

**SEVENTH JUDICIAL CIRCUIT  
COURT VACANCY APPLICATION OF**

**ALICIA R. WASHINGTON, ESQ.**



**APPLICATION FOR NOMINATION TO THE SEVENTH JUDICIAL CIRCUIT COURT**

(Please attach additional pages as needed to respond fully to questions.)

DATE: 01/22/2016 Florida Bar No.: 141615

GENERAL: Social Security No.: XXX-XX-XXXX

1. Name Alicia R. Washington E-mail: awashingtonlaw@gmail.com

Date Admitted to Practice in Florida: 06/06/1998

Date Admitted to Practice in other States: Texas Bar 11/07/97

2. State current employer and title, including professional position and any public or judicial office.

President/Owner of Alicia R. Washington, P.A.

3. Business address: 100 South State St., Suite B

City Bunnell County Flagler State Fl. ZIP 32110

Telephone (386) 437-4341 FAX (386) 437-6872

4. Residential address: XXXXXXXXXX

City XXXXXXXXXX County XXXXX State XX ZIP XXXX

Since November 2006 Telephone (XXX) XX-XXXX

5. Place of birth: Opelousas, Louisiana

Date of birth: XX-XX-XXXX Age: 45

6a. Length of residence in State of Florida: 18 years

6b. Are you a registered voter?  Yes  No

If so, in what county are you registered? Flagler

7. Marital status: Married

If married: Spouse's name XXXXXXXXXXXX

Date of marriage 06/06/1998

Spouse's occupation Attorney

If ever divorced give for each marriage name(s) of spouse(s), current address for each former spouse, date and place of divorce, court and case number for each divorce.

N/A

8. Children

<i>Name(s)</i>	<i>Age(s)</i>	<i>Occupation(s)</i>	<i>Residential address(es)</i>
XXXXXXXXXX	11	N/A	XXXXXXXXXX
XXXXXXXXXX	8	N/A	XXXXXXXXXX

9. Military Service (including Reserves)

<i>Service</i>	<i>Branch</i>	<i>Highest Rank</i>	<i>Dates</i>
Louisiana Army National Guard	Army	Spec 4	1989-1994
Rank at time of discharge	<u>Spec 4</u>	Type of discharge	<u>Honorable</u>
Awards or citations	<u>_____</u>		

**HEALTH:**

10. Are you currently addicted to or dependent upon the use of narcotics, drugs, or intoxicating beverages? If yes, state the details, including the date(s).

No

11a. 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?

Yes  No

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.

11b. 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 2 or 3 nights
- Experiencing periods of hyperactivity
- Spending money profusely with extremely poor judgment
- Suffered 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

Yes  No

If yes, please explain.

- 12a. 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?

Yes  No

- 12b. If your answer to the question above is Yes, are the limitations or impairments caused by your physical or mental health impairment reduced or ameliorated because you receive ongoing treatment (with or without medication) or participate in a monitoring or counseling program?

Yes  No

Describe such problem and any treatment or program of monitoring or counseling.

13. 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, give full details as to court, date and circumstances.

No

14. 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 law provisions.)

No

15. 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 use of 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

16. 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

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

No

#### **EDUCATION:**

18a. Secondary schools, colleges and law schools attended.

<i>Schools</i>	<i>Class Standing</i>	<i>Dates of Attendance</i>	<i>Degree</i>
Thurgood Marshall School of Law	Top 1/3	08/94-05/97	Juris Doctorate
Louisiana State University	Top 1/2	09/89-05/94	Bachelor Degree in Political Science

18b. List and describe academic scholarships earned, honor societies or other awards.  
Law School Dean's List Fall and Spring 1996 and 1997; NAACP Legal Intern; Environmental Law Clinic; Volunteer Tax Assistance Program; Houston Bar Association Mock Trial Program; Prestige Woods Women's Legal Society

#### **NON-LEGAL EMPLOYMENT:**

19. List all previous full-time non-legal jobs or positions held since 21 in chronological order and briefly describe them.

<i>Date</i>	<i>Position</i>	<i>Employer</i>	<i>Address</i>
12/90-	Assistant Manager	You & I Fashions	2834 Highland Road

08/94	of retail store		Baton Rouge, La. 70802
	Investigator interviewing inmates and investigating crime scenes		
10/97-		Public Defender	25 Market St.
01/98		4 <sup>th</sup> Judicial Circuit	Jacksonville, Fl. 32202

**PROFESSIONAL ADMISSIONS:**

20. List all courts (including state bar admissions) and administrative bodies having special admission requirements to which you have ever been admitted to practice, giving the dates of admission, and if applicable, state whether you have been suspended or resigned.

<i>Court or Administrative Body</i>	<i>Date of Admission</i>
Florida Bar Association	06/01/1998
Federal Bar Middle District	10/15/2003
Texas Bar Association	11/07/1997

**LAW PRACTICE:** (If you are a sitting judge, answer questions 21 through 26 with reference to the years before you became a judge.)

21. State the names, dates and addresses for all firms with which you have been associated in practice, governmental agencies or private business organizations by which you have been employed, periods you have practiced as a sole practitioner, law clerkships and other prior employment:

<i>Position</i>	<i>Name of Firm</i>	<i>Address</i>	<i>Dates</i>
President/Owner	Alicia R. Washington, P.A.	P.O. Box 100 Bunnell, Fl.	07/2008 to present
Contract Attorney	7th Circuit Guardian ad Litem Program	250 N. Beach St. Daytona Beach, Fl.	09/2011 to present
Of Counsel	Central Florida Community Development Corp.	211 N. Ridgewood Ave., Suite 114 Daytona Beach, Fl. 32114	2004 to present
Part time attorney	Community Legal Services of Mid Fl.	128 E Orange Ave. Daytona Beach, Fl.	07/2008 to 07/2011

Juvenile Division Chief	Public Defender 7th Judicial Cir.	251N. Ridgewood Daytona Beach, Fl.	07/2006 to 07/2008
President/Owner	Law Office of Alicia R. Washington	248 S. Ridgewood Ave. Daytona Beach, Fl.	04/2003- 11/2006
Associate	Smith, Hood, et. al.	P.O. Box 15200 Daytona Beach, Fl.	04/2002- 04/2003
Assistant State Attorney	State Attorney 7th Judicial Circuit	251 N. Ridgewood Daytona Beach, Fl.	10/2000- 04/2003
Assistant Public Defender	Public Defender 7th Judicial Circuit	251 N. Ridgewood Daytona Beach, Fl.	10/1998- 10/2000
Assistant Public Defender	Public Defender 4th Judicial Circuit	25 Market St. Jacksonville, Fl.	01/1998- 10/1998

22. 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.

My current practice consists primarily of criminal, family, and dependency cases. I have a wide variety of clients that cross all racial, cultural and economic lines. Every one from the struggling parent trying to help his or her adult child survive a criminal prosecution to a retired business man ending an unhappy thirty year marriage. I provide criminal defense services for cases ranging from misdemeanor trespass to first degree felonies punishable by life. I have handled family law cases that have ranged from simplified dissolutions with no property or dependents to complex dissolutions involving equitable distribution of business assets, retirement accounts, and alimony. In the past, I have represented parents at risk of losing their children in dependency proceedings. I currently protect the interests of dependent children as a full time independent contractor for the Florida Guardian ad Litem program in Flagler County. It has been challenging but the rewards in protecting children are great. Additionally, I have been of counsel for Central Florida Community Development Corporation since 2004. In that capacity, I have litigated contract disputes and real estate actions. I have represented Second Avenue Merchants Association since 2010 and have litigated corporate actions seeking declaratory and injunctive relief. I also recently added plaintiff personal injury law as an area of practice where I seek to help those who have been injured through the negligence of others.



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

	Court		Area of Practice	
Federal Appellate	0	%	Civil	20
Federal Trial	0	%	Criminal	30
Federal Other	0	%	Family	40
State Appellate	0	%	Probate	%
State Trial	100	%	Other	10
State Administrative	0	%		
State Other	0	%		
		%		
<b>TOTAL</b>	<b>100</b>	<b>%</b>	<b>TOTAL</b>	<b>100</b>

24. In your lifetime, how many (number) of the cases you have tried to verdict or judgment were:

Jury?	50	Non-jury?	85
Arbitration?	_____	Administrative Bodies?	5

25. 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

26. 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 in full.

No

**(Questions 27 through 30 are optional for sitting judges who have served 5 years or more.)**

27a. For your last 6 cases, which were tried to verdict before a jury or arbitration panel or tried to judgment before a judge, list the names and telephone numbers of trial counsel on all sides and court case numbers (include appellate cases).

White v. White, 2012DR1143

Paul E. Rice, Jr. Esq., Counsel for Wife/Petitioner, 386.257.1222

In the Interest of J.S. and J.S. 2013DP9

Bruce Johns, Esq., Counsel for Father, 386.256.2586

Wesley Flagler, Esq., Counsel for DCF, 386.313.7038

In the Interest of A.F., 2013DP15

Carol F. Kelley, Esq., Counsel for Father, 386.238.3700

Jayroe v. Lopez, 2012DR767

Armistead Ellis, Jr., Esq., Counsel for Respondent, 386.255.2433

Old King's Highway Associates, Ltd. v. Bellas's Tomato Pies, Inc. et. al

2014CC366

LeAnn B. Wagner, Esq., 954.474.8000

In the interest of A.W. 2015DP16

Kurt F. Teifke, Esq., Counsel for Mother, 386.269.4551

Richard A. Price, Esq., Counsel for Father, 386.597.7749 ext 801

Wesley Flagler, Esq., Counsel for DCF, 385.313.7038

- 27b. For your last 6 cases, which were 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).

State v. Paul Stout, 2015CF90

Christina Opsahl, Esq., Assistant State Attorney, 386.313.4300

Timothy Pribisco, Esq., Assistant State Attorney, 386.313.4300

Ogden v. Ogden, 2015DR30

J. Anthony Franco Esq., attorney for Respondent, 844.541.1252

Brown v. Jones, 2014CA426

John A. Wilkerson, Esq., attorney for Defendant, 386.248.2557

Phagan v. McDuffee, 2001-34260-FMCI

David L. Ferguson, Esq., attorney for Respondent, 386.677.0822

Wyss v. Wyss, 2014DR283

Eric K. Neitzke, Esq., attorney for Respondent, 386.323.1990

Zapata v. Zapata, 2014DR222

Donald Appignani, Esq., attorney for Petitioner, 386.206.9170

- 27c. During the last five years, how frequently have you appeared at administrative hearings?  
0 average times per month
- 27d. During the last five years, how frequently have you appeared in Court?  
10 average times per month
- 27e. During the last five years, if your practice was substantially personal injury, what percentage of your work was in representation of plaintiffs? N/A% Defendants?  
N/A%
28. If during any prior period you have appeared in court with greater frequency than during the last five years, indicate the period during which this was so and give for such prior periods a succinct statement of the part you played in the litigation, numbers of cases and whether jury or non-jury.

During my prior employment with the State Attorney and Public Defender offices, I was in court on average a minimum of 15 days a month. During those periods is when I accumulated the majority of my trial experience. In that capacity, I tried over 40 jury criminal jury trials and over 60 juvenile adjudicatory trials.

29. For the cases you have tried to award in arbitration, during each of the past five years, indicate whether you were sole, associate or chief counsel. Give citations of any reported cases.

N/A

30. List and describe the six most significant cases which you personally litigated giving case style, number 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. Give the name of the court and judge, the date tried and names of other attorneys involved.

State v. Wajira Dayaratne, 1999-34634-CFAES

This was my very first felony trial. I do not know if you ever forget your first felony trial. I was the Assistant Public Defender assigned to represent Mr. Dayaratne, a somewhat difficult gentleman of Middle Eastern descent. He was charged with Battery on a Law Enforcement Officer. It was alleged that he spit on two police officers in retaliation for being arrested. Judge Briese presided and the Assistant State Attorney was Kevin Sullivan. I had only been in the felony division for two weeks prior to the trial, yet I had two trials that week.

There was a significant language barrier between Mr. Dayaratne and I. I was not sure if he understood the trial process and the possible ramifications of a guilty verdict. He was very angry. He objected to any further continuances in the case due to his continued incarceration pending trial. He felt very strongly that he was the one who had been mistreated.

Trial was held on November 19, 1999. I remember vividly the fear I felt. I remember the burden of realizing that my inexperience could cause this man to go to prison. I remember not sleeping for days as the trial approached and sleeping far less once the battle began. The jury returned a guilty verdict, and Mr. Dayaratne was sentenced to prison. I accepted that the jury verdict was fair given the evidence. But it took me months to feel comfortable that I had done the best I could for my client. It is one thing to have a client go to prison for something he or she has done. It is quite another to feel that your own inadequacies caused your client to be convicted. That trial taught me that I have to do better than my best. People trust their attorneys. We have an obligation to not only live up to, but to exceed their expectations. I feel blessed to still feel as much excitement for the process today, and my role within it, as I did 17 years ago.

State v. Emma Jean, 2000-31332-CFAES

The lead counsel on this case was actually the quite capable Assistant State Attorney Celeste Gagne. Defense counsel was Grady Irvin, Jr., Esquire. There was a media circus surrounding the case. The child victim had been found wandering the streets with his hands and legs duct taped and visible bruising to his body. The State charged aggravated child abuse. Ms. Jean was a well respected pastor's wife, and there were accusations that she was being overcharged because she was African American.

I was asked whether I would be interested in being co-counsel. I reviewed the case file,

and while I understood why I was likely being asked to co-chair, it did not matter to me. No child- Caucasian, African American or otherwise- deserved to be abused. So I accepted the task. Trial commenced on December 14, 2001. The jury returned a guilty verdict. There were those in the African American community that were upset I was a part of a prosecutorial process they viewed as racist. They saw me as no more than a racial pawn used by the State to neutralize the racial overtones of the case. But I did what I felt was right. I believe that if you get buried in trying to decipher everyone else's agenda before making your own decision, chances are you will never make a decision. I never addressed the allegations. I let my work and my reputation speak for itself.

In the Interest of V.W., et al, 2003-31087-FMDL

I was court appointed to represent the Mother in dependency proceedings that were initiated after her infant died in her care. Garrick Fox, Esquire represented the Father. Celine Cannon, Esquire represented the Department of Children & Families in their petition seeking to terminate parental rights. In the discovery process, I learned a lot about the family's history. Violence and drugs were seemingly a part of their every day culture. It was a reality that I knew nothing about.

Trial was conducted on February 18th and 19th of 2004. Judge Briese presided. The Department's petition was granted. I gained so much respect for the dependency court, and the role it can play in hopefully breaking the cycle of violence and addiction that is common place to many. This case truly taught me the importance of having empathy for people, even if you have no connection to their experience or their walk in life. People are not created in vacuums. They are a product of their upbringing, and whether you relate with their reality or not, they deserve to be adequately represented.

My experiences representing parents in dependency proceedings is what fueled my passion to protect dependent children through the Guardian ad Litem program. The vicious cycle has to stop somewhere. If I can help protect these children, maybe they can go on to lead stable and productive lives.

George v. George, 2006-DR-2189

I had just opened my practice in Bunnell. Ms. George was employed by the City of Bunnell. So I had this seemingly great idea to take her case for a nominal retainer in order to get referrals from her for other prospective clients. I had no idea that opposing counsel was a family law guru named Dorothy J. McMichen, Esquire from Orange County. The case had been pending two years before I came aboard, and my client had gone through two prior attorneys. The delays in the case were caused largely by Mr. George's refusal to comply with mandatory disclosures.

Mr. George was self employed and owned a concrete business. Immediately after the divorce was filed, he had dissolved the marital corporation and formed a new corporation with his new girlfriend serving as president. He would not supply any financial information regarding the new entity, or its predecessor. I was truly taken aback that he

was not complying with mandatory disclosures. In criminal law, there are rules addressing discovery and the mutual duty to disclose pertinent information. In civil cases, especially family law cases, these lines can be blurred. Initially, I felt that his attorney was not properly advising him of his obligations. But I reluctantly came to realize that it was not her job to help me locate items that would hurt her client's case.

My client could not afford an investigator or a business valuation expert. So I had to become both, in a sense. I used a series of non-party subpoenas to get invoices from his suppliers. Then I used those invoices to identify his contracts as the supplies were delivered to the job sites. I used FaceBook to learn more information about the girlfriend, who was a 19 year old part time hair dresser with no business experience. I had my tax accountant review the business tax records and assist me in placing a value on the business and business assets. I used Kelly Blue Book, Auto Trader, and Boat Trader to assist me in placing a value on the vehicles and vessels. In short, I had to step out of my role as an attorney, and be all of the things my client needed me to be to adequately present her case.

Ms. McMichen abruptly withdrew from representing Mr. George. I would like to think I wore her down, but it is probably more likely that her client ran out of money. James Riecks, Esquire then became his new counsel. We went to trial on October 19th and 20th of 2009 before Judge Zambrano. I called Mr. George as my first witness and methodically went to great lengths to demonstrate the fraud he had perpetuated upon the Court. In the end, I was able to get my client, and her children, a fair and just distribution of marital property, alimony, child support, and attorney fees. But more importantly, I gained a level of knowledge that has proven invaluable to my family law practice.

Woolridge, et. al. v. Hernandez, et. al., 2009CA2206

This was an action for specific performance of a real estate contract. Plaintiffs were represented by James Evans, Esquire. Lupe Hernandez had filed bankruptcy in Texas due to a business partly owned by her going bankrupt. Her husband, Edward Hernandez, did not file bankruptcy on the advice of Mrs. Hernandez's bankruptcy attorney. Said attorney then advised them that they had to sell their Florida home. The Hernandezs entered a contract to sell their Florida home to Plaintiffs. It was later determined that the Hernandezs had the option of selling their Georgia home instead. They returned the \$1000.00 earnest money to Plaintiffs and sought to void the contract.

What made this case very interesting was that I had to understand Chapter 7 bankruptcy to properly advise my client, although I had been retained for a contract issue. I reached out to the trustee and the primary creditor, both in Texas, to negotiate a settlement in the bankruptcy proceedings that would estop Plaintiffs from proceeding with their action for specific performance. Finally, a chance to use my Texas license. Plaintiffs then hired private counsel in Texas to file an objection to the proposed settlement. The federal judge ultimately set aside the settlement I reached with the trustee on my clients' behalf. Shortly thereafter, we proceeded to trial before Judge Zambrano on December 2, 2010 on the specific performance issue. The Plaintiffs prevailed. But my clients were very appreciative of my diligent efforts and said I had restored their faith in attorneys.

31. Attach at least one example of legal writing which you personally wrote. If you have not

personally written any legal documents recently, you may attach writing for which you had substantial responsibility. Please describe your degree of involvement in preparing the writing you attached.

I personally drafted all of the writing samples attached. I have elected to provide six legal writing samples to illustrate the diversity of my practice and legal knowledge base. This, I believe, will make me a great asset to the judiciary.

Exhibit A: Harrison v. Harrison, 2004DR2627-O, Exceptions to Report and Recommendation of General Magistrate

Exhibit B: Palm Coast Plantation HOA v. Sherrod, et.al., Motion to Dismiss

Exhibit C: 5036 Hwy 50, LLC v. Jeong, et. al., 2012CA17100, Plaintiff's Motion for Summary Judgment

Exhibit D: Tyler, et. al. v. Hernandez, et. al., 2009CA2206, Motion for Summary Judgment

Exhibit E: Old Kings Highway Associates, Ltd. v. Bella Tomato Pies, Inc. et. al., 2014CC366, Motion to Dismiss

Exhibit F: In the Interest of N.S., 2013DP7, Notice of GAL Objection to Petition to Intervene

#### **PRIOR JUDICIAL EXPERIENCE OR PUBLIC OFFICE:**

32a. Have you ever held judicial office or been a candidate for judicial office? If so, state the court(s) involved and the dates of service or dates of candidacy.

No

32b. List any prior quasi-judicial service:

*Dates*

*Name of Agency*

*Position Held*

Types of issues heard: N/A

32c. Have you ever held or been a candidate for any other public office? If so, state the office, location and dates of service or candidacy.

No

32d. If you have had prior judicial or quasi-judicial experience,

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

N/A

- (ii) Describe the approximate number and nature of the cases you have handled during your judicial or quasi-judicial tenure.

N/A

- (iii) List citations of any opinions which have been published.

N/A

- (iv) List citations or styles and describe the five most significant cases you have tried or heard. Identify the parties, describe the cases and tell why you believe them to be significant. Give dates tried and names of attorneys involved.

N/A

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

N/A

- (vi) Have you ever held an attorney in contempt? If so, for each instance state name of attorney, approximate date and circumstances.

N/A

- (vii) If you are a quasi-judicial officer (ALJ, Magistrate, General Master), have you ever been disciplined or reprimanded by a sitting judge? If so, describe.

N/A

### **BUSINESS INVOLVEMENT:**

- 33a. 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.

I own and operate my law practice, Alicia R. Washington, P.A., and intend to dissolve that entity upon appointment. I am also a full time independent contractor with the Florida Guardian ad Litem Program. I would resign from that position, as well.

- 33b. Since being admitted to the Bar, have you ever been engaged in any occupation, business or profession other than the practice of law? If so, give details, including dates.

No

- 33c. State whether during the past five years you have received any fees or compensation of any kind, other than for legal services rendered, from any business enterprise, institution, organization, or association of any kind. If so, identify the source of such compensation, the nature of the business enterprise, institution, organization or association involved and the dates such compensation was paid and the amounts.

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.

Yes. My spouse, XXXXX, is employed with State Farm Insurance. I should not preside over any cases involving State Farm Insurance.

**MISCELLANEOUS:**

35a. Have you ever been convicted of a felony or a first degree misdemeanor?

Yes \_\_\_\_\_ No  x  If "Yes" what charges? \_\_\_\_\_

Where convicted? \_\_\_\_\_ Date of Conviction: \_\_\_\_\_

35b. Have you pled nolo contendere or pled guilty to a crime which is a felony or a first degree misdemeanor?

Yes \_\_\_\_\_ No  x  If "Yes" what charges? \_\_\_\_\_

Where convicted? \_\_\_\_\_ Date of Conviction: \_\_\_\_\_

35c. Have you ever had the adjudication of guilt withheld for a crime which is a felony or a first degree misdemeanor?

Yes \_\_\_\_\_ No  x  If "Yes" what charges? \_\_\_\_\_

Where convicted? \_\_\_\_\_ Date of Conviction: \_\_\_\_\_

36a. Have you ever been sued by a client? If so, give particulars including name of client, date suit filed, court, case number and disposition.

No

36b. Has any lawsuit to your knowledge been filed alleging malpractice as a result of action or inaction on your part?

No

36c. Have you or your professional liability insurance carrier ever settled a claim against you for professional malpractice? If so, give particulars, including the amounts involved.

No

37a. Have you ever filed a personal petition in bankruptcy or has a petition in bankruptcy been filed against you?

Yes

37b. Have you ever owned more than 25% of the issued and outstanding shares or acted as an officer or director of any corporation by which or against which a petition in bankruptcy has been filed? If so, give name of corporation, your relationship to it and date and caption of petition.

No

38. Have you ever been a party to a lawsuit either as a plaintiff or as a defendant? If so, please supply the jurisdiction/county in which the lawsuit was filed, style, case number, nature of the lawsuit, whether you were Plaintiff or Defendant and its disposition.

Yes. Alicia Washington, et. al. v. Efrain Ubiles, et. al., case number 2008-10746-CODL, County Court, Volusia County. I was a landlord seeking eviction. A final judgment of eviction granted.

National City v. Alicia Washington, et. al., case number 2009-31125-CICI, Circuit Court, Volusia County. I was the foreclosure defendant. A judicial sale was held in July 2010.

In re Alicia Washington, et. al., case number 6:09-BK-09519-KSJ, United States Bankruptcy Court, Middle District of Florida. I was the debtor. The discharge was granted in October 2009.

39. 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, give the particulars.

No

40. To your knowledge within the last ten years, have any of your current or former co-workers, subordinates, supervisors, customers or clients ever filed a formal complaint or formal accusation of misconduct against you with any regulatory or investigatory agency, or with your employer? If so, please state the date(s) of such formal complaint or formal accusation(s), the specific formal complaint or formal accusation(s) made, and the background and resolution of such action(s). (Any complaint filed with JQC, refer to 32d(v).

No

41. 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

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

No

43a. Have you filed all past tax returns as required by federal, state, local and other government authorities?

Yes  No  If no, please explain. \_\_\_\_\_

43b. Have you ever paid a tax penalty?

Yes  No  If yes, please explain what and why. \_\_\_\_\_

43c. Has a tax lien ever been filed against you? If so, by whom, when, where and why?

No

#### HONORS AND PUBLICATIONS:

44. If you have published any books or articles, list them, giving citations and dates.

N/A

45. List any honors, prizes or awards you have received. Give dates.

Volusia Flagler Association of Women Lawyers 2011 Distinguished Service to the Profession Award ; 2012 Bunnell Chamber Business Person of the Year Award

46. List and describe any speeches or lectures you have given.

Guest Speaker on Thursday Night with Tony and Trish on two occasions to speak about the Juvenile Justice System and the Bunnell Potato Festival; Mount Cavalry Women's Day Guest Speaker in February 2012; NAACP Summer Internship Program Guest Speaker in July 2012; Bethune Cookman University Criminal Justice Department Guest Speaker in February 2013; Keynote speaker for Bunnell MLK event in January 2016.

47. Do you have a Martindale-Hubbell rating? Yes  If so, what is it? \_\_\_ No

#### PROFESSIONAL AND OTHER ACTIVITIES:

48a. List all bar associations and professional societies of which you are a member and give the titles and dates of any office which you may have held in such groups and committees to which you belonged.

Florida Bar Association; Texas Bar Association; Flagler Bar Association; Hatchett Bar Association; Volusia County Bar Association Board Member 2001-2004; Dunn Blount Inns of Court 2001-2003 and 2014 to present; Daytona Beach Kiwanis 2003-2005

48b. List, in a fully identifiable fashion, all organizations, other than those identified in response to question No. 48(a), of which you have been a member since graduating from law school, including the titles and dates of any offices which you have held in each such organization.

Juvenile Justice Continuum from 2006 to 2008. This was a collaboration between Daytona Beach Police Department, Volusia County Sheriff Office, Department of Juvenile Justice, Office of State Attorney, Office of Public Defender; and Volusia County Schools to help identify collaborative solutions to decrease juvenile delinquency.

Juvenile Drug Court Steering Committee from 2006 to 2008. This was a collaboration between Drug Court, Stewart Marchman, Department of Juvenile Justice, Office of State Attorney, Office of Public Defender, and Judge John Watson to help devise a juvenile

drug court program.

Seventh Judicial Circuit Juvenile Justice Committee from 2006 to 2008. This was a collaboration between various law enforcement agencies, the Department of Juvenile Justice, the Office of State Attorney, and the Office of Public Defender to address delinquency issues in the Seventh Judicial Circuit.

Flagler Victims of Sexual Violence Task Force from 2010 to 2011. This was a collaboration between the various law enforcement agencies of Flagler County, the Office of State Attorney, and myself to primarily devise ways to assist victims of sexual violence. One of the most rewarding activities we organized was to go into the middle schools and have students draw pictures about what sexual violence meant to them. Some of the illustrations were heart wrenching, and we talked about ways that we all can help victims heal. Of equal significance, I also devised a pamphlet that explained the elements of the lewd and lascivious crimes that was distributed to the students. I felt strongly that if children were going to be charged with sex offenses that had lifelong implications on their futures, they should be adequately educated.

Bunnell Chamber of Commerce from 2008 to 2012. I served on the Board of Directors from 2008 to 2012. Our goal was to revitalize local businesses in Bunnell and to form a connection between the local community and local business owners. Our greatest achievement is the formation of the Annual Bunnell Potato Festival which is a huge success bringing local business owners, local farmers, and the community together in celebration of Bunnell's rich agricultural history.

Flagler Teen Court Mock Trial Coach from 2010 to present. I help train middle school and high school students to compete in Mock Trial Competitions. This year we won the competition. Watching those children grow right before my eyes has been amazing. They all have very bright futures, and I am immensely proud to have been a small part of their lives. We will be hosting the competition in Flagler County for the first time in 2016. We are all very excited.

Flagler Teen Court from 2010 to present. I have presided as the Teen Court Judge on several occasions. The common misconception is that Teen Court is for the "bad" kids. Quite to the contrary, these are first time offenders that simply used bad judgment. It is great that there is a forum where their own peers can be utilized to help them see the error of their choices.

48c. List your hobbies or other vocational interests.

I am afraid having a full time practice, two children, a husband, and all the activities listed herein does not allow much time for other hobbies or vocational interests. I enjoy

doing things with my family while it is still cool to have mom around. I know those days are numbered, so I am soaking it all in.

- 48d. Do you now or have you ever belonged to any 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, national origin or sex? If so, detail 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.

No

- 48e. Describe any pro bono legal work you have done. Give dates.

I have provided free consultations in a variety of legal areas to members of New Found Favor Ministries from 2010 to present. I have represented a few of those church members in criminal and family law matters at no cost due to their inability to afford legal assistance. I have also provided pro bono services to Central Florida Community Development Corporation by reviewing and/or drafting residential and commercial leases, land development contracts, and joint venture agreements.

#### **SUPPLEMENTAL INFORMATION:**

- 49a. Have you attended any continuing legal education programs during the past five years? If so, in what substantive areas?

Yes. Basic Family Law and Administrative Hearings.

- 49b. Have you taught any courses on law or lectured at bar association conferences, law school forums, or continuing legal education programs? If so, in what substantive areas?

No

50. Describe any additional education or other experience you have which could assist you in holding judicial office.

As I reflect back on my legal career, I realize that every Judge I have appeared before, every attorney I have litigated with or against, and every client or victim I have ever represented helped to shape me into the attorney I am today. In 1998, when I was a juvenile assistant public defender before Judge John Watson we were often in Court until 7:00 p.m. You can believe that there was a lot of complaints from my colleagues. But I have worked hard all my life. It was second nature to me. What Judge Watson taught me is that you have to do what it takes to get the job done.

In 1999, when I was promoted to the felony division, Judge Shawn Briese presided. He taught me that inexperience was no excuse for ineffective assistance of counsel. When there is a job to be done, you simply have to rise to the occasion. Later, I was transferred to Judge Richard Orfinger. He taught me about client and docket management. Cases cannot be continued into perpetuity. People need closure in order to heal. This is also where I first met Judge McGlashan and Judge Feigenbaum who were then prosecutors in Judge Orfinger's courtroom. They taught me that it is

completely legal to stalk your prosecutors to get a case resolved. If they did not get back to me on a case as quickly as I liked, I surveyed the parking lot from my office window to see when they returned from lunch. Then I would be waiting with file in hand as the elevator doors opened. I do not think they quite enjoyed that as much as I did though. I suspect they begged Mr. Tanner to hire me just so I would stop stalking them.

In 2000, when I was hired by the Honorable John Tanner as an assistant state attorney, I was assigned to the misdemeanor division. I remember that at the time I was hired it was explained to me that I could not be officially sworn in until Mr. Tanner returned from an African safari. That meant I had to shadow David Cromartie until Mr. Tanner returned. Now I like Dave, but I am just not the shadowing type. I asked David Smith if Mr. Tanner was already gone, and was told he was flying out that next morning from Daytona Beach International Airport at 6:00 a.m. I, along with Investigator Robert Wheeler, met Mr. Tanner at the airport at 4:30 a.m. so he could swear me in before he left. Mr. Tanner was in his safari gear, and Mr. Wheeler took photos. This is a memory I will always hold dear to my heart.

Soon thereafter, I was elevated to lead misdemeanor attorney. I supervised seven other misdemeanor attorneys. While I was tasked with molding them into good attorneys, they in turn taught me how to lead with respect and deference. By 2001, I had been elevated to the Sex Crimes Division. It was an honor to be the voice for victims of sexual violence.

I left the State Attorney's Office in 2002 to join what was then Smith, Hood & Perkins. I was an insurance defense associate working for Judge Terrence Perkins and Jeffrey Bigman. My last day as an Assistant State Attorney I was scheduled to go to trial on a kidnapping case. Judge Zambrano was my supervisor then. The Defendant had taken some pills at the jail and was visibly impaired. Judge Richard Watson was presiding and continued the case until the end of the week. Much to Judge Zambrano's surprise, I promptly rescinded my resignation and extended it to the trial date so I could finish what I started. There was no way I was going to let the victim wait a day longer for justice.

When I arrived at Smith, Hood, Perkins I was full of anxiety and excitement. Up until then, I had no real experience in civil law. Now Judge Perkins and Mr. Bigman handled the depositions conducted in England, Ireland, and Spain. But I got the privilege of going to Brooksville and Wewahitchka for my depositions. I had the opportunity to appear before judges and work with other attorneys in Jacksonville, Tampa, Orlando and so many other areas throughout Florida. It was truly an invaluable experience that helped me grow immensely as an attorney. I left the firm to strike out on my own, because Judge Perkins and Mr. Bigman gave me the confidence to do it.

Operating a private practice was rewarding but challenging. It gave me my first opportunity to practice "door" law. If it came through the door, and the check cleared, I tried it. But I quickly came to appreciate that you can not competently practice every area of the law. You have to limit your practice area so that you can become adequately

proficient and properly serve your client. I chose to primarily practice criminal, family, and dependency law. Then in 2004, I met Gerald Chester, President of Central Florida Community Development Corporation. The corporation had three primary goals-increasing minority home ownership; increasing minority business ownership; and revitalizing economically challenged communities. Through him I began to nurture my desire to give back to the community. He taught me about land and business development. In exchange I provided pro bono services by reviewing and drafting contracts. It is a relationship I still maintain, because I see the need for this organization and others like it. It is an honor to help in any way I can.

In 2006, the Honorable James Purdy gave me an opportunity to supervise the juvenile division. Helping children has always been a passion for me. Mr. Purdy pushed me to go beyond just the day to day work and to actually be a part of the different organizations geared toward saving our youth. Mr. Purdy believed that it was very important to not only have a voice, but also to be a part of the working solution. This was an exciting time for me. So when I left in 2008, it was a difficult decision. But my personal life had drastically changed. I was now a mother of a three year old and an infant. There was a small part of me that just wanted to stay home and look at those babies. My desire to be a great attorney was now equaled by my desire to be a great mother. It was a confusing time for me. But a good friend told me something I will never forget. She said you can have everything you want. You just can not have it all at the same time. So I went back into private practice mainly for the flexibility. But my children are older now, and Alfred and I have given them a strong foundation. It is time now for me to once again serve my community.

I recently increased my commitment to the Florida Guardian ad Litem Program. I am now the sole guardian ad litem attorney responsible for all Flagler County dependency cases. I simultaneously maintain my private practice, as well. This dual commitment has been challenging. But dependent children need strong advocates. Being able to help them is its own reward. Due to my strong work ethic, I have been able to competently fulfill the needs of my private practice clients while maintaining my commitment to strongly advocate for these children.

Now seventeen years after receiving the privilege of practicing in Florida, I have now appeared before judges throughout the Seventh Judicial Circuit. I have also forged positive relationships with my fellow peers across the Seventh Judicial Circuit and throughout Florida. These relationships have developed me into a more well rounded, balanced attorney. These are the very characteristics that will aid me in becoming an effective jurist. I am thankful to the legal community and my clients for nurturing me over the last sixteen years. I humbly look forward to an opportunity to further serve them as a Circuit Court Judge.

51. Explain the particular potential contribution you believe your selection would bring to this position.

There is currently a need in the Seventh Judicial Circuit for a judge knowledgeable in family and dependency law. I am already learned in these areas and would be ready to

hit the ground running. I also find that here is really where you can help change people's lives. Family law and dependency cases can be very volatile. A jurist presiding over these types of cases must be humble, patient, kind, and fair. You can not be predisposed before all the facts have been presented. These characteristics are a part of my human nature. I truly believe my whole life has lead me to this point, to this calling.

Litigants in family law and dependency cases are also very diverse. They want to feel heard and understood, even if they do not prevail. It is my responsibility to know the law and to apply the law in a fair and impartial matter. It is often not what you say, but how you say it that matters. Litigants, attorneys, court staff, and bailiffs all deserve to be respected. A calm, caring, and knowledgeable judge can neutralize an otherwise volatile situation in family and dependency court.

I also have the benefit of having practiced in many diverse areas of the law. While, I have practiced extensively in criminal and family law matters, I have also litigated real estate, personal injury, and commercial contract disputes. I believe this diversity of experience would be invaluable to the Seventh Judicial Circuit judiciary as I am adequately equipped to handle any division I am assigned to. I would willingly go wherever I would benefit the Circuit the most.

It has always been second nature to me to work hard. It is simply how I was raised. I have always welcomed life's challenges and have also been open and accepting of people from all walks of life. I attribute that at least partially to the fact that I am biracial. My Mother is Korean. My Father is African American. My extended family includes people from many different races, cultures, and experiences. So I believe in the basic goodness and worth of all people. Our similarities far exceed our differences. You can learn a lot in life by just being open to the possibility that the world extends beyond you. I believe no one, especially me, is too old to grow and to learn from all people that enter your life and every moment you experience. This humility will serve me well should I be selected to serve the Seventh Judicial Circuit.

52. If you have previously submitted a questionnaire or application to this or any other judicial nominating commission, please give the name of the commission and the approximate date of submission.

Seventh Judicial Circuit Nominating Commission in November 2013; March 2014; August 2014; and September 2015

53. Give any other information you feel would be helpful to the Commission in evaluating your application.

I encourage the Nominating Committee to reach out to members of the Bar, the Judiciary, and the community for their input on whether I am the right person for this position. I feel very confident that I have done the work and am deserving of this honor. I feel very confident that I am qualified and capable. This is now my fifth time applying for a circuit judicial vacancy. I sincerely thank the Committee for selecting me for the short list the last four times I have applied. I want all of you to know that I have grown throughout this process. I have learned from each opportunity I was afforded. I am a



better candidate now, and I believe that, if you choose to give me another opportunity, all will come to fruition on this occasion. I understand that the position is one of public service and should I have the honor of being selected I will humbly and dutifully serve the citizens of the Seventh Judicial Circuit. There will never be a moment when any one of you will ever regret giving me yet another opportunity.

#### REFERENCES:

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

Honorable Hubert L. Grimes, The Grimes Law Group, LLC, 226 North Nova Road, Suite 327, Ormond Beach, Fl. 32174, 386.481.2757 ext 2752.

Honorable Richard B. Orfiner, Fifth District Court of Appeals, 300 South Beach St., Daytona Beach, Florida 32114; 386.947.1510.

Honorable James S. Purdy, Public Defender, 7th Judicial Circuit, 251 N. Ridgewood Ave., Daytona Beach, Fl. 32114; 386.239.7730.

Michael H. Lambert, Esq., Michael H. Lambert, P.A., 428 N. Halifax Ave., Daytona Beach, Fl. 32118; 386.255.0464.

Gerald Chester, President of Central Florida Community Development Corp., 847 Orange Ave., Daytona Beach, Fl. 32114; 386.258.7520.

Suzanne Johnston, Flagler County Tax Collector, 1769 E. Moody Blvd., Bldg. 2, Bunnell, Fl. 32110; 386.313.4160.

Alan Abramowitz, Esq., Executive Director Florida Guardian ad Litem Program, 2574 Goldenrod Way, Tallahassee, Fl. 32311, 850.241.3232.

Scott Sowers, Vice Chairman of Executive Board of Directors Flagler Chamber of Commerce and Director of Land Development of S.E. Cline Construction, Inc., 18 Utility Dr., Palm Coast, Fl. 32137; 386.446.6444.

Mayor Terrill Hill, Palatka City Hall, 201 N. 2nd St., Palatka, Fl. 32177, 386.329.0100 Ext. 223.

Marian Irvin, Teen Court Coordinator, 1769 E. Moody Blvd., Bldg. 1, Bunnell, Fl. 32110;  
386.313.4559.


## 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 22<sup>nd</sup> day of January, 2016.

Alicia R. Washington  
Printed Name

  
Signature

*(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	\$10,135.00		
List Last 3 years	\$264,590.00	\$135,874.00	\$96,663.00

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	\$7600.00		
List Last 3 years	\$184,800.00	\$71,881.00	\$69,212.00

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

Current year to date	N/A		
List Last 3 years	N/A	N/A	N/A

4. 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	N/A		
List Last 3 years	N/A	N/A	N/A

**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 01, 2016 was \$97,124.00.

**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 \$ 50,000.00

**ASSETS INDIVIDUALLY VALUED AT OVER \$1,000:**

DESCRIPTION OF ASSET (specific description is required – see instructions p. 3)	VALUE OF ASSET
Residence at xxxxxxxx	\$335,000.00
Bank accounts at Wells Fargo Banks	\$ 23,624.00
2010 BMW 528i	\$ 22,000.00
2013 Chevy Surburban	\$ 55,000.00
Alicia R. Washington, P.A. furnishing, equipments, accounts	\$ 50,000.00
Florida Prepaid College Accounts	\$ 21,000.00

**PART C - LIABILITIES**

LIABILITIES IN EXCESS OF \$1,000 (See instructions on page 4):

NAME AND ADDRESS OF CREDITOR	AMOUNT OF LIABILITY
Suntrust Mortgage, P.O. Box 79041, Baltimore, MD 21279-0041	\$ 251,000.00
ACS Student Loans, P.O. Box 7051, Utica, NY 13504-7051	\$185,000.00
Fidelity Bank, P.O. Box 105690, Atlanta, Ga. 30348-5690	\$ 21,000.00

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
Alicia R. Washington, P.A.	P.O. Box 100, Bunnell, Fl. 32110	\$264,590.00

**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 BUSIENSS' INCOME	ADDRESS OF SOURCE	PRINCIPAL BUSINESS ACTIVITY OF SOURCE

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

	BUSINESS ENTITY #1	BUSINESS ENTITY #2	BUSINESS ENTITY #3
NAME OF BUSINESS ENTITTY	Alicia R. Washington, P.A.		
ADDRESS OF BUSINESS ENTITY	P.O. Box 100, Bunnell, Fl.		
PRINCIPAL BUSINESS ACTIVITY	Legal services		
POSITION HELD WITH ENTITY	President		
I OWN MORE THAN A 5% INTEREST IN THE BUSINESS	Yes 100%		
NATURE OF MY OWNERSHIP INTEREST	Owner		

**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.

*Alicia R. Washington*

SIGNATURE

**STATE OF FLORIDA**

**COUNTY OF Flagler**

Sworn to (or affirmed) and subscribed before me this 22nd day of January, 2016 by Alicia R. Washington

*Teresa Elizabeth Blaha*

(Signature of Notary Public, State of Florida)

(Print Name of Notary Public) **TERESA ELIZABETH BLAHA**  
 MY COMMISSION # FF 235766  
 EXPIRES September 29, 2019  
 Bonded Thru Notary Public Underwriters

Personally Known  OR Produced Identification \_\_\_\_\_

Type of Identification Produced \_\_\_\_\_

## 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:

- form;
- (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 entirety 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: 01/22/2016

JNC Submitting To: Seventh Judicial Circuit Nominating Committee

Name (please print): Alicia R. Washington, Esq.

Current Occupation: Attorney

Telephone Number: 386.437.2263 Attorney No.: 141615

Gender (check one):  Male  Female

Ethnic Origin (check one):  White, non Hispanic

Hispanic

Black

American Indian/Alaskan Native

Asian/Pacific Islander

County of Residence: Flagler

*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.

Printed Name of  
Applicant:

Alicia R. Washington

Signature of Applicant:



Date: 01/22/2016

EXHIBIT A

IN THE CIRCUIT COURT, NINTH JUDICIAL CIRCUIT, IN AND FOR OSCEOLA  
COUNTY, FLORIDA

IN RE:  
TODD HARRISON,  
Petitioner,

CASE NO.: 04-DR-2627-O  
DIVISION: 31

and

LOLITA HARRISON,  
Respondent.

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**EXCEPTIONS TO REPORT AND RECOMMENDATION OF GENERAL  
MAGISTRATE**

**COMES NOW** Petitioner, **TODD HARRISON**, and files his exceptions to the Report and Recommendation of the General Magistrate. An audio recording of the proceeding has been ordered from Court Reporting. Upon receipt, a transcript of the proceedings will be ordered and filed with the Court, in advance of any hearing on these exceptions, in further support of Petitioner's exceptions. Petitioner excepts on the following grounds:

1. The Magistrate's report is contrary to the evidence. The Magistrate commenced the hearing by stating, prior to taking any testimony or receiving any evidence, that the minor child, DANE HARRISON, never resided in Florida. When the undersigned offered to proffer testimony from Petitioner that the child had, in fact, resided here in Florida from June 2003 through November of 2003, the Magistrate then stated that even if the child had resided in Florida during those periods the child was not residing in Florida at the time of the July 8, 2004 judgment, which in her opinion, invalidated the judgment in so far as it related to child custody and support issues.
2. Based on her analysis, the Magistrate determined this Court did not have jurisdiction to determine custody and child support issues at the time of the July 8, 2004 judgment. The Magistrate further implied, with no apparent basis to do so, that Petitioner provided false information to the Court to obtain the Final Judgment. This is contradicted by the UCCJEA affidavit filed by Petitioner at the time of filing the initial dissolution action which accurately outlines the child's prior residences for the five year period preceding the initiation of the original action and further disclosed that the minor child was not residing in Florida at the time his action was commenced.
3. Further, the Magistrate's report is contrary to the law as it relates to the Magistrate setting aside the 2004 Final Judgment. The Magistrate stated she could find no basis upon which the Court entered its judgment. However, there is no statutory requirement that the trial court make specific written findings in a custody decision. See Adair v. Adair, 720 So.2d 316, 317 (Fla. 4th DCA 1998). Thus, a final judgment is not erroneous simply for failing

to list the factors on which it relied in making its determination. Aguirre v. Aguirre, 985 So.2d 1203, 1206 (Fla. 4th DCA 2008). Because no transcript of the final hearing was contained in the record before the Magistrate, the Magistrate could only review errors that appear on the face of the judgment. Casella v. Casella, 569 So.2d 848, 849 (Fla. 4th DCA 1990). In the instant case, there are no errors that appear on the face of the judgment. The Magistrate is unable to review the evidentiary basis of the court's ruling, and therefore, her recommendation that the judgment be set aside is contrary to the law. Hindle v. Fuiith, 33 So. 2d 782, 785 (Fla. 5<sup>th</sup> DCA 2010).

4. Further, the Magistrate's findings regarding the proper homestate of the minor child at the time the Petition of Dissolution of Marriage was filed is contrary to the law. The Uniform Child Custody Jurisdiction Enforcement Act, contained within Chapter 61 of the Florida Statutes, is the authority on establishing subject matter jurisdiction regarding child custody determinations. Florida Statute §61.503(7) defines homestate as the state where the child has resided during the six month period immediately preceding the initiation of an action seeking a custody determination. Pursuant to Fl. St. §61.514 (1)(a), a court of this state has jurisdiction to make an initial child custody *determination only if this state is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within 6 months before the commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state.*
5. At the time Petitioner filed his Petition for Dissolution of Marriage, Respondent had only left the State of Florida three months preceding the filing of Petitioner's initial petition. She was believed to be in Massachusetts, but at the time of filing Petitioner was not certain.
6. Similarly, prior to these events, Petitioner on June 18, 2003 filed in the Family Court of Onondaga, New York a Petition for Custody of the Minor Child. Before that matter could be resolved by the New York court, Respondent left the jurisdiction and moved the child to Florida. A certified copy of the Petition for Custody and the Order to Show Cause are attached hereto as Exhibit Composite A.
7. Subsequently, Respondent then moved to Pembroke Pines, Florida from June 2003 through November 2003. These continued unilateral acts of Respondent removing the child at will makes the six month homestate rule inapplicable and complicates UCCJEA applicability in this case. Since Respondent did not return to New York after leaving Florida, and none of the parties resided in New York at the time the initial petition seeking dissolution was filed, New York was not the proper court to determine custody. Ironically, if we accept the reasoning outlined in the Magistrate's report, it would seem New York could not hear the custody issues anyway as the child no longer lived there.
8. Petitioner submits that either Florida or Massachusetts could have conceivably been proper forums. But as Petitioner was a Florida resident at that time, Florida was the proper state for him to commence divorce, custody and support issues.



9. In cases of this nature where litigants are continually relocating, the Court is left with the daunting task of determining which state has significant enough contacts, again immediately preceding the initiation of the action, to render a decision. Important to that determination is whether any party has deliberately evaded proper resolution by continually moving the minor child.
10. Thus, the Magistrate's report in so far as it holds that where the Child resides at the time of entry of Final Judgment determines the homestate is contrary to the law and the evidence. The Magistrate's report further states that Respondent was not subject to personal jurisdiction. However, this disregards the fact that under the Florida Statutes Chapter 61, Part II, i.e. the Uniform Child Custody Jurisdiction Act, any State determined to be the homestate has subject matter jurisdiction and can enter an order of custody. Hindle v. Fuith, 33 So. 3d 782, 785 (Fla. 5<sup>th</sup> DCA 2010).
11. Further, the 5<sup>th</sup> District Court of Appeal has recognized that the polestar in custody determinations is what is in the best interests of the child. Even in cases where Florida is not the homestate of the minor child, the courts are authorized to act if it is in the best interests of the child and necessary to prevent any of the problems enumerated under Fl. St. §61.502. Id at 785.
12. The relevant enumerated factors of Fl. St. §61.502, that necessitate this Court entering an order establishing a parenting plan are to:
  - (1) Avoid jurisdictional competition and conflict with courts of other states in matters of child custody which has in the past resulted in the shifting of children from state to state with harmful effects on their well-being.
  - (3) Discourage the use of the interstate system for continuing controversies over child custody.
  - (4) Deter abductions.
13. This case was initiated in Orange County, Florida by Petitioner seeking a dissolution of marriage involving a minor child. The Magistrate has cited Birnbaum v. Birnbaum, 615 So. 2d 241 (Fla. 3d DCA, 1993) in support of her reliance on the divisible divorce concept. A close reading of that case, however, further supports Petitioner's argument that Florida had jurisdiction to enter the 2004 order regarding custody in the instant case. The Court held that Florida courts have jurisdiction and are competent to decide custody matters if Florida is the home state of the child at the time of the commencement of the proceeding, or Florida has been the child's home state within six months before the commencement of the proceeding. Id at 242. For the reasons previously stated herein, Florida was the minor child's home state at the time the initial petition was filed.
14. Further, the Magistrate erred in part three of the findings of fact in holding that the Respondent never intended to reside in Florida. The Magistrate stated that she had thoroughly reviewed the extensive file over lunch and was familiar with all of the

exhibits filed by both parties. The Magistrate's Report does, contrary to her verbal findings, acknowledge that Respondent and the minor child "visited" Florida for five months from July 2003 through November 2003. But the Magistrate's report finds that Respondent never had any intention of remaining in Florida. This finding is directly contradicted by even a cursory review of the August 2, 2003 Modified Child Custody Agreement filed with this Court by Respondent, the same of which is attached to Respondent's Response to Supplemental Petition filed with this Court.

15. The August 2, 2003 Modified Child Custody Agreement, absent the handwritten alterations made by Respondent, was executed in Florida as evidenced by the notary stamps affixed thereto. At the top of the second page of said agreement, it acknowledges that at the time of signing of the agreement, the parties lived 3.5 hours apart. The minor child was six years of age at that time and was attending school in Pembroke Pines, Florida. The fact that a detailed visitation arrangement was entered evidenced Respondent's intent to reside in Florida at the time of its execution. This is completely contradictory to the testimony of Respondent at the hearing, and the record does not support the Magistrate's findings that Respondent never intended to reside in Florida.
16. Further, in determining what is in the best interests of the child, the Magistrate failed to consider that Florida Statute §61.13(2)(a) contains an exception to the general requirement that the minor child reside within the territorial jurisdiction of Florida. It provides that the court may approve, grant, or modify a parenting plan, notwithstanding that the child is not physically present in this state at the time of filing any proceeding under this chapter, if it appears to the court that the child was removed from this state for the primary purpose of removing the child from the court's jurisdiction in an attempt to avoid the court's approval, creation, or modification of a parenting plan. A review of the file pleadings evidences Respondent has moved the child from New York, to Florida, on to Massachusetts, back to New York, and now to Arizona to primarily further her goal of keeping the child from Petitioner. This is clearly not in the best interests of the child.
17. Further, the Magistrate erred in part three of the findings of fact in only addressing one ground of relief, i.e. specific enforcement of the 2004 Final Judgment, sought by Petitioner. But the Petition/Motion additionally asks for the alternative relief of the Court implementing a parenting plan which would include provisions for time sharing and child support. In holding that the minor child's best interest would not be served by enforcing the custody provisions, the Magistrate had the duty to at minimum address the request for alternative relief and consider whether this continued legal uncertainty was in the best interests of the minor child.
18. As this Court may recall, at a hearing on Petitioner's Motion to Compel held August 10, 2011, the undersigned specifically stated on record that Respondent was believed to be in Arizona based on information obtained from nonparty subpoenas. Respondent maintained, under oath, on the record that she and the minor child resided in New York at the time of the August 10<sup>th</sup> hearing. Her address of record was given as 4465 East Geneese Street, #121, Dewitt, New York. This is the same address she maintained during the pendency of the Flagler county case which initiated in 2009 and concluded in 2011.

She has now admitted to residing in Arizona the last two years. This evidences her continued intent to be less than candid and cooperative with any court of law seeking to grant Petitioner parental rights.

19. It is also important to note Respondent failed to notify both the Court and Petitioner that at the time of that hearing, she had on June 28, 2011, which was twelve days before the hearing on Petitioner's contempt motion, filed an action in Arizona seeking an ex parte order of custody of the minor child. A certified copy is attached hereto as Exhibit B. This after she had on June 1, 2011 voluntarily dismissed her Orange County action seeking modification of the subject judgment. It was only after obtaining these documents directly from the Maricopa County Clerk that the undersigned was able to locate and personally serve Respondent in Arizona. Petitioner is fearful that Respondent will continue on this course of action of manipulating yet another court system if he has to initiate an action in Arizona.
20. What is most lacking in the Magistrate's report is that it fails to even remotely acknowledge that the minor child has been deprived of a parent child relationship with Petitioner for the last eight years. The Magistrate is of the belief that the Final Judgment of Dissolution of Marriage should have been brought in Massachusetts. The Magistrate completely ignores the fact that the Massachusetts court denied Respondent's Complaint to Modify Foreign decree based on Respondent being untruthful to that Court regarding her residency. At that time she had stated she lived in Massachusetts when she actually lived in New York. More pertinent is that Court further ruled that Florida was the child's home state. A copy of the transcript and the order from these proceeding are a part of the Court record as Exhibits I and J of Petitioner's Supplemental Petition Seeking Enforcement of the Final Judgment.
21. Respondent's lack of candor appears to be completely ignored in the Magistrate's Report. Yet, the Magistrate's report implies that Petitioner lacked candor when he filed his Affidavit of Diligent Search. However, the Magistrate fails to account for the fact that the address Petitioner listed on his affidavit of diligent search was in fact Respondent's correct address, and that Petitioner only sought constructive service after Middlesex County Sheriff Office could not effectuate service.
22. The Magistrate's report takes great care in outlining the desperate measures taken by Petitioner to get custody of his son which resulted in his criminal prosecution. That is unfortunate in that the Magistrate's report fails to even remotely mention the fact that Petitioner first petitioned this Court, and then subsequently the Massachusetts court for a writ of habeas to lawfully obtain custody of his son. There is not a mere mention of the fact that he desperately sought the assistance of the legal system and the Medford police. Exhibits which substantiate all of these matters are contained in the court file and should have been considered in the Magistrate's recommendations.
23. This is a very unusual case. The Magistrate has casually suggested that Petitioner seek time sharing by litigating in Arizona. Due to the extensive history of continued evasive maneuvers taken by Respondent to keep Petitioner from his son, Petitioner is not likely

to get relief from that State or any other state without prolonged litigation. This Court is the original court that made the initial child custody determination which Petitioner maintains was valid. It maintains exclusive, continuing jurisdiction under Fl. St. §61.515.

24. The minor child is now fifteen years of age. Petitioner has not seen his son or been allowed contact with him for nearly eight years. At great expense, Petitioner has spent the last eight years trying to establish a parent child relationship in New York, Florida, and Massachusetts. Based on Respondent's egregious conduct, Petitioner should not now be required to litigate in Arizona. Both parties have acquiesced personal jurisdiction to this court by their participation in these proceedings. Petitioner respectfully requests relief from this Court if Petitioner has any hopes of exercising time sharing with the minor child before the child reaches the age of majority.

### CERTIFICATE OF SERVICE

**I HEREBY CERTIFY** that on this \_\_\_\_\_ day of \_\_\_\_\_, 2012 the original of the foregoing Exceptions to General Magistrate's Report has been mailed to the Orange County Clerk of Court at 425 North Orange Avenue, Orlando, Florida 32801 and true and correct copies of the foregoing have been mailed to General Magistrate Maria M. Hinds, at 425 North Orange Avenue, Orlando, Florida 32801 and Respondent Lolita Harrison at 15600 North Frank Lloyd Wright Blvd., #1035, Scottsdale, Az. 85260.

**ALICIA R. WASHINGTON, P.A.**  
Respectfully submitted by:

BY:

ALICIA R. WASHINGTON, ESQUIRE  
P.O. Box 100.  
Bunnell, Florida 32110  
(386) 437-4341  
(386) 437-6872  
Florida Bar No. 0141615  
Attorney for Petitioner

EXHIBIT B

IN THE COUNTY COURT OF THE SEVENTH JUDICIAL CIRCUIT,  
IN AND FOR FLAGLER COUNTY, FLORIDA

PALM COAST PLANTATION  
HOMEOWNER'S ASSOCIATION,  
INC., a not for profit corporation,

Plaintiff

Case No.:2010-CC-325  
Division: 60

v.

ANTHONY SHERROD  
KAREN SHERROD,

Defendants.

**MOTION TO DISMISS**

**COMES NOW**, the Defendants, ANTHONY SHERROD and KAREN SHERROD, by and through their undersigned counsel, and pursuant to the Florida Rules of Civil Procedure, and hereby move this Honorable Court for an Order dismissing the Plaintiff's Complaint, and as grounds thereof in support, state as follows:

1. On or about April 30, 2010, Plaintiff, Palm Coast Plantation Homeowner's Association, filed a two-count complaint against the above-named Defendants;
2. Count one of said complaint purports to be an action to foreclosure on real property;
3. Count two of said claim purports to be an action for money judgment for nonpayment of homeowner's assessments;
4. Attached to said complaint, Plaintiff provided two exhibits- (a) a copy of a claim of lien for assessments filed November 13, 2009 and (b) a December 1, 2009 delinquency letter sent to client;
5. Plaintiff failed to attach copies any contracts, covenants, bylaws or any other legal contracts and/or documents upon which they claim the Defendants are legally

obligated to pay the amounts demanded;

**GROUND ONE: FAILURE TO STATE CAUSE OF ACTION**

6. Florida Rule of Civil Procedure 1.130 (a) provides in relevant part that all bonds, notes, bills of exchange, contracts, accounts, or documents upon which action may be brought or defense made, or a copy thereof or a copy of the portions thereof material to the pleadings, shall be incorporated in or attached to the pleading;
7. Additionally, Fla.R.Civ.P. 1.130 (a) states that when a party brings an action based upon a contract and fails to attach a necessary exhibit under Rule 1.130 (a), the opposing party may attack the failure to attach a necessary exhibit through a motion to dismiss. *Samuels v. King Motor Co. of Fort Lauderdale*, 782 So.2d 489, 500 (Fla. 4<sup>th</sup> DCA 2001); *See also Walters v. Ocean Gate Phase I Condominium*, 925 So.2d 440, 443-44 (Fla. 5<sup>th</sup> DCA 2006); *See also Contractors Unlimited v. Nortrax Equip. Co. Southeast*, 833 So.2d 286, 288 (Fla. 5<sup>th</sup> DCA 2002).
8. Consistently, when a Plaintiff's claim is based upon a written instrument that was not attached to its Complaint, he fails to state a cause of action. *See Samuels*, 782 So.2d at 500.
9. Defendants move this Court to dismiss the instant case for Plaintiff's failure to attach the covenants, bylaws, articles or any other legal document which would support its authority to impose the assessments levied and the obligations, if any, of Defendants to pay said amounts. Consequently Plaintiff's instant cause should be dismissed without prejudice.

**GROUND II: FAILURE TO SATISFY CONDITION PRECEDENT**

10. Plaintiff seeks to enforce an obligation under the Declaration of Protective

Covenants, Restrictions, Easements, Charges and Liens for Palm Coast Plantation. In seeking to do so Plaintiff is bound by the powers and procedures delegated to it in the Articles of Incorporation and the Bylaws of Palm Coast Plantation Homeowner's Association, Incorporated.

11. Plaintiff cannot maintain this action because all of the conditions precedent to this action provided for in the Bylaws of Palm Coast Plantation Homeowner's Association recorded in the Official Records Book 734 Page 130, et. seq. of Flagler County, Florida, the same of which is attached hereto as Exhibit A, have not been satisfied.
12. More specifically, Article III, Section 23(a) and 23(b) (see official record 734, page 140 et. seq.) states in pertinent part that prior to the imposition of any sanctions the board shall serve the owner with written notice containing all of the following elements as a condition precedent to filing suit. Said notice must:
  - (a) Describe the nature of the violation
  - (b) Describe the proposed sanction to be imposed;
  - (c) Notify owner that they have 10 days to present a written request to the Covenants Committee for a hearing on said violation;
  - (d) Contain a statement that the described sanction shall be imposed if no request for hearing is made within the 10 days
13. Further, Article III, Section 23(b) states that at said hearing, the Owner shall have an opportunity to be heard and 23(c) further provides a right to appeal.
14. By virtue of the minimal correspondence Plaintiff has attached to its complaint, Plaintiff has failed to afford Defendants' the due process and notice required under its bylaws.

**WHEREFORE**, the Defendants, ANTHONY AND KAREN SHERROD, respectfully request an Order of this Honorable Court dismissing the Plaintiff's claims, and such other relief this



Court deems just and proper.

**I HEREBY CERTIFY** that a true and correct copy of the foregoing motion to Dismiss has been furnished by mail this \_\_\_ day of June, 2010 to attorney for the Plaintiffs, Rosanne P. Perrine, Esquire, at 100 Executive Way, Suite 100, Ponte Vedra Beach, Fl. 32082.

**ALICIA R. WASHINGTON, P.A.**

BY:

**ALICIA R. WASHINGTON, ESQ.**

Post Office Box 100

Bunnell, Fl. 32110

(386) 437-4341

(386) 437-6872 (fax)

Fla. Bar No. 0141615

Attorney for Defendants

EXHIBIT C

IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT  
IN AND FOR ORANGE COUNTY, FLORIDA

5036 HWY 50, LLC,  
a Florida Limited Liability  
Company,

Plaintiff,

vs.

JIN HYEON JEONG, an individual and  
HYUN SUN JEONG, both in her  
individual capacity and d/b/a Bridal &  
Suit City,

Defendants.

CASE NO.:2012-CA-17100

DIV.: COMPLEX BUS. LIT.

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**PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

COMES NOW the Plaintiff, **5036 HWY 50, LLC**, by and through its undersigned counsel, and pursuant to Florida Rule of Civil Procedure 1.510, and hereby moves this Honorable Court for entry of an order granting Plaintiff summary final judgment as a matter of law, and grounds therefore along with its memorandum of law in support, states:

1. Plaintiff, 5036 HWY 50, LLC (Assignee of Xiao Jun Han), filed the instant complaint alleging causes of action for Breach of a Mortgage Deed and Note related to commercial property in which Plaintiff seeks damages that exceed \$15,000.00 and an action for Breach of Contract and Foreclosure predicated upon Defendant's breach of said contracts entered on November

1, 2007 between Defendants and Xiao Han, Assignor/Managing Member of 5036 HWY 50, LLC.

2. Plaintiff is a duly organized and validly existing Florida Limited Liability Company, as evidenced by the Articles of Organization filed on July 29, 2011 with the Florida Division of Corporations, a copy of which is attached as Exhibit A to the Amended Complaint filed in this action, and is authorized to do business in the State of Florida.

3. Plaintiff is Assignee of Xiao Jun Han, Mortgagor/Lender/Assignor.

A copy of the Assignment of Mortgage dated August 4, 2011 is attached as Exhibit B to the Amended Complaint filed in this action. Additionally, Assignor has executed the attached Affidavit in Support of Plaintiff's Motion for Summary Judgment. A copy is attached to this Motion as Exhibit 1.

4. Said agreements were executed on November 1, 2007. The subject property of said lease is commercial property situated in Orange County, Florida, described as follows:

*Unit No. 30, Building B, of WESTSIDE CROSSING CONDOMINIUM, a condominium, according to the Declaration of Condominium recorded in Official Records Book 8259, page 4042,*

*and all exhibits and amendment thereof, Public Records of Orange County, Florida and which is further identified as Parcel ID#: 30-22-29-9195-00300.*

*See paragraphs 2 and 3 of Affidavit of Xiao Jun Han attached hereto.*

5. Under the terms of the subject Mortgage Deed and Note, Defendants were required to pay \$2383.63 monthly for principal and interest payments due on the 1<sup>st</sup> of each month for five consecutive years. At the end of the 5 year period, Defendants were to make a final balloon payment of \$298,403.59 plus any accrued interest on or before November 1, 2012.

*See paragraph 4 of Affidavit of Xiao Jun Han attached hereto.*

6. Defendants have failed to pay the required monthly payments from July 1, 2012 to date. Defendants have also failed to pay the 2012 ad valorem taxes of \$4041.64 and since July 2012 have failed to pay the \$602.82 monthly condo association fees as required by the terms of the subject Mortgage Deed and Note. *See paragraph 7 of Affidavit of Xiao Jun Han attached hereto.*

7. To date, Plaintiff has incurred damages in excess of \$44,806.65, which include but are not limited to:

Unpaid mortgage payments  
13 months at \$2383.63

\$ 30,987.19

13 months late fees of \$119.18 per month	\$ 1549.34
2012 ad valorem taxes	\$ 4041.64
\$602.82 monthly association fees from 7/2012-present	\$ 7836.66
Late fees from association of \$30.14 monthly	\$ 391.82

*Id at 7(d).*

8. Additionally, Plaintiff has incurred attorney's fees and costs in litigating this matter. *Id at 7(e).*

9. Meanwhile, Defendants continue to occupy the property and operate their for profit business.

10. Plaintiff is entitled to summary judgment of foreclosure and to an award of damages in its breach of contract action.

11. Plaintiff is further entitled to prevailing party fees and costs under both Fl. R. Civ. Proc. Rule 1.420 and the terms of the subject Mortgage Deed and Note. Plaintiff requests the Court reserve jurisdiction to enter an amount upon the undersigned filing an affidavit of fees and costs with supporting documents.

12. Generally, "the party moving for summary judgment has the burden to prove conclusively the nonexistence of any genuine issue of material fact." *See e.g., Scheibe v. Bank of America, N.A.*, 822 So. 2d 575 (Fla. 5<sup>th</sup> DCA 2002); *Kroll v. City of Orlando*, 778 So. 2d 490, 491-92 (Fla. 5<sup>th</sup> DCA 2001); *Moultrie v. Consolidated Stores International Corp.*, 764 So. 2d 637,

638 (Fla. 1<sup>st</sup> DCA 2000)(citing *Johnson v. Circle K Corp.*, 734 So. 2d 536 (Fla. 1<sup>st</sup> DCA 1999)(citing *Moore v. Morris*, 475 So. 2d 666 (Fla. 1985); *Holl v. Talcott*, 191 So. 2d 40, 43 (Fla. 1966) (“The well settled principles governing motions for summary judgment provide: “[t]o establish entitlement to a summary judgment, the moving party must demonstrate conclusively that no genuine issue exists as to any material fact, even after all reasonable inferences are drawn in favor of the party opposing the summary judgment”). Consistently, a party who opposes summary judgment is not permitted to alter the position of his previous pleadings, admissions, affidavits, depositions, or testimony in order to defeat a summary judgment. See e.g., *DeCosmo v. Fisher*, 683 So. 2d 659, 660 (Fla. 5<sup>th</sup> 1996); *Inman v. Club on Sailboat Key, Inc.*, 342 So. 2d 1069, 1070 (Fla. 3d DCA 1977).

13. Based upon the undisputed facts and arguments set forth below, Plaintiff is entitled to summary final judgment as a matter of law because there is no dispute that a valid and binding contract was entered and that Defendants failed to perform their duties under said contract.

14. In their Answer and Affirmative Defenses to the Amended Complaint, Defendants admit that they executed the subject Mortgage Deed and Note. Further, Defendants have not pled any affirmative defenses challenging the validity of the underlying contracts themselves.

15. Additionally, both Defendants were deposed on May 24, 2013. A copy of both transcripts are attached hereto as Exhibits 2 and 3.

16. Under oath Defendant **JIN HYEON JEONG** admitted the following facts to be true:

a. that he entered this contract on November 1, 2007 (Page 7 Lines 23-25 and Page 8 Lines 1-2);

b. that he understood the contract to be an agreement to purchase the subject property (Page 11 Lines 8-13);

c. that from June 2007 through, but not including, July 2012, he paid the required monthly mortgage payments (Page 11 Lines 15-17 and Page 20 Lines 18-25);

d. further that from June 2007 through, but not including, July 2012, he paid the required ad valorem taxes and condo association fees (Page 17 Lines 3-19);

e. that since July 2012 he has paid neither the mortgage payments, nor any accrued condo association fees and/or ad valorem taxes (Page 17 Lines 18-25 and Page 18 Lines 1-8);

f. and that he understands that he was required to tender the mortgage payments, condo association fees, and ad valorem taxes as a



condition of the Mortgage Deed and Note (Page 17 Lines 18-25; Page 18 Lines 1-8) .

17. Likewise, under oath Defendant **HYUN SUN JEONG** admitted the following facts to be true:

a. that she entered this contract on November 1, 2007 (Page 6 Lines 4-17 and Page 8 Lines 1-19);

b. that she understood the contract to be an agreement to purchase the subject property (Page 6 Lines 24-25 and Page 7 Lines 1-70);

c. that from June 2007 through, but not including, July 2012, she paid the required monthly mortgage payments (Page 9 Lines 12-19);

d. further that from June 2007 through, but not including, July 2012, she paid the required ad valorem taxes and condo association fees (Page 9 Lines 20-25 and Page 10 Lines 1-22);

e. that since July 2012 she has not paid neither any mortgage payments, nor any condo association fees and/or ad valorem taxes (Page 10 Lines 23-25 and Page 11 Line 1); and

f. that she understands that she was required to tender the mortgage payments, condo association fees, and ad valorem taxes as a condition of the Mortgage Deed and Note (Page 10 supra).

18. To establish a claim for breach of contract, a party must show the existence of a contract, the breach thereof, and damages. *Prestige Development Group, Inc. v. Russell*, 612 So. 2d 691 (1<sup>st</sup> DCA, 1993). Defendants through their responsive pleadings and their sworn deposition testimony have admitted a contract existed, that they breached their duties under said contract, and as a result of that breach Plaintiff has suffered damages. Based on all of the foregoing, Plaintiff is entitled to summary judgment as matter of law granting it a Judgment of Foreclosure against Defendants and awarding Plaintiff damages which to date total \$44,806.65, as well as attorney's fee and costs.

**WHEREFORE**, Plaintiff, 5036 HWY 50, LLC, respectfully requests this Honorable Court to enter an Order granting it final summary judgment as a matter of law, and such other relief this Court deems just and proper.

#### **CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on this 25<sup>th</sup> day of July 2013, I electronically filed the foregoing with the Clerk of Court using the E-Portal system which will send notice of electronic filing to the Law Offices of David S. Cohen, LC, 5728 Major Blvd., Suite 550, Orlando, Fl. 32819. A copy was also furnished to David S. Cohen, Esquire via email at [dscohenlaw@yahoo.com](mailto:dscohenlaw@yahoo.com);

[cadams@dscohenlaw.com](mailto:cadams@dscohenlaw.com); and [admin@dscohenlaw.com](mailto:admin@dscohenlaw.com).

Respectfully submitted by:  
ALICIA R. WASHINGTON, P.A.

By:

\_\_\_\_\_  
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Attorney for Plaintiff

EXHIBIT D

IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT,  
IN AND FOR FLAGLER COUNTY, FLORIDA

THELMA TYLER, et. al.

CASE NO: 2009-CA-002206

DIV.:

Plaintiffs,

Vs.

EDWARD B. HERNANDEZ,

et. al.

Defendants.

**MOTION FOR SUMMARY JUDGEMENT**

COMES NOW, the Defendant, EDWARD B. HERNANDEZ, by and through the undersigned attorney, and pursuant to Fl. Rules of Civil Pro. 1.510 (2010), and files this Motion for Summary Judgment, and as grounds in support thereof, states as follows:

1. Plaintiffs, THELMA TYLER and JOSEPH JAY WOOLBRIDGE, have filed an action seeking specific performance of a contract to convey real property;
2. The subject property is jointly owned by Defendant, EDWARD B. HERNANDEZ, and his wife/co-Defendant, LUPE S. HERNANDEZ, as tenants by the entireties. Attached hereto as **Exhibit A** is a copy of the warranty deed;
3. On December 12, 2009, LUPE S. HERNANDEZ received a Chapter 7 discharge with regards any debts owed under the subject contract in bankruptcy case number #09-70145-CAG. A certified copy of said order is attached hereto as **Exhibit B**;
4. Plaintiffs were served by the bankruptcy clerk with a Notice to Creditors on or about September 21, 2009. A certified copy is attached hereto as **Exhibit C**;
5. In depositions conducted on January 14, 2010, both Plaintiffs admitted to receiving said notice and failing to file any objections to discharge thereto with the bankruptcy court. Attached are copies of the deposition transcripts of Plaintiffs hereto as **Exhibit D** (See page 13) and **Exhibit E** (See page 15);

6. Federal Rules of Bankruptcy Rule of Procedure 4004 requires that creditors objecting to a discharge must file an objection with the Court no later than 60 days after the first set date for the meeting of creditors;
7. In co-Defendant's bankruptcy case, the meeting of creditors was conducted on November 19, 2009. To date, Plaintiffs have not timely filed for any relief from the discharge. A certified copy of docket sheet showing the date of said meeting is attached hereto as **Exhibit F**;
8. On December 21, 2009, co-Defendant/Joint Tenant, Lupe S. Hernandez received a Discharge of Debtor;
9. Pursuant to 11 U.S.C.A. § 524 (3) said discharge operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect or recover from, or offset against, property of the debtor, Lupe S. Hernandez;
10. The instant action is an action for specific property to enforce a sale contract for Debtor's property. This cause of action was discharged in the bankruptcy proceedings;
11. Attached are affidavits filed by both Defendants in support of this motion for summary judgment attached hereto as **Exhibit G** and **Exhibit H**;
12. Further, pursuant to 11 U.S.C.A. §101(5)(b), the legislative history and the Supreme Court's analysis in Ohio v. Kovacs, 469 U.S. 274 (1985) an equitable remedy will "give rise to a right to payment" and therefore be a "claim" under § 101(5)(B) if the payment of monetary damages is an alternative to the equitable remedy. In re Ben Franklin Hotel Associates, 186 F.3d 301, 305 (3rd Cir.1999); In re Nickels Midway Pier, LLC, 341 B.R. 486, 499 (D.N.J.2006);
13. Under Florida law, a vendor's breach of a real estate **contract** gives rise to alternative remedies: the purchaser may (1) elect to sue in an action at law for damages suffered as a result of the breach; or (2) the purchaser may elect to sue in equity to compel **specific performance** of the terms of the **contract**. Said actions are properly discharged under 11 U.S.C.A. §101(5)(b). In re Rabin, 361 B.R. 282 (S.D. Fla., 2007);

14. As such, this instant action to recover property jointly owned by Debtor/Co-Defendant on a discharged debt is barred by 11 U.S.C.A. § 524 (3) and should be dismissed;
15. Moreover, any actions seeking to set aside the discharge or enforce a claim should have been brought before the Bankruptcy Court pursuant to the procedures outlined in the Order Fixing Last Date for Filing Proofs of Claim, Combined with Notice Thereof of which client received a copy. The order is attached hereto as **Exhibit I** and the Certificate of Notice is attached as **Exhibit J**;

**WHEREFORE**, Defendant, EDWARD B. HERNANDEZ, for the foregoing reasons, respectfully requests the Court grant Defendant's Motion for Summary Judgment in the instant case.

**I HEREBY CERTIFY** that a copy of the foregoing was furnished by U.S. Mail to James R. Evans, attorney for Plaintiffs by mail at 322 Silver Beach Avenue, Daytona Beach, Fl. 32118, this \_\_\_\_ day of June, 2010.

**ALICIA R. WASHINGTON, P.A.**

BY:

**ALICIA R. WASHINGTON, ESQ.**

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386. 437.6872 (fax)

Fla. Bar No. 0141615

Attorney for Defendant

EXHIBIT E



IN THE COUNTY COURT OF THE SEVENTH JUDICIAL CIRCUIT,  
IN AND FOR FLAGLER COUNTY, FLORIDA

OLD KINGS HIGHWAY ASSOCIATES  
LTD.,

Plaintiff

v.

Case No.:2014-CC-366

Division:

BELLA'S TOMATO PIE, INC.,  
RICHARD ROSER and ANTOINETTE  
LAURIA,

Defendants.

MOTION TO DISMISS

**COMES NOW**, the Defendant, **RICHARD ROSER**, by and through his undersigned counsel, and pursuant to the Florida Rules of Civil Procedure 1.130, 1.140 and 1.420, and Florida Statute §725.01, and hereby move this Honorable Court for an Order dismissing Plaintiff's Complaint to the extent that it raises any claims against Defendant, **RICHARD ROSER**, without any leave to amend and to further award Defendant, **RICHARD ROSER**, costs including reasonable attorneys' fees from Plaintiff, **OLD KINGS HIGHWAY ASSOCIATES LTD.** As grounds in support thereof, Defendant states as follows:

1. On or about July 30, 2014, Plaintiff, Old Kings Highway Associates, LTD. (hereafter referred to as Plaintiff), filed a three count complaint against the above-named Defendants.
2. Count one of said complaint purports to be an action for possession of real property against Tenant/Defendant, Bella's Tomato Pie, Inc. for failure to pay rent.
3. Count two of said complaint purports to be an action against Tenant/Defendant, Bella's Tomato Pie, Inc., for a money judgment for rents owed.

4. Count three of said complaint purports to be an action against Defendants Richard Roser and Antoinette Lauria as purported guarantors of a guaranty agreement for a debt owed by Tenant/Defendant Bella Tomato Pies, Inc.
5. Attached to said complaint, Plaintiff provided three exhibits- (a) a copy of the lease agreement executed on August 22, 2011; (b) a copy of the lease assignment executed on September 28, 2012 by Plaintiff and Defendant Antoinette Lauria; and (c) a copy of a June 26, 2014 three day notice to Defendant/Tenant Bella's Tomato Pie, Inc. and Defendant Antoinette Lauria regarding nonpayment of rent.
6. Plaintiff failed to attach copies any contracts and/or documents upon which they can legitimately claim that the Defendant Richard Roser executed a binding guaranty agreement legally obligating him to pay the amounts demanded and owed by Defendants Bella's Tomato Pie, Inc. and Antoinette Lauria.
7. Florida Rule of Civil Procedure 1.130 (a) provides in relevant part that all bonds, notes, bills of exchange, contracts, accounts, or documents upon which action may be brought or defense made, or a copy thereof or a copy of the portions thereof material to the pleadings, shall be incorporated in or attached to the pleading.
8. Additionally, Fla.R.Civ.P. 1.130 (a) states that when a party brings an action based upon a contract and fails to attach a necessary exhibit under Rule 1.130 (a), the opposing party may attack the failure to attach a necessary exhibit through a motion to dismiss. *Samuels v. King Motor Co. of Fort Lauderdale*, 782 So.2d 489, 500 (Fla. 4<sup>th</sup> DCA 2001); *See also Walters v. Ocean Gate Phase I Condominium*, 925 So.2d 440, 443-44 (Fla. 5<sup>th</sup> DCA 2006); *See also Contractors Unlimited v. Nortrax Equip. Co. Southeast*, 833 So.2d 286, 288 (Fla. 5<sup>th</sup> DCA 2002).

9. The subject lease attached to the complaint was executed on August 22, 2011. The parties to said lease were Carmine Celery's Corporation and Plaintiff Old King's Highway Associates, LTD.
10. Per the terms of said lease, the lease interest expired on February 28, 2011.
11. At the time of the execution of the lease, Defendant Richard Roser was vice president of Carmine Celery's Corporation. In his capacity as vice president, he executed the lease. The 2012 For Profit Corporation Annual Report for Carmine Celery's Corporation filed on June 24, 2012 is attached hereto as Exhibit A.
12. Defendant Richard Roser also executed a Guaranty of Lease as to the August 2011 lease attached to Plaintiff's complaint as a guarantor of Carmine Celery's Corporation.
13. Any obligations Defendant Richard Roser had under this Guaranty of Lease expired at the lease's expiration on February 28, 2014 and would only relate to any amounts due by Carmine Celery's Corporation.
14. Additionally, on August 2, 2012 Defendant Richard Roser sold his interest in Carmine Celery's Corporation to his then business partner Defendant Antoinette Lauria. The 2012 For Profit Corporation Amended Annual Report for Carmine Celery's Corporation filed on August 3, 2012 is attached hereto as Exhibit B.
15. Subsequently, on August 20, 2012, Defendant Antoinette Lauria formed the business Bella's Tomato Pie, Inc. The Articles of Incorporation for Bella's Tomato Pie, Inc. are attached hereto as Exhibit C.
16. Defendant Richard Roser has never held any interest in Bella's Tomato Pie, Inc.
17. On September 28, 2012, Plaintiff and Defendants Bella's Tomato Pie, Inc. and

Antoinette Lauria entered into an Assignment of the 2011 lease agreement.

18. Antoinette Lauria executed the lease in her capacity as President of Carmine Celery's Corporation and as a personal guarantor for Defendant Bella's Tomato Pie, Inc.
19. Defendant Richard Roser was not a party to this Assignment of Lease and did not sign as a guarantor on this contract.
20. Florida Statute §725.01 states in pertinent part that no action shall be brought whereby to charge the defendant upon any special promise to answer for the debt of another person unless the agreement or promise upon which such action shall be brought, or some note or memorandum thereof shall be in writing and signed by the party to be charged therewith or by some other person by her or him thereunto lawfully authorized.
21. Defendant Richard Roser was not a party to the subject Assignment of Lease in favor of Defendant Bella's Tomato Pie, Inc.
22. Defendant Richard Roser did not sign as a guarantor for the subject assignment as is evidenced by the unsigned assignment filed by Plaintiff as Exhibit 2 of its complaint.
23. Plaintiff's claim against Defendant Richard Roser is based upon an unenforceable, unsigned written instrument which cannot form the basis of a valid contract.
24. As such Plaintiff fails to state a cause of action against Defendant Richard Roser.
25. Additionally, the August 2011 lease under which Defendant Richard Roser signed as guarantor for Carmine Celery's Corporation expired on February 28, 2014.
26. On June 26, 2014, Plaintiff forwarded correspondence to Defendants Bella's Tomato Pie, Inc. and Antoinette Lauria demanding \$7844.34 in unpaid rent. At the time of the 2012 assignment, the monthly rent under the August 2011 lease was \$2220.75 per month.

27. Hence, Plaintiff now seeks rent payments that accrued after the February 28, 2014 expiration of the 2011 lease.
28. Plaintiff in effect created a month to month tenancy with Bella's Tomato Pie, Inc. at the expiration of the August 2011 lease to which Defendant Richard Roser was not a party.
29. Plaintiff has failed to state a valid cause of action against Defendant Richard Roser.
30. To defend this meritless action, Defendant Richard Roser, has retained the undersigned attorney.
31. Defendant requests an award of attorney's fees as a taxable item of costs against Plaintiff for all fees and costs associated with defending this action as required by Florida Rules of Civil Procedure 1.420(d).
32. Additionally, by the terms of the August 2011 lease paragraph 10.1, Defendant Richard Roser is entitled to prevailing party fees in this action should the Court dismiss Plaintiff's complaint.

**WHEREFORE**, the Defendant, **RICHARD ROSER**, respectfully request an Order of this Honorable Court dismissing Plaintiff's Complaint to the extent that it raises any claims against Defendant, **RICHARD ROSER**, without any leave to amend and to further award Defendant, **RICHARD ROSER**, costs including reasonable attorneys' fees from Plaintiff, **OLD KINGS HIGHWAY ASSOCIATES LTD.**, and such other relief this Court deems just and proper.

**I HEREBY CERTIFY** that a true and correct copy of the foregoing Motion to Dismiss has been furnished by e-service to Frank, Weinberg & Black, P.I.. c/o David W. Black, Esq., attorneys for Plaintiff, at [dblack@fwblaw.net](mailto:dblack@fwblaw.net) and [bchapman@fwblaw.net](mailto:bchapman@fwblaw.net) on this 17<sup>th</sup> day of September, 2014.

**Respectfully submitted by:**

**ALICIA R. WASHINGTON, P.A.**

BY:

**ALICIA R. WASHINGTON, ESQ.**

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Fla. Bar No. 0141615

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Attorney for Defendant Roser

EXHIBIT F

IN THE CIRCUIT COURT, SEVENTH  
JUDICIAL CIRCUIT, IN AND FOR  
FLAGLER COUNTY, FLORIDA

JUVENILE DIVISION  
CASE NO: 2013-DP-7

IN THE INTEREST OF:

N.S.

MINOR CHILD \_\_\_\_\_ /

**NOTICE OF GUARDIAN AD LITEM PROGRAM'S  
OBJECTIONS TO PETITION TO INTERVENE AND ANTICIPATED MOTION FOR  
CHANGE OF CUSTODY BY FLORIDA HOMESTUDY LLC AND MEMORANDUM OF  
LAW IN SUPPORT THEREOF**

COMES NOW, Program Attorney for the Seventh Judicial Circuit Guardian ad Litem Program, and notifies the Court and all Parties of GUARDIAN AD LITEM'S position on the pending and anticipated motions filed or to be filed by Florida Homestudy LLC:

1. The Guardian ad Litem Program **objects** to the Petition to Intervene filed by Florida Homestudy LLC.
2. The Guardian ad Litem Program **objects** to the anticipated Motion for Change of Custody to be filed by Florida Homestudy LLC.
3. The Guardian ad Litem Program would request that the required hearing be set on the Petition to Intervene and anticipated Motion for Change of Custody, at which time the Court may make the requisite determinations on the parent's choice of placement as well as the child's best interests, pursuant to 63.082(6)(c), (d), and (e) and Florida Statute §39.001.
4. The Guardian ad Litem Program moves this Court to proceed with disposition pursuant to Florida Statute §39.811 and enter an order terminating parental rights based on the parents' validly executed surrenders.
5. The undisputed, pertinent facts are as follows:
  - a. The child N.S. was sheltered on March 30, 2013. He was approximately ten months old at the time of shelter.
  - b. The allegations in the shelter petition alleged substance abuse and domestic violence issues with both Mother and Father identified as perpetrators.



- c. A dependency petition based on these allegations was filed against both Mother and Father on April 22, 2013.
- d. On July 8, 2013, Mother, entered a written consent without admissions to dependency.
- e. On July 12, 2013, Father, entered a written consent without admissions to dependency.
- f. On July 17, 2013 the child was adjudicated dependent and a Reunification case plan with a target date of March 30, 2014 was approved.
- g. Based on the parents' failure to substantially comply with the case plan after repeated extensions, the Department filed a Petition for Involuntary Termination of Parental Rights on January 8, 2015.
- h. On April 6, 2015 Mother entered her written voluntary surrender of her parental rights.
- i. On May 15, 2015 Father entered his written voluntary surrender of his parental rights.
- j. A disposition was scheduled for May 27, 2015.
- k. On May 26, 2015, Florida Homestudy LLC filed its Petition to Intervene Relinquish Jurisdiction with a homestudy attached for the proposed adoptive placement the Hornes.
- l. The child is now three years of age and has been in his current prospective adoptive placement since July of 2013.

## MEMORANDUM OF LAW

### I. ARGUMENTS AGAINST PETITION TO INTERVENE RELINQUISH JURISDICTION

Pursuant to Florida Statute 39.811(5) an order of termination of parental rights permanently deprives a parent of any rights to a child. Florida Statute 39.802(4)(d) requires that parents must be informed of the *availability* of private placement of the child with an adoption entity as defined in 63.032. Florida Homestudy LLC relies on Florida Statute 63.082(6) for its position that it has a *right* to intervene in the dependency action based on the *consent* to adoption signed by Father. Florida Homestudy LLC has filed a Petition to Intervene seeking an order of relinquishment of jurisdiction by the dependency court. The Guardian ad Litem Program objects as there is no authority for Florida Homestudy LLC's position that a petition to intervene by a private adoption agency under Chapter 63 automatically necessitates dismissal of a pending Chapter 39 dependency action.

Statutes should be read *para materia* giving full effect to each statute's legislative intent. Construing statutes in *para materia* requires that the court construe the statutes together "so that they illuminate each other and are harmonized". *McGhee v. Volusia County*, 679 So. 2d 729,730 (Fla. 1996). Where possible, Courts must "give full effect to all statutory provisions and construe related statutory provisions in harmony with one another". *Forsyth v. Longboat Key Beach Erosion Control Dist.*, 604 So 2d 452, 455 (Fla. 1992).

Florida Statute §39.001(1)(a) cites that the primary purpose of Florida Statutes Chapter 39 Proceedings Relating to Children is to “provide for the care, safety, and protection of children in an environment that fosters healthy social, emotional, intellectual, and physical development.” Additionally, Florida Statute §39.001(1)(h) states it is the Legislature’s intent to ensure that permanency for dependent children is achieved as soon as possible for every child in foster care, and that no child remains in foster care for longer than one year. Further, Florida statute §39.001(3) provides that children have a *right* to a permanent and stable home.

Florida Statutes Chapter 63 governs private adoptions. The legislative intent under Florida Statute §63.022(1)(a) cites that the state has a compelling interest in providing stable and permanent homes for adoptive children in a prompt manner. Florida Statute §63.022(2) further states that it is the intent of the Legislature that in every adoption, *the best interest of the child should govern and be of foremost concern in the Court’s determination*. The Court is tasked with making specific findings as to the best interests of the child which would support an action pursuant to Chapter 63.

Reading the provisions of both Chapters 39 and 63 in *para materia*, it is clear that the legislative intent is that only after the dependency court is satisfied that the parent’s chosen adoptive placement is in the child’s best interests and suitable should the dependency proceedings be stayed or dismissed. In applying either Chapter 39 or 63 to the instant case, it is clear that it is not in the best interests of the minor child to allow Florida Homestudy LLC to intervene in this matter. It is further not in the best interests of the minor child to dismiss the dependency action or to relinquish jurisdiction. Dependent parents are classified as such based on their failure to adequately provide for and protect their children. It would be repugnant to then allow those unfit parents to have the sole power to make decisions regarding their children. To the extent that the child’s best interests are inconsistent with the unfit parent’s choice, the child’s best interests prevails. *Padgett v. The Department of Health and Rehabilitative Services*, 577 So. 2d 565, 570 (Fla. 1991).

Florida Homestudy LLC has filed its Petition to Intervene and attached Father’s Consent to Adoption and a homestudy for Father’s proposed adoptive placement the Hornes. Florida Statute §63.082(6) states that the adoption entity shall be permitted to intervene *if it files a validly executed consent to adoption AND a copy of a homestudy for a suitable placement*. The Hornes are a hearing impaired couple who have no relationship to Nathan. Nathan does not have the ability to effectively communicate with the Hornes. There are currently no services in place to make that placement safe and stable for Nathan. More importantly, their homestudy states that Mr. Horne would only commit to caring for Nathan for one year. This prospective adoptive placement does not provide permanency for Nathan and is not suitable under Florida Statute §63.082(6). As such, Florida Homestudy LLC should not be permitted to intervene in this matter.

In the instant case, both Father and Mother were given nearly two years to complete their case plans and be reunified with their son. Now two and a half years later, Father should not be allowed to delay the *child’s right* to permanency by seeking what amounts to a trial adoption under Chapter 63. In applying Florida Statute §63.022(2) to the instant case, it is abundantly clear that a Chapter 63 Adoption is not in the minor child’s best interest. Thus, assertions in this

case that Father has the unfettered right to select the child's adoptive placement and that this Court must dismiss or transfer the dependency case to a Chapter 63 family proceeding are patently incorrect and should be rejected.

## II. ARGUMENTS AGAINST ANTICIPATED MOTION FOR CHANGE OF CUSTODY

Notwithstanding the arguments above, should the Court rule that Florida Homestudy LLC has a right to intervene in these proceedings, Florida Statute §63.082(6)(c) governs any modifications of placements under Chapter 63. It states that in determining the best interest of the child, the Court shall consider:

1. The rights of the parent to determine appropriate placement;
2. Whether permanency is offered by the prospective placement;
3. The child's bonding with any potential adoptive home that the child has been residing in; and
4. The importance of maintaining sibling relationships (which is inapplicable in this case as the child has no siblings).

Florida Homestudy LLC has in previous cases advanced the proposition that parents have a fundamental right to determine the placement of their children. The Fifth District Court in *P.K. v. Florida Department of Children and Families* has opined that "although parents have the God given right to the care, custody and companionship of their children, the right is *not absolute*. Rather, it is subject to the overriding principle that is the ultimate welfare or best interests of the children which must prevail." *P.K. v. Florida Department of Children and Families*, 927 So. 2d 131, 134 (Fla. 5<sup>th</sup> DCA, 2006). Where a parent has been found to be unfit, that parent abdicates his or her sole right to determine the best interests of the child. *Hausmann ex rel Doe v. L.M.*, 806 So. 2d 511,515 (Fla. 4<sup>th</sup> DCA, 2001). The Fifth District Court of Appeal has applied this same analysis in *Guardian ad Litem v. R.A.*, 995 So. 2d 1083, 1084 (Fla. 5<sup>th</sup> DCA, 2008). In that case the Father sought to change the placement of the minor child from foster care to the paternal grandmother. The trial court gave deference to the Father's choice of placement. However, the appellate Court reversed finding that the Court needed to apply a best interests standard when ruling on motions regarding placement.

In proceedings related to children in the custody of the State, the courts are charged with the duty of ensuring that the best interests of the children are advanced and are of the foremost concern. This duty exists during dependency proceedings and continues through adoption proceedings. Father's proposed adoptive placement is the Hornes. At the request of Father, a placement homestudy was completed by the Department of Children and Families. A copy of the homestudy is attached to Florida Homestudy LLC's Petition to Intervene. A review of the homestudy reveals that the Hornes are hearing impaired. This creates significant communication issues between themselves and Nathan who does not know sign language. Noted in the homestudy was that there would be the following services needed to make the placement safe and appropriate:

1. an American sign language interpreter;
2. activation of the ADT alarm system; and
3. addition of baby cry and flashing lights to the ADT alarm system

These services were not provided to the Hornes by Community Partnership for Children as they were not proposing a change of custody. **As such, the placement is currently not suitable for N.S.**

More importantly, N.S. has no relationship and/or bond with the Hornes. Mrs. Horne is a work acquaintance of the paternal grandmother. At the time of the homestudy, she had not seen N.S. in seven months. He has never been in her care. Mr. Horne has never even met N.S.. In Part IV Section 6 of the homestudy it is noted that while Mrs. Horne has expressed a willingness to adopt N.S., **Mr. Horne has stated he would only be willing to care for N.S. for one year.** Mrs. Horne is a self-employed house cleaner. She reported \$100.00 net monthly income. She also receives social security benefits of \$1596.00 per month. Her husband Mr. Horne works at Purple Communications, Inc. and is the family's primary source of support. He reports \$3000.00 net monthly income. They report their monthly expenses as \$4060.00 a month leaving a surplus of \$836.00 per month. As noted in the homestudy, they would need the adoption subsidy to adequately care for N.S. If Mrs. Horne were allowed to complete a single parent adoption while living in a married household, this would not provide safety, security and permanency for N.S.

In the homestudy Mr. Horne stated that after a year, he might reconsider adopting N.S. But Florida Statute §39.621 (1) states that time is of the essence for permanency for children. N.S. has been in the dependency system since he was 10 months of age. He is now three years of age and has spent the majority of his life in his current prospective adoptive placement. It is presumptively in the best interests of the child to remain in the home where he or she has spent the majority of his or her life. *Florida Department of Children and Families v. Interest of J.C.*, 847 So. 2d 487, 491 (Fla. 3d DCA, 2002); see also *Rumph v. Interest of V.D.*, 667 So. 2d 998 (Fla. 3d DCA, 1996). The Court in J.C. noted that "it is a matter of human knowledge that every day in the life of a small child is important to his physical, mental, and emotional development." N.S. is in a placement that offers him permanency. His foster parent has submitted an application seeking to adopt him. N.S. is bonded with his foster parent and views her as his mother. Using the guidelines set forth in Florida Statute §63.022, it is clearly not in his best interests to have N.S.'s right to permanency delayed for what amounts to no more than a trial run with the Hornes. He has no connections to the Hornes and is deserving of permanency now.

### **III. ARGUMENTS IN SUPPORT OF DISPOSITION PURSUANT TO FLORIDA STATUTE §39.811**

On May 15, 2015 Father was set for a trial on the Department's Petition for Involuntary Termination of Parental Rights. On that date, Father entered a written Affidavit and Acknowledgment of Surrender, Consent and Waiver of Notice. Said surrender was unconditional and is binding. The surrender acknowledges Father's desire that N.S. be placed with the Hornes. However, it specifically states the surrender is not conditioned upon that

actually occurring. The surrender was duly executed and accepted by the Court. The case was then sent for a disposition. Prior to disposition occurring, Florida Homestudy LLC filed its Petition to Intervene. Irrespective of whether this Court allows Florida Homestudy LLC's to intervene in the instant action, based on the arguments previously recited herein, the Court should proceed in entering an order terminating Father's parental rights pursuant to Florida Statute §39.811 based on his voluntary surrender.

A voluntary surrender of parental rights is binding. It cannot be set aside unless there is a motion to set aside the surrender based on fraud, duress, or undue influence pursuant to Florida Statute §39.806. Father would have the burden of proving the alleged fraud, duress, undue influence by clear and convincing evidence. *R.B. v. Florida Department of Children and Families*, 997 S0 2d 1216 (Fla. 5<sup>th</sup> DCA, 2008). In the instant case, there is no motion before the Court to set aside Father's valid surrender. There is no authority upon which either Father or Florida Homestudy LLC can rely on for its proposition that a Petition to Intervene by Florida Homestudy LLC invalidates Father's surrender, or that it terminates the jurisdiction of the dependency court. The dependency court should maintain jurisdiction as it is clearly in N.S.'s manifest best interests. As such, the Court should proceed with disposition giving full legal effect to Father's validly executed surrender and enter an order terminating both parents' parental rights by virtue of their valid surrenders.

**WHEREFORE**, based on the foregoing, the Guardian ad Litem respectfully requests the Court enter an order denying Florida Homestudy LLC's Petition to Intervene and proceed with disposition pursuant to Florida Statute §39.811.

#### **CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by e-service delivery this 13<sup>th</sup> day of July 2015 to: Department of Children & Families at [C07\\_CLS\\_Eservice@myflfamilies.com](mailto:C07_CLS_Eservice@myflfamilies.com) and [Wesley.flagler@myflfamilies.com](mailto:Wesley.flagler@myflfamilies.com); Sharon Feliciano, Esq., attorney for Mother at [shrnfeliciano@yahoo.com](mailto:shrnfeliciano@yahoo.com); Scott Meyer, Esq., attorney for Father, at [wscottmeyer@yahoo.com](mailto:wscottmeyer@yahoo.com); and Jonathan Glugover, Esq., attorney for Florida Homestudy LLC, at [jglug@aol.com](mailto:jglug@aol.com).

Respectfully submitted by:

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## TABLE OF CITATIONS

1. Florida Statute 39.811
2. Florida Statute 39.802
3. Florida Statute 63.082
4. McGhee v. Volusia County, 679 So. 2d 729,730 (Fla. 1996)
5. Forsyth v. Longboat Key Beach Erosion Control Dist., 604 So 2d 452, 455 (Fla. 1992).
6. Florida Statute §39.001
7. Florida Statute §63.022
8. Padgett v. The Department of Health and Rehabilitative Services, 577 So. 2d 565, 570 (Fla. 1991)
9. P.K. v. Florida Department of Children and Families, 927 So. 2d 131, 134 (Fla. 5<sup>th</sup> DCA, 2006)
10. Hausmann ex rel Doe v. L.M., 806 So. 2d 511,515 (Fla. 4<sup>th</sup> DCA, 2001)
11. Guardian ad Litem v. R.A., 995 So. 2d 1083, 1084 (Fla. 5<sup>th</sup> DCA, 2008)
12. Florida Statute §39.621
13. Florida Department of Children and Families v. Interest of J.C., 847 So. 2d 487, 491 (Fla. 3d DCA, 2002)
14. Rumph v. Interest of V.D., 667 So. 2d 998 (Fla. 3d DCA, 1996)
15. Florida Statute §39.806.
16. R.B. v. Florida Department of Children and Families, 997 S0 2d 1216 (Fla. 5<sup>th</sup> DCA, 2008)