



John C. Murphy
Florida Bar
#369705



John C. Murphy
Florida Bar
#369705

APPLICATION FOR NOMINATION TO THE Fifth DCA COURT

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

DATE: March 1, 2013

Florida Bar No.: 369705

GENERAL:

Social Security No.: [REDACTED]

1. Name John C. Murphy E-mail: john.murphy@flcourts18.org

Date Admitted to Practice in Florida: September 1, 1983

Date Admitted to Practice in other States: _____

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

County Court Judge, 18th Judicial Circuit, Brevard County

3. Business address: 2825 Judge Fran Jamieson Way

City Viera County Brevard State FL ZIP 32940

Telephone (321) 637-5641 FAX (321) 637-5642

4. Residential address: [REDACTED]

City [REDACTED]

Since October 1, 2008 Telephone [REDACTED]

5. Place of birth: Woonsocket, R.I.

Date of birth: [REDACTED] Age: 55

6a. Length of residence in State of Florida: since 1982

6b. Are you a registered voter? ☒ Yes ☐ No

If so, in what county are you registered? Brevard

7. Marital status: Married

If married: Spouse's name [REDACTED]

Date of marriage [REDACTED]

Spouse's occupation [REDACTED]

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

[illegible]

9. Military Service (including Reserves)

Service	Branch	Highest Rank	Dates
US Army	Special		May 79 to
Reserve	Forces	Colonel	July 08

Rank at time of discharge Colonel Type of discharge Retirement

Awards or citations See Appendix A - Resume of Service Career

HEALTH:

10.

11a.

11b.

12a.

12b.

13.

14.

15.

16.

17.

EDUCATION:

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

<i>Schools</i>	<i>Class Standing</i>	<i>Dates of Attendance</i>	<i>Degree</i>
US Army War College	Unknown	May 04 - Jul 06	MS
Florida Institute of Technology		Sep 85 - May 92	
University of Dayton School of Law	Unknown	June 79 - May 82	JD
University of Rhode Island	Unknown	Sep 75 - May 79	BA

18b. List and describe academic scholarships earned, honor societies or other awards.

FIT Business Honor Society (Delta Mu Delta)

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>
May 79	Various	US Army Reserve	See Appendix A

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 Supreme Court	(1983)
Ohio Supreme Court	(1982) Inactive
US Supreme Court	(1990)
US Court of Appeals for the 11th Circuit	(1983)
US Court of Appeals for the Federal Circuit	(1990)
US Claims Court	(1990)
US Tax Court	(1983)
US District Court for the Middle District of Florida	(1983)

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>
		1800 Penn Street, Suite 6	
Partner	Betten, Murphy & Weiss, Attys, P.A.	Melbourne, FL 32901	2/83 to 12/06

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 practice evolved over the years. Initially, my practice was a trial practice with emphasis on criminal, juvenile delinquency and family law. Over time, I added more civil areas including government contract law, real estate, corporate, construction litigation including construction liens, homeowners associations, juvenile dependency and personal injury. I also practiced Federal Administrative Law appearing before numerous of the Boards of Contract Appeals, Merit System Protection Board, Federal Department of Labor and the Defense Office of Hearings and Appeals. Before being elected to the bench, my practice was limited to elder law including estate planning, probate administration and litigation, trust administration and litigation, medicaid estate planning including representation before the Florida Department of Children and Families.

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	_____ %	Civil	10 %
Federal Trial	_____ %	Criminal	_____ %
Federal Other	_____ %	Family	_____ %
State Appellate	_____ %	Probate	90 %
State Trial	75 %	Other	_____ %
State Administrative	25 %		
State Other	_____ %		
	_____ %		
TOTAL	100 %	TOTAL	100 %

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

Jury?	50	Non-jury?	450
Arbitration?	0	Administrative Bodies?	100

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).
- 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).
- 27c. During the last five years, how frequently have you appeared at administrative hearings?
_____ average times per month
- 27d. During the last five years, how frequently have you appeared in Court?
_____ 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? _____%
Defendants? _____%
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.

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.
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.
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.

See Appendix C - Writing Samples

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.

County Court Judge, Brevard County since January 2007

- 32b. List any prior quasi-judicial service:

<i>Dates</i>	<i>Name of Agency</i>	<i>Position Held</i>
1983-1992	Melbourne Beach Police Civil Service Board	Member 83-84 Chair 84-92
1995-1998	US Army Summary Court Martial	Presiding Official
1979-2008	Article 15	whenever Commander of units
	Police - Employment issues concerning the town Police Officers.	

Types of issues heard: Army - equivalent to criminal non-jury trial.

- 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.

N/A

- 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.

1. William F. Meyer, Esquire
1250 W. Eau Gallie Blvd., Suite G
Melbourne, Florida 32935
(321) 255-2571
2. Alan Diamond, Esquire
3962 W. Eau Gallie Blvd., Suite B
Melbourne, Florida 32934
(321) 953-0104
3. Geoffrey Golub, Esquire
512 N. Harbor City Blvd.
Melbourne, Florida 32935
(321) 757-6848
4. Jennifer Dunne, Esquire
2725 Judge Fran Jamieson Way, Building E
Viera, Florida 32940
(904) 891-4795
5. Aaron Peacock, Esquire
2725 Judge Fran Jamieson Way
Viera, Florida 32940
(321) 617-7510
6. Carl Morgan, Esquire
2800 Aurora Road, Suite J
Melbourne, FL 32935
(321) 253-6223

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

Through Jan 2013, I have handled over 17,500 cases including 95 jury trials. From January 2007 to March 31, 2007 handled both civil and criminals cases in the County Court. Since April 1, 2007, I have handled a criminal docket. This is when the Brevard County Court when to civil and criminal divisions.

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

98 published opinions and counting. See Appendix B - Published Opinions

- (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.

1. JOHN E. DAVIS VS PALM GARDENS GOLF COURSE, Brevard Case 05-1997-CA-020932, Plaintiff was hit in the eye by a golf ball. Multiple day jury trial. This case presented a complex liability situation since most people participate in golf. The case ws tried in front of The Honorable Lisa Davidson (321) 617-7281.
2. WILEY J WILLIAMS VS. CHRISTOPHER P HAMILTON and SEAN N. GARNDER, Brevard Case 05-1996-CA-013031. My first civil jury trial. I represented the insurance company. The case was tried in front of The Honorable Thomas Waddell and the attorney for the Plaintiff was Howard M. Swerbilow, Esquire (321) 453-3880.
3. MARGARET WHITE VS GEORGE VARTANIAN, Brevard Case 05-1998-DR-006065. This case presented an issue concerning the distribution of military retirement years before the federal stature was passed. Representing the former wife was Paul M. Goldman, Esquire (321) 259-8900.
4. JOHN KUHLEY VS JOYCE KUHLEY, Brevard Case 05-2006-DR-006959. This case presented a novel situation of using a supportive relationship to support the husband's ability to pay. The Final Judgment is attached as one of the writing samples. Representing the husband was Margaret M. Anderson, Esquire (772) 562-6262 and the wife was represented by Thomas R. Townsend, Esquire (321) 632-4656.
5. STATE VS MCKELLAR LASHAWN, Brevard Case 05-2006-MM-050181. This case was my first jury trial as a County Court Judge. The State Attorney was Nathan Knust, Esquire (704) 262-5610 and the Public Defender was Mary McNames Kramer, Esquire (321) 723-6591.

- (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.

No

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

No. I do not use contempt lightly. I came close once. There was a particular lawyer who continued to ignore the rules and decorum. First, I gave a subtle warning at the bench. The offending conduct continued. Second, I gave a stern warning on the record. The attorney was not getting the message. I was heading toward the contempt route next but upon reflection I decided for another technique. The lawyer arrived for the contempt proceeding but instead I had them walk with me back to chambers and we discussed the matter. I have not had the issue arise again.

- (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.

N/A

- 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.

See Appendix A - Resume of Service Career

- 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.

Military Service compensation paid by the US Army.

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.

I have never recused myself or been disqualified from any cases. There is no particular type of case or relationship which would limit my ability to sit as a judge. I would always disclose my long time ties with my former law firm. The firm name still honors my father, Betten, Murphy & Weiss, Attorneys, P.A.

MISCELLANEOUS:

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

Yes _____ No xx 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 xx 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 xx 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?

No

- 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. Sucessfully sued the Brevard County Property Appraiser in 1984 for denying my Homestead Exemption while I was on military duty.

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.
N/A
46. List and describe any speeches or lectures you have given.
Space Coast Community Law School Gun Laws & Stand Your Ground Oct 12
Numerous speeches on Patriotism, Judicial Ethics, Media & Trials and soon Electronic Service of Process for the Florida Association of Professional Process Servers.
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.
The Florida Bar
Board of Governors, Young Lawyer's Division, The Florida Bar (Three Terms 87-92)
Brevard County Bar Association
Seminole County Bar Association
The Vassar B. Carlton American Inns of Court - member since 2008 Program Director since 2010. We have won three national program awards during my term.
Conference of County Court Judges - 18th Judicial Circuit Representative 2010
- Vice President for the 5th DCA 2011
Brevard County - Assistant Administrative Judge for the County Court 2011
- Administrative Judge for the County Court 2012
Crane Creek Bar Association
- 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.
National Honor Society, Florida Institute of Technology Graduate Business School
Leadership Brevard (86-87)
American Bar Association
Melbourne Beach Police Civil Service Board (83-92 Chairman 84-92)

Sigma Chi Fraternity (Life Member)

Military Officers Association of America, Cape Canaveral Chapter (Dir 97-99, 2d VP 99, 1st VP 00, Pres 01 & Past Pres 02) National Chapter of the Year when President

Military Order of the World Wars (National JAG 04-05, Nat'l Ass't JAG 05 to 08)

Patrick Henry Silver Medallion; Citizen Soldier of the Year

US Army War College Alumni Association

Senior Army Reserve Commanders Association

Reserve Officers Association

UPORFA, Priory of St. Joan de Arc

Air Defense Artillery Association (Life Member) Ancient Order of Saint Barbara

Civil Affairs Association (Life Member) Order of Cincinnatus

Special Forces Association

Military Society of the Blue Badge

U.S. Parachute Association (License C-30031)

National Guard Officers Association

Melbourne Sertoma Club, Sertoman of the Year.

Calvary Chapel Melbourne

48c. List your hobbies or other vocational interests.

I enjoy running for physical fitness and stress relief. My military career took up much of my free time. Since my military retirement, I spent quite a bit of time working in my yard. Someday, I may endeavor to hit a golf ball.

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 performed Pro Bono work at the South Brevard Geriatric Center from 1998 to 2005. Our firm considered Pro Bono work mandatory well before The Florida Bar. Spent one morning a month providing legal assistance to indigent or low income seniors. Most clients desired Estate Planning. This included a Will, Power of Attorney and Advance Directives. Other topics included advice on Bankruptcy, Landlord Tenant, Contracts, Small Claims and sometimes just common sense advice.

SUPPLEMENTAL INFORMATION:

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

I attend the "Masters of DUI" CLE each year but not for credit and try to be incognito. I have attended numerous CLEs. I have somewhere area 500 hours over the last 6 years.

- 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?

Brevard County Bar Association - Judicial Ethics

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

Ancora imparo!

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

I've always known I would be a judge. The thing that attracted me most to it was the opportunity to continue serving our community. It is my opportunity to continuing giving back as I have done through my pro bono activities, civic leadership and military service.

Integrity is the keystone of the judicial system. I make decisions based on the facts and the law. I recognize I do have biases and work to make sure they do not affect my decisions. I do disregard personalities and political influences.

My practice as a lawyer was very diverse. I started as a trial lawyer with emphasis on criminal and family law. I litigated many government contract cases. My firm's largest cases were QUI TAM (Whistleblower) cases against the US Government. Our firm ran a Title company. I litigated real estate, corporate, construction litigation including construction liens, homeowners association's liens, juvenile dependency and personal injury cases. I also practiced Federal Administrative Law appearing before numerous of the Boards of Contract Appeals, Merit System Protection Board, Federal Department of Labor and the Defense Office of Hearings and Appeals. Before being elected to the bench, my practice was limited to elder law including estate planning, probate administration and litigation, trust administration and litigation, medicaid estate planning including representation before the Department of Children and Families. This diverse law practice background would help prepare any candidate for the 5th DCA.

Judicial temperament includes patience, open-mindedness, courtesy, tact, firmness, understanding, compassion and humility. Patience was the toughest for me. I work very hard to ensure that I do not become impatient. I courteously deal with attorneys, parties, witnesses and jurors. I display the willingness to hear and consider all sides of a case. I try to explain the process to those who do not know. I explain my decisions so that parties and their attorneys understand my decisions. I keep in mind that the power of a judge is easily abused and strive in every case to keep that power in check. When I have doubts as to a decision, I always remember, I have done the best that I can.

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.

Florida Supreme Court JNC July 2008

18th Judicial Circuit JNC October 2009

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

Early in my legal career, I represented the younger lawyers of the 18th Judicial Circuit on the Board of Governors of the The Florida Bar, Young Lawyer's Division. I set up the initial meetings of younger lawyers in Brevard County which has become the current Young Lawyers Section of the Brevard County Bar Association.

My military service was primarily as a Commander. Over 17 of my 29 years was a Commander. I enjoy the demands of being the leader. When I was not the leader, I was a good follower.

One of my civic leadership roles was with the Military Officer's Association of America Cape Canaveral Chapter (MOAACC). I was on the leadership ladder for over 6 years. I was the President in 2001-02 and during that year we were the national Chapter of the Year. I designed a website that went on to receive communication awards.

I have continued to share my leadership on the bench. I was the 18th Judicial Circuit representative to the Conference of County Court Judges and moved up to Vice President representing all County Judges of the 5th DCA area. I was the Assistant Administrative Judge for the County Court and thereafter was the Administrative Judge. I started a Brevard County Veteran's Treatment Court after working in the felony Drug Court.

I am committed to justice. I will devote my mind and spirit to better serving the citizens of Florida.

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.

The Honorable John Antoon, II



Chief Judge Alan A. Dickey



The Honorable Kerry Evander

The Honorable Vincent Torpy

The Honorable Bruce Jacobus



The Honorable Kelly J. McKibben

The Honorable Michelle V. Baker



The Honorable Charles Crawford

The Honorable James H. Earp

The Honorable Lisa Davidson



Major General John R.D. Cleland (Ret)



Mr. L. Allen Bryant



Richard G. Donoghue

Sherwood J. "Pete" Smith

Major General Homer S. "Huck" Long, Jr. (Ret)

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 1st day of March, 2013.

John C. Murphy

Printed Name

John C. Murphy

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

In lieu of answering the questions on this page, you may attach copies of your completed Federal Income Tax Returns for the preceding three (3) years. Those income tax returns should include returns from a professional association. If you answer the questions on this page, you do not have to file copies of your tax returns.

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.

2012 \$134,280.00

2011 \$134,280.00

2010 \$135,000.00

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.

2012 \$134,280.00

2011 \$134,280.00

2010 \$135,000.00

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.

N/A

4. State the amount of net income you have earned or losses incurred (after deducting expenses) from 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.

N/A

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: March 1, 2013

JNC Submitting To: 5th DCA

Name (please print): John C. Murphy

Current Occupation: County Judge

Telephone Number: (321) 637-5641 Attorney No.: 369705

Gender (check one): ☒ Male ☐ Female

Ethnic Origin (check one): ☒ White, non Hispanic

☐ Hispanic

☐ Black

☐ American Indian/Alaskan Native

☐ Asian/Pacific Islander

County of Residence: Brevard

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.

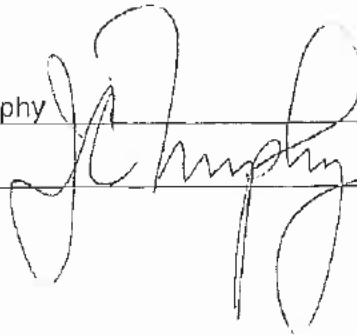
CONSUMER'S AUTHORIZATION FOR FDLE
TO OBTAIN CONSUMER REPORT(S)

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:

John C. Murphy

Signature of Applicant:

A handwritten signature in black ink, appearing to read 'J. C. Murphy', is written over a horizontal line. The signature is stylized with a large initial 'J' and a long, sweeping tail.

Date: March 1, 2013

Murphy, John C.

5th DCA JNC Application Continued

Question Number 18a

Seoul American HS Unknown Aug 74 to May 75 HS

Concord-Carlisle HS Unknown Sep 71 to May 74

Question Number 31

Final Judgment, Marine Bank v. Florida Business Bank, March 19, 2012

Final Judgment, Kuhley v. Kuhley, May , 2008

Leadership Paper February 22, 1991

Appendixes:

A – Resume of Service Career

B – Published Opinions (all available at Florida Law Weekly)

C – Writing Samples

D – Newspaper Articles

Resume of Service Career

RESUME OF SERVICE CAREER
of
MURPHY, John Christopher, Colonel, Special Forces

Place of Birth: Woonsocket, Rhode Island

Years of Commissioned Service/Total: Over 29 years

Present Assignment: Retired Reserve

Civilian Occupation: County Judge, 18th Judicial Circuit, Brevard County, Florida

<u>Military Education</u>	<u>Year</u>
Military Police Officer Basic Course (Resident - Commandant's List)	1983
Airborne Course (Resident - Platoon Leader)	1983
Special Forces Qualification Course (Resident)	1984
Special Forces Pre-Scuba Course (Resident)	1985
Special Forces Combat Diver Qualification Course (Resident - Class Leader)	1985
Infantry Officers Advanced Course (Non Resident)	1987
Military Intelligence Officers Advance Course Ph III (Non Resident)	1988
Jumpmaster Course (Resident)	1989
Pathfinder Course (Resident - Section Leader)	1990
US Army Command & General Staff Officer Course (Commandant's List - Resident & Non Resident)	1991
Civil Affairs Officer Advance Course (Commandant's List - Resident & Non Resident)	1992
Psychological Operations Officer Course Phases I & II (Non Resident)	1994
SATS-NG, National Guard Professional Education Center (Resident - Class Leader)	1996
Defense Strategy Course, US Army War College (Non Resident)	1996
RC - National Security Issues Seminar, US Army War College (Resident)	1999
Air Defense Artillery RC SHORAD Transition Course (Resident)	1999
Air Defense Artillery Pre-Command Course (Resident)	2001
Air War College, Air University (Non Resident)	2002

MURPHY, JOHN C., COL, SF (USAR)

As of: 1 July 08

<u>Military Education Con't.</u>	<u>Year</u>
Commander's Safety Course (Non Resident)	2002
US Army Combat Lifesaver's Course (Resident)	2003
Military Free Fall Parachutist Course (Resident)	2004
Joint Special Operations Forces Pre-Command Course (Resident)	2005
Army Special Operations Forces Pre-Command Course (Resident)	2005
Advanced Military Police Branch Orientation Course (Non Resident)	2006
Army War College, Distance Education Course (Non Resident)	2006

<u>Educational Degrees</u>	<u>Year</u>
University of Rhode Island, Kingston, RI B.A. (Philosophy)	1979
University of Dayton School of Law, Dayton, OH J.D. (Law)	1982
U. S. Army War College M.S. (Strategic Studies)	2006

<u>Foreign Languages</u>	<u>Proficiency</u>
Latin American Spanish	Elementary/Elementary

<u>Chronological List of Appointments</u>		
2LT	USAR	27 May 79
1LT	USAR	05 Jun 82
CPT	ARNG/USAR	14 Aug 86
MAJ	ARNG/USAR	10 Oct 93
LTC	ARNG/USAR	02 Dec 98
COL	USAR	01 Dec 03

Chronological Record of Major Duty Assignments

<u>USAR – Not on Active Duty</u>	
USAR Control Group (Officer Active Duty Obligor)	05/79 to 09/79
USARCPAC, St Louis, Missouri (non-rated)	

<u>ARNG – Not on Active Duty</u>	
Rifle Platoon Leader	09/79 to 05/81
Co. A, 1/166 Inf., 73rd Infantry Brigade (SEP), Dayton, Ohio (5/81 non-rated)	

MURPHY, JOHN C., COL, SF (USAR)

As of: 1 July 08

Chronological Record of Major Duty Assignments Con't.

USAR – Not on Active Duty

Trial Counsel 06/81 to 06/82
140th JAG Detachment, Dayton, Ohio

USAR Control Group (Annual Training) 07/82 to 08/82
USARCPAC, St Louis, Missouri (non-rated)

Active Duty

Student, Military Police Officer Basic Course 09/82 to 01/83
US Army Military Police School, Fort McClellan, Alabama

USAR – Not on Active Duty

USAR Control Group (Annual Training) 01/83 to 09/83
USARCPAC, St Louis, Missouri (non-rated)

Executive Officer, ODA 311 09/83 to 11/84
Co. A 3/11 Special Forces Group (Abn), Tampa, Florida (09/84 to 11/84, non-rated)

Active Duty

Student, Special Forces Qualification Course 01/84 to 05/84
US Army John F. Kennedy Special Warfare Center, Fort Bragg, North Carolina

ARNG – Not on Active Duty

Executive Officer, ODA 241 (SCUBA) 12/84 to 06/86
Co. A 3/20 Special Forces Group (Abn), Camp Blanding, Florida

*Student, Combat Diver Qualification Course, US Army John F. Kennedy Special Warfare Center, Fort Bragg, NC (09/85, AER)

Detachment Commander, ODA 241 (SCUBA) 07/86 to 03/88
Co. A 3/20 Special Forces Group (Abn), Camp Blanding, Florida

*Student, Infantry Officers Advanced Course, US Army Infantry School, Fort Benning, Georgia (11/84 to 04/87, AER)

USAR – Not on Active Duty

Detachment Commander, ODA 312 03/88 to 07/91
Co. A 3/11 Special Forces Group (Abn), Tampa, Florida

*Student, Command and General Staff Officer Course, US Army Command and General Staff College, Fort Leavenworth, Kansas (10/88 to 10/91, AER)

MURPHY, JOHN C., COL, SF (USAR)

As of: 1 July 08

Chronological Record of Major Duty Assignments Con't.

USAR – Not on Active Duty Con't

USAR Control Group (Reinforcement) 08/91 to 02/92
US Army Reserve Personnel Center, St Louis, Missouri (non-rated)

CA Special Operations Officer, DS Team 1, DS Detachment 1 02/92 to 11/92
478 Civil Affairs Battalion (FID/UW), Perrine, Florida

*Student, Civil Affairs Officer Advanced Course, Phase II, US Army John F. Kennedy Special Warfare Center and School, Fort Bragg, NC (04/92, AER)

*Student, Civil Affairs Officer Advanced Course, Phase IV, US Army John F. Kennedy Special Warfare Center and School, Fort Bragg, NC (09/92, AER)

ARNG – Not on Active Duty

Area Support Officer (Ass't S-3) 11/92 to 09/93
3/20 Special Forces Group (Abn), Camp Blanding, Florida

Battalion S-3 09/93 to 12/95
3/20 Special Forces Group (Abn), Camp Blanding, Florida

Company Commander, Company B 01/96 to 11/96
3/20 Special Forces Group (Abn), Brooksville, Florida

USAR – Not on Active Duty

USAR Control Group (Reinforcement) 11/96 to 12/96
US Army Reserve Personnel Center, St Louis, Missouri (non-rated)

Ground Operations Officer (DIMA) 01/97 to 09/97
Special Operations Command Central, MacDill AFB, Florida

ARNG – Not on Active Duty

Company Commander, Company C 10/97 to 08/98
3/20 Special Forces Group (Abn), Fort Lauderdale, Florida (05/98 to 08/98, non-rated)

Operations Readiness Officer 09/98 to 10/98
83rd Troop Command, Cecil Field NAS, Florida (non-rated)

Special Operations Forces Operations Officer 10/98 to 08/01
32nd Army Air and Missile Defense Command, Orlando, Florida (08/01 non-rated)

MURPHY, JOHN C., COL, SF (USAR)

As of: 1 July 08

Chronological Record of Major Duty Assignments Con't.

ARNG – Not on Active Duty Con't

Battalion Commander, 1st Battalion (ADA) 09/01 to 02/03
211th Regiment, Regional Training Institute, Camp Blanding, Florida

USAR – Not on Active Duty

Individual Ready Reserve 02/03 to 03/03
AR-PERSCOM, U.S. Army Reserve (non-rated)

Active Duty

Executive Officer 04/03 to 04/04
3rd Special Forces Group (Abn), Fort Bragg, North Carolina

*Director of Plans, Combined Special Operations Task Force – Afghanistan,
Bagram Air Field, Afghanistan (04/03 to 09/03)

*Chief SOF Liaison Officer to CJTF 180, Combined Special Operations Task
Force – Afghanistan, Bagram Air Field, Afghanistan (10/03 to 03/04)

USAR – Not on Active Duty

Individual Ready Reserve 04/04 to 09/04
AR-PERSCOM, U.S. Army Reserve

Brigade Commander, 1st Brigade (IET) 09/04 to 08/05
80th Division (IT), Fort Meade, MD (06/05 to 07/05, non-rated)

Brigade Commander, 354th Civil Affairs Brigade 08/05 to 04/08
Riverdale Park, Maryland

Unassigned, 354th Civil Affairs Brigade 04/08 to 07/08
Riverdale Park, Maryland

Retired Reserve 07/08 to present

Summary of Joint Experience

Date Rank Assignment

1/97 to 9/97 MAJ Ground Operations Officer (DIMA), Special Operations Command
Central Command, MacDill AFB, Florida

4/03 to 9/03 LTC Director of Plans, Combined Special Operations Task Force -
Afghanistan (CJSOTF-A), Bagram Air Field, Afghanistan

MURPHY, JOHN C., COL, SF (USAR)

As of: 1 July 08

Summary of Joint Experience Con't

10/03 to 3/04 COL Chief SOF Liaison Officer to CJTF 180, CJSOTF-A,
Bagram Air Field, Afghanistan

Decorations, Service Medals and Badges

Legion of Merit
Bronze Star Medal
Meritorious Service Medal (with 2 Oak Leaf Cluster)
Joint Service Commendation Medal
Army Commendation Medal (with 1 Oak Leaf Cluster)
Army Achievement Medal
Army Reserve Components Achievement Medal (with Silver & Oak Leaf Clusters)
National Defense Service Medal (with 1 Bronze Service Star)
Afghanistan Campaign Medal
Global War On Terrorism Expeditionary Medal
Global War On Terrorism Service Medal
Military Outstanding Volunteer Service Medal
Armed Forces Reserve Medal (with Silver Hourglass and "M" Device)
Army Service Ribbon
Overseas Service Ribbon
Army Reserve Components Overseas Training Ribbon (88, 91, 94, 97, 99, 00 & 01)
Florida Commendation Medal
Florida Service Ribbon

Combat Infantryman Badge
Special Forces Tab
Master Parachutist Badge
Pathfinder Badge
Military Free Fall Parachutist Badge
Special Operations Diver Badge

Foreign Awards:

Moroccan Parachute Badge
British Military Parachute Badge
Honduran Parachutist Badge
Canadian Parachutist Badge
Kenyan Parachutist Badge
German Armed Forces Proficiency Badge
Republic of Korea Parachutist Badge

Source Of Commission: ROTC (May 1979)

Published Opinions

Published Opinions

1 STATE OF FLORIDA, Plaintiff, vs. MICHAEL BUELL, Defendant. County Court, 18th Judicial Circuit in and for Brevard County.

Criminal law -- Driving under influence -- Search and seizure -- Consensual encounter -- Where officers observed defendant asleep or passed out in parked vehicle with keys on console, officers did not...

Citation: 20 Fla. L. Weekly Supp. 296a

2 STATE OF FLORIDA, Plaintiff, vs. AMY MARTO, Defendant. County Court, 18th Judicial Circuit in and for Brevard County.

Criminal law -- Driving under influence -- Search and seizure -- Vehicle -- Because offense of driving under influence of unknown alcoholic beverages or drugs is crime for which search of vehicle ma...

Citation: 20 Fla. L. Weekly Supp. 295a

3 STATE OF FLORIDA, Plaintiff, vs. DUSTIN BARTO, Defendant. County Court, 18th Judicial Circuit in and for Brevard County.

Criminal law -- Driving under influence -- Evidence -- Field sobriety exercises -- Breath test -- Consent -- Where trooper ignored defendant's requests to use restroom before and during field sobriety...

Citation: 20 Fla. L. Weekly Supp. 162b

4 STATE OF FLORIDA, Plaintiff, vs. ROGER MOORE, Defendant. County Court, 18th Judicial Circuit in and for Brevard County.

Criminal law -- Driving under influence -- Search and seizure -- Vehicle stop -- Traffic infraction -- Where defendant briefly crossed fog line twice without affecting other traffic, officer did not...

Citation: 20 Fla. L. Weekly Supp. 162a

5 STATE OF FLORIDA, Plaintiff, vs. DANIEL WAYNE KEITHLINE, Defendant. County Court, 18th Judicial Circuit in and for Brevard County.

Criminal law -- Motion to dismiss is granted where state's traverse alleges that defendant has authority to participate in decision making and timesharing but does not show that defendant was under...

Citation: 20 Fla. L. Weekly Supp. 150c

6 MARINE BANK & TRUST COMPANY, A Florida Corporation, Plaintiff, vs. FLORIDA BUSINESS BANK, f/k/a FIRST BUSINESS BANK, A Florida Corporation, Defendant. Circuit Court, 18th Judicial Circuit in and for Brevard County.

Attorney's fees -- Amount -- Expert witness fees and costs awarded MARINE BANK & TRUST COMPANY, A Florida Corporation, Plaintiff, vs. FLORIDA BUSINESS BANK, f/k/a FIRST BUSINESS BANK, A Florida...

Citation: 20 Fla. L. Weekly Supp. 139a

7 STATE OF FLORIDA, Plaintiff, vs. ROBERT STRIFFLER, Defendant. County Court, 18th Judicial Circuit in and for Brevard County.

Criminal law -- Resisting officer without violence -- Evidence -- Where contact between defendant and officer was consensual encounter, evidence of dismissed loitering and prowling charge is exclude...

Citation: 19 Fla. L. Weekly Supp. 956a

8 STATE OF FLORIDA, Plaintiff, vs. JUSTIN GROSS, Defendant. County Court, 18th Judicial Circuit in and for Brevard County.

Criminal law -- Driving under influence -- Search and seizure -- Vehicle stop -- Where defendant touched fog line five times and center line once in five miles, and defendant did not cross lines or...

Citation: 19 Fla. L. Weekly Supp. 894b

9 STATE OF FLORIDA, Plaintiff, vs. JUSTIN MITCHELL, Defendant. County Court, 18th Judicial Circuit in and for Brevard County.

Criminal law -- Driving under influence -- Search and seizure -- Vehicle stop -- Traffic infraction -- Where deputy could have stopped defendant for improper lane change and failure to yield right-o...
Citation: 19 Fla. L. Weekly Supp. 884b

10 STATE OF FLORIDA, Plaintiff, vs. GEORGE KNOX, Defendant. County Court, 18th Judicial Circuit in and for Brevard County.

Criminal law -- Search and seizure -- Residence -- Exigent circumstances -- Where officers were directed to certain apartment as site to which participants in domestic violence disturbance had fled,...
Citation: 19 Fla. L. Weekly Supp. 884a

11 STATE OF FLORIDA, Plaintiff, vs. JOHN SPAZIANO, Defendant. County Court, 18th Judicial Circuit in and for Brevard County.

Criminal law -- Possession of cannabis -- Search and seizure -- Residence -- Consent -- Where officers, who had responded to domestic disturbance complaint, offered a ride to apparently intoxicated...
Citation: 19 Fla. L. Weekly Supp. 883b

12 STATE OF FLORIDA, Plaintiff, vs. CERA IRONS, Defendant. County Court, 18th Judicial Circuit in and for Brevard County.

Criminal law -- Driving under influence -- Evidence -- Statements of defendant -- Defendant's pre-Miranda statements made during DUI investigation are excluded -- Blood test -- Consent -- Where stat...
Citation: 19 Fla. L. Weekly Supp. 864a

13 STATE OF FLORIDA, Plaintiff, vs. BRONSON A. HURT, Defendant. County Court, 18th Judicial Circuit in and for Brevard County.

Criminal law -- Driving under influence -- Evidence -- Breath test -- Substantial compliance with administrative rules -- Twenty-minute observation period -- Pre-arrest observation time satisfied du...
Citation: 19 Fla. L. Weekly Supp. 856b

14 STATE OF FLORIDA, Plaintiff, vs. PATRICK MARTIN, Defendant. County Court, 18th Judicial Circuit in and for Brevard County.

Criminal law -- Driving under influence -- Search and seizure -- Vehicle stop -- Observation of motorcyclist weaving within own lane four times, nearly touching both center and fog lines, provided r...
Citation: 19 Fla. L. Weekly Supp. 852a

15 STATE OF FLORIDA, Plaintiff, vs. JOE RIDDLE, Defendant. County Court, 18th Judicial Circuit in and for Brevard County.

Criminal law -- Driving under influence -- Search and seizure -- Vehicle stop -- Traffic infraction -- Failure to maintain single lane -- Where testimony of detective who stopped defendant for failu...
Citation: 19 Fla. L. Weekly Supp. 849a

16 STATE OF FLORIDA, Plaintiff, vs. EBONY S. GAY, Defendant. County Court, 18th Judicial Circuit in and for Brevard County.

Criminal law -- Search and seizure -- Consent -- Third party consent -- There was no apparent authority for male driver of vehicle to consent to search of purse owned by female defendant who was pas...
Citation: 19 Fla. L. Weekly Supp. 848a

17 STATE OF FLORIDA, Plaintiff, vs. JAMES MICHAEL MULLINS, Defendant. County Court, 18th Judicial Circuit in and for Brevard County.

Criminal law -- Driving under influence -- Search and seizure -- Vehicle stop -- Traffic infraction -- Deputy who believed incorrectly that tag light of defendant's vehicle was not functioning and o...
Citation: 19 Fla. L. Weekly Supp. 747a

18 STATE OF FLORIDA, Plaintiff, vs. ROBERT HIXENBAUGH, Defendant. County Court, 18th Judicial Circuit in and for Brevard County.

Criminal law -- Evidence -- Statements of defendant -- Accident report privilege -- Where officer did not advise defendant when she concluded accident investigation and commenced criminal investigation...

Citation: 19 Fla. L. Weekly Supp. 498a

19 STATE OF FLORIDA, Plaintiff, vs. MICHAEL GARNSEY, Defendant. County Court, 18th Judicial Circuit in and for Brevard County.

Criminal law -- Traffic infractions -- Constitutionality of statute -- Fact that section 316.075 provides for different fine and license consequences for defendant ticketed by law enforcement office...

Citation: 19 Fla. L. Weekly Supp. 497a

20 H. JACK BAGHDASSARIAN, Plaintiff, vs. ISLAMORADA CONDOMINIUM ASSOCIATION, INC., Defendant. County Court, 18th Judicial Circuit in and for Brevard County.

Condominiums -- Arbitration -- Claim by unit owner against condominium association for damages to owner's hurricane shutters allegedly resulting from removal during association's repair of balcony t...

Citation: 19 Fla. L. Weekly Supp. 486a

21 STATE OF FLORIDA, Plaintiff, vs. IVAN CENTENO, Defendant. County Court, 18th Judicial Circuit in and for Brevard County.

Criminal law -- Driving under influence -- Evidence -- Breath test -- Inspection and maintenance of breath testing machine -- Deficiencies in monthly inspection of Intoxilyzer used to test defendant...

Citation: 19 Fla. L. Weekly Supp. 53a

22 STATE OF FLORIDA, Plaintiff, vs. MARK D. GRIFFITH, Defendant. County Court, 18th Judicial Circuit in and for Brevard County.

Criminal law -- Driving under influence -- Search and seizure -- Vehicle stop -- Traffic infraction -- Deputy who was required to take evasive action when defendant's van crossed centerline had foun...

Citation: 19 Fla. L. Weekly Supp. 51d

23 STATE OF FLORIDA, Plaintiff, vs. IVAN CENTENO, Defendant. County Court, 18th Judicial Circuit in and for Brevard County.

Criminal law -- Driving under influence -- Evidence -- Statements of defendant -- Where defendant requested to speak to attorney after officers read implied consent warning and requested that he sub...

Citation: 19 Fla. L. Weekly Supp. 49a

24 STATE OF FLORIDA, Plaintiff, vs. MICHAEL GOWINS, Defendant. County Court, 18th Judicial Circuit in and for Brevard County.

Criminal law -- Driving under influence -- Evidence -- Refusal to submit to breath test -- Where officer had probable cause to arrest defendant for DUI at roadside but instead arrested defendant on...

Citation: 19 Fla. L. Weekly Supp. 48b

25 STATE OF FLORIDA, Plaintiff, vs. THORPE T. DAWES, JR., Defendant. County Court, 18th Judicial Circuit in and for Brevard County.

Criminal law -- Driving under influence -- Evidence -- Blood tests -- Constitutionality of statutes allowing introduction of blood test results without requiring the state to produce as witnesses t...

Citation: 18 Fla. L. Weekly Supp. 1204b

26 STATE OF FLORIDA, Plaintiff, vs. THORPE T. DAWES, JR., Defendant. County Court, 18th Judicial Circuit in and for Brevard County.

Criminal law -- Driving under influence -- Evidence -- Hearsay -- Testimonial out-of-court statements -- Because traceable standard of blood test is not part of chain of custody of blood sample part...

Citation: 18 Fla. L. Weekly Supp. 1204a

27 STATE OF FLORIDA, Plaintiff, vs. BRUCE V. MACK, Defendant. County Court, 18th Judicial Circuit in and for Brevard County.

Criminal law -- Driving under influence -- Evidence -- Breath test -- Inspection and maintenance of breath testing machine -- Deficiencies in monthly inspection of Intoxilyzer used to test defendant...

Citation: 18 Fla. L. Weekly Supp. 1196a

28 STATE OF FLORIDA, Plaintiff, vs. MICHAEL BURNS, Defendant. County Court, 18th Judicial Circuit in and for Brevard County.

Criminal law -- Search and seizure -- Vehicle stop -- Unusual or erratic driving -- Where video of defendant's driving did not confirm deputy's testimony that defendant's vehicle was weaving and fai...

Citation: 18 Fla. L. Weekly Supp. 1194a

29 STATE OF FLORIDA, Plaintiff, vs. SHAWN JAMES MCBRIDE, Defendant. County Court, 18th Judicial Circuit in and for Brevard County.

Criminal law -- Traffic infractions -- Operation of radios or other mechanical sound-making devices or instruments in vehicle so that sound is plainly audible at distance of 25 feet or more from veh...

Citation: 18 Fla. L. Weekly Supp. 1183b

30 STATE OF FLORIDA, Plaintiff, vs. JOSE NAZCO-HERNANDEZ, Defendant. County Court, 18th Judicial Circuit in and for Brevard County.

Criminal law -- Driving under influence -- Search and seizure -- Vehicle stop -- Traffic infraction -- Where defendant swerved three times, causing another vehicle to take evasive action, officer ha...

Citation: 18 Fla. L. Weekly Supp. 1182a

31 STATE OF FLORIDA, Plaintiff, vs. LORI LEBLANC-HAWKINS, Defendant. County Court, 18th Judicial Circuit in and for Brevard County.

Criminal law -- Driving under influence -- Search and seizure -- Vehicle stop -- Traffic infraction -- Officer's visual estimation of speed, which was confirmed by pace-clocking, supplied reasonable...

Citation: 18 Fla. L. Weekly Supp. 1180b

32 STATE OF FLORIDA, Plaintiff, vs. BRITTNEY LOMBARDO, Defendant. County Court, 18th Judicial Circuit in and for Brevard County.

Criminal law -- Search and seizure -- Plain smell -- Officer had probable cause to search defendant-passenger's purse and any containers within purse where officer removed defendant from vehicle aft...

Citation: 18 Fla. L. Weekly Supp. 1172a

33 STATE OF FLORIDA, Plaintiff, vs. CASEY STARCK, Defendant. County Court, 18th Judicial Circuit in and for Brevard County.

Criminal law -- Driving under influence -- Search and seizure -- Vehicle stop -- Reasonable suspicion -- Where unusual driving pattern observed by officer consisted of single sharp turn that was qui...

Citation: 18 Fla. L. Weekly Supp. 1058b

34 STATE OF FLORIDA, Plaintiff, vs. BRANDON JOHNSON, Defendant. County Court, 18th Judicial Circuit in and for Brevard County.

Criminal law -- Driving under influence -- Search and seizure -- Vehicle stop -- Where defendant lowered window in response to tap by officer who observed vehicle backing out of parking space withou...

Citation: 18 Fla. L. Weekly Supp. 1049a

35 STATE OF FLORIDA, Plaintiff, vs. JOSE GOMEZ, Defendant. County Court, 18th Judicial Circuit in and for Brevard County.

Criminal law -- Driving under influence -- Search and seizure -- Vehicle stop -- Failure to maintain single lane -- Officer had probable cause for stop where defendant was observed crossing fogline...

Citation: 18 Fla. L. Weekly Supp. 1026a

36 STATE OF FLORIDA, Plaintiff, vs. LISA KIM PATTERSON, Defendant. County Court, 18th Judicial Circuit in and for Brevard County.

Criminal law -- Driving under influence -- Evidence -- Breath test -- Substantial compliance with administrative rules -- Twenty-minute observation period -- Where state only proved that breath test...
Citation: 18 Fla. L. Weekly Supp. 1025a

37 STATE OF FLORIDA, Plaintiff, vs. DEBORAH MACINTYRE, Defendant. County Court, 18th Judicial Circuit in and for Brevard County.

Criminal law -- Driving under influence -- Evidence -- Breath test -- Consent -- Voluntariness -- Where delay in allowing defendant access to restroom was caused by defendant's questions about conse...
Citation: 18 Fla. L. Weekly Supp. 892a

38 IN RE: The Former Marriage of DANA M. ECHEVERRIA F/K/A DANA MARIE MASSE, Petitioner/Mother, and JUSTIN JAMES HEITSCH, Respondent/Father. Circuit Court, 18th Judicial Circuit in and for Brevard County, Family Law Division.

Child custody -- Child support -- Modification -- Time-sharing and parenting plan -- Increase in time with father is in best interests of child, and there is substantial change in circumstances warr...
Citation: 18 Fla. L. Weekly Supp. 813a

39 STATE OF FLORIDA, Plaintiff, vs. WILLIAM KLINE, Defendant. County Court, 18th Judicial Circuit in and for Brevard County.

Criminal law -- Resisting officer without violence -- Necessity -- Where officer was engaged in securing bathroom of bar so that paramedics could enter safely and treat wounded woman, and defendant...
Citation: 18 Fla. L. Weekly Supp. 685a

40 In re: The Marriage of JENNIFER CRISTOFARO, Petitioner/Wife, and RYAN CRISTOFARO, Respondent/Husband. Circuit Court, 18th Judicial Circuit in and for Brevard County.

Dissolution of marriage -- Child support In re: The Marriage of JENNIFER CRISTOFARO, Petitioner/Wife, and RYAN CRISTOFARO, Respondent/Husband. Circuit Court, 18th Judicial Circuit in and for Bre...
Citation: 18 Fla. L. Weekly Supp. 665b

41 IN RE: The Former Marriage of: TERESA ANN GARRIGAN F/K/A TERESA ANN CHIESA, Petitioner/Mother, and ERIC CHRISTOPHER CHIESA, Respondent/Father. Circuit Court, 18th Judicial Circuit in and for Brevard County, Family Law Division.

Dissolution of marriage -- Child support -- Child custody -- Modification -- Father's petition to modify time-sharing schedule to convert some day visits to additional overnight visits, which would...
Citation: 18 Fla. L. Weekly Supp. 658b

42 STATE OF FLORIDA, Plaintiff, vs. PAULA JEAN DITANO, Defendant. County Court, 18th Judicial Circuit in and for Brevard County.

Criminal law -- Driving under influence -- Evidence -- Breath test -- Inspection and maintenance of breath testing machines -- Substantial compliance with administrative rules -- Where monthly inspe...
Citation: 18 Fla. L. Weekly Supp. 610a

43 STATE OF FLORIDA, Plaintiff, vs. DAVID V. LANE, and BRYAN DEE MURPHY, Defendants. County Court, 18th Judicial Circuit in and for Brevard County.

Criminal law -- Fish and wildlife -- Taking waterfowl out of season -- Taking ducks in excess of bag limit -- Defendants who were observed in possession of ducks between duck hunting seasons and in...
Citation: 18 Fla. L. Weekly Supp. 609a

44 STATE OF FLORIDA, Plaintiff, vs. SANDRA KANE KARWEL, Defendant. County Court, 18th Judicial Circuit in and for Brevard County.

Criminal law -- Traffic infractions -- Appeals -- Filing of notice of appeal deprived trial court of jurisdiction over pending motion for rehearing STATE OF FLORIDA, Plaintiff, vs. SANDRA KANE...
Citation: 18 Fla. L. Weekly Supp. 606c

45 STATE OF FLORIDA, Plaintiff, vs. PAULA JEAN DITANO, Defendant. County Court, 18th Judicial Circuit in and for Brevard County.

Criminal law -- Driving under influence -- Evidence -- Loss or destruction by state -- Failure to videotape performance of field sobriety exercises did not rise to level of bad faith and violate def...
Citation: 18 Fla. L. Weekly Supp. 600b

46 TIMOTHY JAMES CLINGER, Plaintiff, vs. VIRGINIA ANNE CLINGER, Defendant. County Court, 18th Judicial Circuit in and for Brevard County.

Landlord-tenant -- Calculation of rent owed by former wife who was allowed by final judgment of dissolution of marriage to rent former marital home from former husband after quitclaiming interest in...
Citation: 18 Fla. L. Weekly Supp. 554b

47 STATE OF FLORIDA, Plaintiff, vs. DAVID W. HARRIS, Defendant. County Court, 18th Judicial Circuit in and for Brevard County.

Criminal law -- Driving under influence -- Search and seizure -- Vehicle stop -- Traffic infraction -- Careless driving -- Where defendant hit planter by curb while backing truck up slowly, but defe...
Citation: 18 Fla. L. Weekly Supp. 488a

48 STATE OF FLORIDA, Plaintiff, vs. KARA PEREZ, Defendant. County Court, 18th Judicial Circuit in and for Brevard County.

Criminal law -- Driving under influence -- Search and seizure -- Field sobriety exercises -- Where deputy had probable cause to believe defendant was speeding, defendant stopped in turn lane when de...
Citation: 18 Fla. L. Weekly Supp. 487c

49 STATE OF FLORIDA, Plaintiff, vs. CARL BERRY, Defendant. County Court, 18th Judicial Circuit in and for Brevard County.

Criminal law -- Driving under influence -- Search and seizure -- Vehicle stop -- Traffic infraction -- Officer who observed defendant driving 45 mph and less than one car length behind another vehic...
Citation: 18 Fla. L. Weekly Supp. 487b

50 STATE OF FLORIDA, Plaintiff, vs. REBECCA L. JOHNSON, Defendant. County Court, 18th Judicial Circuit in and for Brevard County.

Criminal law -- Driving under influence -- Search and seizure -- Vehicle stop -- Reasonable suspicion -- Failure to maintain single lane -- Where defendant drove onto but not over fogline twice with...
Citation: 18 Fla. L. Weekly Supp. 478c

51 STATE OF FLORIDA, Plaintiff, vs. RONALD GALBREATH, Defendant. County Court, 18th Judicial Circuit in and for Brevard County.

Criminal law -- Driving under influence -- Search and seizure -- Vehicle stop -- Traffic infraction -- Move Over Act -- Where defendant failed to vacate lane closest to deputy assisting disabled veh...
Citation: 18 Fla. L. Weekly Supp. 478b

52 STATE OF FLORIDA, Plaintiff, vs. CHRISTOPHER FRITZ, Defendant. County Court, 18th Judicial Circuit in and for Brevard County.

Criminal law -- Post conviction relief -- Rule 3.850 motion filed 22 years after plea was entered and became final is untimely -- No merit to claim that court erred in failing to advise defendant of...
Citation: 18 Fla. L. Weekly Supp. 424c

53 STATE OF FLORIDA, Plaintiff, vs. SHAWN JAMES MCBRIDE, Defendant. County Court, 18th Judicial Circuit in and for Brevard County.

Criminal law -- Violation of noise statute -- Constitutionality of statute -- By agreement of parties, ruling on constitutionality of noise statute is reserved pending district court's disposition o...

Citation: 18 Fla. L. Weekly Supp. 424a

54 STATE OF FLORIDA, Plaintiff, vs. ROBERT LOUIS SKINNER, Defendant. County Court, 18th Judicial Circuit in and for Brevard County.

Criminal law -- Driving under influence -- Search and seizure -- Field sobriety exercises -- Officer who observed defendant drive through stop sign, almost strike patrol vehicle and continue to driv...

Citation: 18 Fla. L. Weekly Supp. 423b

55 STATE OF FLORIDA, Plaintiff, vs. TOMMY STUDSTILL, Defendant. County Court, 18th Judicial Circuit in and for Brevard County.

Criminal law -- False 911 calls -- Severance -- Motion to sever four counts of making false 911 calls is denied where, although calls spanned several weeks, calls were placed from same cell phone an...

Citation: 18 Fla. L. Weekly Supp. 423a

56 STATE OF FLORIDA, Plaintiff, vs. SCOTT SHERMAN OHARROW, Defendant. County Court, 18th Judicial Circuit in and for Brevard County.

Criminal law -- Driving under influence -- Search and seizure -- Consensual encounter -- Initial encounter between deputy working undercover in convenience store parking lot and defendant parked at...

Citation: 18 Fla. L. Weekly Supp. 422a

57 STATE OF FLORIDA, Plaintiff, vs. RAGENIA KRAFT, Defendant. County Court, 18th Judicial Circuit in and for Brevard County.

Criminal law -- Driving under influence -- Search and seizure -- Arrest -- Exclusionary rule -- Good faith exception to exclusionary rule applies where officer who found defendant slumped over wheel...

Citation: 18 Fla. L. Weekly Supp. 421b

58 STATE OF FLORIDA, Plaintiff, vs. WILLIAM TODD BRALEY, Defendant. County Court, 18th Judicial Circuit in and for Brevard County.

Criminal law -- Driving under influence -- Evidence -- Statements of defendant -- Accident report privilege -- Where trooper advised defendant that he was switching from accident investigation to cr...

Citation: 18 Fla. L. Weekly Supp. 420a

59 STATE OF FLORIDA, Plaintiff, vs. JAMIE JACQUES SOCKABASIN, Defendant, and KELLY JOSEPH CAUDILL, Defendant. County Court, 18th Judicial Circuit in and for Brevard County.

Criminal law -- Search and seizure -- Vehicle stop -- BOLO -- Officer had reasonable suspicion to stop vehicle based on BOLO derived from citizen informant's tip about vehicle seen leaving area in w...

Citation: 18 Fla. L. Weekly Supp. 419a

60 STATE OF FLORIDA, Plaintiff, vs. PHILLIP DALE MONKRESS, KAMEL REKAB and JEFFREY TAORMINA, Defendants. County Court, 18th Judicial Circuit in and for Brevard County.

Criminal law -- Driving under influence -- Discovery -- Intoxilyzer -- Motions for production of Intoxilyzer for inspection and testing are denied where defendants do not claim to have any specific...

Citation: 18 Fla. L. Weekly Supp. 418b

61 STATE OF FLORIDA, Plaintiff, vs. RICHARD FERRIS CLEMENTS, Defendant. County Court, 18th Judicial Circuit in and for Brevard County.

Criminal law -- Driving under influence -- Actual physical control of vehicle -- Sleeping in vehicle with keys in ignition on defendant's own property is DUI -- Actual physical control of vehicle po...

Citation: 18 Fla. L. Weekly Supp. 318a

62 STATE OF FLORIDA, Plaintiff, vs. DOUGLAS MARK OLIVO, Defendant. County Court, 18th Judicial Circuit in and for Brevard County.

Criminal law -- Driving under influence -- Evidence -- Refusal to submit to breath test -- Where defendant stated that he would submit to breath test if his attorney was present, deputy was not requ...

Citation: 18 Fla. L. Weekly Supp. 317a

63 STATE OF FLORIDA, Plaintiff, vs. BENJAMIN GENTILE, Defendant. County Court, 18th Judicial Circuit in and for Brevard County.

Criminal law -- Driving under influence -- Search and seizure -- Consensual encounter -- Deputy's initial approach of vehicle parked at closed business with blinker engaged was consensual encounter...

Citation: 18 Fla. L. Weekly Supp. 244a

64 STATE OF FLORIDA, Plaintiff, vs. PATRICIA RYAN, Defendant. County Court, 18th Judicial Circuit in and for Brevard County.

Criminal law -- Driving under influence -- Search and seizure -- Vehicle stop -- Officer acting outside jurisdiction -- Where officer outside his jurisdiction stopped defendant without intending to...

Citation: 18 Fla. L. Weekly Supp. 243b

65 STATE OF FLORIDA, Plaintiff, vs. ELIZABETH REBEKKAH RAMOS, Defendant. County Court, 18th Judicial Circuit in and for Brevard County.

Criminal law -- Driving under influence -- Search and seizure -- Vehicle stop -- Traffic infraction -- Deputy had objective basis to stop defendant for driving at night without headlights STATE...

Citation: 18 Fla. L. Weekly Supp. 243a

66 STATE OF FLORIDA, Plaintiff vs. SHAUN SIRNEY, Defendant. County Court, 18th Judicial Circuit in and for Brevard County.

Criminal law -- Driving under influence -- Evidence -- Blood test -- Consent -- Voluntariness -- Where officer did not have authority to request blood test under implied consent law, and officer did...

Citation: 18 Fla. L. Weekly Supp. 242a

67 STATE OF FLORIDA, Plaintiff, vs. TOMMY K. EZELL, Defendant. County Court, 18th Judicial Circuit in and for Brevard County.

Criminal law -- Driving under influence -- Search and seizure -- Arrest -- All elements of misdemeanor DUI were not committed in presence of officer and, therefore, warrantless arrest was not lawful...

Citation: 18 Fla. L. Weekly Supp. 241a

68 STATE OF FLORIDA, Plaintiff, vs. COLLEEN SCHAEFFER, Defendant. County Court, 18th Judicial Circuit in and for Brevard County.

Criminal law -- Driving under influence -- Search and seizure -- Vehicle stop -- Investigatory stop -- Erratic driving pattern -- Where defendant drove over fogline twice but there is no evidence of...

Citation: 18 Fla. L. Weekly Supp. 240b

69 STATE OF FLORIDA, Plaintiff, vs. CANDELARIO VALDEZ, Defendant. County Court, 18th Judicial Circuit in and for Brevard County.

Criminal law -- Driving under influence -- Evidence -- Breath test -- State has demonstrated that defendant's breath test was performed on instrument in substantial compliance with administrative ru...

Citation: 18 Fla. L. Weekly Supp. 240a

70 STATE OF FLORIDA, Plaintiff, vs. DOUGLAS MARK OLIVO, Defendant. County Court, 18th Judicial Circuit in and for Brevard County.

Criminal law -- Driving under influence -- Search and seizure -- Vehicle stop -- Investigatory stop -- Erratic driving pattern -- Where defendant drove over fogline four times in one-half mile and d...
Citation: 18 Fla. L. Weekly Supp. 236b

71 STATE OF FLORIDA, Plaintiff, vs. ARTHUR HUMPHREY, Defendant. County Court, 18th Judicial Circuit in and for Brevard County.

Criminal law -- Resisting officer without violence -- Where officer who approached suspected stolen vehicle with weapon drawn and ordered defendant who was passenger to exit vehicle and place hands...
Citation: 18 Fla. L. Weekly Supp. 233a

72 STATE OF FLORIDA, Plaintiff, vs. TONIA CHAPMAN, Defendant. County Court, 18th Judicial Circuit in and for Brevard County.

Criminal law -- Driving under influence -- Search and seizure -- Consensual encounter -- Officer's initial approach of vehicle parked across two parking spaces in condominium parking lot at 4 a.m. w...
Citation: 18 Fla. L. Weekly Supp. 232a

73 STATE OF FLORIDA, Plaintiff, vs. SCOTT SHERMAN OHARROW, Defendant. County Court, 18th Judicial Circuit in and for Brevard County.

Criminal law -- Driving under influence -- Search and seizure -- Consensual encounter -- Initial encounter between deputy working undercover in convenience store parking lot and defendant parked at...
Citation: 18 Fla. L. Weekly Supp. 231c

74 STATE OF FLORIDA, Plaintiff, vs. JAMES KEITH, Defendant. County Court, 18th Judicial Circuit in and for Brevard County.

Criminal law -- Search and seizure -- Vehicle stop -- Erratic driving pattern -- Officer had reasonable suspicion that defendant may have been ill, injured, or impaired after observing vehicle drift...
Citation: 18 Fla. L. Weekly Supp. 114a

75 STATE OF FLORIDA, Plaintiff, vs. HAROLD SHUNDRICK VAN RIPER, Defendant. County Court, 18th Judicial Circuit in and for Brevard County.

Criminal law -- Loitering and prowling -- Search and seizure -- Citizen encounter -- Officer's request that defendant come toward patrol car was citizen encounter not requiring reasonable suspicion...
Citation: 18 Fla. L. Weekly Supp. 113a

76 STATE OF FLORIDA, Plaintiff, vs. RICHARD MORLEY, Defendant. County Court, 18th Judicial Circuit in and for Brevard County.

Criminal law -- Driving under influence -- Search and seizure -- Vehicle stop -- Failure to maintain single lane -- Where defendant drove over fog line two times in less than one mile, deputy did no...
Citation: 18 Fla. L. Weekly Supp. 110a

77 STATE OF FLORIDA, Plaintiff, vs. JAMES GORDON, Defendant. County Court, 18th Judicial Circuit in and for Brevard County.

Criminal law -- Possession of cannabis -- Search and seizure -- Vehicle stop -- Failure to maintain single lane -- Where defendant drove over fog line at least once in area with lots of bars and imp...
Citation: 17 Fla. L. Weekly Supp. 1268a

78 STATE OF FLORIDA, Plaintiff, vs. RICHARD TORPY, Defendant. County Court, 18th Judicial Circuit in and for Brevard County.

Criminal law -- Driving under influence -- Search and seizure -- Vehicle stop -- Reasonable suspicion -- Erratic driving -- Where officer corroborated anonymous tip of erratic driving by observing t...
Citation: 17 Fla. L. Weekly Supp. 1136a

79 STATE OF FLORIDA, Plaintiff, vs. DIAN D. BATESON, Defendant. County Court, 18th Judicial Circuit in and for Brevard County.

Criminal law -- Search and seizure -- Residence -- Where defendant who stopped to observe traffic stop disobeyed deputy's order to pull over and instead drove off, deputy followed defendant to her h...

Citation: 17 Fla. L. Weekly Supp. 1049a

80 STATE OF FLORIDA, Plaintiff, v. GERALD ANDRE MOORES, Defendant. County Court, 18th Judicial Circuit in and for Brevard County.

Criminal law -- Driving under influence -- Search and seizure -- Vehicle stop -- Traffic infraction -- Move Over Act -- Where patrol vehicle stopped on roadside had blue emergency lights activated f...

Citation: 17 Fla. L. Weekly Supp. 1048a

81 BREVARD COUNTY ANIMAL SERVICES and ENFORCEMENT, Plaintiff, vs. SHALEENA J. GEISER, Defendant. County Court, 18th Judicial Circuit in and for Brevard County.

Counties -- Animal control -- Defendant whose dog left her property, entered neighboring property, and attacked neighbor's dog is guilty of animal at large and animal causing property damage -- Defe...

Citation: 17 Fla. L. Weekly Supp. 1044a

82 STATE OF FLORIDA, Plaintiff, vs. LINDA LORRAINE MURRAY, Defendant. County Court, 18th Judicial Circuit in and for Brevard County.

Criminal law -- Driving under influence -- Search and seizure -- Vehicle stop -- Traffic infraction -- Tag light -- Where officer could not read defendant's tag from distance of 50 feet, traffic sto...

Citation: 17 Fla. L. Weekly Supp. 1043b

83 STATE OF FLORIDA, Plaintiff, vs. LAUREN NUNN CLARK, Defendant. County Court, 18th Judicial Circuit in and for Brevard County.

Traffic infractions -- Evidence -- Identity of driver -- Motion to dismiss is granted where, although defendant chose not to appear at hearing as allowed under rule 6.325, state failed to identify d...

Citation: 17 Fla. L. Weekly Supp. 1043a

84 STATE OF FLORIDA, Plaintiff, vs. THOMAS A. WILLIAMS, Defendant. County Court, 18th Judicial Circuit in and for Brevard County.

Criminal law -- Driving under influence -- Search and seizure -- Field sobriety exercises -- Where officer observed defendant drive over fog line and leave roadway twice, on contact with defendant o...

Citation: 17 Fla. L. Weekly Supp. 852a

85 STATE OF FLORIDA, Plaintiff, vs. RICHARD TORPY, Defendant. County Court, 18th Judicial Circuit in and for Brevard County.

Criminal law -- Driving under influence -- Search and seizure -- Vehicle stop -- Investigatory stop -- Tip - - Where officer did not get name or contact information for motorist that reported defenda...

Citation: 17 Fla. L. Weekly Supp. 847a

86 STATE OF FLORIDA, Plaintiff, vs. BRYAN T. MCCOLLUM, Defendant. County Court, 18th Judicial Circuit in and for Brevard County.

Criminal law -- Driving under influence -- Search and seizure -- Consensual encounter -- Deputy's approach to vehicle parked in parking lot of car dealer not open for business was consensual encount...

Citation: 17 Fla. L. Weekly Supp. 490a

87 STATE OF FLORIDA, Plaintiff, vs. PEDRO MARTINEZ, Defendant. County Court, 18th Judicial Circuit in and for Brevard County.

Criminal law -- Driving under influence -- Search and seizure -- Vehicle stop -- Fellow officer rule -- Arrest by local law enforcement officers was lawful where member of Air Force Security Forces...

Citation: 17 Fla. L. Weekly Supp. 486a

88 STATE OF FLORIDA, Plaintiff, v. DAMIAN BAIR, et al., Defendants. County Court, 18th Judicial Circuit, Brevard County.

Criminal law -- Driving under influence -- Evidence -- Breath test -- No merit to claim that Intoxilyzer 8000 used to test defendants' breath is not approved for evidentiary use in state where evide...

Citation: 16 Fla. L. Weekly Supp. 984a

89 STATE OF FLORIDA, Plaintiff, vs. GARY MICHAEL ANDERSON, Defendant. County Court, 18th Judicial Circuit in and for Brevard County, Criminal Division.

Criminal law -- Driving under influence -- Search and seizure -- Vehicle stop -- Officer acting outside jurisdiction -- Citizen's arrest -- Where officer outside his jurisdiction observed defendant...

Citation: 16 Fla. L. Weekly Supp. 784a

90 STATE OF FLORIDA, Plaintiff, vs. DARRYL BRANHAM, Defendant. County Court, 18th Judicial Circuit in and for Brevard County, Criminal Division.

Criminal law -- Driving under influence -- Search and seizure -- Warrantless stop -- Emergency aid exception -- Where officer who responded to suspicious persons report observed defendant asleep in...

Citation: 16 Fla. L. Weekly Supp. 693b

91 STATE OF FLORIDA, Plaintiff, vs. DEREK MAXWELL JATZ, Defendant. County Court, 18th Judicial Circuit in and for Brevard County.

Criminal law -- Driving under influence -- Search and seizure -- Vehicle stop -- Officer who observed defendant speeding, passing on right and fishtailing during turn had reasonable suspicion of unu...

Citation: 16 Fla. L. Weekly Supp. 204a

92 STATE OF FLORIDA, Plaintiff, vs. KELLY LAURENT, Defendant. County Court, 18th Judicial Circuit in and for Brevard County.

Criminal law -- Driving under influence -- Evidence -- Breath test -- Independent blood test -- There is no statutory requirement that defendant be affirmatively advised of right to independent bloo...

Citation: 16 Fla. L. Weekly Supp. 119a

93 STATE OF FLORIDA, Plaintiff, vs. KELLY LAURENT, Defendant. County Court, 18th Judicial Circuit in and for Brevard County.

Criminal law -- Driving under influence -- Evidence -- Breath test -- Where officer read implied consent to defendant and had her sign form, and defendant did not acquiesce to police authority, brea...

Citation: 16 Fla. L. Weekly Supp. 118a

94 STATE OF FLORIDA, Plaintiff, vs. ERMENEGILDO PISTRITTO, Defendant. County Court, 18th Judicial Circuit in and for Brevard County.

Criminal law -- Driving under influence -- Evidence -- Loss by state -- Where video of defendants driving pattern was not shown to be exculpatory or material, video was only potentially useful and,...

Citation: 15 Fla. L. Weekly Supp. 1030b

95 STATE OF FLORIDA, Plaintiff, vs. JAMES GALLMAN, Defendant. County Court, 18th Judicial Circuit in and for Brevard County.

Criminal law -- Violation of injunction for protection -- Evidence -- Motion in limine to exclude evidence that injunction was dissolved subsequent to defendant's alleged violation is granted where...

Citation: 15 Fla. L. Weekly Supp. 639a

96 STATE OF FLORIDA, Plaintiff, vs. KAREN CAPO, Defendant. County Court, 18th Judicial Circuit in and for Brevard County.

Criminal law -- Driving under influence -- Search and seizure -- Vehicle stop -- Traffic infraction -- Deputy had reasonable suspicion of traffic infraction justifying stop where defendant crossed m...

Citation: 15 Fla. L. Weekly Supp. 636a

97 STATE OF FLORIDA, Plaintiff, vs. SANDRA DUNFEE, Defendant. County Court, 18th Judicial Circuit in and for Brevard County.

Criminal law -- Driving under influence -- Search and seizure -- Vehicle stop -- Traffic infraction --
Based on observation of dark windows, deputy had reasonable suspicion of violation of window ti...
Citation: 15 Fla. L. Weekly Supp. 501a

98 STATE OF FLORIDA, Plaintiff, vs. ALBERT M. GIANCASPRO, Defendant. County Court, 18th Judicial Circuit in and for Brevard County.

Criminal law -- Driving under influence -- Search and seizure -- Field sobriety exercises -- Officer had
reasonable suspicion to ask defendant to perform field sobriety exercises where officer obser...
Citation: 15 Fla. L. Weekly Supp. 500b

Writing Samples

IN THE CIRCUIT COURT
OF THE EIGHTEENTH JUDICIAL CIRCUIT
IN AND FOR BREVARD COUNTY, FLORIDA

MARINE BANK & TRUST COMPANY,
A Florida Corporation,
Plaintiff,

vs.

Case #: 05-2009-CA-029342-XXXX-XX

FLORIDA BUSINESS BANK, f/k/a
FIRST BUSINESS BANK,
A Florida Corporation,
Defendant.

_____ /

FINAL JUDGMENT IN FAVOR OF DEFENDANT

THIS MATTER came before the Court for non-jury trial on October 27 and 28, 2011. The Plaintiff, MARINE BANK & TRUST COMPANY, A Florida Corporation, ("MARINE") being present and being represented by JACK A. KIRSCHENBAUM and ADAM BYRD, Esquires, of GrayRobinson, P.A., and the Defendant, FLORIDA BUSINESS BANK, f/k/a FIRST BUSINESS BANK, A Florida Corporation, ("FBB") being present and represented by ALLAN P. WHITEHEAD, Esquire of Frese, Hansen, Anderson, Anderson, Hueston & Whitehead, P.A. Upon hearing testimony of the parties and witnesses, argument of counsel, and being otherwise fully advised in the premises, the Court finds as follows:

FACTS

MARINE instituted litigation against FBB for breach of contract and breach of fiduciary duty concerning a Loan Participation Agreement gone bad.

MARINE and FBB are both community banks. MARINE primarily operates in Indian River County and FBB primarily operates in Brevard County. These banks had worked together prior to this Loan Participation Agreement.

The following is a list of the key individuals involved in this case and their roles. FBB's Loan Officer and Vice President was Mr. James Chastain, the Executive Vice President and Chief Operating Officer was Mr. Bill Koehne, and the President and Chief Executive Officer was Mr. Daryl Bishop. Marine's Loan Processor was Ms. Marilyn Ingram, and the Executive Vice President was Mr. William J. Penney. Island Oaks, Inc. was a Florida corporation with Dr. Richard and Marcia O'Halloran as the initial sole shareholders. After the funding stopped, other investors were brought into Island Oaks, Inc. The Island Oaks General Contractor was Mr. Marc Rousseau, of Professional Service & Management Group. The Island Oaks "Inspector" and Engineer was Mr. Randall Byrd, P. E. MARINE's expert witness was William M. Wurzbach, Jr., P.E., who is Founder and Principal of CFC Engineering, LLC., located in San Antonio, Texas. FBB's expert witness was Luke Miorelli, P.E., who is President of M.E. Construction, Inc., located in Brevard County, Florida.

A loan participation agreement is a contract. This type of contract is used when a bank wants to make a loan to a borrower that may exceed their lending limit. If the loan exceeds the bank's lending limit, the bank will seek other investors, often other banks, to participate or take a share of the loan. Often times, these participation agreements allow smaller banks to compete with bigger banks with higher lending limits. A loan participation agreement allows the lead bank to share the lending risk with the participant bank. Each participant receives a certificate delineating its share or percentage in the loan and collateral. Only the lead bank enjoys privity with the borrower. The relationship between the lead bank and the participant is governed by the loan participation agreement which contains the appropriate servicing standard.

In 2004, FBB agreed to fund a construction project named Island Oaks. The location of the project is a 3.95 acre property on Merritt Island. The Island Oaks project included four residential buildings, common facilities and infrastructure. The project was to be completed in two phases.

The funding was a revolving line of credit of 1.9 million dollars. The Phase 1 portion would include two residential buildings (24 units), common facilities and infrastructure (including some site work for Phase 2). After completing Phase 1, units would be sold and closed to replenish the line of credit and restore the 1.9 million dollars. After the line of credit was replenished, construction of Phase 2 was to commence. Phase 2 consisted of two residential buildings (another 24 units).

The FBB loan commitment (P Ex 2) required a final detailed construction budget and a signed contract with a certified General Contractor. All draw requests were required to be on standard AIA documents, with independent third party inspections provided at Borrower's expense. Additionally P Ex 2 required a loan participation in an amount no less than \$900,000 which represented the amount in excess of FBB's lending limit. (pg 5) FBB offered MARINE the opportunity to participate in the loan.

MARINE agreed to participate in the Island Oaks project via an approval letter dated May 24, 2004. (P Ex 3) The loan amount was 1.9 million dollars. It was agreed that FBB would fund 53% (\$1,000,000.00) and MARINE would fund 47% (\$900,000.00) of the 1.9 million dollar revolving line of credit. MARINE'S requirements included, "A qualified independent party will perform a plan and construction cost review prior to closing." and "An independent inspection will be required before any advances are made for draws for payment." (pg 3) The letter concluded with, "Approval is granted subject to the following conditions:

1. No advances for Phase 2 until FBB is in possession of an acceptable appraisal that will indicate a bulk sale value of at least \$2,600,00.00.
2. No advances for the construction of Phase 2 without a minimum of 17 contracts for the sale of the units accompanied by 10% non-refundable deposit. ..." (pg 4).

FBB entered into a loan participation agreement with MARINE. A Loan Participation Certificate and Agreement Negotiable was executed by the parties on August 10, 2004. (P Ex 4). Paragraph 10, "Administration", contains the servicing standard which both parties have identified as the key contract language in this case.

"Bank shall with reasonable promptness notify Participant of any material default of Borrower which it becomes aware and of any matters which, in its judgment, materially affect the interest of the parties in the loan. With the foregoing exceptions, Bank will service and manage the loan in accordance with its usual practices and will exercise the same degree of care to protect Participant's interest as it does its own. So long as Bank exercises such care in the servicing and management of the loan, it shall not be under liability to Participant with anything it may do or refrain from doing in the exercise of its judgment which may seem to Bank to be necessary or desirable in the servicing and management of the loan, except of its willful misconduct."

The process for funding would include a draw request from the contractor, review and approval by the inspector and submission of the draw request to FBB. At FBB, the draw request was reviewed by the loan officer, Mr. Chastain, sometimes site inspections and followed by loan officer authorization. After loan officer authorization, the draw request would be transmitted to MARINE, reviewed by their Loan Processor, Ms. Ingram, approved by Vice President Penny and, after approval, the funds were wired to FBB. While the draw request was at MARINE, it would reviewed by either FBB President/CEO or Executive Vice President/COO, then approved by either FBB President/CEO or Executive Vice President/COO for issuance of a draw payment, and after receiving the MARINE funds, a draw payment would be made to the contractor.

From September 2004 to May 2005, eleven (11) draw requests were submitted by the contractor and paid. In reviewing the twelfth draw request, the FBB CEO, Bishop, noticed that the loan was almost expended and substantial work remained to be done. Shortly thereafter, in June 2005, the FBB COO, Koehne, conducted a site visit and concluded the progress represented in the draw requests was not the same as the actual progress at the project site. It was determined

that there were not enough dollars left to complete Phase 1, and in fact, some funding was being used on a Phase 2 building. FBB immediately stopped funding the Island Oaks project. In July 2005, FBB notified MARINE of the issue and the two banks worked together to attempt to resolve the construction crisis.

The essence of MARINE'S breach of contract claim is that during the time draws were being paid, FBB's loan officer, Mr. Chastain, did not utilize an independent inspector and allowed Randall Byrd, P.E. to conduct the inspections knowing he had been hired by the contractor and the developer. Due to the lack of an independent inspector, FBB allowed the money to get ahead of the project. FBB also allowed money to be invested in Phase 2 although Phase 1 was not complete. The Phase 1 units should have been sold and closed (at least 17 of the 24) in order to replenish the revolving line of credit before commencing the construction of Phase 2.

MARINE presented the testimony of its expert, William M. Wurzbach, Jr., P.E. Mr. Wurzbach is a professional engineer with background in mechanical engineering, construction and construction management. The Court did not find his testimony helpful in the determination of this case, because of his lack of a background in banking, banking procedure, or experience with loan participation agreements. The testimony of this expert is rejected by the Court

From July 2005 to August 2006, construction continued through an infusion of about 2 million dollars from additional shareholders in Island Oaks. In May 2006, the contractor and the inspector were terminated by Island Oaks. In August 2006, FBB defaulted Island Oaks.

FBB presented the testimony of its expert, Luke Miorelli, P.E. Mr. Miorelli is a professional engineer and a certified General Contractor, with a background in Civil/Structural Engineering and construction defects. He has testified as an expert at least a dozen times in Brevard Courts. Mr.

Miorelli opined the value of the progress made on Phase 2, before Phase 1 was complete, to be \$ 233,219.00. This amount includes the construction completed on Phase 2 and the materials stored on the project site for use in Phase 2.

From September 2006 to December 2007, FBB and MARINE worked together to mitigate their damages on the Island Oaks project. FBB filed to foreclose Island Oaks, worked through bankruptcy and received a Deed to the Island Oaks property in July 2007. Eventually, in December 2007, the Island Oaks property was sold. Both banks agreed to a sales price of \$ 1,007,313.46. The proceeds were divided in accordance with the Loan Participation Agreement percentages. MARINE received \$ 477,164.39 less expenses of \$ 26,164.33 for a net of \$451,000.06.

MARINE seeks damages in the following method:

participation of \$ 806,886.96 (at default)

minus the net proceeds \$ 451,000.06 (sale after foreclosure)

damages \$ 355,886.96 (from 12/28/2007)

This request for damages would return MARINE back to where it was before this Loan Participation Agreement was entered. MARINE did not make a request for the benefit of the bargain.

LEGAL ANALYSIS

BREACH OF CONTRACT

MARINE must prove the following elements on their breach of contract claim: 1) a valid contract, 2) a material breach, and 3) damages. See Merin Hunter Codman, Inc. v. Wackethut Corr. Corp., 941 So. 2d 396, 398 (4th DCA 2006).

VALID CONTRACT

The parties agreed the Loan Participation Agreement consisted of P. Exs. 3 & 4. These two documents are the contract between MARINE and FBB.

MATERIAL BREACH

Having proven a valid contract, the Court turns next to MARINE'S burden of proving a material breach.

MARINE has alleged FBB materially breached the contract. MARINE proved that FBB's loan officer did not utilize an independent inspector for the eleven (11) draws it paid to the contractor. MARINE proved that FBB allowed Randall Byrd, P.E. to conduct the inspections knowing he had been hired by the contractor and the developer. MARINE proved that the lack of an independent inspector allowed the money to get ahead of the project. MARINE proved FBB allowed money to be invested in Phase 2 although Phase 1 was not complete. This Court finds the aforementioned conduct to be a breach of the parties' contract.

MARINE did not prove that FBB provided very confusing information. The draw requests were the same as submitted to FBB and on all eleven (11) occasions reviewed and approved by officers of both banks. MARINE never asked for any clarifications if they thought the information was confusing. MARINE did not prove that FBB failed to provide a detailed Schedule of Values. Again, each bank had officers review and approve the draw requests. MARINE never requested further information as to the Schedule of Values. MARINE did not prove that profits were paid to the Contractor and Developer. MARINE did not prove that FBB failed to require the Developer to put cash first. MARINE failed to prove that no site work was completed before the loan closing between FBB and the Developer. MARINE did not prove that FBB failed to require lien waivers. In fact, most construction projects experience this issue and the issue was easily resolved by FBB.

Although, a breach is not enough in itself, the breach would need to be a material breach. To be a material breach, the breach would need to satisfy the "same degree of care" standard and also be "willful misconduct".

"SAME DEGREE OF CARE" & WILLFUL MISCONDUCT

The common law requires a banker exercise the same degree of care reasonably required in the banking profession. In other words, under the common law, the duty of a banker is measured by peers in the absence of contract.

The language used in a contract is the best evidence of the intent and meaning of the parties. Jenne v. Church & Tower, Inc., 814 So. 2d 522, 524 (Fla. 4th DCA 2002); *see also* Khosrow Maleki, P.A. v. M.A. Hajianpour, M.D., P.A., 771 So. 2d 628 (Fla. 4th DCA 2000) ("It is axiomatic that the clear and unambiguous words of a contract are the best evidence of the intent of the parties. Where contracts are clear and unambiguous, they should be construed as written, and the court can give them no other meaning.") Where, however, a contract term is susceptible to more than one reasonable interpretation, extrinsic evidence may be considered by the court to ascertain the intent of the parties. *See* Murley v. Wiedemann, 25 So. 3d 27, 30 (Fla. 2d DCA 2009), *review denied*, 36 So. 3d 657 (Fla. 2010). Absent an ambiguity, the plain language and the plain meaning of that language controls. Emergency Assocs. of Tampa, P.A. v. Sassano, 664 So. 2d 1000, 1003 (Fla. 2d DCA 1995). Just because a provision may be complex, and needs to be analyzed in order to be applied, does not mean that it is ambiguous. *See* Swire Pac. Holdings, Inc. v. Zurich Ins. Co., 845 So. 2d 161, 165 (Fla. 2003).

The Court has boiled down the servicing standard located in paragraph 10 of the Loan Participation Certificate and Agreement to the following:

"Bank will service and manage the loan ... and will exercise the same degree of care to protect Participant's interest as it does its own."

The Court finds this "same degree of care" is analyzed as a bank would conduct its own affairs. Therefore, the lead bank would need to protect the participant's interests as its own. This would mean, if the lead bank does not place its interests ahead of the participant bank, no liability would attach. If the lead bank placed its interests ahead of the participant's interests, liability would attach.

MARINE did not produce any evidence that FBB placed its own interests ahead of MARINE. In fact, all evidence produced showed clearly that at all times FBB treated MARINE exactly the same as itself. All money invested was pursuant to the percentages in the Loan Participation Agreement. The one payment received during this transaction was distributed according to that specified percentage. There was no evidence of an occasion where FBB treated MARINE any differently than itself.

The Court finds that the "same degree of care" servicing standard is further limited in paragraph 10 of the Loan Participation Certificate and Agreement by the following:

"... except of its willful misconduct."

The term "willful misconduct" in the Loan Participation Agreement is not ambiguous. The absence of a definition for this term in the Loan Participation Agreement does not mean the term is ambiguous. See State Farm Fire & Cas. Co. v. CTC Dev. Corp., 720 So. 2d 1072, 1076 (Fla. 1998).

There is no precise definition of the term willful, because its meaning largely depends on the context in which it appears. Willful generally signifies an intentional act as opposed to an inadvertent act. In Florida criminal cases, "willful" means intentional, purposeful, and with

knowledge. Florida Standard Jury Instructions in Criminal Cases, Instructions 8.18, 8.19, et al. (2012). The term "willful" requires a finding of actual intent to harm. This is a heavy burden. Misconduct means worse than mere substandard action, and contemplates the intentional doing of something with knowledge that it is likely to result in harm. Willful misconduct means intentionally doing that which should not be done or intentionally failing to do that which should be done, knowing that harm will result.

MARINE did not prove that FBB's breaches violated the same degree of care limitation of liability. Even if MARINE had proved a violation of the same degree of care limitation on liability, MARINE did not prove willful misconduct. MARINE did not prove that anything FBB did or failed to do was willful misconduct, pursuant to the liability limitation in the Loan Participation Agreement. Not having proved a breach beyond the same degree of care or willful misconduct, the Court finds no material breach and therefore does not need to consider damages.

BREACH OF FIDUCIARY DUTY

A cause of action for breach of a fiduciary duty is founded on a fiduciary relationship. A fiduciary relationship may be either express or implied. See Capital Bank v. MVB, Inc., 644 So. 2d 515 (Fla. 3d DCA 1994). Express fiduciary relationships are created by contract or by legal proceedings. See *id.* Implied fiduciary relationships are based on the circumstances surrounding the transaction and the relationship of the parties, See *id.*; Hooper v. Barnett Bank of W. Fla., 474 So. 2d 1253 (Fla. 1st DCA 1985), and may be found when "confidence is reposed by one party and a trust accepted by the other." Dale v. Jennings, 107 So. 175 (Fla. 1925).

"To establish a fiduciary relationship, a party must allege some degree of dependency on one side and some degree of undertaking on the other side to advise, counsel, and protect the weaker party." Watkins v. NCNB Nat'l Bank of Fla., N.A., 622 So. 2d 1063, 1065 (Fla. 3d DCA

1993), *review denied*, 634 So. 2d 629 (Fla. 1994). "In an arm's length transaction...there is no duty imposed on either party to act for the benefit or protection of the other party, or to disclose facts that the other party could, by its own diligence have discovered." *Id.* at 1065. See also Maxwell v. First United Bank, 782 So. 2d 931 (Fla. 4th DCA 2001).

Fiduciary relationships are not inherent between co-participants in a loan participation agreement. Whether fiduciary duties arise from a loan participation agreement is generally controlled by the language of the agreement. First Citizens Fed. Sav. And Loan Ass'n v. Worthen Bank and Trust Co., N. A., 919 F.2d 510, 513 (9th Cir. 1990). Absent language "expressly and unequivocally" creating a fiduciary relationship in a loan participation agreement, no fiduciary relationship exists between the participants. Banque Arabe et Internationale D'Investissement v. Maryland Nat'l Bank, 57 F3d 146, 158 (2d Cir. 1995). Banks and savings institutions engaged in commercial transactions normally deal with one another at arm's length and not as fiduciaries. See Aaron Ferer & Sons v. Chase Manhattan Bank, 731 F.2d 112, 122 (2nd Cir. 1984). This rule holds true for institutions engaged in loan participation agreements. First Citizens at 514.

Applying these legal principles to the facts of this case dispels the notion that a fiduciary relationship existed between Marine and FBB. MARINE has not proven that a fiduciary relationship existed between the parties.

CONCLUSION

The Loan Participation Agreement explicitly limited FBB's liability pursuant to the specified servicing standard. While FBB did breach the Loan Participation Agreement, the breach did not rise to the level of a material breach. Therefore, MARINE did not prove its breach of contract claim.

The Loan Participation Agreement did not create a fiduciary relationship between MARINE and FBB. Therefore, MARINE did not prove its breach of fiduciary duty claim.

ORDERED AND ADJUDGED that:

- 1) The Court finds in favor of the Defendant, FBB, and a Final Judgment is hereby entered in their favor. The Plaintiff, MARINE, shall recover nothing in this case and the Defendant shall go hence without day.
- 2) The Court reserves jurisdiction to determine entitlement to attorney's fees and costs.

DONE AND ORDERED in Viera, Brevard County, Florida, this 19th day of March, 2012.

John C. Murphy
Acting Circuit Court Judge

cc:
JACK A. KIRSCHENBAUM, ESQ.,
GrayRobinson, P.A.,
1795 W. Nasa Blvd.,
Melbourne, Florida 32902
jack.kirschenbaum@gray-robinson.com

ALLAN P. WHITEHEAD, ESQ.
Frese, Hansen, Anderson, Anderson, Hueston & Whitehead, P.A.
2200 Front Street, Suite 301
Melbourne, Florida 32901
awhitehead@fresehansen.com

IN THE CIRCUIT COURT OF THE
EIGHTEENTH JUDICIAL CIRCUIT
IN AND FOR BREVARD COUNTY,
STATE OF FLORIDA

Case No.: 05-2006-DR-006959

IN RE: THE MARRIAGE OF

JOHN B. KUHLEY,

Husband/Petitioner,

vs.

JOYCE KUHLEY,

Wife/Respondent.

_____ /

FINAL JUDGMENT

This cause of action having come before this court on May 16, 2008 for Non Jury Trial with the Petitioner being present and represented by Margaret M. Anderson, Esquire and the Respondent being present and represented by Thomas R. Townsend, Esquire and this court having heard the testimony and argument of counsel, reviewed the exhibits and being otherwise advised in the premises and does hereby find as follows:

1. This court has jurisdiction over the parties and subject matter.
2. The marriage between the parties is irretrievable broken.
3. The parties were married on May 5, 1980 in Youngstown, Ohio.
4. The parties separated November 20, 1998.
5. There were no children born of this marriage and none are anticipated.
6. The Petition for Dissolution of Marriage was filed April 7, 2006 in Indian River County and was subsequently transferred to Brevard County.
7. Both parties have worked throughout the marriage.
8. The standard of living the parties enjoyed during the marriage was modest.
9. The parties' medical conditions and emotional state do not preclude their future employment.

10. The parties lived and worked together in Youngstown, Ohio from 1980 until 1996.
11. Many unfortunate events befell the Kuhleys while in Ohio.
 - a. The husband was employed at G.F. Furniture for 17.5 years when they stopped operating the business.
 - b. The parties home was foreclosed upon resulting in a deficiency judgment of approximately \$10,000.00.
 - c. Both parties admitted to varying levels of drug use during this time.
12. The parties agreed to a fresh start in Florida.
13. Upon arriving in Florida in 1996, the husband worked for his brother in law, whose business evidently shut down. The wife commenced her employment with Wuestoff Health. Subsequently, the husband commenced employment with Ocean Spray.
14. Shortly after arriving in Florida, the parties signed a contract for deed to purchase an acre lot with a double wide modular home, which after separation the wife continued to reside in and make payments. The wife continued to make payments until 2004 when she financially was unable to continue the payments. In 1999, the wife made a decision to stop making payments on her car which was repossessed in order to continue to make the payments on the contract for deed.
15. The parties purchased a Kirby Vacuum Cleaner with the husband's credit card. The debt was sold and resold over these years. The vacuum was left at the marital residence upon the husband's departure. The wife had the possession and use of this vacuum from separation in 1998 until 2004. The wife testified that she left the vacuum at the marital residence upon her departure in 2004. The wife wasted this asset by leaving the vacuum at the former marital residence thinking the husband could pick it up but not notifying him. The vacuum's value is \$400.00 therefore the husband's share is \$200.00.
16. The parties separated in November 1998. The husband packed up his clothes and tools and departed. The parties did not communicate during separation.

17. Just prior to separation the wife's brother passed away in Ohio. While attending the funeral, the wife received a \$2000.00 inheritance just prior to returning to Florida. The parties spent about \$200.00 traveling back to Florida. Upon return to Florida, the remaining inheritance money was deposited into the parties' joint bank account. The wife testified that the husband took the full 1800.00 from the account at separation. The husband testified that he only took \$1,000.00 from the account. This inheritance is not a marital asset. When the separation occurred, the husband withdrew this money from the joint bank account shortly after it's deposit. The \$1800.00 inheritance is the wife's non-marital property.
18. In April 1999, husband's former employer, G.F. Furniture, sent a \$2,415.68 check to the former marital residence. The wife signed the husband's name and deposited the check into the parties' bank account. The wife used the money for her purposes. This distribution check is a marital asset. The husband's share of this asset is \$1,207.84.
19. The parties each have a vehicle. The husband possesses a 2003 Nissan Altima and the wife a 1993 Dodge Caravan. This is a very telling part of this case. At separation, the husband left with a 1996 Buick. The car was purchased in July 1998 for a \$3,100.00 trade in and \$500.00 cash. In late 2003, the husband traded in the 1996 Buick for \$1000.00 towards the purchase of the 2003 Nissan Altima. The Altima was purchased in October 2003 for over \$20,000.00 with payments at \$470.13 per month for 6 years. At separation, the wife possessed a 1998 Ford Escort. She was paying \$400.00 per month until it was repossessed in 1999. She then purchased a 1993 Dodge Caravan. Since 2003, the husband has enjoyed the use of an almost new vehicle, 2003 Nissan Altima, while the wife has struggled along in a 1993 Dodge Caravan. He has a vehicle 5 years old and her vehicle is 15 years old. The 2003 Nissan Altima is currently worth \$8,000.00 with a loan balance of \$6600.00 or equity of \$1400.00. The 1993 Dodge Caravan is currently worth \$600.00. Husband's equity \$1400.00 minus the wife's equity \$600.00 leaves a net marital asset of \$800.00. The wife's share of the vehicle equitable distribution is \$400.00.

20. Husband worked for Ocean Spray for 7.5 years until they shut down in 2005.

The husband started receiving a pension of \$103.65 per month in January 2006 from his employment at Ocean Spray. Therefore, the husband has received \$3,109.50 through May 2008. The beneficiary on this pension is husband's roommate, Ms. Pyle, and should have been the wife according to the Ocean Spray's Pension Benefit Options form. The husband failed to obtain the spousal signature to designate some other person as beneficiary. This pension is a marital asset. The wife's share of the pension received from Ocean Spray is \$1,504.75.

21. Wife has continued to work at Wuestoff Health. She has accumulated a retirement account of \$2074.80. This retirement account is a marital asset. The husband's share of this retirement account is \$1,037.40.

22. The Court specifically finds pursuant to Florida Statute 61.08(2) as follows:

a. *The standard of living established during the marriage.* The parties established a modest standard of living during their marriage. The evidence is the parties had two homes foreclosed upon. The parties took few vacations, accumulated no savings, jewelry and/or investments.

b. *The duration of the marriage.* This is a long term marriage of 28 years. The parties separated after 18 years. The Petition for Dissolution of Marriage was filed at the 26 year point.

c. *The age and the physical and emotional condition of each party.* The husband is 60 years of age and reasonable healthy. The husband testified that he has experienced a number of cardiac events and has high blood pressure. When laid off at his last employment, he is losing his prescription plan which required payment of only \$100.00 per month. No evidence was presented on what the husband's prescriptions will costs without the benefit of his previous plan.

The wife is 54 years of age, in reasonable health and employed. The wife testified that she was unable to work full time during 2005 to 2007 because of breast cancer. She testified she is cancer free and therefore has resumed full time employment.

d. *The financial resources of each party, the nonmarital and marital assets and liabilities distributed to each.* The parties presented no evidence that they have any significant marital and/or non-marital assets.

e. *When applicable, the time necessary for either party to acquire sufficient education or training to enable such party to find appropriate employment.* The wife presented no evidence of any desire or need for further education or training.

f. *The contribution of each party to the marriage, including, but not limited to, services rendered in home-making, child care, education and career building of the other party.* Both parties worked, although, husband was the primary breadwinner.

g. *All sources of income available to either party.* The husband is unemployed. His last employer, Ford Wire and Cable had a reduction in force going from 48 to 7 employees. He was let go on April 5, 2008. He has applied for and is currently receiving unemployment compensation, which requires three job searches per week. The husband testified that this month he has been unemployed is the longest period he has ever been without employment. The court finds that the husband has acted in good faith as to his temporary unemployment of one month. The husband's layoff was not voluntary. The husband has a journeymen electrician's license and could take the exam to become a master electrician. He also possesses basic welding skills. His annual gross income is approximately \$42,000.00. This annual amount is based on the husband's 2004, 2005, 2006, 2007 Income Tax returns. In 2008, the husband made \$11,187.00 from the beginning of the year to his permanent layoff on April 5, 2008. Since that date, the husband has received unemployment compensation in the amount of \$275.00 per week or \$1,182.50 per month. He also receives \$103.69 in retirement benefits from Ocean Spray.

The wife is employed at Wuestoff Health Systems as a Certified Nurse Assistant. She has been employed by Wuestoff since moving to Florida in 1996. She has enjoyed pay raises starting at \$6.50 an hour in 1996 to \$12.29 per hour in 2008. The wife receives compensation for on-call time and this was utilized by the court. The wife's annual gross income is approximately \$26,000.00. This annual amount is based on the wife's 2004, 2005, 2006, 2007 Income Tax returns. In 2008, the wife made \$10,621.75 from the beginning of the year to April 26, 2008.

h. *The court may consider any other factor necessary to do equity and justice between the parties.* The husband has been in a supportive relationship with Ms Sherry Pyle for almost 8 years. While the supportive relationship is intended to be used to reduce or terminate alimony, this court finds no reason the same analysis can't be used to find an increased ability to pay alimony. The court used the nonexclusive list of eleven factors set out in §61.14(1)(b)(2).

1) *The extent to which the obligee/or and the other person have held themselves out as a married couple by engaging in conduct such as using the same last name, using a common mailing address, referring to each other in terms such as "my husband" or "my wife," or otherwise conducting themselves in a manner that evidences a permanent supportive relationship.* The husband

and Ms. Pyle have a common mailing address. There was no evidence that they have held themselves out as husband and wife. Their supportive relationship is approaching 8 years and the court finds an intent to be a permanent supportive relationship. The husband, somehow, was able to place Ms. Pyle on his Ocean Spray pension. This beneficiary designation, by the form, requires the spouse's signature to name other than the spouse. This beneficiary designation indicates more than the roommate relationship described during the trial.

2) *The period of time that the obligee/or has resided with the other person in a permanent place of abode.* The husband has been in a long term supportive relationship with his roommate/landlord. The husband has been living with Ms Sherry Pyle in her home for almost 8 years.

3) *The extent to which the obligee/or and the other person have pooled their assets or income or otherwise exhibited financial interdependence.* Ms. Pyle testified she did not keep record of Mr. Kuhley's payments of rent, utilities or food. The husband often handles Ms. Pyle's banking activities. The husband has no checking account and at times Ms. Pyle has written checks for him. Ms. Pyle testified she has made car payments for husband.

4) *The extent to which the obligee/or or the other person has supported the other, in whole or in part.* See sub paragraph 3 above.

5) *The extent to which the obligee/or or the other person has performed valuable services for the other.* The reduced rent to Ms. Pyle was being compensated by the husband taking on additional domestic duties. Additionally, the husband runs errands for Ms. Pyle including conducting her banking transactions.

6) *The extent to which the obligee/or or the other person has performed valuable services for the other's company or employer.* There was no evidence presented on this factor.

7) *Whether the obligee/or and the other person have worked together to create or enhance anything of value.* There was no evidence presented on this factor.

8) *Whether the obligee/or and the other person have jointly contributed to the purchase of any real or personal property.* During the time this action has been pending, the husband's rent has increased from \$351 plus half of the utilities and food to \$707 plus half of the utilities and food in just 27 months. This rent increase is not normal. The increases in rent were directly tied to the roommate's mortgage payments and nothing else. Ms. Pyle testified that she is currently accepting less money from Mr. Kuhley in exchange for him taking on more domestic duties at the home. The court finds this agreement to be an equity sharing agreement as to the real property.

9) *Evidence in support of a claim that the obligee/or and the other person have an express agreement regarding property sharing or support.* See sub paragraph 8 above.

10) *Evidence in support of a claim that the obligee/or and the other person have an implied agreement regarding property sharing or support.* See sub paragraph 8 above.

11) *Whether the obligee/or and the other person have provided support to the children of one another, regardless of any legal duty to do so.* The agreement to split the food and utilities included no adjustment when Ms. Pyle's two daughters were residing in the home. The husband also paid car insurance which listed Ms. Pyle and her two daughters on the policy.

23. The parties enjoyed a long term marriage and there is a presumption in favor of alimony. The marriage was 26 years from the date of marriage to the filing of the petition although the parties lived as husband and wife for 18 of those years. This court believes more than nominal alimony is appropriate.

24. The husband has an ability to provide permanent periodic alimony although at the current time that ability to pay is reduced. The husband does not anticipate this current reduced ability to pay to continue into the future.

25. The wife has a need for such permanent periodic alimony.

It is therefore ORDERED AND ADJUDGED that:

1. The marriage between the parties is dissolved and each restored to the status of single.
2. In determining alimony, this court took into consideration that this was an at least an 18 year marriage and therefore there is a presumption favoring alimony. This presumption was not overcome by the evidence. The parties had a modest standard of living, both parties are emotionally and physically able to work, and marital assets are minimal.
3. This court finds that the husband has the ability to pay permanent periodic alimony since the filing of the Petition. Currently, the husband has the reduced ability to pay permanent periodic alimony due to his recent unemployment. Although the reduced ability to pay is minimized since the husband is in a permanent supportive relationship. Even if his employment situation remains the same, his roommate has financially assisted him in the past and will continue to assist him in the future.

4. This court finds that the wife has a need for permanent periodic alimony which has existed since the filing of the Petition.
5. The husband shall pay to the wife the sum of \$110.00 per month for permanent periodic alimony. Said payments shall commence on the first day of June 1, 2008 and continue on or before the first day of each month thereafter until the death of either party or the remarriage of the wife, whichever occurs first.
6. This alimony amount represents about 10% of the husband's unemployment compensation and therefore he has 90% to pay his obligations. Since he is not held to strict contractual terms in his supportive relationship, the husband should have more than enough funds to pay this alimony and cover his expenses.
7. Said payments shall be made payable to Florida Support Disbursement Unit, P.O. Box 8500, Tallahassee, Florida 32314-8500, together with the statutory service charge. Payment shall be made in the form of cash, personal check, cashier's check, money order or other approved method of payment and must include the case number, name of obligor and oblige for proper identification.
8. Both parties shall immediately notify the court depository of any changed of their name, address and place of employment, other source of income or other information that would affect their abilities to discharge their legal duties.
9. The husband is responsible for alimony back to the date of the filing of the Petition in March 2006. The husband shall pay lump sum \$2,970.00 to the wife as alimony representing \$110.00 per month for the 27 months this case has been pending.
10. This court orders that the pension/retirement plan shall be divided as follows:
 - a. The husband's Ocean Spray pension (\$103.65) shall be equally split between the parties. The wife is entitled to receive \$51.82 per month from the husband until the Qualified Domestic Relation Order (QDRO) is in place. The husband is directed to pay the wife until the QDRO is in effect.
 - b. The husband shall irrevocably change the beneficiary on the Ocean Spray pension to the wife.
 - c. This account is subject to division by a QDRO. The QDRO shall be prepared by the wife's attorney.

11. The Court orders the husband to pay the wife \$1,259.51 for the net equitable distribution of the marital assets and taking of non-marital property of the other. This net amount is calculated from the following:

- a. Paragraph 15, Vacuum Cleaner, the wife will pay \$200.00 to the husband.
- b. Paragraph 17, inheritance taken at separation, the husband will pay \$1,800.00 to the wife.
- c. Paragraph 18, check from G.F. Furniture, the wife will pay \$1,207.84 to the husband.
- d. Paragraph 19, vehicles, the husband will pay \$400.00 to the wife.
- e. Paragraph 20, Ocean Spray's Pension received, the husband will pay \$1,504.75 to the wife.
- f. Paragraph 21, Wuestoff Health retirement account, the wife will pay \$1,037.40 to the husband.

12. Any other obligations of the parties not specifically disposed of in this Final Judgment shall be borne by the party who incurred said liability, who shall be responsible for its payment and who shall hold the other party harmless from any liability thereon.

13. Wife has made a request for attorney fees and costs. The Court finds the substantial competent evidence there is a need for, and that husband has an ability to pay some of wife's attorney fees. The Court finds by substantial competent evidence that the reasonable attorney fees in this matter to be awarded to Attorney is \$5,013.58 which allows for a reasonable 23.1 hours at the reasonable rate of \$200.00 per hour for the attorney, and a reasonable 5.7 hours for the Legal Assistant at the reasonable rate of \$50.00 per hour and the reasonable costs expended of \$108.58. The Court finds husband has the ability to pay 50% of the awarded attorney fees and costs. The payment by husband to Thomas R. Townsend, Esquire shall be \$2,500.00 for attorney fees and \$56.00 for costs. Payments shall be at the rate of \$200.00 per month on the first of every month beginning June 1, 2008 until paid in full plus statutory interest.

14. Court reserves jurisdiction except as to the dissolution of marriage granted in this judgment, this court specially reserves jurisdiction over the parties hereto and the entire subject matter to enter any further orders concerning enforcement or modification or otherwise that may be equitable, appropriate and just. Further, the parties are ordered and

directed to abide by and comply with each and every provision of this judgment. Further, they are ordered and directed to take whatever action is reasonable and necessary to conduct themselves in a manner conducive with carrying out the intent and purpose of this judgment.

DONE AND ORDERED at the Moore Justice Center in Viera, Brevard County, Florida this ____ day of May, 2008.

JOHN C. MURPHY
COUNTY COURT JUDGE
Acting CIRCUIT JUDGE

cc:

Margaret M. Anderson, Esq., 1707 20th Street, Vero Beach, Florida 32960
Thomas R. Townsend, Esq., 984 Florida Ave., Rockledge, Florida 32955-2100

QUALITY LEADERSHIP

**John C. Murphy
MAJ, SF, FLARNG
310 Albacore Place
Melbourne Beach, Florida 32951
22 FEB 91**

QUALITY LEADERSHIP

Leadership is the single most important attribute of a successful unit. Good leaders concentrate on motivation, inspiration, and pride. They help subordinates make substantive improvements in the way they work.

Leadership is not synonymous with management excellence. Managers tend to focus on standards, rules, and numbers. Successful leaders employ these principles, but good managers are not necessarily strong leaders.

What follows are components of leadership. They are discussed in order of importance.

"Honesty is always the best policy."
GEORGE WASHINGTON

1. Quality leaders have integrity. A leader is held responsible for his own actions. For example, he may see other officers coming in late, leaving early to play golf, or taking advantage of a situation for their own personal gain. But as an officer, the leader must realize that his own behavior and actions will be a direct reflection on the way he is perceived and how well his unit performs. He cannot be in it for himself. He must be a team player and think of everything in the "we" sense instead of the "I" sense. He should never let his personal habits interfere with his job performance.

A leader must be loyal to his unit, his soldiers, and his leaders. Many times, he will find himself in disagreement with other leaders. His only option is to voice his opinion in a professional manner. By doing this, he shows that he can stick to his guns, and he may be able to provide constructive comments that will influence the decision. On the other hand, he often has to accept a decision he does not agree with and follow through unconditionally with the orders he

is given. This "unconditional obedience" is, for the most part, necessary to make the chain of command function.

Loyalty is a two-way street. If a leader expects his subordinates to be loyal to him, he has to be loyal to them, or there will be a serious breakdown in leadership within the organization. A leader does not speak critically of another leader in front of troops. When there is a loss of integrity among his leaders, the soldiers observe the breakdown and lose their faith in the unit's leadership.

"Doing what's right isn't the problem. It's knowing what's right."
PRESIDENT LYNDON B. JOHNSON

2. Quality leaders set the example. Leaders should regularly ask themselves if they want their subordinates to copy their actions. Do you preach one story and practice another? Are you leading your followers down the right path? Quality leaders lead by setting the example you want others to follow.

Leaders do not set higher standards for their subordinates than they set for themselves. Leaders set the highest standards for their own performance first, then ask their subordinates to follow their own example. A leader who accepts mediocrity is one who compromises. When a leader compromises, the unit compromises. Quality leaders set and demand standard of excellence. While a leader should not compromise, he should allow subordinates the ability to fail on smaller tasks. Subordinates cannot innovate unless the leader is willing to accept some mistakes.

A leader accentuates the positive, identifies areas that deserve improvement, work toward initiating solutions to problems. One cannot lead while constantly griping about problems. Most importantly, the leader must have a deep love for what he is doing.

Love does not mean dedication to the degree of excluding other pursuits. Love means showing by your actions that if you had it to do over again, you would be a leader, but with the desire to avoid whatever mistakes you made along the way.

"Men think as their leaders think."
GEN. CHARLES P. SUMMERALL

3. Quality leaders communicate. Complete communications in an unit can make it more effective and efficient. When leaders do not communicate with subordinates, they actually make their own jobs harder, because those who feel left out may not work to their full potential.

Regular staff meetings are the most effective way to improve communications. Whenever problems arise, call a meeting, place the problems on the table for discussion, make some decisions, and the problems will be solved. If problems exist and are not addressed they will remain unsolved. A Commander's Policy Notebook can answer many recurring problems.

A big part of the skill of effective communication is attentive listening. Effective listening is thoughtfully considering the ideas and proposals of subordinates. It is seeking out innovation.

No leader knows all the answers. Ask your subordinates about matters which you don't understand. It is important you make sure subordinates know you appreciate their willingness to take a risks by suggesting unconventional approaches.

Furthermore, reward subordinates when their ideas are implemented. Explain why their proposals work or why they will not or cannot be adopted. The follow up communications are the icing on the listening cake.

It is much easier to keep your subordinates informed in peacetime than in wartime. In peacetime, you can inform via the written word, but the best method is direct contact with subordinates. In wartime, the leader keeps his subordinates informed through warning orders, frag orders and operation order. Based on planning, the leader directs rehearsals. Whether in peacetime or wartime, the leader does not inform subordinates by rumor control.

"A unit does well those things the leader checks."
GEN. BRUCE CLARK

4. Quality leaders set goals and delegate. Planning for the future significantly increases the probability actions will follow the right course. Planning will not guarantee success, but it certainly makes it more likely.

Leaders strive to meet the highest standards possible. Quality and excellence pay long term benefits. Leaders work to bring true meaning to these words by developing specific tasks aimed toward achieving them.

Leaders know how to push subordinates to new challenges that they have a reasonable chance of conquering. They understand that the best performers thrive on challenge. They appreciate stagnation can occur without challenge. Quality leaders have set priorities for their subordinates and their unit.

A leader cannot and should not do everything that a unit requires. He delegates but does not abdicate. Leaders stand behind their subordinates and do not over control them.

Leaders tolerate mistakes as long as they are not repeated and subordinates learn lessons from each one. Expecting perfection is to expect super human performance, however, tolerating sloppy thinking and casual attention to matters is to invite disaster and chaos in a unit. When delegating, a leader must make sure his orders are clear and understood. Then he must check to see the orders are being carried out. In peacetime, the leader checks on training and follows up on projects. In wartime, the leader positions himself to best influence the action.

"A good plan today is better than a perfect plan tomorrow."
GEN. GEORGE PATTON

5. Quality leaders are decisive. Individuals who procrastinate and take forever to make a decision or who "waffle" after one may have a hard time leading. Quality leaders make decisions that do not require so much time as to significantly dilute their effectiveness. It is absolutely better to do something than to do nothing at all.

Leaders need to grab hold of tough problems. Leaders should do the hardest job first. A quality leader has to be personally involved in challenging issues and must not let the subordinates make the hard decisions.

Leaders take the initiative by improving both his unit and himself. To do this a leader concentrates on one goal making his unit the best in the Army. This means refusing to allow training distractions to control his training. Leaders do not wait for his orders to train, he does it.

"The man who commands efficiently must have obeyed others in the past,
and the man who obeys dutifully is worthy of being some day a commander."
MARCUS TULLIUS CICERO
Roman Statesman

6. Quality leadership in humility. How often one sees arrogance attempt to cover up incompetence, bullshiness camouflage insecurity, and impatience mask indecisiveness. A humble man is one who does not take all the credit himself for his units accomplishments. He does not hog the show. He is self-confident knowing his own capabilities. He is not afraid to take the rap for his units failings, and admit he made a mistake. A humble leader knows his subordinates are intelligent and have valid worthwhile ideas. The humble leader lends his ear to his subordinates, then make a decision.

"The final test of a leader is that he leaves behind him in other men
the conviction and the will to carry on."

WALTER LIPPMAN

Journalist

These thoughts represent my personal beliefs on what leadership should be. It does not differ from the fire team leader, to the commander of our largest unit, to the Chairman of the Joint Chiefs of Staff. Leadership is getting others to do what you want them to do. If you do not fail your subordinates, they will not fail you.

Newspaper Articles

Veterans

Continued from Page 1A

discharged as the military downsizes.

"It's important to note that we have lots of veterans coming home," said Chris Deutsch, a spokesman for NADCP. "We know some of them will struggle and end up in the justice system."

The Veterans Treatment Court will begin hearing cases in which the victim, the State Attorney's Office, the defendant and the defendant's attorney all agree to participate in the program.

Referrals to the program may be made by the court, by the jail, the state attorney, defense attorney, law enforcement, mental health providers, a veterans organization or others. Corrections officers are to inquire whether a person being booked into the Brevard County Detention Center is a veteran. That information is then passed on to the state attorney, who in turn will ask the Department of Veterans Affairs for verification.

If the veteran is entitled to receive services for treatment for behavioral health issues, Murphy can transfer the case to his court.

Murphy, a retired colonel who served 30 years in the Army, said he believes that the Veterans Treatment Court can intervene before a veteran gets into serious trouble. He wants those who appear before him to realize that committing crimes is wrong, but still wants them to be productive members of society.

"You don't want to get them discouraged," he said. "You don't want to tattoo them forever."

It's not much different from military discipline.

"I always felt that the best training I ever had to be a judge was not as a lawyer, but as a military commander," Murphy said.

Each veteran will be assigned a mentor to help

them through their case and help them get to appointments and encourage them to complete the program.

"It's a problem-solving court," said Assistant State Attorney Wayne Holmes, who helped with the program setup, as he did with a drug court and mental health court, too.

Holmes said charges would be dismissed if a veteran successfully completes the program.

"I think particularly in (this) community where we have so many veterans, it can be beneficial," Holmes said.

Some veterans who have passed through the Brevard court system have been homeless. Others suffered from the effects of war, including traumatic brain injury and post-traumatic stress disorder.

Holmes said troops be-

ing discharged will be arriving home soon, some returning from Iraq and Afghanistan with mental health concerns.

According to the research organization RAND Corporation, at any given time, about 15 to 20 percent of returning service members meet criteria for a probable diagnosis of post-traumatic stress disorder, with similar numbers meeting the criteria for post-deployment major depression.

"It's something we're going to be dealing with more and more," Holmes said.

George Taylor, an advocate for homeless veterans, will assist Don Wassmer, who is vice president of the Vietnam and All Veterans of Brevard, in coordinating the mentor program for the Veterans Treatment Court.



Don Wassmer, left, vice president of Vietnam and All Veterans of Brevard, seen with Ross Perot in May, will help coordinate the mentor program. FLORIDA TODAY FILE

ABOUT THE COURT

The Veterans Treatment Court will handle cases involving veterans who are eligible for treatment or placement in a behavioral health program and who have been arrested on misdemeanor charges or criminal traffic offenses, with the exception of DUI.

Taylor said that once a veteran gets charged with a crime, it makes it hard to get a job, which could eventually lead to homelessness. The new court will provide resources to and hopefully keep them out of jail.

"We've been asking for this for a long time," Taylor said. "It's huge for veterans."

Contact Moody at 321-242-3651 or rmoody@floridatoday.com

METRO EDITOR BELINDA STEWART, lstewart@floridatoday.com or 242-3634

You can be excused from jury duty if you are over age 70, a convicted felon, a pregnant woman or a part-time working mother with a child under 6. You can be excused if you are a police officer with arrest powers or if you are under prosecution for a felony.

Or you can be excused if the defense or prosecuting lawyers don't like the way you answer their questions.

That opportunity never came for me.

■ **The official welcome:** At 8 a.m., I arrive at the Moore Justice Center in Viera and shuffle through the court's metal detector bleary-eyed after emptying my pockets of wallet, cell phone, keys and spare change.

I go down a corridor and into a room where a clerk has me fill out a form and hands me a plastic badge-holder for my jury number.

By the time everyone gets sorted, coffee filled and sat down, Piper gives us the official welcome.

She and her fellow jury clerk Mariah Jones crack jokes and keep things upbeat to ease the pain that the 160 of us in the waiting room will have to endure.

Their interplay was more like that of a well-oiled comedy team than government bureaucrats.

"We try to make it light, so people are not stressed out. Give them some information, keep them informed," she said. "Over the years, we have found that people realize it's not so bad after all, so that when they get another summons it's not so bad."

■ **Assigned to a judge:** Around 9 a.m., County Judge John Murphy came down to greet the potential jurors.

"I had to pay out of my own pocket for a box of pencils, but the jury room has a budget for coffee," he said, touching on the serious issue of the court system budget crunch created by Florida's financial crisis.

The jury clerks ran a computer program that randomly assigned each of us to one of three judges: Murphy, Circuit Judge George Maxwell and Circuit Judge John Harris.

Anyone who didn't get assigned to a judge would get to go home. Some cheers.

"Is anyone here not happy?" Mariah Jones asked.

One elderly bald-headed gent raised his hand.

"Oh, I am so sorry," she said. "Anything we can do to make you happy?"

Let me leave, he muttered.

"Oh, we don't want to do that. We want you to stay and enjoy yourself. I'm going to make sure you get assigned now," she kidded. "What is your ID number?"

Because I will make sure you get to stay with us."

Finally, Jones announces our assignments.

The first group went up at 10 a.m. for Judge Murphy. The rest of See JURY, 5B

Brevard Watchlist



For public reaction, updates and original documents, check our daily watchdog report. floridatoday.com/watchdog



Jeff
Schweers
Watchdog

Come on in, the jury pool's fine

If you are a citizen of the United States and Brevard County, and have a driver's license or Florida identification card, chances are you will get called for jury duty.

My jury duty summons arrived in a plain white envelope with the Clerk of Courts return address printed in plain black ink.

It can be an intimidating experience for anyone who hasn't been through it before, and many people look for a way out. About 40 percent of the people called on a given day get an excuse or postponement.

But jurors are an essential part of the criminal justice system as many jury clerks and judges will tell you. Without enough jurors, judges have had to cancel trials. And, sometimes, juries serve justice just by showing up.

"People get so stressed out and fearful about court, period," said Caroline Piper, a jury clerk at the Moore Justice Center in Viera. "A lot of time, they get jury summons, think they did something wrong and don't understand the jury sys-

Reporter reports for jury duty, but sent home

JURY, from 1B

us watched "Family Feud."

■ No liquid lunch: About a half-hour later, Judge Harris released his group. Until 1:30 p.m.

By 11 a.m., our group was released until 1:30 p.m., too. We were admonished not to

have a liquid lunch, unless we were bringing alcohol back to share.

One time, a group of jurors came back from lunch feeling a little too happy, Piper explained.

■ Deals all around: At 2 p.m., we were called up to the fourth floor to sit outside Judge Maxwell's courtroom.

Nearly another hour passed.

Judge Maxwell appeared. He explained that it had been one of those rare days when every defendant who came before him wanted to strike a deal with prosecutors — something about "seeing the whites of their eyes"

that makes the best defense lawyers and fiercest prosecutors give in and cut deals, he said.

"I had a good day," he said. "I sent some people to prison, and I let some go for time served."

Sometimes, knowing a jury is out there waiting to

weigh the evidence can intimidate the most hardened defendant.

"Those six people have a way of seeing through to the truth," Maxwell said. ■ Schwere is a Watchdog reporter for FLORIDA TODAY.

Contact Schwere at 242-3668 or jschwere@floridatoday.com.



MONDAY, MARCH 17, 2008

50 CENTS

FORUM

BLOG

CHAT

VIBR

PHOTO GALLERY





See what's waiting for you at the new

FLORIDA TODAY.com

March 17, 2008

Judge sets an example by answering jury call

No-shows hurt legal process

BY KEYONNA SUMMERS
FLORIDA TODAY

VIERA - Among the dozens of bleary-eyed residents grumbling as they shuffle in for jury duty at 8 a.m. today, there will be one bubbling with anticipation. John Murphy, a county court judge who presides over traffic and misdemeanor offenses, has no chance of being asked to serve: his position as a judge automatically disqualifies him. But Murphy is showing up nonetheless in hope that his presence will remind others that jury duty is an important civic responsibility. Brevard County has struggled with jury duty no-shows for at least the past four years, although the situation is improving. Jury duty clerks in 2007 counted half the number of no-shows per week on average -- about 40 -- than in 2005.

Typically, more than 40 percent of people summoned to jury duty request to be excused or to have their service postponed. No-shows ignore the jury summons altogether. Over the years, that has irked county judges, who have experimented with a variety of measures to combat those who beg off -- everything from fines to scoldings.

"Jury duty is an obligation so people accused of crimes can have their right to a trial, and without persons willing to serve, we can't have our system of justice," said Murphy, an Army reservist and lawyer who has made it his mission to encourage jury attendance since his election to the county bench in January 2007. In 2005, Brevard judges announced a crackdown on no-shows.



Last year, Murphy began handwriting notes about the importance of jury duty on postponement requests, hoping the personal touch would get the attention of those summoned. That gave way to him rubber-stamping all requests, including excusals and denials, with the phrase: "Every citizen needs to serve our community."

Just last month, he spearheaded a project in which the U.S. Postal Service donated a framed replica jury duty stamp to the jury assembly room.

Murphy hopes the effort will help citizens remember that the right to justice doesn't come without a cost.

"There are some jurors that come in and . . . they'll say anything to get off jury duty," said Murphy, who returned from a tour of duty in Afghanistan in 2004.

"I remind them that Uncle Sam called me for a year when it wasn't most convenient in my life (so) it isn't as inconvenient to serve a couple days jury duty as to serve a year in Afghanistan in a combat zone.

"We don't get too many more complaints after that," he said.

Contact Summers at 242-3642 or ksummers@floridatoday.com.



MONDAY, AUGUST 14, 2006

TODAY
Military

Hometown Heroes

John C. Murphy

■ **Rank:** colonel

■ **Branch:** U.S. Army Reserve, Special Forces

■ **Home Base:** Riverdale Park, Md.

■ **Current assignment:** Brigade commanded 354th. Civil Affairs Brigade

■ **Career:** Murphy, a Melbourne attorney, was deployed to Afghanistan between April 2003 and April 2004. During his career in the Army Reserve, he has served in Morocco, the United Kingdom, Honduras, Germany, Panama, Kuwait, South Korea and Afghanistan. He has commanded Special Forces, Air Defense Artillery, Military Police and Civil Affairs units.

■ **From Murphy:** "During my Afghanistan tour, a Special Forces Company of the Florida National Guard that I commanded rotated into (the) country. I was able to spend some time with my former troops when national known author Robert Kaplan visited. These warriors were featured in his book, "Imperial Grunts."