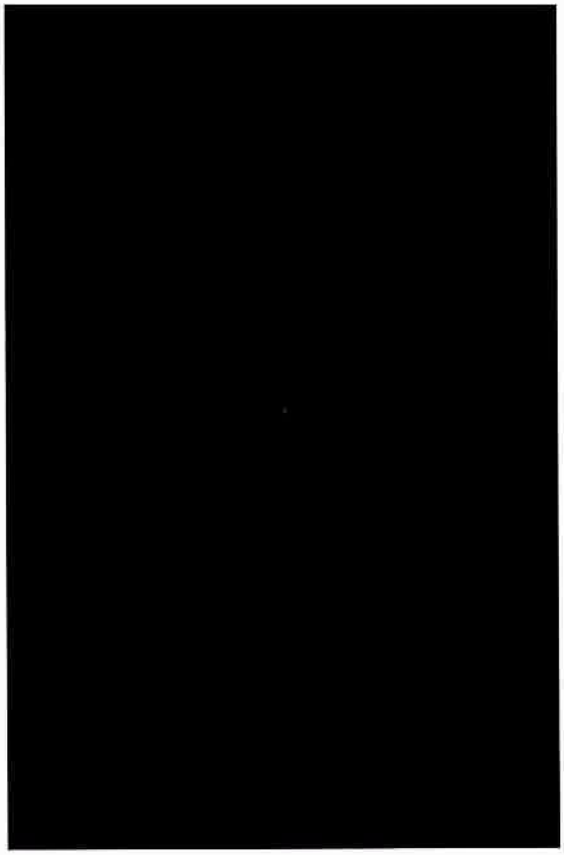
APPLICATION FOR NOMINATION TO THE COUNTY COURT

ST. JOHNS COUNTY, FLORIDA

JUNE 23, 2025

RANDALL ANN DAUGUSTINIS, ESQ.



APPLICATION FOR NOMINATION TO THE ST. JOHNS COUNTY COURT

Instructions: *Respond fully to the questions asked below. Please make all efforts to include your full answer to each question in this document. You may attach additional pages, as necessary, however it is discouraged. In addition to the application, you must provide a recent color photograph to help identify yourself.*

Full Name: Randall Ann Daugustinis **Social Security No.:** [redacted]

Florida Bar No.: 0112134 **Date Admitted to Practice in Florida: 9/24/2014**

1. Please state your current employer and title, including any professional position and any public or judicial office you hold, your business address and telephone number.

   State Attorney's Office, Fourth Judicial Circuit
   Assistant State Attorney – Division Chief of the Special Victims Unit
   825 N. Orange Avenue, Green Cove Springs, FL 32043
   904-529-3681

2. Please state your current residential address, including city, county, and zip code. Indicate how long you have resided at this location and how long you have lived in Florida. Additionally, please provide a telephone number where you can be reached (preferably a cell phone number), and your preferred email address.

   Current residential address:
   [redacted]

   I have resided at this residence since May 2020.

   I first lived in Florida from August 2007-December 2010. I have continuously lived in Florida since 2011.

   Cell phone number: [redacted]

   Preferred email address: [redacted]

3. State your birthdate and place of birth.

   [redacted]
   New Haven, Connecticut

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

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

   Florida Supreme Court (Florida Bar): Admitted September 24, 2014

6. Have you ever been known by any aliases? If so, please indicate and when you were known by such alias.

   My maiden name is Randall Ann Radziszewski. I was known by my maiden name until November 2015 when I got married and legally changed my last name to Daugustinis. I have also been referred to by my nickname, Randi, since 1988.

EDUCATION:

7. List in reverse chronological order each secondary school, college, university, law school or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, the date the degree was received, class standing, and graduating GPA (if your class standing or graduating GPA is unknown, please request the same from such school).

   Florida Coastal School of Law
   August 15, 2011-May 18, 2014
   Juris Doctorate, *Magna Cum Laude*, received May 18, 2014
   Graduated in the top 3% of class
   Graduating GPA 3.66
   Exact class rank unavailable

   University of Tampa
   August 2007-December 18, 2010
   Bachelor of Science, *Magna Cum Laude*, received December 18, 2010
   Major in Criminology, Minor in Spanish
   Class Standing 12 out of 1367
   Graduating GPA 3.98

   North Mecklenburg High School
   October 2005-June 2007
   High School Diploma, received in June 2007
   Class Standing 92 out of 626
   Graduating GPA 4.4 weighted

   Voorhees High School
   September 2003-October 2005

No degree received or requested (I moved out of state)

8. List and describe any organizations, clubs, fraternities or sororities, and extracurricular activities you engaged in during your higher education. For each, list any positions or titles you held and the dates of participation.

Florida Coastal School of Law:

Harding Inn of Phi Delta Phi, National Legal Honor Society: Member, 2012-2014

Moot Court Honor Board: Member, Brief Writer, Team Manager, 2012-2014

Mock Trial: Member, 2013-2014

Teaching Assistant: 2013-2014

Public Interest Research Bureau: Managing Editor, Recruitment Director, April 2012-April 2014

University of Tampa:

Student Conduct Board: Chairperson, Board Member, 2009-2010

Criminology Club: Secretary, Member, 2007-2010

Alpha Phi Sigma National Criminal Justice Honor Society: Member, 2008-2010

Sigma Alpha Pi National Society of Leadership and Success: Member, 2008-2010

Omicron Delta Kappa National Leadership Honor Society: Member, 2008-2010

Sigma Delta Pi Sociedad Nacional Honoraria Hispanica: Member, 2008-2010

Phi Eta Sigma Freshman National Honor Society: Member, 2007-2008

Flag football and indoor soccer intramural teams: Fall 2009

EMPLOYMENT:

9. List in reverse chronological order all full-time jobs or employment (including internships and clerkships) you have held since the age of 21. Include the name and address of the employer, job title(s) and dates of employment. For non-legal employment, please briefly describe the position and provide a business address and telephone number.

Assistant State Attorney **March 2020 to Current**
State Attorney's Office, 4th Judicial Circuit

825 N. Orange Avenue, Green Cove Springs, FL 32043
(904) 529-3681

Assistant State Attorney — **August 2014 to March 2020**
State Attorney's Office, 10th Judicial Circuit
255 N. Broadway Avenue, Bartow, FL 33830
(863) 534-4890

Certified Legal Intern/Externship — **January 2014-April 2014**
State Attorney's Office, 4th Judicial Circuit
311 W. Monroe St., Jacksonville, FL 32202
(904) 255-2500

Law Clerk — **August 2013-November 2013**
Law Offices of Fred Tromberg
4925 Beach Blvd., Jacksonville, FL 32207
(904) 396-5321

Summer Law Intern/Externship — **May 2012-July 2012**
United States Attorney's Office, Middle District of Florida
300 N. Hogan St., Jacksonville, FL 32202
(904) 301-6300

Server/Waitress — **March 2011-August 2011**
Buffalo Wild Wings
289 George Bay Ct., Concord, NC 28027
(704) 782-9464

College Law Intern/Externship — **August 2010-December 2010**
United States Attorney's Office, Middle District of Florida
400 N. Tampa St., Suite 3200, Tampa, FL 33602
(813) 274-6000

Summer Intern — **May 2010-August 2010**
Guardian Ad Litem
700 East 4th St., Suite 300, Charlotte, NC 28202
(704) 686-0075

Server/Waitress — **May 2010-August 2010**
Buffalo Wild Wings (Restaurant)
400 E. Martin Luther King Jr. Blvd., Charlotte, NC 28202
(704) 971-9464

Hostess **May 2009-August 2009**
Brickhouse Tavern (Restaurant)
209 Delburg St., Davidson, NC 28036
(704) 987-2022

10. Describe the general nature of your current practice including any certifications which you possess; additionally, if your practice is substantially different from your prior practice or if you are not now practicing law, give details of prior practice. Describe your typical clients or former clients and the problems for which they sought your services.

I am an Assistant State Attorney for the Fourth Judicial Circuit. I am currently the Division Chief of the Special Victims Unit for the Clay County office and I handle felony prosecutions ranging from child abuse/neglect to sexual battery and homicide. I have no clients and I represent the State of Florida in these criminal matters.

11. What percentage of your appearance in court in the last five years or in the last five years of practice (include the dates) was:

Court		Area of Practice	
Federal Appellate	____ %	Civil	____ %
Federal Trial	____ %	Criminal	**100** %
Federal Other	____ %	Family	____ %
State Appellate	____ %	Probate	____ %
State Trial	**100** %	Other	____ %
State Administrative	____ %		
State Other	____ %		
TOTAL	100 %	TOTAL	100 %

If your appearance in court the last five years is substantially different from your prior practice, please provide a brief explanation: **Not Applicable.**

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

Jury? 57 Non-jury? 3

Arbitration? ____ Administrative Bodies? ____

Appellate? _____

13. Please list every case that you have argued (or substantially participated) in front of the United States Supreme Court, a United States Circuit Court, the Florida Supreme Court, or a Florida District Court of Appeal, providing the case name, jurisdiction, case number, date of argument, and the name(s), e-mail address(es), and telephone number(s) for opposing appellate counsel. If there is a published opinion, please also include that citation.

Not Applicable.

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

No.

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

No.

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

State of Florida v. Christopher Pledger, Clay County Case No. 2020CF-001603, Fifth District Court of Appeal 5D2023-1990, Co-Counsel Philip Bavington, phil.bavington@gmail.com, (904) 269-6319, Defense Attorney Jennings Mark Wright, jmw@pd4.coj.net, (904) 269-6318, Defense Attorney Richard Andrew Rippeon, arippeon@pd4.coj.net, (904) 269-6318.

State v. Daveion Austin, Clay County Case No. 2020CF-001606, Fifth District Court of Appeal 5D2023-2241, Co-Counsel Hector Murcia Bustos, hmbustos@coj.net, (904) 269-6319, Defense Attorney Julie Schlax, julie@schlaxlaw.com, (904) 674-0717.

State v. Jesus Garcia, Clay County Case No. 2020CF-001704, Co-Counsel Cara Devlin, cdevlin@coj.net, (904) 529-3681, Defense Attorney Beth Sammons, bma@claylawyer.com, (904) 284-2970.

State v. Timothy Floyd, Clay County Case No. 2022CF-001226, Fifth District Court of Appeal 5D2024-2371, Co-Counsel Jamie Cona, jcona@coj.net, (904) 284-6319, Defense Attorney Jennings Mark Wright, jmw@pd4.coj.net, (904) 269-6318, Defense Attorney Charles Simpson, csimpson@pd4.coj.net, (904) 271-9669.

State v. Dustin Chapin, Clay County Case No. 2018CF-001697, Fifth District Court of Appeal 5D2025-0346, Co-Counsel Cara Devlin, cdevlin@coj.net, (904) 529-3681, Defense Attorney Kenneth Weaver, ken@weaverdorfmanlaw.com, (321) 259-0560, Defense Attorney Jerry Sessions, atty.sessions@gmail.com, (904) 329-7264.

State v. Eric Green, Clay County Case No. 2024CF-000927, Co-Counsel Cara Devlin, cdevlin@coj.net, (904) 529-3681, Defense Attorney Charles Simpson, csimpson@pd4.coj.net, (904) 271-9669, Defense Attorney Jennings Mark Wright, jmw@pd4.coj.net, (904) 269-6318.

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

State v. Scott Morris, Clay County Case No. 2023CF-000022, Fifth District Court of Appeal 5D2025-0140, Defense Attorney Charles Simpson, (904) 271-9669.

State v. Marc Jubin, Clay County Case No. 2023CF-000940, Defense Attorney Beth Sammons, (904) 284-2970.

State v. Morgan Tindall, Clay County Case No. 2024CF-000236, Fifth District Court of Appeal 5D2025-0434, Defense Attorney Loren Hevesi, (904) 529-1050.

State v. Alexander Higgins, Clay County Case No. 2024CF-000978, Defense Attorney Richard Andrew Rippeon, (904) 269-6318.

State v. Leslie Smith, Clay County Case No. 2023CF-001538, Defense Attorney Charles Simpson, (904) 271-9669.

State v. Kellum Keys, Clay County Case No. 2023CF-000667, Defense Attorney Brandine Powell, (954) 735-0095.

18. During the last five years, on average, how many times per month have you appeared in Court or at administrative hearings? If during any period you have appeared in court with greater frequency than during the last five years, indicate the period during which you appeared with greater frequency and succinctly explain.

As an Assistant State Attorney in a trial division, I am in court regularly. On average, I appear in court approximately 15 times per month.

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

Not Applicable.

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

Not Applicable.

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

State v. Delavon Johnson, Circuit Court of the Tenth Judicial Circuit in Polk County, FL, 53-2013CF-009827. Second District Court of Appeal, 2D2018-1340. Judge Wayne Durden. Defense Attorney Cachina King Patterson (cpatterson@hofla.org, (863) 519-5663).

In my first case as a prosecutor in the Special Victims Unit, I took over an Aggravated Child Abuse with Great Bodily Harm case not long before trial and was precluded from using any of the Defendant's statements due to a Second District Court of Appeal ruling. The case hinged on complex medical testimony, as the victim suffered from permanent brain injury. The victim was the Defendant's three-month-old daughter. On December 1, 2013, the victim's mother left the victim alone with the Defendant for approximately one hour. When she left home, the victim was healthy and sleeping. When she returned, the victim was nonresponsive and her eyes were rolling back into her head. The victim suffered from significant brain injury. Medical experts opined that the victim suffered from abusive head trauma and will be permanently disabled. Despite being four years old by the time the case went to trial, the victim had the mental capacity of a baby.

I believe this is a significant case because it required very technical, difficult, and complex evidence. I had to not only learn all about the medical diagnoses, but understand the evidence well enough to be able to competently present it to a jury with no medical background. The case was also over four years old by the time it went to trial, which posed yet another hurdle. I was able to successfully prosecute the Defendant and obtain a guilty as charged verdict in January 2018. The Defendant was sentenced to the maximum allowed by law, which was 30 years in Florida State Prison. The Defendant appealed the judgment and sentence and the Second District Court of Appeal affirmed. 2D2018-1340.

State v. Jonathan Diaz Fundora, Circuit Court of the Tenth Judicial Circuit in Polk County, FL, 53-2018-CF-003015. Judge Wayne Durden. Defense Attorney Grace K. Bowles (gbowles@pd10.org, (863) 534-4200).

I personally handled this case from the time of the Defendant's arrest to his sentencing hearing. The Defendant, who was 23 years old at the time, was arrested for sexually battering a ten-year-old female child. After the Defendant's arrest, I interviewed the victim and I ultimately charged the Defendant with a total of 13 crimes, the most serious being Capital Sexual Battery, punishable by mandatory life in prison.

Unfortunately, while the case was pending, the victim passed away. After her death, I filed a motion seeking to admit the victim's hearsay statements made to a treating physician pursuant to Florida Statute Section 90.803(4) as statements made for purposes of medical diagnosis or treatment. During the hearing on the State's motion in October 2018, I elicited testimony from the treating physician and I made a legal argument as to why the victim's hearsay statements should be admitted into evidence during the State's case in chief. Ultimately, the court granted the State's motion and ruled the victim's hearsay statements were admissible. After the court's ruling, the Defendant entered an open plea to all 13 charges, including the Capital Sexual Battery. The court held a sentencing hearing in January 2019, which was the most emotional hearing I have been a part of in my career. The Defendant was sentenced to life in prison and was designated as a sexual predator. This case is significant to me because it really taught me to separate my emotions from my legal analysis. In the wake of tragedy, I had to quickly pivot to determine how I could successfully prosecute the Defendant without the victim's testimony at trial. I was able to conduct thorough research and successfully present my argument to the court. The judge also had a difficult job to do because he too had to separate his emotions in deciding the outcome of the State's motion hearing.

State v. Travis Burton, Circuit Court of the Tenth Judicial Circuit in Polk County, FL, 53-2017-CF-010615. Second District Court of Appeal, 2D2019-2036. Judge Wayne Durden. Co-Counsel Rachelle Williamson (rwilliamson@jud10.flcourts.org, (863) 534-4088). Defense Attorney Lee Cohen (lee@cohenlaw7.com, (863) 646-7636).

This case received significant media attention in Polk County. I personally handled this case from the time of the Defendant's arrest to the jury trial, which was in May 2019. I charged the Defendant with Sexual Battery (Victim 12+ with a Deadly Weapon or Physical Force), Kidnapping (Bodily Harm or Terrorize), and Soliciting for Prostitution. The victim was a 16-year-old female, who was also the victim of human trafficking by another individual (whom I also personally prosecuted). The Defendant, age 30 at the time, responded to the victim's "Backpage" ad, which was posted by the victim's trafficker. The victim was dropped off at the Defendant's residence and as soon as she entered the residence, the Defendant began beating her. Ultimately, the Defendant forcefully sexually battered the victim and threatened her with a knife. He tied her up, put her in his truck, and drove her to a dark and isolated orange grove in Polk County. While in the orange grove, the Defendant sexually battered the victim again and put a rope around her neck. Meanwhile, the victim's trafficker had arrived back at the Defendant's residence to pick her up, but

when he saw the victim's torn underwear and tape containing the victim's hair, he called 911. Law enforcement responded and pinged the victim's phone, leading deputies to the isolated orange grove. The aviation unit used a thermal imaging camera and was able to locate the Defendant and the victim. The Defendant was apprehended after attempting to flee on foot.

During the pendency of the case, the victim moved from group home to group home, and for a period of time I did not know if we would be able to locate her for trial. She was traumatized and scared to testify and I ultimately had to travel several hours away to meet with her in another group home and gain her cooperation and trust. Additionally, the Defendant went *pro se* for a period of time and filed a *pro se* motion to suppress evidence, which was heard in October 2018. The court ultimately denied the Defendant's motion to suppress. The Defendant then requested counsel and was appointed attorney Lee Cohen, who was the Defendant's trial counsel. While I had a second chair, I personally handled all aspects of the jury trial, which lasted a full week. At least 19 witnesses testified for the State and I cross examined the Defendant. The jury found the Defendant guilty as charged and the Defendant was sentenced to life in prison as a prison releasee reoffender. The Defendant appealed the judgment and sentence and the Second District Court of Appeal affirmed. 2D2019-2036.

This case is significant because of its severity, it involved a pro se Defendant for a period of time, and it also involved several evidentiary issues that had to be litigated pretrial. The judge had to make many rulings on the admissibility of certain evidence throughout the case. The judge also had to conduct numerous Faretta inquiries before the Defendant requested an attorney. The fact that the victim moved to various group homes during the pendency of the case and was so traumatized also posed a hurdle, which I was able to overcome to successfully prosecute the Defendant.

State v. Christopher Pledger, Circuit Court of the Fourth Judicial Circuit in Clay County, FL, 10-2020-CF-001603. Fifth District Court of Appeal, 5D2023-1990. Judge Don Lester. Co-Counsel Philip Bavington (phil.bavington@gmail.com, (904) 269-6319). Defense Attorneys Jennings Mark Wright (jmw@pd4.coj.net, (904) 269-6318) and Richard Andrew Rippeon (arippeon@pd4.coj.net, (904) 269-6318).

I prosecuted this case by jury trial in March 2023. The Defendant was charged with four counts of Familial/Custodial Sexual Battery, which are punishable by life offenses. The victim was the Defendant's stepdaughter and he began sexually abusing her when she was 13 years old. The abuse continued for several years. This case involved *Williams Rule* evidence because the Defendant also sexually abused two of the victim's siblings. During trial, I had to be very strategic in eliciting the testimony of the *Williams Rule* victims and I had to keep my arguments narrow in order to follow the law regarding this particular type of evidence and to avoid an appellate issue. I believe this case is significant because of the *Williams Rule* evidence, as well as the fact that it not only involved several victims, all of whom were afraid or nervous to testify against the Defendant, but the Defendant's biological son also testified for the State regarding incriminating statements made by the Defendant.

The case also involved very delayed disclosures from the named victim, with the incidents dating back to 2010. Therefore, there was no physical evidence. The jury found the Defendant guilty as charged and the Defendant was sentenced to life in prison on all four counts. The Defendant appealed his conviction and the Fifth District Court of Appeal affirmed. 5D2023-1990.

State of Florida v. Daveion Austin, Circuit Court of the Fourth Judicial Circuit in Clay County, FL, 10-2020-CF-001606. Fifth District Court of Appeal, 5D2023-2241. Judge Don Lester. Co-Counsel Hector Murcia Bustos (hmbustos@coj.net, (904) 269-6319). Defense Attorney Julie Schlax (julie@schlaxlaw.com, (904) 674-0717).

I prosecuted this case by jury trial in April 2023. The Defendant was charged with Second Degree Felony Murder and Armed Robbery. This case is significant because it was my first homicide jury trial and it also involved several evidentiary issues. The Defendant and several other individuals were involved in attacking the deceased victim and the armed robbery victim. The Defendant was not who shot and killed the deceased victim, so the State argued the principal theory. Detectives interviewed the Defendant upon his arrest and he made multiple incriminating statements. The interview was audio and video recorded, but the quality of the audio recording itself was very poor and many of the words spoken were inaudible. The State and numerous law enforcement agencies tried to enhance the audio, but it was not unsuccessful. At trial, I questioned the lead detective at length regarding this recording and I had him break down the entire interview in detail. The Defendant testified at trial that the detectives fabricated his confession and he testified to an entirely different version of events on the date of the incident. I was able to effectively cross examine the Defendant at trial and the jury found the Defendant guilty of Second Degree Felony Murder and Armed Robbery. The Defendant appealed his conviction and the Fifth District Court of Appeal affirmed. 5D2023-2241.

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

I have included two writing samples at the end of this application, which I personally wrote. The first writing sample is the State's response to a defendant's motion to suppress evidence. The second writing sample is the State's response to a defendant's motion for postconviction relief.

PRIOR JUDICIAL EXPERIENCE OR PUBLIC OFFICE

23. Have you ever held judicial office or been a candidate for judicial office? If so, state the court(s) involved, the dates of service or dates of candidacy, and any election results.

No.

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

Not Applicable.

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

Not Applicable.

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

(i) the names, phone numbers and addresses of six attorneys who appeared before you on matters of substance;
(ii) the approximate number and nature of the cases you handled during your tenure;
(iii) the citations of any published opinions; and
(iv) descriptions of the five most significant cases you have tried or heard, identifying the citation or style, attorneys involved, dates of the case, and the reason you believe these cases to be significant.

Not Applicable.

27. Provide citations and a brief summary of all of your orders or opinions where your decision was reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, attach copies of the opinions.

Not Applicable.

28. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, attach copies of the opinions.

Not Applicable.

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

Not Applicable.

30. Have you ever held an attorney in contempt? If so, for each instance state the name of the attorney, case style for the matter in question, approximate date and describe the circumstances.

Not Applicable.

31. Have you ever held or been a candidate for any other public office? If so, state the office, location, dates of service or candidacy, and any election results.

No.

NON-LEGAL BUSINESS INVOLVEMENT

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

Not Applicable.

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

No.

POSSIBLE BIAS OR PREJUDICE

34. The Commission is interested in knowing if there are certain types of cases, groups of entities, or extended relationships or associations which would limit the cases for which you could sit as the presiding judge. Please list all types or classifications of cases or litigants for which you, as a general proposition, believe it would be difficult for you to sit as the presiding judge. Indicate the reason for each situation as to why you believe you might be in conflict. If you have prior judicial experience, describe the types of cases from which you have recused yourself.

My husband is an attorney licensed to practice law in the State of Florida. I would recuse myself from any case involving him. Otherwise, there are no types of cases, groups of entities, or extended relationships or associations which would limit the cases for which I could sit as the presiding judge.

PROFESSIONAL ACCOMPLISHMENTS AND OTHER ACTIVITIES

35. List the titles, publishers, and dates of any books, articles, reports, letters to the editor, editorial pieces, or other published materials you have written or edited, including materials published only on the Internet. Attach a copy of each listed or provide a URL at which a copy can be accessed.

None.

36. List any reports, memoranda or policy statements you prepared or contributed to the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. Provide the name of the entity, the date published, and a summary of the document. To the extent you have the document, please attach a copy or provide a URL at which a copy can be accessed.

None.

37. List any speeches or talks you have delivered, including commencement speeches, remarks, interviews, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place they were delivered, the sponsor of the presentation, and a summary of the presentation. If there are any readily available press reports, a transcript or recording, please attach a copy or provide a URL at which a copy can be accessed.

None.

38. Have you ever taught a course at an institution of higher education or a bar association? If so, provide the course title, a description of the course subject matter, the institution at which you taught, and the dates of teaching. If you have a syllabus for each course, please provide.

No.

39. List any fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement. Include the date received and the presenting entity or organization.

I received recognition for Outstanding DUI Prosecution at the 2016 Mothers Against Drunk Driving Annual Law Enforcement Training and Recognition Ceremony.

Graduated *Magna Cum Laude* from Florida Coastal School of Law, May 2014.

Research, Writing, and Drafting Certificate – Awarded May 2014 from Florida Coastal School of Law.

Pro Bono Honors – Awarded May 2014 from Florida Coastal School of Law.

Dean's Scholar – Awarded Fall 2011, Spring 2012, Fall 2012, Spring 2013, Fall 2013, and Spring 2014 from Florida Coastal School of Law.

Book Award for the highest grade in Legal Research and Writing I – Awarded Fall 2011 from Florida Coastal School of Law.

Book Award for the highest grade in Legal Research and Writing II – Awarded Spring 2012 from Florida Coastal School of Law.

Book Award for the highest grade in Evidence – Awarded Fall 2012 from Florida Coastal School of Law.

Book Award for the highest grade in Pretrial Litigation Drafting – Awarded Spring 2013 from Florida Coastal School of Law.

National Best Brief Award – Awarded November 2013 by the Chicago Bar Association Moot Court Competition.

Best Civil Team Award – Awarded Fall 2013 during the trial practice course trial competition.

Best Advocate Award – Awarded Fall 2013 during the trial practice course trial competition.

Best Direct Examination Award – Awarded in Fall 2013 during the trial practice course trial competition.

Best Cross Examination Award – Awarded in Fall 2013 during the trial practice course trial competition.

Harding Inn of Phi Delta Phi, National Legal Honor Society – Florida Coastal School of Law, 2012-2014.

Graduated *Magna Cum Laude* from the University of Tampa, December 2010.

Alpha Phi Sigma National Criminal Justice Honor Society – University of Tampa, 2008-2010.

Sigma Alpha Pi National Society of Leadership and Success – University of Tampa, 2008-2010.

Omicron Delta Kappa National Leadership Honor Society – University of Tampa, 2008-2010.

Sigma Delta Pi Sociedad Nacional Honoraria Hispanica – University of Tampa, 2008-2010.

Phi Eta Sigma Freshman National Honor Society – University of Tampa, 2007-2008.

Dean's Scholarship Recipient – Awarded by the University of Tampa, August 2007-December 2010.

Dean's List – Awarded Fall 2007, Spring 2008, Fall 2008, Spring 2009, Fall 2009, Spring 2010, and Fall 2010 by the University of Tampa.

40. Do you have a Martindale-Hubbell rating? If so, what is it and when was it earned?

No.

41. List all bar associations, legal, and judicial-related committees of which you are or have been a member. For each, please provide dates of membership or participation. Also, for each indicate any office you have held and the dates of office.

The Federalist Society – May 2023 to Present

Clay County Bar Association – January 2023 to Present

Wilson Inn of Court – Associate, 2016

42. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in the previous question to which you belong, or to which you have belonged since graduating law school. For each, please provide dates of membership or participation and indicate any office you have held and the dates of office.

Junior League of Greater Lakeland – August 2016 to Spring 2018

St. John Paul II Catholic Church – 2019 to present

Belles & Beaus of the River – 2022 (this is a social, philanthropic society serving the greater Jacksonville area). As a member, I participated in community volunteer events.

As part of my role as an Assistant State Attorney in the Special Victims Unit in Clay County from 2020-present, I frequently participate in community events with and to benefit the Quigley House, which is Clay County's domestic violence and sexual assault center.

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

From August 2016 to the spring of 2018, when I was employed by the State Attorney's Office in Polk County, Florida, I was a member of the Junior League of Greater Lakeland, which is a non-profit charitable organization that restricts its membership to women. The Junior League's mission is to advance women's leadership in the community through volunteerism and collaboration. The Junior League's purpose is exclusively educational and charitable. While membership is restricted to women, women of all races, religion, and national origin are eligible to join. I have not been a member of the Junior League of Greater Lakeland since spring of 2018 and will not be rejoining.

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

As an Assistant State Attorney, I am not able to perform pro bono legal work.

45. Please describe any hobbies or other vocational interests.

I enjoy spending time with my family, baking, traveling, and participating in outdoor activities.

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

I have not served in the military.

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

https://www.instagram.com/randi_daugustinis/

www.snapchat.com/add/randi_daug

https://www.linkedin.com/in/randi-daugustinis-7810a782

FAMILY BACKGROUND

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

I am married to [redacted]. We have been married since November 1, 2015. He is employed by [redacted]. He is an attorney and operations manager for the company.

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

[redacted]

CRIMINAL AND MISCELLANEOUS ACTIONS

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

No.

51. Have you ever pled nolo contendere or guilty to a crime which is a felony or misdemeanor, including adjudications of guilt withheld? If so, please list and provide the charges, case style,

date of conviction, and terms of any sentence imposed, including whether you have completed those terms.

No.

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

No.

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

No.

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

No.

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

No.

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

No.

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

No.

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

No.

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

No.

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

No.

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

I have complied with all legally required tax return filings.

HEALTH

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

No.

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

No.

64. In the past ten years have any of the following occurred to you which would interfere with your ability to work in a competent and professional manner: experiencing periods of no sleep for two or three nights, experiencing periods of hyperactivity, spending money profusely with extremely

poor judgment, suffering from extreme loss of appetite, issuing checks without sufficient funds, defaulting on a loan, experiencing frequent mood swings, uncontrollable tiredness, falling asleep without warning in the middle of an activity. If yes, please explain.

No.

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

No.

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

No.

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

No.

68. In the past ten years, have you ever been reprimanded, demoted, disciplined, placed on probation, suspended, cautioned, or terminated by an employer as result of your alleged consumption of alcohol, prescription drugs, or illegal drugs? If so, please state the circumstances under which such action was taken, the name(s) of any persons who took such action, and the background and resolution of such action

No.

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

No.

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

No.

SUPPLEMENTAL INFORMATION

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

My experience as an Assistant State Attorney for nearly 11 years will greatly assist me in holding judicial office. I started my career as a prosecutor in county court handling misdemeanors, then I worked my way up to the felony division, the Special Victims Unit, and ultimately to my position as Division Chief of the Special Victims Unit. Over the years, I have learned how to effectively manage a caseload. There have been times that my caseload was approximately 200 cases. While this had the potential to be overwhelming, I have always been able to efficiently handle my cases and be as prepared as possible when I step foot in the courtroom. I have experience "calling the dockets" during arraignment dockets and pretrial dockets. As a prosecutor, I understand the importance of efficiency and the court's time and I will not call a case until I know both the State and Defense are ready to proceed to avoid any delay in handling the matter at hand. This experience will assist me in running my own docket as a judge, as I will be conscious of not only my time, but the time of all parties involved and I will make sure that all parties are given adequate time to make their arguments.

I have litigated hundreds of cases during my career as a prosecutor. There have been many times that my cases involved an area of the law that I was unfamiliar with, which has helped me develop significant research skills to expand my knowledge of the law. I have also learned the importance of collegiality and conferring with my colleagues, which will remain important when I hold judicial office. When I was in law school, I had the opportunity to clerk for the Law Offices of Fred Tromberg, handling a variety of topics in civil litigation, ranging from personal injury to foreclosure. When I started my clerkship, I had no experience dealing with those types of cases, but I was able to observe the attorneys in the office, conduct extensive research on the subject matters, and I became well versed on the matters in which I was handling at the time. I understand that judges are assigned to various divisions while holding office, sometimes dealing with different areas of the law than he or she practiced. The skills I have acquired as an Assistant State Attorney and as a law clerk will assist me in being able to quickly adapt and learn any new area of the law to enable me to effectively preside over the cases that come before me.

Through my experience at the State Attorney's Office, I have learned the importance of protecting the court record. Over the past 11 years, I have had the opportunity to appear before many different judges on both the county court and the circuit court. Some of the judges were new to the criminal bench. While many of my colleagues would get nervous when a judge new to the criminal bench would take over in our division, I always took that opportunity to refine and hone my courtroom skills and make sure that my arguments were even more thorough. I have been in the Special Victims Unit for approximately eight years. The cases that I handle often require very specific judicial findings on the record and are riddled with complex evidentiary issues that could potentially pose appellate issues. I have

the experience to make sure that my arguments remain confined to what the law and rules of evidence allow and I have the experience to ensure that the proper judicial findings are made on the record.

Not only have I had the privilege to practice before many judges in two different judicial circuits, but I have had the opportunity to work with many defense attorneys and fellow prosecutors. Throughout the past 11 years, I have been a mentor to younger attorneys, often training new attorneys on the role of a prosecutor, how to manage a caseload, how to litigate certain matters in court, and how to effectively present a case to a jury. My experience as a mentor, and as a supervisor for several years, has taught me the true meaning of leadership. I always strive to be professional and respectful to everyone I come into contact with in life and in my career. My professionalism, respect, legal knowledge, and leadership will assist me in holding judicial office.

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

I have dedicated my career to public service. Public service is who I am and it all started when I was a young child. I grew up having a very close relationship with my grandparents. Both of my grandfathers served our country in the military and always instilled in me the importance of service to our community and to our country. I lived with my grandparents for a period of time when I was approximately six years old. Every night after dinner, I held pretend court and put my grandfather on trial for saying something that I, at the time, deemed disrespectful to my grandmother. During pretend court, I played the role of the attorney, the judge, and the jury. No one in my family knew where I learned this behavior because I was not watching legal television shows at that age. Fast forward 30 years and I have passionately served the People of the State of Florida for nearly 11 years as a prosecutor. I now feel it is the right time for me to serve my community in a different capacity, as a County Court Judge in St. Johns County. My experience as an Assistant State Attorney has given me the valuable tools I need to be a successful jurist. I have learned from many incredible attorneys and judges throughout my career, who have all helped me expand my knowledge of the law and I will continue to expand my knowledge of the law as a member of the judiciary.

I have also faithfully upheld the Oath of Attorney every day since my admission to the Florida Bar. I believe in the separation of powers in our system of government, I am committed to supporting and upholding the Constitution, and I will exercise judicial restraint when deciding cases. In my capacity as the Division Chief of the Special Victims Unit, I am often tasked with making difficult decisions. When an arrest is made, I then decide what, if any, charges are appropriate. After the filing decision is made, I then decide what the just outcome should be, whether it is a plea offer or a sentencing recommendation after a trial. Even when the outcome is contrary to my personal preferences, I am able to be decisive and come to a conclusion that is consistent with the law as it is written. As a judge, I will continue to be decisive and apply the law as it is written.

Additionally, just as I have pledged fairness, integrity, and civility to opposing parties and counsel as an Assistant State Attorney, I will continue to pledge fairness, integrity, and civility to all parties who appear before me upon my appointment to the bench. I will continue to exemplify the standards of professionalism and treat everyone who appears before me with respect. I am also a leader and a team player, which are both valuable traits for a member of the judiciary. Throughout my experience at the State Attorney's Office, there have been many times that I stepped in to assist a colleague or to cover a hearing or trial for another attorney. I will continue to be a team player upon appointment to the bench and will look forward to working with and assisting the county court judges and circuit court judges in St. Johns County.

St. Johns County is my home and I have a strong desire to serve my community as a County Court Judge. My legal career and work ethic have prepared me for this role. Additionally, I have assisted several members of my community in various campaigns, teaching me what it takes to win an election. If appointed to the bench, I am confident that I will be able to retain my seat.

REFERENCES

73. List the names, addresses, e-mail addresses and telephone numbers of ten persons who are in a position to comment on your qualifications for a judicial position and of whom inquiry may be made by the Commission and the Governor.

Honorable Don Lester
Senior Judge, Fourth Judicial Circuit
825 N. Orange Ave., Green Cove Springs, FL 32043
(904) 269-6302
Lesterd@clayclerk.com

Honorable Rachelle Williamson
County Court Judge, Tenth Judicial Circuit
P.O. Box 9000, Drawer J-129, Bartow, FL 33831
(863) 534-4088
rwilliamson@jud10.flcourts.org

Honorable Melissa Gravitt
Circuit Court Judge, Tenth Judicial Circuit
P.O. Box 9000, Drawer J-135, Bartow, FL 33831
(863) 534-4684
mgravitt@jud10.flcourts.org

Honorable Wayne Durden
Retired Circuit Court Judge, Tenth Judicial Circuit
P.O. Box 9000, Bartow, FL 33831
[redacted]
wtdurden@verizon.net

Timothy Miller
Harris, Guidi, & Rosner, P.A.
1837 Hendricks Ave., Jacksonville, FL 32207
(904) 607-8700
miller@harrisguidi.com

Ashley McCarthy
State Attorney's Office, Seventh Judicial Circuit
251 N. Ridgewood Ave., Daytona Beach, FL 32214
(386) 239-7710
mccarthya@sao7.org

Cara Devlin
State Attorney's Office, Fourth Judicial Circuit
825 N. Orange Ave., Green Cove Springs, FL 32043
(904) 529-3681
cdevlin@coj.net

Jeremiah Blocker
Douglas Law Firm
100 Southpark Blvd., Suite 414, St. Augustine, FL 32086
(352) 362-9317
jeremiah@dhclawyers.com

Fred Tromberg
Law Offices of Fred Tromberg
4925 Beach Blvd., Jacksonville, FL 32207
(904) 514-3322
tromberglaw@bellsouth.net

Mark Sieron
Aguilar & Sieron, P.A.
1045 N. Orange Ave, Ste. 3, Green Cove Springs, FL 32043
(904) 707-1596
mark@aguilarsieron.com

CERTIFICATE

I have read the foregoing questions carefully and have answered them truthfully, fully and completely. I hereby waive notice by and authorize The Florida Bar or any of its committees, educational and other institutions, the Judicial Qualifications Commission, the Florida Board of Bar Examiners or any judicial or professional disciplinary or supervisory body or commission, any references furnished by me, employers, business and professional associates, all governmental agencies and instrumentalities and all consumer and credit reporting agencies to release to the respective Judicial Nominating Commission and Office of the Governor any information, files, records or credit reports requested by the commission in connection with any consideration of me as possible nominee for appointment to judicial office. Information relating to any Florida Bar disciplinary proceedings is to be made available in accordance with Rule 3-7.1(l), Rules Regulating The Florida Bar. I recognize and agree that, pursuant to the Florida Constitution and the Uniform Rules of this commission, the contents of this questionnaire and other information received from or concerning me, and all interviews and proceedings of the commission, except for deliberations by the commission, shall be open to the public.

Further, I stipulate I have read and understand the requirements of the Florida Code of Judicial Conduct.

Dated this 22nd day of June, 2025.

Randall Ann Daugustinis — R Daugustinis

Printed Name — Signature

State of Florida
County of St. Johns

Sworn to (or affirmed) and subscribed before me by means of
☑ physical presence OR ☐ online notarization
this 22nd day of June, 2025.

By Randall Daugustinis
☐ Personally known ___
☑ Produced ID ___
Type of Identification Drivers license

Madison Scharf
Signature Notary Public

Madison Scharf
Printed name of Notary Public

MADISON SCHARF
Notary Public - State of Florida
Commission # HH 513377
My Comm. Expires Apr 8, 2028
Bonded through National Notary Assn.

(Pursuant to Section 119.071(4)(d)(1), F.S.), . . . *The home addresses and telephone numbers of justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges; the home addresses, telephone numbers, and places of employment of the spouses and children of justices and judges; and the names and locations of schools and day care facilities attended by the children of justices and judges are exempt from the provisions of subsection (1), dealing with public records.*

FINANCIAL HISTORY

1. State the amount of gross income you have earned, or losses you have incurred (before deducting expenses and taxes) from the practice of law for the preceding three-year period. This income figure should be stated on a year to year basis and include year to date information, and salary, if the nature of your employment is in a legal field.

Current Year-To-Date: $52,530.00

Last Three Years: 2024 - $103,530.00 2023 - $93,620.78 2022 - $80,386.44

2. State the amount of net income you have earned, or losses you have incurred (after deducting expenses but not taxes) from the practice of law for the preceding three-year period. This income figure should be stated on a year to year basis and include year to date information, and salary, if the nature of your employment is in a legal field.

Current Year-To-Date: $38,310.28

Last Three Years: 2024 - $75,353.05 2023- $68,194.22 2022 - $59,037.90

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

Current Year-To-Date: $155.69 (Bank Interest)

Last Three Years: 2024 - $192.85 (Capital Gain); $306.17 (Bank Interest) 2023 - $313.97 (Bank Interest); 2022 - $1,572.22 (Capital Gain); $71.27 (Bank Interest)

4. State the amount you have earned in the preceding three years on a year by year basis from all sources other than the practice of law, and generally describe the source of such income or losses.

Current Year-To-Date: $155.69 (Bank Interest)

Last Three Years: 2024 - $192.85 (Capital Gain); $306.17 (Bank Interest) 2023 - $313.97 (Bank Interest) ; 2022 - $1,572.22 (Capital Gain); $71.27 (Bank Interest)

5. State the amount of net income you have earned or losses incurred (after deducting expenses) from all sources other than the practice of law for the preceding three-year period on a year by year basis, and generally describe the sources of such income or losses.

Current Year-To-Date: $155.69 (Bank Interest)

Last Three Years: Last Three Years: 2024 - $192.85 (Capital Gain); $306.17 (Bank Interest) 2023 - $313.97 (Bank Interest) ; 2022 - $1,572.22 (Capital Gain); $71.27 (Bank Interest)

FORM 6
FULL AND PUBLIC
DISCLOSURE OF
FINANCIAL INTEREST

PART A – NET WORTH

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

My net worth as of June 13, 2025 was $80,423.00.

PART B - ASSETS

HOUSEHOLD GOODS AND PERSONAL EFFECTS:

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

The aggregate value of my household goods and personal effects (described above) is $ 100,000.00.

ASSETS INDIVIDUALLY VALUED AT OVER $1,000:

DESCRIPTION OF ASSET (specific description is required – see instructions p. 3)	VALUE OF ASSET
Real Property at [redacted]	$650,000.00
Fidelity Roth IRA	$22,310.72
Fidelity Brokerage Account	$2,400.85
Northwestern Mutual Life Insurance	$9,048.87
Fidelity Cash Management Account	$4,821.79
Savings Bonds Series EE	$3,994.06

PART C - LIABILITIES

LIABILITIES IN EXCESS OF $1,000 (See instructions on page 4): NAME AND ADDRESS OF CREDITOR	AMOUNT OF LIABILITY
PNC Mortgage for [redacted] P.O. Box 8807, Dayton, OH 45401-8807	$315,819.57
Vystar Mortgage for [redacted] P.O. Box 41266, Jacksonville, FL 32203-1266	$122,865.58
Mohela Student Loan P.O. Box 790453, St. Louis, MO 63179-0453	$252,492.90
Florida First Credit Union Car Loan P.O. Box 43310, Jacksonville, FL 32203-3310	$19,468.14
Chase Bank P.O. Box 1423, Charlotte, NC 28201-1423	$1,507.10

JOINT AND SEVERAL LIABILITIES NOT REPORTED ABOVE: NAME AND ADDRESS OF CREDITOR	AMOUNT OF LIABILITY

PART D - INCOME

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

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

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

NAME OF SOURCE OF INCOME EXCEEDING $1,000	ADDRESS OF SOURCE OF INCOME	AMOUNT
State of Florida, Fourth Circuit State Attorney's Office	200 E. Gaines St., Tallahassee, FL 32399-0356	$105,060.00

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

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

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

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

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

OATH

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

R Daugustinis

SIGNATURE

STATE OF FLORIDA

COUNTY OF St. Johns

Sworn to (or affirmed) and subscribed before me this 22nd day of June, 2025 by Randall Daugustinis

Madison Scharf

(Signature of Notary Public—State of Florida)

Madison Scharf

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

Personally Known_____*OR* Produced Identification ✓

Type of Identification Produced Drivers license

MADISON SCHARF
Notary Public - State of Florida
Commission # HH 513377
My Comm. Expires Apr 8, 2028
Bonded through National Notary Assn.

INSTRUCTIONS FOR COMPLETING FORM 6:

PUBLIC RECORD: The disclosure form and everything attached to it is a public record. **Your Social Security Number is not required and you should redact it from any documents you file.** If you are an active or former officer or employee listed in Section 119.071(4)(d), F.S., whose home address is exempt from disclosure, the Commission is required to maintain the confidentiality of your home address ***if you submit a written request for confidentiality.***

PART A – NET WORTH

Report your net worth as of December 31 or a more current date, and list that date. This should be the same date used to value your assets and liabilities. In order to determine your net worth, you will need to total the value of all your assets and subtract the amount of all of your liabilities. Simply subtracting the liabilities reported in Part C from the assets reported in Part B will not result in an accurate net worth figure in most cases.

To total the value of your assets, add:

(1) The aggregate value of household goods and personal effects, as reported in Part B of this form;

(2) The value of all assets worth over $1,000, as reported in Part B; and

(3) The total value of any assets worth less than $1,000 that were not reported or included in the category of "household goods and personal effects."

To total the amount of your liabilities, add:

(1) The total amount of each liability you reported in Part C of this form, except for any amounts listed in the "joint and several liabilities not reported above" portion; and,

(2) The total amount of unreported liabilities (including those under $1,000, credit card and retail installment accounts, and taxes owed).

PART B – ASSETS WORTH MORE THAN $1,000

HOUSEHOLD GOODS AND PERSONAL EFFECTS:

The value of your household goods and personal effects may be aggregated and reported as a lump sum, if their aggregate value exceeds $1,000. The types of assets that can be reported in this manner are described on the form.

ASSETS INDIVIDUALLY VALUED AT MORE THAN $1,000:

Provide a description of each asset you had on the reporting date chosen for your net worth (Part A), that was worth more than $1,000 and that is not included as household goods and personal effects, and list its value. Assets include: interests in real property; tangible and intangible personal property, such as cash, stocks, bonds, certificates of deposit, interests in partnerships, beneficial interest in a trust, promissory notes owed to you, accounts received by you, bank accounts, assets held in IRAs, Deferred Retirement Option Accounts, and Florida Prepaid College Plan accounts. You are not required to disclose assets owned solely by your spouse.

How to Identify or Describe the Asset:

— Real property: Identify by providing the street address of the property. If the property has no street address, identify by describing the property's location in a manner sufficient to enable a member of the public to ascertain its location without resorting to any other source of information.

— Intangible property: Identify the type of property and the business entity or person to which or to whom it relates. **Do not list simply "stocks and bonds" or "bank accounts."** For example, list "Stock (Williams Construction Co.)," "Bonds (Southern Water and Gas)," "Bank accounts(First

National Bank)," "Smith family trust," Promissory note and mortgage (owed by John and Jane Doe)."

How to Value Assets:

— Value each asset by its fair market value on the date used in Part A for your net worth.

— Jointly held assets: If you hold real or personal property jointly with another person, your interest equals your legal percentage of ownership in the property. However, assets that are held as tenants by the entirety or jointly with right of survivorship must be reported at 100% of their value.

— Partnerships: You are deemed to own an interest in a partnership which corresponds to your interest in the equity of that partnership.

— Trusts: You are deemed to own an interest in a trust which corresponds to your percentage interest in the trust corpus.

— Real property may be valued at its market value for tax purposes, unless a more accurate appraisal of its fair market value is available.

— Marketable securities which are widely traded and whose prices are generally available should be valued based upon the closing price on the valuation date.

— Accounts, notes, and loans receivable: Value at fair market value, which generally is the amount you reasonably expect to collect.

— Closely-held businesses: Use any method of valuation which in your judgment most closely approximates fair market value, such as book value, reproduction value, liquidation value, capitalized earnings value, capitalized cash flow value, or value established by "buy-out" agreements. It is suggested that the method of valuation chosen be indicated in a footnote on the form.

— Life insurance: Use cash surrender value less loans against the policy, plus accumulated dividends.

PART C—LIABILITIES

LIABILITIES IN EXCESS OF $1,000:

List the name and address of each creditor to whom you were indebted on the reporting date chosen for your net worth (Part A) in an amount that exceeded $1,000 and list the amount of the liability. Liabilities include: accounts payable; notes payable; interest payable; debts or obligations to governmental entities other than taxes (except when the taxes have been reduced to a judgment); and judgments against you. You are not required to disclose liabilities owned *solely* by your spouse.

You do not have to list on the form any of the following: credit card and retail installment accounts, taxes owed unless the taxes have been reduced to a judgment), indebtedness on a life insurance policy owned to the company of issuance, or contingent liabilities. A "contingent liability" is one that will become an actual liability only when one or more future events occur or fail to occur, such as where you are liable only as a partner (without personal liability) for partnership debts, or where you are liable only as a guarantor, surety, or endorser on a promissory note. If you are a "co-maker" on a note and have signed as being jointly liable or jointly and severally liable, then this is not a contingent liability.

How to Determine the Amount of a Liability:

— Generally, the amount of the liability is the face amount of the debt.

— If you are the only person obligated to satisfy a liability, 100% of the liability should be listed.

— If you are jointly and severally liable with another person or entity, which often is the case where more than one person is liable on a promissory note, you should report here only the portion of the liability that corresponds to your percentage of liability. *However*, if you are jointly and severally liable for a debt relating to property you own with one or more others as tenants by the entirely or jointly, with right of survivorship,

report 100% of the total amount owed.

— If you are only jointly (not jointly and severally) liable with another person or entity, your share of the liability should be determined in the same way as you determined your share of jointly held assets.

Examples:

— You owe $10,000 to a bank for student loans, $5,000 for credit card debts, and $60,000 with your spouse to a saving and loan for the mortgage on the home you own with your spouse. You must report the name and address of the bank ($10,000 being the amount of that liability) and the name and address of the savings and loan ($60,000 being the amount of this liability). The credit cards debts need not be reported.

— You and your 50% business partner have a $100,000 business loan from a bank and you both are jointly and severally liable. Report the name and address of the bank and $50,000 as the amount of the liability. If your liability for the loan is only as a partner, without personal liability, then the loan would be a contingent liability.

JOINT AND SEVERAL LIABILITIES NOT REPORTED ABOVE:

List in this part of the form the amount of each debt, for which you were jointly and severally liable, that is not reported in the "Liabilities in Excess of $1,000" part of the form. Example: You and your 50% business partner have a $100,000 business loan from a bank and you both are jointly and severally liable. Report the name and address of the bank and $50,000 as the amount of the liability, as you reported the other 50% of the debt earlier.

PART D – INCOME

As noted on the form, you have the option of either filing a copy of your latest federal income tax return, including all schedules, W2's and attachments, with Form 6, or completing Part D of the form. If you do not attach your tax return, you must complete Part D.

PRIMARY SOURCES OF INCOME:

List the name of each source of income that provided you with more than $1,000 of income during the year, the address of that source, and the amount of income received from that source. The income of your spouse need not be disclosed; however, if there is a joint income to you and your spouse from property you own jointly (such as interest or dividends from a bank account or stocks), you should include all of that income.

"Income" means the same as "gross income" for federal income tax purposes, even if the income is not actually taxable, such as interest on tax-free bonds. Examples of income include: compensation for services, gross income from business, gains from property dealings, interest, rents, dividends, pensions, IRA distributions, distributive share of partnership gross income, and alimony, but not child support. Where income is derived from a business activity you should report that income to you, as calculated for income tax purposes, rather than the income to the business.

Examples:

— If you owned stock in and were employed by a corporation and received more than $1,000 of income (salary, commissions, dividends, etc.) from the company, you should list the name of the company, its address, and the total amount of income received from it.

— If you were a partner in a law firm and your distributive share of partnership gross income exceeded $1,000, you should list the name of the firm, its address, and the amount of your distributive share.

— If you received dividend or interest income from investments in stocks and bonds, list only each individual company from which you received more than $1,000. Do not aggregate income from all of these investments.

— If more than $1,000 of income was gained from the sale of property, then you should list as a source of income the name of the purchaser, the purchaser's address, and the amount of gain from the sale. If the purchaser's

identity is unknown, such as where securities listed on an exchange are sold through a brokerage firm, the source of income should be listed simply as "sale of (name of company) stock," for example.

— If more than $1,000 of your income was in the form of interest from one particular financial institution (aggregating interest from all CD's, accounts, etc., at that institution), list the name of the institution, its address, and the amount of income from that institution.

SECONDARY SOURCE OF INCOME:

This part is intended to require the disclosure of major customers, clients, and other sources of income to businesses in which you own an interest. It is not for reporting income from second jobs. That kind of income should be reported as a "Primary Source of Income." You will ***not*** have anything to report ***unless***:

(1) You owned (either directly or indirectly in the form of an equitable or beneficial interest) during the disclosure period, more than 5% of the total assets or capital stock of a business entity (a corporation, partnership, limited partnership, LLC, proprietorship, joint venture, trust, firm, etc., doing business in Florida); and

(2) You received more than $1,000 in gross income from that business entity during the period.

If your ownership and gross income exceeded the two thresholds listed above, then for that business entity you must list every source of income to the business entity which exceeded 10% of the business entity's gross income (computed on the basis of the business entity's more recently completed fiscal year), the source's address, the source's principal business activity, and the name of the business entity in which you owned an interest. You do not have to list the amount of income the business derived from that major source of income.

Examples:

— You are the sole proprietor of a dry cleaning business, from which you received more than $1,000 in gross income last year. If only one customer, a uniform rental company, provided more than 10% of your dry cleaning business, you must list the name of your business, the name of the uniform rental company, its address, and its principal business activity (uniform rentals).

— You are a 20% partner in a partnership that owns a shopping mall and your gross partnership income exceeded $1,000. You should list the name of the partnership, the name of each tenant of the mall that provided more than 10% of the partnership's gross income, the tenant's address and principal business activity.

PART E – INTERESTS IN SPECIFIED BUSINESS

The types of businesses covered in this section include: state and federally chartered banks; state and federal savings and loan associations; cemetery companies; insurance companies; mortgage companies, credit unions; small loan companies; alcoholic beverage licensees; pari-mutuel wagering companies; utility companies; and entities controlled by the Public Service Commission; and entities granted a franchise to operate by either a city or a county government.

You are required to make this disclosure if you own or owned (either directly or indirectly in the form of an equitable or beneficial interest) at any time during the disclosure period, more than 5% of the total assets or capital stock of one of the types of business entities listed above. You also must complete this part of the form for each of these types of business for which you are, or were at any time during the year an officer, director, partner, proprietor, or agent (other than a resident agent solely for service of process).

If you have or held such a position or ownership interest in one of these types of businesses, list: the name of the business, its address and principal business activity, and the position held with the business (if any). Also, if you own(ed) more than a 5% interest in the business, as described above, you must indicate that fact and describe the nature of your interest.

JUDICIAL APPLICATION DATA RECORD

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

(Please Type or Print)

Date: June 22, 2025

JNC Submitting To: Seventh Judicial Circuit

Name (please print): Randall Ann Daugustinis

Current Occupation: Assistant State Attorney

Telephone Number: [redacted] Attorney No.: 0112134

Gender (check one): ☐ Male ☑ Female

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

County of Residence: St. Johns

FLORIDA DEPARTMENT OF LAW ENFORCEMENT

DISCLOSURE PURSUANT TO THE
FAIR CREDIT REPORTING ACT (FCRA)

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

CONSUMER'S AUTHORIZATION FOR
FDLE TO OBTAIN CONSUMER REPORT(S)

I have read and understand the above Disclosure. I authorize the Florida Department of Law Enforcement (FDLE) to obtain one or more consumer reports on me, for employment purposes, as described in the above Disclosure.

Randall Ann Daugustinis

Printed Name of Applicant

R Daugustinis

Signature of Applicant

Date: 6/22/25

WRITING SAMPLE 1

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT, CRIMINAL DIVISION
IN AND FOR POLK COUNTY, FLORIDA

STATE OF FLORIDA CASE NUMBER: 53-2017-CF-010447-A000-XX

vs.

BRITTANY CHANTEL HARRIS

STATE'S RESPONSE TO DEFENDANT'S MOTION TO SUPPRESS URINALYSIS

On April 15, 2019, the Defense filed an Amended Motion to Suppress Evidence seeking to suppress the Defendant's urine specimen on Fourth, Fifth, and Sixth Amendment grounds. Since the Defense did not cite to any legal authority in its Amended Motion to Suppress Evidence, the State had the Defense confirm on the record prior to the beginning of the motion hearing on April 18, 2019, that the grounds for suppression being raised by Defense were the Fourth, Fifth, and Sixth Amendments. At the conclusion of the hearing, the Defense advised the Court that the main issue was whether or not the Defendant's invocation of her right to counsel was scrupulously honored by law enforcement and whether or not the Department of Children and Families (DCF) was a state actor. In the Defendant's Memorandum of Law in Support of Her Motion to Suppress Urinalysis, the Defense argues that DCF is a government actor and as such, any consent to the urine specimen was involuntary and law enforcement did not scrupulously honor the Defendant's invocation of counsel. In making her argument, the defense misstates and misrepresents many of the facts and testimony presented during the Motion Hearing.

Prior to rebutting the Defendant's arguments set forth in her Memorandum of Law, the State would point out that contrary to the Defendant's Amended Motion to Suppress and representation during the motion hearing that the Fifth and Sixth Amendments were at issue, the Fifth and Sixth Amendments are not implicated in this case, as the Defense is seeking to suppress urine, which is physical evidence. The Fifth Amendment is triggered when a defendant is compelled to make incriminating *testimonial statements*. State v. Busciglio, 976 So. 2d 15 (Fla. 2d DCA 2008) *(emphasis added)*. Here, the Defendant's statements are not at issue and the

Defense is merely seeking to suppress urine, not testimonial statements. Therefore, the Fifth Amendment is not triggered. The Sixth Amendment is also not triggered in this case. The Sixth Amendment is triggered when proceedings are initiated, beginning at the earliest of formal charge(s), a preliminary hearing, indictment or information, or arraignment. State v. Burns, 661 So. 2d 842 (Fla. 5th DCA 1995) (administration of breath test and field sobriety tests constitute the collection and preservation of physical evidence and does not require the presence of a defendant's attorney). Here, at the time the urine was collected, no charges had been brought against the Defendant and no proceedings had been initiated.

Next, to even get to the Defense's argument, the Defense and the Court must assume that the Defendant was in custody and subject to interrogation for the Defendant's Miranda rights to even be triggered and lead to a potential violation of the Defendant's constitutional rights. The State argues that (1) the Defendant was not in custody, therefore Miranda was not triggered and Defendant's invocation of her right to counsel legally did not require law enforcement to cease questioning or speak with an attorney; (2) even if the Court finds the Defendant was in custody for purposes of Miranda, DCF was not acting as a government actor and therefore the Fourth Amendment is inapplicable. There was no violation of the Defendant's constitutional rights and the urine was legally obtained and is admissible.

I. THE DEFENDANT WAS NOT IN CUSTODY AND THEREFORE THE DEFENDANT'S INVOCATION OF HER RIGHT TO COUNSEL DID NOT REQUIRE LAW ENFORCEMENT TO ALLOW DEFENDANT TO CONFER WITH COUNSEL.

The Defendant was not in custody and therefore her Miranda rights were not triggered. For Miranda to apply, a suspect must be in custody and subject to interrogation. Miranda v. Arizona, 384 U.S. 436 (1966). The fact that an interview takes place at a police department or police agency does not necessitate a finding that the suspect is in custody for purposes of Miranda, but rather the Court must look at the restraints placed upon a person during interrogation to determine whether a reasonable person in the suspect's shoes would have believed he or she was in custody. Ramsey v. State, 731 So. 2d 79 (Fla. 3d DCA 1999). In Ramsey, the defendant, Ramsey, was being questioned by police in reference to a homicide investigation. Id. at 80. Ramsey's interview took place at the police department, he was not

handcuffed, he was not threatened, and he was given food and water. Ramsey was never told he was not free to leave. Ramsey ended up confessing to the crime prior to Miranda being read. Id. The court in Ramsey held that Miranda safeguards were not triggered because the defendant was voluntarily at the police station and he was not subject to custodial interrogation at the time of his confession. Id. at 81.

The fact that a suspect is transported in a police car to a police department for questioning also does not necessitate a finding that a suspect is in custody for purposes of Miranda. State v. Pitts, 936 So. 2d 1111 (Fla. 2d DCA 2006). In Pitts, the defendant, Pitts, was a suspect in a double homicide investigation. Pitts was transported from his home to the police department in a police car, in the very early morning hours, to be interviewed by police in reference to the homicides. Pitts was not handcuffed while riding in the police vehicle. Id. at 1117. While at the police department, Pitts was not free to walk around by himself, he was never put in a holding cell or locked in a room and he was not in handcuffs at any time. Id. at 1118. Pitts ended up being interviewed at the police department multiple times, for multiple hours. Id. at 1118-1120. The Second District Court of Appeal held that Miranda was not triggered prior to Pitts' admission that he did hold a gun to the victims' heads because Pitts' interrogation was not custodial. Id. at 1128-1129. Furthermore, the Court in Pitts stated that an interrogation does not become custodial in the absence of a suspect being advised he or she is free to leave. Id. at 1125.

The reading of Miranda rights to a suspect also does not transform questioning into a custodial interrogation. Luna-Martinez v. State, 984 So. 2d 592, 601 (Fla. 2d DCA 2008). In Luna-Martinez, police officers conducted a knock-and-talk of the defendant's residence after receiving a tip that illegal drugs were within that residence. Id. at 595. A police officer read the defendant his Miranda rights before asking the defendant to consent to a search of his residence, consent was given, and a trafficking amount of heroin was found. Id. at 596. The Second District Court of Appeal rejected any arguments that the reading of Miranda rights to the defendant meant the defendant was in custody and specifically ruled that "the mere giving of *Miranda* warnings does not transform a suspect's status from noncustodial to custodial." Id. at 601. When Miranda is not triggered in a noncustodial setting, a suspect's invocation of his or her right to remain silent or right to counsel does not legally require law enforcement to end

questioning and does not legally require a suspect be allowed to confer with an attorney. Caldwell v. State, 41 So. 3d 188, 198 (Fla. 2010).

In the instant case, the facts in evidence establish that the Defendant was not in custody at the time of her interview with Detective Chawn Hall and Detective Justin Conatser of the Lakeland Police Department. Therefore, Miranda was not triggered and the Defendant's invocation of her right to counsel did not require law enforcement to allow her to confer with an attorney at any subsequent time, including prior to and during DCF's contact with the Defendant. The Defendant testified that she was told by an unknown police officer at Lakeland Regional Medical Center that she had to go to Lakeland Police Department because "the cops had more questions." The Defendant was transported to Lakeland Police Department in a patrol vehicle, in the backseat, and the Defendant was never handcuffed. Contrary to the Defendant's Memorandum, the Defendant's testimony contradicted the testimony of other witnesses during the Motion Hearing. The Defendant testified that upon arrival at LPD, she was taken to a conference room by a female police officer, who told her that she could not leave. The Defendant testified that she sat in the conference room for hours waiting for the detectives, the female officer just played on her phone the whole time, and the television in the conference room was playing the news. Detective Justin Conatser testified during the Motion to Suppress Hearing that he made contact with the Defendant in either the first or second floor lobby of the Lakeland Police Department, not in the conference room as the Defendant testified. Detective Conatser specified that the second floor lobby is outside the Criminal Investigations Division, therefore it is outside the locked doors of the detective division, so the Defendant was not kept behind locked doors prior to her interview with Detectives Conatser and Hall. Sergeant Hall also testified that he does not remember anyone or any officer guarding the Defendant when he made contact with her. Also, the Defendant was never handcuffed during her entire time at LPD, nor was she ever placed in a holding cell.

The fact that the Defendant was transported in a police vehicle to the police department does not mean she was in custody. See Pitts, 936 So. 2d 1111 (Fla. 2d DCA 2006). Also, the fact that the Defendant's interview took place at the Lakeland Police Department did not transform her interview into a custodial interrogation. See Ramsey, 731 So. 2d 79 (Fla. 3d DCA 1999). The fact that the Defendant was not free to roam around Lakeland Police Department

also does not necessitate a finding that she was in custody or not free to leave at any time. At the beginning of the Defendant's recorded interview, the Defendant confirms that she came to Lakeland Police Department voluntarily. The Defendant also admitted on cross-examination during the Motion Hearing that she did confirm with Detective Conatser that she came to Lakeland Police Department voluntarily. The Defendant's conversation with Detective Hall is also observed in the video and audio recording entered into evidence. Detective Hall and the Defendant engaged in small talk prior to Detective Conatser entering the room. While engaging in small talk, the Defendant appears calm and appears to have an enjoyable conversation with Detective Hall. The Defendant's demeanor and tone of voice in the video recording certainly is not consistent with an individual who believes he or she is being detained and not free to leave. Additionally, Detective Conatser testified that the door to the interview room was open the entire time the interview was being conducted, which can also be seen in the video recording. The Defendant was told at the beginning of the interview that she was not in any trouble and at the end, after the Defendant invokes the right to counsel, Detective Conatser tells her that he is not arresting her, Defendant immediately responds by saying that she is not worried about being arrested. Again, such a statement and demeanor is clearly inconsistent with the Defendant's in-court testimony that she did not feel like she was free to leave. The Defendant never asked Detectives Conatser and Hall if she could leave the interview or if she could leave LPD. The Defendant agreed with this fact on cross-examination. The tone of the interview is also calm and cordial throughout and the interview is fairly short in length. The doors to the Criminal Investigations Division (CID) lock from the outside, meaning that someone cannot just walk into the unit. However, the testimony was clear that the doors used to exit the CID are not locked from the inside and do not require any law enforcement assistance or authorization to exit the doors. There are also no locks on the doors to the interview room and conference room. The Defendant freely walked out of Lakeland Police Department that day.

The facts in evidence support a finding that the Defendant was not in custody during her time at Lakeland Police Department. Since the Defendant was not in custody before or after the interview with detectives, Miranda was not triggered. Pursuant to the Luna-Martinez case, the fact that Detective Conatser read the Defendant her Miranda rights did not transform her status from noncustodial to custodial. Detective Conatser testified that he read the Defendant Miranda

out of an abundance of caution even though the Defendant was free to leave the entire time. Because the Defendant's Miranda rights were not triggered in this case, her subsequent invocation of her right to counsel did not attach and did not require law enforcement to cease questioning (which they did anyway) and did not require law enforcement to allow the Defendant to speak to an attorney, contrary to the Defendant's arguments. Such a finding is consistent with the Second District Court of Appeal's opinion in Luna-Martinez, 984 So. 2d 592. Therefore, there was no violation of the Defendant's constitutional rights and the analysis should end here.

II. EVEN IF THE COURT FINDS THE DEFENDANT WAS IN CUSTODY FOR PURPOSES OF MIRANDA, TRIGGERING HER RIGHT TO COUNSEL, DCF WAS NOT ACTING AS A GOVERNMENT AGENT AT THE TIME THE URINE SAMPLE WAS OBTAINED AND THEREFORE THE FOURTH AMENDMENT IS INAPPLICABLE, AND THERE WAS NO VIOLATION OF THE DEFENDANT'S CONSTITUTIONAL RIGHTS.

If the Court finds that the Defendant was in custody for purposes of Miranda and that her constitutional right to an attorney was implicated, her rights were not violated when Stephanie Myers, a Child Protection Investigator (CPI) with DCF, obtained a urine specimen from the Defendant after the Defendant had invoked her right to counsel. As can be seen in the video and audio recorded interview with the Defendant, law enforcement scrupulously honored the Defendant's invocation and ended the interview. The Defense does not contradict this fact. Law enforcement did not obtain any additional physical evidence without a warrant and did not conduct any additional questioning of the Defendant. The only other evidence obtained was the Defendant's urine specimen by CPI Myers with DCF, which is the sole basis of the Defendant's Motion to Suppress. CPI Myers was not acting as a government actor at the time, specifically, she was not acting as an agent of law enforcement when she obtained the Defendant's urine sample. Since CPI Myers was not acting as an agent of law enforcement, the Defendant's Fourth, Fifth, and Sixth Amendment rights are not applicable, and such rights were not implicated nor violated.

The exclusionary rule is not applicable to illegal searches conducted by private citizens or individuals who are found to not be acting as instruments of the state, agents of the government, or with the knowledge or participation of a government official. See Burdeau v. McDowell, 256

U.S. 465, 41 (1921); U.S. v. Kinney, 953 F. 2d 863, 865 (4th Cir. 1992); U.S. v. Hall, 142 F. 3d 988 (7th Cir. 1998). Courts look to whether, under the totality of the circumstances, a person acted as an instrument of the state. Hall, 142 F. 3d 988. Courts examine whether the government knew of and acquiesced in the search, whether the purpose of the search was to assist law enforcement, and at times, whether the government offered the private party of a reward for the conduct. Id. at 993 (finding the private individual did not act as an instrument of the state and therefore the Fourth Amendment was inapplicable when the government had no knowledge that the individual was going to repair the defendant's computer, the government did not instruct the individual to obtain the child pornography files, the government was not contacted about the files until after the files were obtained by the individual, and the search was conducted in the individual's normal course of business). If an individual did not act at the direction of the government, the Fourth Amendment is inapplicable, even if the private search was illegal. Kinney, 953 F. 2d at 865 ("For purposes of the exclusionary rule, a private actor must 'be regarded as having acted as an "instrument" or agent of the state,' in order for a private search to be considered action by the government.").

The mere fact that an individual is a state employee, specifically a DCF employee, does not automatically render that individual an agent of law enforcement or a government actor for purposes of the exclusionary rule. See Garner v. State, 729 So. 2d 990 (Fla. 5th DCA 1999). In Garner, the defendant was in jail pending a manslaughter charge for killing his wife. While Garner was in custody at the county jail, a child protection investigator with DCF, who the court refers to as a "state employee," visited Garner at the county jail to question him about his minor son since the mother, the victim in the case, was dead. Id. at 992. During the course of DCF's interview, Garner admitted to killing his wife, the victim. Id. Garner sought to suppress his statements on the basis that the CPI did not advise him of his rights to an attorney or about how the statements could be used against him. Id. at 991. The Fifth District Court of Appeal agreed with the trial court that the exclusionary rule was not implicated in Garner. Id. at 992. The appellate court agreed with the trial court's findings that the CPI did not speak with police prior to the CPI's interview with defendant Garner and law enforcement did not ask the CPI to speak with defendant Garner to elicit any information from him regarding the crime. Id. The appellate

court agreed with the trial court that the CPI was not a law enforcement officer and the CPI was not acting as an agent of law enforcement at the time of the interview with defendant Garner. Id.

Courts look to whether law enforcement knows of certain activity and acquiesces to that activity in determining whether an individual is acting as a government agent. See Id.; see also State v. Zecckine, 946 So. 2d 72 (Fla. 1st DCA 2006). In Zecckine, the court held a jailhouse inmate did not act as a government agent when he deliberately elicited incriminating information from the defendant because law enforcement and the jailhouse inmate did not have any tacit or overt plan to obtain incriminating information from the defendant. Id. at 74. Since the jailhouse inmate was not acting as a government agent, the court found there was no violation of the defendant's Sixth Amendment rights. Id.

The Defense relies exclusively on Ferguson v. City of Charleston, 532 U.S. 67 (2001), however such reliance is misplaced as the facts and circumstances of Ferguson are entirely distinguishable from the instant case. In Ferguson, the hospital at issue had developed a task force in conjunction with police to combat the amount of pregnant woman using cocaine during prenatal treatment. Id. at 67. As part of the policy developed by hospital staff and law enforcement, as well as other local officials, chain of custody procedures were outlined detailing the procedures for obtaining urine samples from patients suspected of using drugs. Id. at 71-72. The policy also outlined the police procedures when patients tested positive for drugs and it also prescribed prosecutions for the drug offenses based on the stage of a patient's pregnancy. Id. at 72. Thus, the central feature of the policy was threat of prosecution in order to force patients to undergo substance abuse treatment. Id. at 83. In carrying out the central feature and goal of the policy, the immediate objective of obtaining urine tests from patients was to generate evidence for law enforcement purposes. Id. Police and prosecutors mandated who would receive the hospital's reports of positive drug screens. Id. at 82. The Supreme Court therefore held that the urine tests pursuant to this policy were searches. Id. at 83. The Court went on to conclude that "[w]hile state hospital employees, like other citizens, may have a duty to provide the police with evidence of criminal conduct that they inadvertently acquire in the course of routine treatment, when they *undertake to obtain such evidence from their patients for the specific purpose of incriminating those patients*, they have a special obligation to make sure that the patients are

fully informed about their constitutional rights, as standards of knowing waiver require." Id. at 84-85. (*emphasis added*).

Unlike the hospital staff in Ferguson, in the instant case, DCF does not have any agreement or policy with law enforcement to conduct urine screens of parents who are suspected of using drugs. CPI Myers testified that she requested a urine sample from the Defendant pursuant to DCF protocol in cases involving the death of a child. CPI Myers testified that she did not request or obtain the urine sample for purposes of the criminal investigation. CPI Myers, Detective Conatser, and Sergeant Hall all testified that there was no plan in place for DCF to obtain a urine sample from the Defendant. They also all testified that CPI Myers was not employed as a special agent of law enforcement. Law enforcement did not ask CPI Myers to obtain a urine sample, law enforcement did not speak with CPI Myers about the details of the case prior to her contact with the Defendant, law enforcement did not monitor the interaction between CPI Myers and the Defendant, and law enforcement did not even know that CPI Myers was planning to obtain a urine sample from the Defendant. Detective Conatser testified that he did not know of DCF's protocol in death cases. CPI Myers confirmed that she did not tell law enforcement that she was going to be obtaining a urine sample from the Defendant. It is undisputed that law enforcement did not know that CPI Myers was going to obtain a urine sample and it is undisputed that law enforcement did not direct CPI Myers to obtain the urine sample. Detective Conatser was not advised of the positive urine screen until he walked into the conference room for purposes of executing the search warrant for the Defendant's blood. While CPI Myers testified that she did alert some law enforcement officer of the positive result after the sample was obtained, she was unable to say who she told the results to. However, it is undisputed that no law enforcement officers at LPD were alerted about the urine screen prior to it being obtained or at the time it was being obtained. Law enforcement here did not know of the activity (CPI Myers' urine screen) and law enforcement did not acquiesce to that activity.

CPI Myers testified that she was not acting at the encouragement or direction of law enforcement. She was merely following DCF protocol. CPI Myers testified that her objective is to provide education, preventive services, and more importantly in cases involving the death of a child, grief counseling. These objectives were conveyed to the Defendant. Detective Conatser and CPI Myers told the Defendant that DCF is separate from the law enforcement investigation,

which furthers the State's point that DCF was not acting at the direction of law enforcement, and DCF was not acting as an agent of law enforcement at the time the Defendant's urine sample was obtained. The facts of the instant case are analogous to the facts of the Garner case, where the appellate court concluded that the CPI in that case was not a state actor and he was not working as an agent of law enforcement.

Furthermore, law enforcement was not even present in the conference room with CPI Myers and the Defendant. Law enforcement was not on guard outside the conference room. No law enforcement officers escorted CPI Myers and the Defendant to the restroom – an officer merely pointed down the hall in the direction of the bathroom, per CPI Myer's testimony. No law enforcement officers went inside the restroom to monitor the Defendant urinating in the sample cup, and no law enforcement officers conducted the testing of the urine sample. Also, no law enforcement officers were standing outside the bathroom while the urine screen was being provided. CPI Myers was merely doing her job and following DCF protocol in obtaining urine samples from all the adults who had contact with the child in the hours prior to the child's death. The testimony was clear that CPI Myers never acted as an agent of law enforcement.

Defense argues that Ferguson compels a different conclusion in this case and argues that Garner was decided before Ferguson. However, Ferguson does not overrule Garner and Garner does not have any negative treatment on State or Federal levels on the grounds of whether or not DCF is a state actor. The Court must look to the totality of the circumstances and the individual cases in determining whether or not DCF in this case was acting as a government agent. Additionally, as previously mentioned above, the facts and circumstances of Ferguson are entirely different than the facts and circumstances of the instant case. Defense relies heavily on the fact that DCF's contact with the Defendant occurred at Lakeland Police Department. However, the mere fact that DCF made contact with the Defendant and obtained a urine sample from her at the Lakeland Police Department certainly does not transform CPI Myers into an agent of the police.

In summary, CPI Stephanie Myers did not speak to law enforcement about the case prior to her interview and interaction with Defendant, law enforcement did not ask CPI Myers to respond to Lakeland Police Department (CPI Myers testified that she responded at the request of her supervision pursuant to DCF protocol), law enforcement did not ask CPI Myers to elicit any

information from the Defendant, law enforcement did not ask CPI Myers to obtain a urine sample from the Defendant, and law enforcement did not know CPI Myers was going to ask Defendant for a urine sample. Furthermore, Defendant's own written memorandum of law states that DCF "unilaterally" decided to deliver the urine sample and report the positive results to law enforcement, thus the Defendant concedes that law enforcement did not direct or encourage CPI Myers to obtain the urine sample, supporting the State's own argument that DCF was not acting as a government agent. Based on the facts and circumstances of the instant case, CPI Myers was not working as an agent of law enforcement, or as a government actor, at the time she obtained the Defendant's urine sample. Because CPI Myers was not acting as a government actor, the exclusionary rule does not apply, the Fourth Amendment is inapplicable, none of the Defendant's constitutional rights were violated, and the Defendant's urine sample is admissible.

In support of the Defendant's argument, the Defense relies on the fact that Detective Conatser and CPI Myers both "explicitly promised" the Defendant that the DCF investigation was separate from LPD's investigation. In doing so, the Defense alleges that LPD and DCF conveyed the message to the Defendant that any evidence she provided to DCF would not be used against her in a criminal investigation. First, no such facts are in evidence. Second, since DCF was not acting as an agent of law enforcement, DCF was not required to inform the Defendant that the results of the urine test could be used against her. No warnings were required. Again, this is an entirely different scenario than the Ferguson case relied upon by Defense.

Defense argues that the Defendant did not provide informed or voluntary consent to the urine sample. However, the facts presented at the hearing show that the Defendant did provide voluntary consent to DCF's urine sample. In determining whether the Defendant's consent was voluntary, the Court must look to the totality of the circumstances. The Defendant was advised at the beginning of her contact with CPI Myers the reason why DCF wanted to speak with her and the protocol in child death cases. No trickery or coercion was utilized in obtaining consent from the Defendant. CPI Myers testified that she told the Defendant part of the DCF protocol is to obtain urine samples from all adults who had contact with the deceased child prior to his or her death. CPI Myers advised the Defendant that providing the urine sample was completely voluntary. CPI Myers advised the Defendant she had the right to refuse to provide a urine

sample, and CPI Myers advised the Defendant that there were no consequences of refusing to provide the urine sample. Of course, the Defendant does not remember being advised of any of this information, per her testimony on cross-examination.

After being advised of that information, CPI Myers spoke with the Defendant about her family life and the timeline leading up to the child's death. After speaking with the Defendant for quite some time, the *Defendant* brought up the urine sample to CPI Myers by telling CPI Myers that she had to use the restroom and could provide the urine sample at that time. CPI Myers testified that she only asked the Defendant for consent one time, she did not repeatedly ask for consent. See Luna-Martinez v. State, 984 So. 2d 592 (Fla. 2d DCA 2008) (holding the manner in which consent was requested was not coercive, it was not a mere acquiescence of authority, and there were no repeated requests for consent). Defense argues that the Defendant's "purported consent cannot in any sense be seen as free, voluntary, or informed." Not only do the circumstances and facts surrounding Defendant's consent to provide the urine sample rebut the Defense's argument, but the fact that the Defendant previously invoked her right to counsel, effectively ending law enforcement's interview, shows that the Defendant knew she did not need to speak to law enforcement or provide any additional information. A reasonable person in Defendant's shoes would know that she could invoke her rights and refuse to do something – such as provide a urine sample. She was even advised that she could refuse the urine sample, but she still consented. See Caldwell v. State, 41 So. 3d 188, 201 (Fla. 2010) ("[C]itizens who are first given Miranda warnings should be better able to protect their constitutional rights, regardless of the context); see also Luna-Martinez v. State, 984 So. 2d 592, 601 (Fla. 2d DCA 2008) (concluding that administration of the Miranda warnings "weigh in favor of the conclusion that the [defendant's] consent [to search] was voluntary."). The facts in evidence establish the Defendant's consent to the urine sample was freely and voluntarily given.

Defense next alleges in its written memorandum that since DCF, as a government actor, delivered the urine sample and results to LPD, it exceeded the scope of the consent purportedly obtained from the Defendant. The Defense cites to Wyche v. State, 987 So. 2d 23 (Fla. 2008) and State v. Gibson, 150 So. 3d 1240 (Fla. 3d DCA 2014), however, such cases are distinguishable from the instant case because those cases involve a government agent, specifically law enforcement, obtaining DNA samples for the purpose of law enforcement's

criminal investigation. In its written argument, the Defense again concedes that DCF is a non-law enforcement agency. Once CPI Myers was in possession of a positive urine screen, which she testified was unexpected, she handed it over to law enforcement at a later time when law enforcement entered the conference room to execute the search warrant for the Defendant's blood. CPI Myers did not immediately hand over the urine cup as the Defense alleges. Since CPI Myers was not acting as a government agent at the time she obtained the urine sample and discovered a positive result, the Fourth Amendment is still inapplicable.

Lastly, multiple reasons exist to sufficiently rebut the Defendant's third argument in her written memorandum. First, as discussed at the beginning of the State's Response, the Defendant was not in custody for purposes of Miranda and her Miranda rights were not triggered. Therefore, the Defendant's invocation of her right to counsel did not legally require law enforcement to cease questioning (which they did anyway) or allow the Defendant to confer with an attorney. Second, DCF was not acting as an agent of law enforcement at the time the urine sample was collected, as previously discussed at length. Since DCF was not acting as an agent of law enforcement, DCF did not detain the Defendant. CPI Myers testified that DCF does not have the authority to detain anyone. The Defendant never asked CPI Myers if she could leave. CPI Myers testified that had the Defendant asked to leave and end the contact, CPI Myers would have allowed her to leave. CPI Myers and the Defendant sat next to each other during their contact, the door to the conference room was not locked and no law enforcement was inside the room or guarding the room, further showing that this was a very non-custodial type interaction.

Third, even if this Court finds the Defendant was in custody for purposes of triggering her Miranda rights and that the Defendant's invocation of her right to counsel was implicated, a defendant only has a right to counsel during interrogations. Miranda does not require counsel's presence for all further communications. See State v. Lantz, 237 So. 3d 1168 (Fla. 1st DCA 2018). In Lantz, the defendant was being investigated by police for first degree murder and he was advised of his Miranda rights and he immediately asked for an attorney. Id. at 1169. After the defendant invoked his right to counsel, he waited for approximately two hours for a crime scene technician to arrive to process him for physical evidence. During that time, the defendant made incriminating statements. Id. The defendant later filed a motion to suppress those

statements, arguing that he had invoked his right to counsel. The Fifth District Court of Appeal reversed the trial court's suppression of the statements on the grounds that Miranda is only implicated when a defendant who is in custody is subject to questioning or its functional equivalent. Id. at 1170. In the instant case, the Defense is not seeking to suppress any of the statements made to DCF, only the urine sample. Even if the right to counsel had attached, law enforcement scrupulously honored that request and the detectives immediately ended their interview with the Defendant. Additionally, DCF, who was not even acting as an agent of law enforcement at the time, did not conduct an interrogation of the Defendant and counsel was not legally required to be present at the time the urine sample was collected. There was no infringement of the Defendant's constitutional rights.

Fourth, the Defense argues that no reasonable person in the Defendant's position would have felt she was free to leave during the time spent at Lakeland Police Department. However, the facts in evidence prove otherwise. The Court should look to all of the facts in evidence regarding the Defendant's interaction with law enforcement and also DCF. The Defendant's demeanor before and during her interview with law enforcement do not establish that she did not feel free to leave. The Defense points out that Defendant testified she did not feel free to leave LPD at any time, but the Defense fails to remind the Court that the Defendant also testified that she never asked to leave, she never told Detectives Hall and Conatser that she wanted to leave or that she wanted to see her mother, she never told the detectives that she did not want to speak with them, she never told CPI Myers that she wanted to leave or see her mother, and she never told CPI Myers that she did not want to speak with her. Additionally, when she walked to the restroom with solely CPI Myers, the Defendant exited out of the Criminal Investigations Division (through the very doors defense argues would be locked and require police escorts) to get to the restroom. Any reasonable person in the Defendant's position would know and understand that she could just walk out of the unit without the assistance of law enforcement or without the assistance of anyone at all.

The Defense, on page thirteen of its written memorandum, overdramatizes the situation that actually occurred at Lakeland Police Department on May 28, 2017, and the Defense misrepresents the facts in evidence, which have already been discussed throughout the entirety of this Response. Defense additionally argues that LPD used the DCF interview to "effectively and

unlawfully prolong their detention of her." There are no facts in evidence to support this argument. Contrary to the Defense's representation in its written memorandum, the Defendant was never told that she could not leave LPD until she completed the DCF interview. LPD did not have any involvement in the DCF interview or subsequent urine screen. LPD detectives told the Defendant that their interview and contact with her was over and that DCF wanted to speak with her and that DCF and law enforcement were separate. Detective Conatser testified that after he introduced the Defendant to CPI Myers, he left the conference room and went to his office/cubicle. He did not watch or listen to CPI Myers' interview of the Defendant, he did not check back in with them, he did not sit outside the conference room while they spoke (nor did any other officer per CPI Myers' testimony). The only reason Detective Conatser came back into the conference room around 4:20PM was to execute the search warrant for the Defendant's blood (note: the Defense's memorandum gives multiple different times for when the urine sample and blood draw were obtained, but the testimony established the urine was obtained at approximately 3:23PM and the blood draw was done at 4:27PM. The search warrant for blood was signed by Detective Conatser at 3:20PM and was signed by the judge at 3:36PM). Detective Conatser testified that had the Defendant left LPD and gone home or anywhere else, LPD would have located her wherever she was to execute the search warrant. Detective Conatser testified that he did not detain the Defendant, with DCF, so that she would still be at LPD so he could execute the search warrant. The Defendant was free to leave before, during, and after her interview with detectives. She was still free to leave before, during, and after her interactions with DCF. The Defendant did leave after her contact with DCF.

There was no police seizure in this case to justify suppression of the Defendant's urine sample and its results, contrary to the Defense's arguments. CPI Myers was not acting as an agent of law enforcement at the time, therefore, DCF/CPI Myers did not detain or seize the Defendant in order to obtain her urine sample. Also, based on the facts in evidence, at no time did law enforcement prolong the detention of the Defendant, therefore her voluntary consent to the urine sample was not vitiated or tainted in any way, and is valid.

As a last point for the Court to consider, the State notes that defense witness, Diana Harris, who testified at the hearing on April 18, 2019, was impeached with her prior deposition testimony. Diana Harris is the Defendant's mother. She testified at the hearing that she did not

see the Defendant arrive at LPD and she did not remember if the Defendant was in handcuffs. On cross-examination, Diana Harris was confronted with her deposition testimony, at which time Diana Harris agreed that she previously testified in her deposition that the Defendant came in LPD through the front lobby and the Defendant was not in handcuffs. Diana Harris is not a credible witness, as she was impeached with prior inconsistent statements.

Based on all of the aforementioned reasons, the State requests this Court deny the Defendant's Motion to Suppress Urinalysis.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to PHILIP AVERBUCK ESQ, AVERBUCKLAW@AOL.COM by e-service on this 1st day of May, 2019.

/s Randall Daugustinis

Assistant State Attorney

Florida Bar No.: 0112134

(863) 534-4800

copies: Randall Daugustinis, Assistant State Attorney

Philip Averbuck Esq, Attorney for the Defendant

Judge: WAYNE DURDEN

WRITING SAMPLE 2

S.A. CASE NO.: 13CF064923AC

IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT, IN AND FOR CLAY COUNTY, FLORIDA

CLERK NO.: 102013CF002056A

CIRCUIT DIVISION: B

STATE OF FLORIDA

vs.

DANNY BONGAO PASICOLAN JR.

STATE'S RESPONSE TO DEFENDANT'S MOTION FOR POSTCONVICTION RELIEF

COMES NOW, the State of Florida, by and through the undersigned Assistant State Attorney, and files this response to the Defendant's Motion for Postconviction Relief filed on October 5, 2020, pursuant to Florida Rule of Criminal Procedure 3.850. The Defendant asserted five grounds for relief in his Motion and this Honorable Court has ordered the State to file a response as to Grounds One and Three of the Motion.

LEGAL STANDARD

For the Defendant to prevail on his claim of ineffective assistance of counsel, the Defendant must satisfy two components: (1) that counsel's performance was deficient by establishing that counsel's errors were so serious and outside the range of reasonable competent assistance that counsel was not functioning as the "counsel" guaranteed by the Sixth Amendment, and (2) that counsel's deficient performance prejudiced the defense by showing that counsel's errors were so serious as to deprive the defendant of a fair trial. Strickland v. Washington, 466 U.S. 668, 687 (1984). If the defendant fails to satisfy both components, the Court cannot find that the defendant's

conviction resulted from a breakdown in the adversary process that rendered the trial results unreliable. Id. It is the defendant's burden to overcome the presumption of effective assistance. In doing so, "[t]he defendant must overcome the presumption that, under the circumstances, the challenged action 'might be considered sound trial strategy.'" Holland v. State, 916 So. 2d 750, 756 (Fla. 2005)(quoting Strickland v. Washington, 466 U.S. 688, 689-90 (1984). The Strickland Court held that "[t]he proper measure of attorney performance remains simply reasonableness under prevailing professional norms." 466 U.S. at 688. Under this rationale, the Court underscores that defense counsel's performance need not be perfection, tracking down every possible lead and every possible avenue. Instead, the defense counsel's performance is based purely on reasonableness. Id.

RESPONSE TO GROUND ONE:

In Ground One of the Defendant's Motion for Postconviction Relief, the Defendant argues that defense counsel rendered ineffective assistance of counsel by failing to file a motion to suppress based on law enforcement's warrantless use of a cell-site simulator. The Defendant alternatively argues that evidence of the cell-site simulator amounts to newly discovered evidence. The Defendant's arguments as to Ground One are without merit because law enforcement applied for and obtained a court order, akin to a search warrant (see attached Exhibit A). "[F]or a successful ineffective assistance claim based on counsel's failure to file a motion to suppress, a movant must demonstrate that there is a reasonable probability that the motion would have been granted." Guzman-Aviles v. State, 226 So. 3d 339, 344 (Fla. 5th DCA 2017).

In the instant case, the application for the court order and the ultimate court order issued was pursuant to Sections 934.31, 934.33, 934.34, and 934.42, Florida Statutes. In law enforcement's application for the court order, the affiant, FDLE Special Agent Veronica Edwards, set forth facts establishing probable cause. The court order was approved by the judge on October 14, 2013 and authorized the following: (1) the installation and use of both a pen register and a trap and trace device, (2) the release of customer records and other information, and (3) the geolocation based measurements pertaining to mobile communications devices. The "target device" was the Defendant's cell phone with a phone number of 904-239-0003. See attached Exhibit A. Because law enforcement obtained a court order, pursuant to Sections 934.31, 934.33, 934.34, and 934.42, Florida Statutes, defense counsel in this case had no legal basis to file a motion to suppress on the grounds set forth by the Defendant. Therefore, the Defendant failed to demonstrate that there is a reasonable probability that a motion to suppress would have been granted.

Alternatively, the Defendant argues that evidence of the use of a cell-site simulator amounts to newly discovered evidence. For postconviction relief purposes, to qualify as newly discovered evidence, "the asserted facts 'must have been unknown by the trial court, by the party, or by counsel at the time of trial, and it must appear that defendant or his counsel could not have known them by the use of diligence.'" Jones v. State, 591 So. 2d 911, 916 (Fla. 1991)(quoting Hallman v. State, 371 So. 2d 482, 485 (Fla. 1979)). Furthermore, the evidence must be such that it would probably produce an acquittal on retrial. Jones, 591 So. 2d at 915.

The Defendant's argument as to newly discovered evidence is without merit. The existence of the aforementioned court order and the results obtained from the court order were disclosed to defense counsel and Special Agent Veronica Edwards testified regarding the search warrant and its results during a deposition and at trial. The existence of the court order and returned results were also included in the arrest warrant and law enforcement reports that were disclosed to the defense in discovery. Special Agent Veronica Edwards was deposed on March 6, 2014. The transcript of the deposition is attached as Exhibit B. During her deposition, Special Agent Edwards testified that she had a court order issued to Verizon. (Exhibit B, Page 30, line 21). Defense counsel, Mr. Fagan, then referenced the search warrant for the Defendant's Verizon phone number and questioned Special Agent Edwards about how she obtained the search warrant to find out whether the phone number Defendant used to communicate during the undercover operation belonged to the Defendant. (Exhibit B, Page 31, line 10, lines 23-25). Special Agent Edwards confirmed she obtained a search warrant to find out whether the phone number belonged to the Defendant. (Exhibit B, Page 31, lines 1-2). She further confirmed the search warrant came back with a name (the Defendant's) for the phone number used. (Exhibit B, Page 32, lines 5-7). A reading of the deposition transcript shows that defense counsel was aware of the search warrant at issue prior to trial, therefore it cannot be said that such evidence is newly discovered.

The Defendant's trial commenced on March 25, 2014. The trial transcripts are attached as Exhibits C, D, and E. Prior to the trial beginning, the State and defense

counsel stipulated to the admissibility of certain evidence. The Defendant's phone records from Verizon wireless, including subscriber information and a list of calls, were entered into evidence without objection from defense. (Exhibit C, Page 193, lines 24-25; Page 194, lines 1-8). Defense counsel further informed the Court that he conferred with the Defendant and the Defendant agreed that the evidence was admissible. (Exhibit C, Page 196, lines 1-11). The Court inquired of the Defendant regarding the stipulations to the evidence and the Defendant agreed that the evidence was admissible. (Exhibit C, Page 197, lines 6-13). The phone records from Verizon wireless, including the subscriber information and call list, were obtained pursuant to the issued court order (Exhibit A). The Defendant cannot argue that he was not aware of this evidence when he, and his counsel, stipulated to its admissibility at trial.

Special Agent Veronica Edwards testified at trial regarding the fact that she obtained a court order for Verizon phone records pertaining to the phone number of 904-239-0003, which was identified as the Defendant's phone number. (Exhibit C, Page 275, lines 23-25; Page 276, lines 1-25; Page 277, lines 1-8). Special Agent Edwards also testified that the phone the Defendant had in his possession at the time law enforcement made contact with him matched the phone number used to call and text the undercover, who was portraying herself as a 13-year-old female. (Exhibit C, Page 337, lines 19-25; Page 338, lines 1-3). Special Agent Edwards testified to the records obtained pursuant to the search warrant from page 358 through page 360 of Exhibit C.

Additionally, the Defendant took the stand in his own defense at trial. During his

testimony, the Defendant admitted to all of the text messages and phone calls between himself and the undercover agent. The Defendant advised he knew it as an undercover sting operation and that he sent photographs of himself and his genitalia to the 13-year-old persona. He further admitted throughout his testimony that all the emails, text messages, and phone calls were sent from his Verizon smartphone. The Defendant testified that his phone number at the time was 904-239-0003. (Exhibit D, Page 461, line 12). The Defendant also admitted during his trial testimony that his phone/phone number was used to make all of the phone calls, to send the text messages, to send the emails, and to send the pictures. (Exhibit D, Page 478, lines 21-24).

The search warrant authorizing cell-site data and the results of said warrant were known to the defense during discovery and at trial. As a result, the Defendant and his counsel cannot meet their burden of proof by establishing that the facts were unknown at the time of trial or that the facts could not have been known by them by the use of diligence. Furthermore, absent the search warrant results and Verizon phone records that were entered into evidence at trial, after Defendant's stipulation, the Defendant admitted during his trial testimony that he used his phone number (which was the target of the search warrant) to communicate with the undercover officer. The Defendant then admitted to all of the communications that were at issue during the trial. Therefore, the evidence the Defendant argues is "newly discovered" is not evidence that would produce an acquittal on retrial, based on the Defendant's own statements alone.

Based on the aforementioned, the Defendant is not entitled to an evidentiary hearing on this ground and the State respectfully requests this Court deny Ground One

of the Defendant's Motion for Postconviction Relief.

RESPONSE TO GROUND THREE:

In Ground Three of the Defendant's Motion for Postconviction Relief, the Defendant argues that defense counsel rendered ineffective assistance of counsel by failing to present a mental health witness at trial. Specifically, the Defendant argues that defense counsel should have presented a mental health expert to opine that at the time of the Defendant's communications in this case, he did not have any inclination towards engaging in sexual activity with minors (i.e., he does not have a sexual deviancy) and had defense counsel presented such an expert, an expert would have conducted the appropriate evaluation and provided this opinion to the jury. The Defendant's argument as to Ground Three fails because the purported evidence would be inadmissible expert testimony and would not undermine the reliability of the jury's verdict.

In order to fall under Strickland, the evidence must be admissible. Schofield v. State, 67 So. 3d 1066 (Fla. 2d DCA 2011). Mere speculation as to what a witness would testify to does not demonstrate a colorable claim of ineffective assistance of counsel. Florida Statutes Section 90.702 (2013) governs the analysis of expert testimony in this case. According to Florida Statues Section 90.702:

> If scientific, technical, or other specialized knowledge will assist the trier of fact in understanding the evidence or in determining a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify about it in the form of an opinion or otherwise, if:
> (1) The testimony is based upon sufficient facts or data;
> (2) The testimony is the product of reliable principles and methods; and
> (3) The witness has applied the principles and methods reliably to the facts of the case.

Fla. Stat. § 90.702 (2013).

In United States v. Gillis, 938 F.3d 1181 (11th Cir. Ct. App. 2019), the defendant was convicted of attempting to induce or entice a minor to engage in sexual activity, among other crimes, arising from the defendant's online communication to an undercover agent and the agent's fictional 11-year-old daughter as the intended victim. Gillis appealed his convictions on the ground that the trial court deprived him of his constitutional right to a defense by prohibiting the testimony of his proposed expert witnesses. Id. at 1186. One of the witnesses Gillis sought to have testify at trial was Dr. Sullivan, who had performed several psychological tests on Gillis. Dr. Sullivan was going to testify that based upon her evaluation of Gillis, he did not have an interest in prepubescent children. Id. at 1192. The trial court excluded Dr. Sullivan's testimony on the grounds that she would be testifying to what Gillis told her and she would be presenting expert opinion testimony to conclude that Gillis did not have the requisite intent to commit enticement merely because he was not attracted to prepubescent girls. Id. The Eleventh Circuit Court of Appeals held the district court did not abuse its discretion in excluding Dr. Sullivan's testimony under Daubert and the evidentiary rules governing expert testimony. The court noted that it saw no error in the lower court's determination that the expert testimony would "do more than leave an inference for the jury to draw and 'instead veered into the impermissible territory of offering an opinion on Gillis' mental state.'" Id. at 1195. Additionally, the court stated that defendants generally are permitted to introduce evidence directly pertaining to any of the elements of the charged offenses and evidence that could make the existence of those elements

more or less certain; however, defendants do not have the "unfettered right to offer testimony that is incompetent, privileged, or otherwise inadmissible under standard rules of evidence." Id. at 1193.

The Defendant in the instant case was convicted of Traveling to Meet a Minor and Transmission of Material Harmful to Minors. In closing arguments at trial, defense counsel argued that there was no evidence that the Defendant had any history, perversion, desire, pedophilia, or any want to engage in sexual activity with underage girls. (Exhibit E, page 533, lines 12-16). The crux of the defense at trial was that the Defendant never thought he was communicating with a real thirteen-year-old child. The Defendant argued that he was playing a game of chess with the undercover officer "to beat them at their own game." The Defendant's "inclination" towards engaging in sexual activity with minors, or his sexual deviancy, has no bearing on the elements of either crimes of which the Defendant has been convicted. Specifically, the Defendant's inclination towards engaging in sexual activity with minors or his sexual deviancy does not pertain to whether or not the Defendant actually believed he was communicating with a person he believed was a child.

In order to prove Traveling to Meet a Minor, the State had to prove two elements: (1) the Defendant used a computer on-line service, internet service, local bulletin board service, or a device capable of electronic data storage or transmission to seduce, solicit, lure, entice, or attempt to seduce, solicit, lure, or entice a child or a person believed by the Defendant to be a child to engage in unlawful sexual conduct, and (2) the Defendant traveled or attempted to travel for the purpose of engaging in unlawful sexual

conduct with a child or a person believed by the Defendant to be a child. In order to prove Transmission of Material Harmful to Minors, the State has to prove three elements: (1) the Defendant knowingly sent an image, information, or data that he knew or believed to be harmful to minors, (2) the Defendant sent the image, information, or data to a specific individual who was either actually known by him to be a minor or believed by him to be a minor, and (3) the Defendant sent the image, information, or data via electronic mail.

The Defendant argues that his defense counsel should have presented a psychologist or other mental health expert to testify that he does not have any inclination towards engaging in sexual activity with minors or that he does not have a sexual deviancy. The defense expert would be testifying to speculative testimony based on what the Defendant told the expert. The expert would likely be called upon by the defense to testify that the Defendant lacked such sexual deviancy after his/her psychological evaluations, an argument that is analogous to the argument made by the defense in Gillis. Any such expert testimony in this case would be inadmissible under Florida Statutes Section 90.702. The Defendant's sexual deviancy or inclination towards engaging in sexual activity with minors, or lack thereof, is not an element of either Traveling to Meet a Minor or Transmission of Material Harmful to Minors. Therefore, there is no scientific, technical, or other specialized knowledge that would have assisted the jury in understanding the evidence or in determining a fact in issue. Evidence of the Defendant's sexual deviancy or inclination towards engaging in sexual activity with minors is not relevant to proving any material fact at issue and it is not

evidence that rebuts the State's evidence that the Defendant was communicating with someone who he believed was a child. Any such expert testimony would merely serve to confuse and mislead the jury. As the court stated in Gillis, the Defendant in this case does not have the unfettered right to offer expert testimony that is incompetent or otherwise inadmissible under the rules of evidence, especially when it does not pertain to any of the actual elements of the offenses of which the Defendant was convicted. Additionally, the Defendant is speculating as to what a mental health expert would opine in this case.

Because the proposed mental health expert would only be called upon to testify to matters that would be inadmissible on retrial, this matter does not fall under Strickland and is not a colorable claim of ineffective assistance of counsel. Furthermore, the Defendant cannot overcome the presumption that the decision not to call a mental health expert at trial was a sound trial strategy or that it fell outside the realm of reasonableness.

Based on the aforementioned, the Defendant is not entitled to an evidentiary hearing on this ground and the State respectfully requests this Court deny Ground Three of the Defendant's Motion for Postconviction Relief.

WHEREFORE, the State respectfully requests this Court deny the Defendant's Motion for Postconviction Relief.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been furnished by e-service to Michael Ufferman, 2022-1 Raymond Diehl Road, Tallahassee, Florida

32308, ufferman@uffermanlaw.com, attorney for the Defendant/Appellee, this 13th day of May, 2021.

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