APPLICATION FOR NOMINATION
TO THE
TWELFTH JUDICIAL CIRCUIT COURT

Hunter W. Carroll

May 3, 2013

INDEX TO APPLICATION
FOR NOMINATION TO
THE TWELFTH JUDICIAL CIRCUIT COURT

Document	Tab
Application	1
Transcript, University of Florida	2
Resume	3
List of Reported Decisions	4
Writing samples:	
Response to Motion to Change Venue	5
Motion for Judgment on the Pleadings	6
Appellate Brief	7
Photograph	8

APPLICATION FOR NOMINATION TO THE TWELFTH JUDICIAL CIRCUIT COURT

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

DATE: May 3, 2013 Florida Bar No.: 0297630

GENERAL: Social Security No.: [redacted]

hcarroll@

1. Name Hunter W. Carroll E-mail: matthewseastmoore.com

   Date Admitted to Practice in Florida: September 11, 2000

   Date Admitted to Practice in other States: n/a

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

   Matthews Eastmoore; shareholder and attorney

3. Business address: 1777 Main Street, Ste. 500

   City Sarasota County Sarasota State FL ZIP 34236

   Telephone (941) 366-8888 FAX (941) 954-7777

4. Residential address: [redacted]

   City [redacted]

   Since December 27, 2011 Telephone [redacted]

5. Place of birth: Sarasota, Florida

   Date of birth: [redacted] Age: 38

6a. Length of residence in State of Florida: 38

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

   If so, in what county are you registered? Sarasota

7. Marital status: Married

   If married: Spouse's name [redacted]

   Date of marriage

   Spouse's occupation

   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.

   I have never been divorced.

8. Children

Name(s)	*Age(s)*	*Occupation(s)*	*Residential address(es)*
[redacted]			

9. Military Service (including Reserves)

Service	*Branch*	*Highest Rank*	*Dates*

None.

Rank at time of discharge _____ Type of discharge _____

Awards or citations _____

HEALTH:

10. [redacted]

11a. [redacted]

11b. [redacted]

12a

12b

13.

14.

15. [redacted]

16. [redacted]

17. [redacted]

EDUCATION:

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

Schools	*Class Standing*	*Dates of Attendance*	*Degree*
University of Florida College of Law	23 / 219	8/1997 - 5/2000	Juris Doctorate, with honors
University of Florida College of Business Administration	undetermined	8/1993 - 5/1997	BSBA (finance), with honors
University of Florida College of Liberal Arts & Sciences	undetermined	8/1993 - 5/1997	BA (political science) with honors
Sarasota High School	1 / 529*	6/1989 - 6/1993	Diploma, with highest honors

* Approximate

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

Awards:

University of Florida Hall of Fame
Book Award - Florida Constitutional Law

Jason H. Cherner Award, presented by Florida Blue Key - 1999, 2000
(First two time recipient)
C. Arthur Sandeen Improving the Quality of Life Award - 1999
Outstanding Male Graduate - May 1997
Valedictorian, Sarasota High School, Class of 1993

Honor Societies:

Florida Blue Key (member, executive committee)
Matthews Society
Omicron Delta Kappa (president, treasurer)
Golden Key Honor Society
American Legion Boys State - Certificate of Merit
National Honor Society

Scholarships:

Coca-Cola Scholars Foundation -- national four year scholarship program
Robert C. Byrd Honors Scholarship -- four year scholarship program
Ruth M. Foy Charitable Foundation -- four year scholarship program
Florida Undergraduate Scholars -- four year scholarship program
Valedictorian Scholarship -- one time award by the University of Florida
Teen Court of Sarasota Scholarship -- awarded by local program

NON-LEGAL EMPLOYMENT:

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

Date	*Position*	*Employer*	*Address*
5/1998 - 8/1998	Internal Auditor Intern	Bealls, Inc.	1806 38th Avenue East Bradenton, FL 34208
5/1997 - 8/1997	Internal Auditor Intern	Bealls, Inc.	1806 38th Avenue East Bradenton, FL 34208
6/1994 - 12-1995	Runner	Wershow & Schneider, P.A.	204 SE First Street Gainesville, FL 32601

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.

Court or Administrative Body	*Date of Admission*
United States Supreme Court	January 12, 2004
Eleventh Circuit Court of Appeals	April 29, 2002
District Court, Middle District of Florida	November 7, 2002
District Court, Northern District of Florida	July 19, 2002
District Court, Southern District of Florida	July 19, 2002

No suspensions or resignations.

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:

Position	*Name of Firm*	*Address*	*Dates*
Attorney	Matthews Eastmoore	1777 Main Street Suite 500 Sarasota, FL 34236	3/2008 - present
Attorney	Carlton & Carroll, Attorneys at Law, PA	124 N Brevard Ave Arcadia, FL 34266	9/2005 - 2/2008
Attorney	Carlton Fields	360 Central Avenue Suite 1500 St. Petersburg, FL 33701	9/2002 - 9/2005
Senior Staff Attorney*	Chief Justice Wells Florida Supreme Court	The Supreme Court 500 S Duval Street Tallahassee, FL 32399	5/2000 - 9/2002

Legal Intern	State Attorney - 8th Judicial Circuit, domestic violence	120 West University Avenue Gainesville, FL 32601	1/2000 - 5/2000
Summer Associate	Williams Parker Harrison Dietz & Getzen, P.A.	200 S. Orange Ave Sarasota, FL 34236	5/1999 - 8/1999

*highest position attained

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.

I have a varied civil trial practice, with a strong emphasis on complex commercial matters. I typically handle business disputes ranging from violations of Florida's Uniform Trade Secrets Act to Florida's Deceptive and Unfair Trade Practices Act; from breach of contract actions to injunctive relief on restrictive covenants; from class action defense to civil RICO; from claims involving misrepresentations to claims in equity; and from real property disputes to software development disputes. My typical client is a business owner who has encountered legal difficulties involving her or his business. Sometimes, these problems involve "bet the company" matters. Sometimes, these problems include novel issues of law. I have handled a myriad of other matters, including writs of replevin, distress writs, defamation claims, tort claims, tortious interference claims, construction defects, malpractice claims (both legal and medical), punitive damage claims, and probate litigation. I have drafted and argued numerous summary judgment and other dispositive motions. A common thread running through my practice is that these matters all involve active litigation. Although not otherwise noted in the statistics calling for a completed trial, I have participated in hearings involving class actions, restrictive covenants, and trade secret injunctions, in addition to the normal motion practice, all of which fall within the purview of the Circuit Court.

Additionally, as Matthews Eastmoore represents the School Board of Sarasota County, I practice education law. This runs the gamut from First Amendment issues to labor disputes; from tax election referenda to privacy concerns; and from defense of claims to general advice. There are three smaller, but tangible components to my practice. One, I handle governmental issues, with an emphasis on defending allegations of violations of Florida's Sunshine Law and Public Records Law. Two, I handle matters involving taxing or assessing authority, including challenges or defenses to non ad valorem assessments. Three, I maintain an appellate practice. Exhibit 4 details the reported decisions in which I was involved.

My practice at Carlton Fields was similar to my current practice at Matthews Eastmoore. There are, however, two distinct periods of time during my career where my practice was different.

When I practiced with David Carlton, generally speaking, the litigation was more focused on plaintiff's personal injury matters and first party insurance claims. During that time, however, I continued to handle commercial litigation matters.

When I was Chief Justice Wells' staff attorney, at least one-third of my time was devoted to working on all phases of death penalty cases, including direct appeals, postconviction matters, and active death warrants. I am aware of the unique death penalty case law and procedures that give meaning to the phrase "death is different." Additionally, I handled a variety of other cases, generally involving statutory or constitutional interpretation, bond validation, resolving conflicts between the district courts of appeal, determining the proper role of government officials, election disputes, and determinations of the Florida Supreme Court's own jurisdiction. Notably, I worked on the election cases that culminated in the Bush v. Gore decision by the United States Supreme Court.

Justice Wells also allowed me to assist him on his discharge of administrative matters to Florida's judiciary, the most notable being my attendance at all Trial Court Budget Commission meetings. The TCBC, then in its infancy, was established by the Florida Supreme Court to coordinate and help the Legislature and Florida Supreme Court with funding and policy matters affecting the trial courts, as the voters had recently enacted substantial reform to how Florida's judiciary was to be funded.

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

Court		Area of Practice	
Federal Appellate	0 %	Civil	90 %
Federal Trial	10 %	Criminal	0 %
Federal Other	0 %	Family	0 %
State Appellate	15 %	Probate	5 %
State Trial	70 %	Other	5 %
State Administrative	5 %		
State Other	0 %		
	%		
TOTAL	100 %	TOTAL	100 %

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

Jury?	5, including those as CLI	Non-jury?	4
Arbitration?	0	Administrative Bodies?	8

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).

1. Chrisman v. West, case no. 8:10-bk-05854-MGW, Middle District of Florida Bankruptcy Court, Judge Michael G. Williamson (final ruling to be announced May 15, 2013).

Counsel for Plaintiff: Robert E. Johnson; telephone (813) 273-5000.

Counsel for Florida Lawyers Mutual Insurance Company: Frances M. "Kem" Toole; telephone (813) 222-3184.

I am Trial Counsel for Defendant West.

2. In re: Garden Leaders Corporation Bid Protests, filing date December 8, 2011, before the Lakewood Ranch Community Development Districts 1, 4, and 5

Trial Counsel for Bid Protestor, Garden Leaders Corporation: Morgan Bentley; telephone (941) 556-9030.

Trial Counsel for LWR CDD1: Anthony "Tony" J. Abate; telephone (941) 364-2707.

Board Counsel for LWR CDD 1: Jeffrey S. Russell, deceased.

Board Counsel for LWR CDD 4 and 5: Andrew H. Cohen; telephone (941) 365-4950.

Hearing Officer: H. Hamilton "Chip" Rice, retired; telephone (813) 961-0809.

I was Trial Counsel for LWR CDD 4 and 5.

3. The Leiter Group, LLC v. Palm Island Marina, LLC, et al., case no. 2008-3945-CA, Twentieth Judicial Circuit, Charlotte County. Case was before Judge George Richards.

Counsel for all Defendants: William S. Jonassen; telephone (727) 586-1484 or (727) 410-0275.

I was Trial Counsel and Appellate Counsel for Plaintiff The Leiter Group, LLC. Lamar Matthews was second chair; telephone (941) 366-8888. With us at counsel table was Illinois attorney Samuel B. Zabek, admitted pro hac vice, but he had no active role in the trial; telephone (309) 673-2922.

Associated appeal from this trial: The Leiter Group, LLC, v. Palm Island Marina, LLC, et al, case no. 2D11-2738. The same counsel were involved on the appeal, representing the same parties.

4. Sarasota County School Board v. Karin Ehlers, DOAH case number 10-4142, Administrative Law Judge Elizabeth W. McArthur.

Trial Counsel for Respondent: Kevin F. Sanderson; telephone (941) 244-0468.

I was Trial Counsel for Petitioner.

5. Ocular Innovations, Inc. v. Putrino v. Barzell and Whitmore, case no. 2008-CA-6501-NC, Twelfth Judicial Circuit Court, Sarasota County. Case was before Judge Charles Williams.

Counsel for Defendant / Counterclaim Plaintiff / Third-party Plaintiff Dr. Charles Putrino: Michael Moran; telephone (941) 366-1800.

I was Trial Counsel for Plaintiff / Counterclaim Defendant Ocular Innovations, Inc. and Third-party Defendants Dr. Winston Barzell and Dr. Willet Whitmore. Lamar Matthews was second chair; telephone (941) 366-8888.

6. Dodge v. School Board of Sarasota County, Florida, case no. 2007-CA-1038-NC, Twelfth Judicial Circuit Court, Sarasota County. Case was before Judge Donna Berlin.

Counsel for Plaintiff Nancy Dodge: Robert F. McKee; telephone (813) 248-6400.

Counsel for Intervener Sarasota Classified/Teachers Association: Thomas W. Brooks; telephone (850) 878-5212.

My partner, Art Hardy was first chair; telephone (941) 366-8888. I was second chair.

NOTE: The question did not seem to ask for pro se cases, so I excluded the pro se cases from the "last six" list above. During this time frame, though, there were two pro se cases I tried on behalf of the School Board:

A. Sarasota County School Board v. Berry, DOAH case number 09-3557, Administrative Law Judge Daniel M. Kilbride. The pro se respondent was Brian Berry, last known telephone: (941) 727-2997.

B. Sarasota County School Board v. Davenport, DOAH case number 09-0956, Administrative Law Judge R. Bruce McKibben. The pro se respondent was Ronald Davenport, last known telephone: (941) 485-3443.

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).

1. In re: Guardianship of Eugene Mervin Cloud, Jr., case no. 2012-GA-1513, Twelfth Judicial Circuit Court, Manatee County.

Trial Counsel for the Guardian William Evers: Christopher D. Smith; telephone (941) 907-4774.

Trial Counsel for the Ward: Edwin Mulock; telephone (941) 748-2104.

Trial Counsel for Kevin Cloud: John P. Fleck, Jr.; telephone (941) 749-1832 (not participating in the settlement).

Trial Counsel for First Manatee Bank: Michael M. Hamrick; telephone (941) 747-1871 (not participating in the settlement).

I represented Eugene M. "Trey" Cloud, III

2. Burnt Store Lakes Property Owners Association, Inc. v. Faradiso, LLC, case no. 10-4870-CA, Twentieth Judicial Circuit Court, Charlotte County.

Trial Counsel for Plaintiff / Counterclaim Defendant, Burnt Store Lakes Property Owners Association, Inc.: Keith Hagman; telephone (239) 336-6276.

I represented Defendant / Counterclaim Plaintiff Faradiso, LLC.

3. Borstelmann v. Edge, et al, case no. 2011-CA-6482, Twelfth Judicial Circuit Court, Manatee County.

Trial Counsel for Plaintiff Richard H. Borstelmann: Andre Perron; telephone (941) 750-9760.

Trial Counsel for Amanda Edge: Matt Taylor; telephone (941) 741-8224; (not participating in settlement).

I represented Defendant Graeme Edge.

4. U.S. Funding Group, LLC v. Maximum Processing, Inc., case no. 2009-CA-10302, Twelfth Judicial Circuit Court, Manatee County.

Trial Counsel for Plaintiff / Counterclaim Defendant U.S. Funding Group: Charles J. Bartlett; (941) 366-8100.

I represented Defendant / Counterclaim Plaintiff Maximum Processing, Inc.

5. Wachovia Bank, N.A. v. Graeme Edge, et al, case no. 2009-CA-1691, Twelfth Judicial Circuit Court, Manatee County.

Trial Counsel for Wachovia Bank: Greg Rosenthal; telephone (954) 491-2000.

Counsel for Buyer: Louis J. Najmy; telephone (941) 748-2216.

Amanda Edge was not represented in this matter.

I represented Defendant Graeme Edge.

6. Orion Bank v. Villages of Manasota Beach, LLC, et al., case no. 2008 CA-17875-NC, Twelfth Judicial Circuit, Sarasota County; Confidential settlement.

Trial Counsel for IberiaBank (which bank assumed this asset following the FDIC's liquidation of Orion Bank's assets), Jason D. Joffe; telephone (561) 650-7200.

I represented one of the numerous judgment debtors.

27c. During the last five years, how frequently have you appeared at administrative hearings?
Less than one time average times per month

27d. During the last five years, how frequently have you appeared in Court?
Three average times per month

27e. During the last five years, if your practice was substantially personal injury, what percentage of your work was in representation of plaintiffs? n/a

% Defendants? _____%

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.

My appearances in Circuit Court have remained fairly consistent during the last five years. In 2009, I handled four separate School Board termination/discipline cases, each of which went for a full trial before a Division of Administrative Hearing judge. Since then, there has been a decrease in frequency of those DOAH trials.

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

None to award.

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.

1. Ocular Innovations, Inc. v. Putrino v. Barzell and Whitmore, case no. 2008-CA-6501-NC, Twelfth Judicial Circuit Court, Sarasota County. Case was before Judge Charles Williams. This was a week-long jury trial, involving a disagreement between the three main shareholders of Ocular Innovations. I was first chair, presented all but two witnesses, and handled the entire case workup. Lamar Matthews was second chair. We represented the majority shareholders, Drs. Barzell and Whitmore as well as the company. Michael Moran (941-366-1800) represented Dr. Putrino, a minority shareholder and former employee. This case was significant to me as I was responsible for virtually the entire case from the initial case work-up, to trial, to settlement. The facts were also interesting: the company owned a patent for a piece of eye equipment, and the company was attempting to market and manufacture that device in a commercially viable way. The company sued Dr. Putrino for replevin, seeking the return of company property. Dr. Putrino countersued for back wages, and he also sued Drs. Barzell and Whitmore, alleging misrepresentation. This case generated unique evidentiary issues involving the admissibility of the patent and its chain of title, among other things. The jury awarded the company possession of its property, found no liability on my clients' part relating to misrepresentations, and awarded Dr. Putrino only a small fraction of the claimed back wages, which was a near total victory. There was no appeal, as there was a settlement when my clients filed their motion for attorney fees.

2. Grillasca v. Hess Corporation, case no. 2007-11610-CI-21, Sixth Judicial Circuit, Pinellas County. Case was before Judge John A. Schaefer. This was a class action lawsuit, involving claims of unfair trade practices involving automated fuel dispensers (pay-at-the-pump) where a customer paid for fuel using a debit card without using her or his PIN, which potentially resulted in a "hold" being placed on the customer's bank account. Martin Garcia and I represented Hess Corporation. James Staack (727-441-2635) and Cameron Moyer (904-392-0618) represented the customers. My role during the evidentiary hearing (akin to a trial) was to present half the witnesses and cross half the plaintiffs' witnesses and Martin handled the other half. Initially, the trial court certified a class following the evidentiary hearing. On appeal, in Hess Corporation v. Grillasca, 2D09-1338, 27 So. 3d 684 (Fla. 2d DCA 2009), the appellate court reversed. The trial court denied the customers' subsequent attempt to re-certify the class. The customers appealed that denial but soon dismissed that second appeal, styled Grillasca v. Hess Corporation, 2D12-3149. This case was significant to me because it involved the substantial interplay and legal arrangements between banks and merchants such as Hess Corporation. Additionally, we were able to defend an appropriate industry practice. Had the customers prevailed, potentially an entire industry would have had to change the manner in which it interfaced with its customers at the gas pump.

3. Sarasota County School Board v. Ehlers, DOAH case no. 10-4142, reported at 2010 WL 4598092 (Fla. DOAH Nov. 10, 2010). Case was before Administrative Law Judge Elizabeth W. McArthur. This case involved the termination of a long-term school board employee who had created a hostile work environment as well as committing other workplace offenses. I represented the School Board and was responsible for the entire case work up as well as trial. Kevin Sanderson (941-244-0468) represented Ms. Ehlers. This was a grueling trial, where the School Board called 14 witnesses, Ms. Ehlers called 14 separate witnesses, and 40 exhibits were introduced into evidence. The trial judge issued an extensive 58-page ruling detailing the multiple reasons why termination was warranted. This case was significant to me because the favorable outcome came as a great relief to many of her co-workers, and it brought an increased sense of safety to the workplace.

4. Citizens for Sunshine, Inc. v. City of Venice, et al., 2008-CA-8108-SC, Twelfth Judicial Circuit, Sarasota County. Case was before Judge Robert Bennett. This was an alleged Sunshine Law violation case within the City of Venice. Lamar Matthews and I represented John Moore, one of the council member Defendants. Andrea Mogensen (941-955-1066), who was later joined by Matthew Leish (813-223-7000), represented the Plaintiffs. Jeff Boone (941-488-6716) represented another council member. Bob Anderson (941.480.0999) represented the City. Dale Scott (407-897-5150) represented two of the council members, several advisory committee members, and was co-counsel for the City. In this case, I was responsible for most of the discovery, and I took a lead position among all defendants on the facts and law in numerous hearings. While this case settled on the courthouse steps, I include it because of the result obtained. When my client first learned of the lawsuit, the Court had already entered an Order (1) seizing his and his wife's personal computer and (2) directing a highly invasive search be conducted with no safe guards for disclosure of items such as medical and financial privacy matters and attorney-client matters. We were able to roll-back the scope of that Order, and in fact, nothing beyond the normal civil discovery occurred with respect to the computer. Additionally, we were able to exonerate our client, securing the dismissal with prejudice for our client, with no conditions imposed on him. There was a substantial amount of public scrutiny associated with this case, and our ability to effectively clear his name was professionally satisfying.

5. Sarasota County School Board v Berry, DOAH Case No. 09-3557, reported at 2010 WL 333008 (Fla. DOAH Jan. 27, 2010). Case was before Administrative Law Judge Daniel M. Kilbride. This was a teacher termination case, for which I was responsible for the case work-up and trial. In this case, Mr. Berry, who represented himself at trial, confronted a co-worker, causing her to fear for her safety. A few minutes later, in front of his own class, Mr. Berry confronted his principal and threatened violence against him, which lead to the evacuation of the students. This case personally was important to me because I was able to sustain Mr. Berry's termination outside the normal grievance procedure set forth in the collective bargaining agreement. This established a precedent that now can be used to terminate those employees who threaten violence against others in the workplace. This decision helped bring a sense of safety back to the school environment.

6. Smith v. Trailer Estates Park and Recreation District, 2008-CA-11315, Twelfth Judicial Circuit, Manatee County. Case was before Judge Janette Dunnigan. This was a Sunshine Law and Public Records case involving a special district and its volunteer

board of supevisors. I represented one of the board members, Janet Jones. Tom Shults (941-364-2425) and Kurt Lee (941-955-5100) represented the District. Kevin Hennessy (941-708-4040) represented the Plaintiffs. James Dye (941-748-4411), Dan Scott (941-366-6301), and Bob Turffs (941-953-9009) each represented a board member or other individual defendant. While the individual defendants settled just prior to trial, there was a trial, with a verdict in favor of the District, which was affirmed on appeal in 2D11-315. This case involved over 100 separate counts and generated close to 50 depositions. There were numerous hearings, many of which I was the primary advocate for all of the defendants. The reason I selected this case was its extreme complexity. In many respects, I was the most involved in organizing and leading the defense for all of the individual defendants, not just my client.

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.

Please see attached Exhibits 5, 6, and 7. I drafted the entirety of each of those documents.

PRIOR JUDICIAL EXPERIENCE OR PUBLIC OFFICE:

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

No to both questions.

32b. List any prior quasi-judicial service:

Dates	*Name of Agency*	*Position Held*
n/a		

Types of issues heard:

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

No.

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

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

n/a

(ii) Describe the approximate number and nature of the cases you have handled

during your judicial or quasi-judicial tenure.

n/a

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

n/a

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

n/a

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

n/a

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

n/a

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

n/a

BUSINESS INVOLVEMENT:

33a. If you are now an officer, director or otherwise engaged in the management of any business enterprise, state the name of such enterprise, the nature of the business, the nature of your duties, and whether you intend to resign such position immediately upon your appointment or election to judicial office.

I serve as a Director and Vice President of the Matthews Eastmoore law firm. If appointed to the bench, I will resign from the law firm.

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

No.

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

No. Although not a "business enterprise, institution, organization, or association," during the last few years of my grandfather's life, I was responsible for all of

his financial and business decisions, and I arranged for and coordinated payment for his care. With the knowledge and approval of my family, my grandfather (G. Hunter Gibbons) paid me a small amount for this substantial time commitment, for which I received a Form 1099. In 2012, I received $2,000. In 2011, I received $575. Prior to 2011, I did not accept any funds for these activities.

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.

None. For an appropriate length of time, I would request the Chief Judge to administratively reassign cases where attorneys from the Matthews Eastmoore law firm initially appeared of record.

MISCELLANEOUS:

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

Yes _____ No __X__ If "Yes" what charges? _____

Where convicted? _____ Date of Conviction: _____

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

Yes _____ No __X__ If "Yes" what charges? _____

Where convicted? _____ Date of Conviction: _____

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

Yes _____ No __X__ If "Yes" what charges? _____

Where convicted? _____ Date of Conviction: _____

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

No.

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

No.

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

No.

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

No to both questions.

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 to both questions.

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.

No. I am, however, currently serving as appointed Personal Representative of my late Grandfather's Estate. I anticipate his Estate being finalized prior to the effective date of Judge DeFuria's retirement. In re: Estate of G. Hunter Gibbons, case no. 2012-CP-4203-NC, pending in the Twelfth Judicial Circuit Court, Sarasota County.

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 to all questions.

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 to all questions.

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.

Judge Paul E. Logan: profiles in service, published in The Docket, December 2012 (a retrospective on Judge Loan).

Kissing cousins: public record requests and document requests in civil cases, published in The Docket, June 2011 (examining the interplay between the Public Records Law and civil discovery rules).

A class action for lawyers (editorial), published in The Docket, June 2007 (discussing a bar review course class action).

A way to increase the richness of our legal community (editorial), published in The Docket, May 2007 (discussing the need for geographic diversity on the 2d DCA JNC).

A price that isn't too great to pay (editorial), published in The Docket, April 2007 (advocating a pay increase for non-judge judicial employees).

Welcome to DeSoto County, published in The Docket, March 2007 (highlighting the practice of law in Arcadia as well as the resident judges).

When a holiday isn't a holiday . . . take that, Hallmark! (editorial), published in The Docket, November 2006 (examining the differences between legal holidays and Court holidays).

Legal blogs: delivering legal commentary minutes after decisions are rendered, published in The Docket, November 2006 (examining the growing trend of instant commentary of court rulings).

Creating a Sixth District Court of Appeal, and why Sarasota should care (editorial), published in The Docket, October 2006 (discussing the potential for a Sixth District Court of Appeal).

Hunter Gibbons: SCBA's energizer bunny, published in The Docket, September 2006 (a spotlight on the contributions of Mr. Gibbons to the Sarasota Bar)

Eastward bound: is I-75 the new hub for law firms?, published in The Docket, September 2006 (highlighting the growing trend of firms relocating near the interstate).

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

Best Lawyers - 2013

Florida Legal Elite - 2012-2010 (presented by Florida Trend).

Florida Rising Stars - 2012-2010 (presented by Super Lawyers).

Dennis Wood Memorial Award - 2007 (presented by Teen Court).

30 Under 30 in Tampa Bay - 2005 (selected by Tampa Bay Business Journal).

Pro bono pin - 2005.

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

Speaker, The Vote is in Your Court. Presented to the League of Women Voters of Charlotte County, May 16, 2012.

Please also see the response to Question 49b for a roster of those lectures to bar association conferences, law school and undergraduate classes, and continuing legal education courses.

47. Do you have a Martindale-Hubbell rating? Yes ☒ If so, what is it?___No ☐

AV rating.

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.

Sarasota County Bar Association:

Treasurer (2012 - present)

Member, Board of Directors (2009 - present)

Editor, The Docket (2006-2007)

Member, Young Lawyers Board of Directors (2007-2012)

Board of Governors, Young Lawyers Division, The Florida Bar (2008-2013):

Budget Committee Chair (2011 - 2013); Vice-Chair (2010-2011)

Legislative Affairs Committee Chair (2010-2011); Vice-Chair (2009-2010)

Executive Committee Member (2010 - 2013)

Judge Scheb Inn of Court (2006 - present):

Treasurer (2009 - present)

Teen Court of Sarasota, Inc.:

Board of Directors / Assistant Treasurer (2008 - present)

Volunteer since 1989

Sarasota County Law Library Board of Trustees (2010 - present)

Manatee County Bar Association (2011 - present)

St. Petersburg Bar Association (2002 - 2006)

Chair, Young Lawyers Section (2004-2005)

Member, Board of Directors (2004-2005)

Barney Masterson Inn of Court in St. Petersburg (2002-2005)

Florida Supreme Court Historical Society (2002-2009)

The Florida Bar (2000 - present)

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.

Sarasota Gun Club, Inc. (Sarasota Trap, Skeet & Clays)

University of Florida Alumni Association

Sarasota County Gator Club

I am not currently active in any of these organizations.

48c. List your hobbies or other vocational interests.

Golf, water skiing, traveling, reading, skeet shooting, and Gator sports. I am also becoming more involved with photography.

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.

In my freshman year of high school, I joined the Key Club. At that time, Key Club at Sarasota High excluded females. My senior year, when I was President, the organization changed its rules and allowed females to join, and that year we selected the first class that included females. Additionally, at the Key Club District conference (for the State of Florida) my senior year of high school, I submitted a by-laws change to the District rules that would prohibit any Key Club in the District from excluding females. That by-laws change was adopted.

In college, I was a member of a social fraternity, Phi Kappa Tau, which only admitted males.

Since college, I have not been affiliated with any club or organization that restricts membership on sex (or any of the referenced classifications). I have no intent on joining any club or organization that restricts membership on any of the referenced classifications.

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

Since the time I began the active practice of law, I have provided hundreds of hours of pro bono representation. The most significant in terms of time involved handling a social security disability appeal as well as serving as appointed counsel in

numerous cases before the Florida Supreme Court.

The social security disability appeal occurred in 2004-2005. In that case, a single mother with two children had been denied benefits. After a trial, the administrative law judge reversed the Agency's determination and awarded retroactive and on-going disability benefits.

The other significant cases involved working on five separate appeals before the Florida Supreme Court on criminal sentencing issues. In four of those appeals, I was appointed directly by the Florida Supreme Court. Those cases included:

Robert Ey v. State of Florida, SC03-2161 (appointed April 12, 2007); resulted in the reported decision, Ey v. State, 982 So. 2d 618 (Fla. 2008) (holding an attorney's erroneous advice that a criminal defendant's plea in one case may not be used to enhance the sentence in a second case constitutes ineffective assistance of counsel).

Corbblin Bush v. State of Florida, et al., SC04-2306 (appointed May 25, 2005); resulted in the reported decision, Bush v. State, 945 So. 2d 1207 (Fla. 2006) (resolving the appropriate venue for challenges to administrative determinations on sentencing-reducing credits, holding such challenges are to be made by petition for mandamus, and directing trial courts to transfer, not dismiss, cases filed in the wrong venue).

Kenneth Edward Davis v. State of Florida, SC03-1582 (appointed July 30, 2004); dismissed on jurisdictional grounds.

George I. Wright v. State of Florida, SC04-137 (appointed July 12, 2004); resulted in the reported decision, Wright v. State, 911 So. 2d 81 (Fla. 2005) (holding the trial court's failure to provide written reasons to retain jurisdiction does not constitute an "illegal sentence" for purposes of rule 3.800(a), and thus such a claim may not be brought at any time).

State of Florida v. Cedric T. Green, SC03-532 (not directly appointed); resulted in reported decision, State v. Green, 887 So. 2d 1089 (Fla. 2004) (concluding that the Three-Strike Violent Felony Offender Act, chapter 99-188, Laws of Florida, did not violate the single-subject rule, and therefore the ex post facto challenge to the Legislature's subsequent reenactment of this Law in five separate pieces with a directive that it be applied retroactively was moot).

Additionally, I have and continue to contribute financially to both Legal Aid of Manasota as well as The Florida Bar Foundation to support their pro bono legal aid work.

SUPPLEMENTAL INFORMATION:

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

Yes. In May 2012, I attended the near week long Advanced Trial Advocacy course. This was an intensive trial advocacy course. In May 2012, I attended and participated in the Sarasota County Bar Association's half-day appellate law CLE. In March 2011, I completed the 18 hour Civil Trial Board Certification review

course, which focused on the many procedural issues involved in civil litigation. In May 2010, I attended the Sarasota County Bar Association's half-day appellate law CLE. In March 2010, I completed an eight hour CLE on the Sunshine Law and the Public Records Law. In addition, in each of the last five years, I have attended numerous Inn of Court presentations on topics including family law, criminal law, advertising, probate law, and civil law issues.

Unless otherwise noted, each of these CLEs was presented by The Florida Bar.

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?

Participant, Appellate Ethics Roundtable, presented by the Sarasota County Bar Association, May 18, 2012.

Organizer, Basic Discovery CLE, presented by The Florida Bar, March 29, 2012.

Organizer, "Florida's JNC Composition - the Past, Present, and Future," moderated by former Representative Dudley Goodlette, and panelists Raquel "Rocky" Rodriguez, Alan Bookman, and Talbolt "Sandy" D'Alemberte, presented by the Legislative Affairs Committee of the Board of Governors, Young Lawyers Division, January 26, 2011.

Moderator, Basic Basics CLE, presented by The Florida Bar, May 20, 2010.

Lecturer, Time and Stress Management Seminar, presented by the Young Lawyers Division of the Sarasota County Bar Association, June 4, 2009.

Moderator, Practicing With Professionalism, presented by The Florida Bar, February 27, 2009.

Lecturer, Getting Involved with Your Local Bar, Practicing with Professionalism Seminar, 2005.

Guest Lecturer, the Ethics of Billing, Stetson College of Law, 2005.

Guest Lecturer, Judicial Law Clerkships, Stetson College of Law, 2004.

Guest Lecturer, the Jurisdiction of the Florida Supreme Court, Florida State College of Law, 2002.

Guest Lecturer, Florida's Death Penalty Law, Florida Agricultural and Mechanical University, multiple occasions, 2000-2002.

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

My time working for Chief Justice Wells was invaluable. That experience taught me a wide variety of substantive and procedural legal issues. But more importantly, it taught me what it means to be a judge. While this clerkship was at an appellate court, my interactions with the judiciary in circuits across the state confirm that Justice Wells is a superb judicial role model. As to the qualities learned, foremost among them is the adherence to the proper restraint that all members of the judiciary

should be governed. I also observed first-hand the value of a judge having the correct judicial temperament. As Justice Wells taught, the power entrusted to a judge should never been abused or taken for granted. Becoming a judge does not mean the judge may become a bully.

There are two other unique experiences that I have which are out of the ordinary legal practice that I believe will assist me. In law school, I served as Vice Chancellor of the Student Honor Court. In that capacity, I presided over alleged cheating cases. Additionally, my nearly 25 year volunteer involvement with Teen Court will serve me well, as in many of those years I presided as the judge. I am used to presiding, keeping order, and staying out of the attorney's presentations. In fact, I have presided at several different Teen Court programs, including in Tallahassee, which required me to obtain approval of the entire Florida Supreme Court to participate.

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

I would bring to the bench a rich and diverse legal background, not only in substantive and procedural civil law areas, but also in experiences that dovetail well with the Court's other divisions. Having participated in more than my fair share of atypical civil matters, I believe I could be a resource to my fellow judges on civil matters. Beyond the civil realm, I am already familiar with the death penalty body of law and procedures. I have handled complex sentencing issues, which include the cases in which I was appointed by the Florida Supreme Court. I have tried criminal cases at the State Attorney's Office in the domestic violence unit as a certified legal intern. My legal career also includes experiences in probate and guardianship matters. Through my appellate practice and clerkship, I am intimately familiar with the appellate process, which will be helpful when the Circuit Court sits in its appellate capacity. I believe these multifaceted experiences will serve me well, regardless of division assignment.

Beyond the diversity of my legal background, I would bring to the bench a practical knowledge of what it means to be an attorney. I know what it means to make payroll, to run a business while practicing law, to handle competing demands on my time, to juggle cases, and to send bills and collect fees. I also know what it means, both in terms of time and cost, for a judge to ask that an issue be briefed or to provide proposed rulings. And, I know how to work with pro se individuals, having litigated against those without legal representation. I believe this practical knowledge would make me an understanding judge regarding the multitude of issues that arise before the Court, and at the same time, allow me to be a strong administrator of my docket.

Finally, I would bring to the bench a passion for the Florida Constitution. This includes the proper restraint necessary for our judges and the respect for the co-equal branches of government.

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.

None. This is my first application to a judicial nominating commission.

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

I grew up here in Sarasota, the second of three boys. My parents divorced when I was young, and my mother, a high school science teacher, raised us. She was ably assisted by her parents, who also lived in Sarasota. My grandfather, who was a local attorney, was my role model. My family instilled strong values, a sense of public service, and a substantial work ethic in me. My family encouraged my brothers and me to choose any career path we wanted. I chose the law.

I am married to a highly intelligent and beautiful wife, and we have one young son. I truly am fortunate to have Jessica, the love of my life, as my partner in life. Jessica and I discussed at length how joining the bench will impact our lives in all respects, including financially and socially. Fortunately, we are in a position for me to apply for this opening, and Jessica is entirely behind this application.

In my judgment, the largest problem for me in joining the bench will be the need for me to resign from Matthews Eastmoore. I practice with friends whom I admire very much. Not being able to walk into any of their offices on a daily basis will be difficult.

In my final analysis, the judiciary will suit my temperament and abilities. I am at my best when I am solving problems and figuring out the "correct" answer. I will work hard. I will be fair. I will be efficient, while ensuring every litigant gets an opportunity to be heard. And I will rule, not based on what I would personally want to see happen, but on what the law requires.

Thank you for your time and service.

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.

1. Charles J. Bartlett; [redacted]
2. Jeff A. Boone; [redacted]
3. Judge Janette Dunnigan; [redacted]
4. Steven C. Dupre; [redacted]
5. Theodore C. Eastmoore; [redacted]
6. Fred E. Moore; [redacted]
7. Judge Diana Moreland [redacted]

8. Chief Judge Andrew D. Owens

9. Kathleen "Katie" Self;

10. Charles T. Wells.

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 3d day of May, 2013.

Hunter W. Carroll
Printed Name

Signature

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

FINANCIAL HISTORY

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.

2013 (4 months)*	2012	2011	2010
$41,666.68	$310,593	$204,718	$216,055

*Based on salary only with no distributions. Gross income figures not yet available.

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.

2013 (4 months)*	2012	2011	2010
$41,666.68	$188,461	$113,583	$198,289

*Based on salary only with no distributions. Net income figures not yet available.

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.

2013 (4 months)	2012	2011	2010
$0	$29,072	$3,422	$1,223

These figures are joint with my wife. In each year, there was interest and dividends. In 2011 and 2012, the listed amount includes the 1099 amounts received from my granddad as discussed in question 33c. The 2012 amount includes the sale proceeds of some stock, which was used to fund our son's prepaid college tuition.

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.

2013 (4 months)	2012	2011	2010
$0	$8,018	$1,601	$1,210

These figures are joint with my wife.

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: May 3, 2013

JNC Submitting To: Twelfth Judicial Circuit Court Judicial Nominating Commission

Name (please print): Hunter W. Carroll

Current Occupation: Attorney

Telephone Number: (941) 448-5551 Attorney No.: 0297630

Gender (check one): ☒ Male ☐ Female

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

County of Residence: Sarasota

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: Hunter W. Carroll

Signature of Applicant: Hunter W. Carroll

Date: May 3, 2013

An official transcript has heat-sensitive ink on the reverse side.

UNIVERSITY OF FLORIDA

Official Academic Transcript

Office of the University Registrar
222 Criser Hall, Box 114000
Gainesville, FL 32611-4000

www.ufl.edu
www.registrar.ufl.edu
352-392-1374

Do Not Release to Third Party Without Student Permission

STUDENT NAME: HUNTER M CARROLL
SOCIAL SECURITY NUMBER: [redacted] UFID: 3756-9640
DATE OF BIRTH: [redacted]
GENDER: MALE
BASIS OF ADMISSION: HIGH SCHOOL
COLLEGE: FREDRIC G LEVIN COLLEGE OF LAW
MAJOR: LAW
RESIDENCY STATUS: FLORIDA RESIDENT
DATE PRINTED: APRIL 22, 2013
TYPE OF CREDIT: SEMESTER HOURS
COPIES REQUESTED: 04 COPY NUMBER: 02 PAGE NO.: 01

CARROLL,HUNTER HYMAN
3768 EAGLE HAMMOCK DR
SARASOTA FL
34240-8238

This transcript is not valid without the university seal and signature of the University Registrar.

Stephen J. Fritz Jr.
University Registrar

SAT VRB MAT TSWE TOTAL DATE
590 660 470 1250

CLAST M 373 R 328 W 317 E 11 02/19/94

MANATEE CMTY COLLEGE 1991 FALL

Prefix & Course Number	Course Title	Course Notation	Grade	Credit	Credit Earned	Credit for GPA
MAC 2142	COL ALG/TRIG		A	5.00	5.00	

EARNED HRS 5.00 GRADE PTS 20.00 HRS CARRIED 5.00

CREDIT BY EXAM - ADV PLACEMENT 1993 FALL

ENC 0201	ENGLISH LANG/COMP	Y	P	3.00	3.00	
Y 0201	CALCULUS AB	Y	P	4.00	4.00	
0201	GOVT & POLITICS-U.S.	Y	P	3.00	3.00	

EARNED HRS 10.00 GRADE PTS .0 HRS CARRIED .00

UNIVERSITY OF FLORIDA 1LS 1993 FALL

APB 2150	CELLS ORGANISMS GENET		A	3.00	3.00	3.00
APB 2152 L	LAB IN BIOL SCIENCES		A	1.00	1.00	1.00
CPO 2001	COMPARATIVE POLITICS		A	3.00	3.00	3.00
PHI 2015	INTRO TO PHILOSOPHY		A	3.00	3.00	3.00
STA 3023	INTRO TO STATISTICS 1		A	3.00	3.00	3.00

EARNED HRS 13.00 GRADE PTS 52.00 HRS CARRIED 13.00

UNIVERSITY OF FLORIDA 1LS 1994 SPRING

APB 2151	EVOLU ECOL & BEHAVIOR		A	3.00	3.00	3.00
AST 1002	DISCOVER THE UNIVERSE		A	3.00	3.00	3.00
INR 2001	INTERNATIONAL RELATNS		A	3.00	3.00	3.00
LAT 1120	BEGINNING LATIN 1		A	4.00	4.00	4.00
MUL 2010	INTRO TO MUSIC LIT		A	3.00	3.00	3.00

EARNED HRS 16.00 GRADE PTS 64.00 HRS CARRIED 16.00

UNIVERSITY OF FLORIDA 2LS 1994 SUMMER
MAY-JUNE - 6 WEEKS

CHM 1020	BAS CHEM CONCEPT/APPL		A	3.00	3.00	3.00
EDF 3514	HIST OF EDUC IN US		A	3.00	3.00	3.00

EARNED HRS 6.00 GRADE PTS 24.00 HRS CARRIED 6.00

UNIVERSITY OF FLORIDA 2LS 1994 SUMMER
JUNE-AUGUST - 6 WEEKS

ENC 1102	WRITING ABOUT LIT		A	3.00	3.00	3.00
THE 2000	THEATRE APPREC 1		A	3.00	3.00	3.00

COMMUNICATION & COMPUTATION COMPLETE
EARNED HRS 6.00 GRADE PTS 24.00 HRS CARRIED 6.00

UNIVERSITY OF FLORIDA 2LS 1994 FALL

ACG 2021	INTRO FINAN ACCOUNTNG		B+	3.00	3.00	3.00
ECO 2013	PRIN MACROECONOMICS		A	3.00	3.00	3.00
LAT 1121	BEGINNING LATIN 2		B+	3.00	3.00	3.00
POS 3606	AMER CIVIL LIBERTIES		B+	3.00	3.00	3.00

AWARDED ASSOCIATE OF ARTS
DEC 17 1994
EARNED HRS 12.00 GRADE PTS 43.50 HRS CARRIED 12.00

UNIVERSITY OF FLORIDA 3LS 1995 SPRING

ACG 2071	INTRO MANAGERIAL ACCT		A	2.00	2.00	2.00
LAT 1122	BEGINNING LATIN 3		B	3.00	3.00	3.00
POS 4734	RESEARCH METHODS		A	3.00	3.00	3.00
POS 4934	HONORS PREPARATION		A	1.00	1.00	1.00
PUP 4712	PROBS MARKET & GOVT		A	3.00	3.00	3.00

EARNED HRS 12.00 GRADE PTS 45.00 HRS CARRIED 12.00

UNIVERSITY OF FLORIDA 3LS 1995 SUMMER
MAY-JUNE - 6 WEEKS

SYG 2000	PRINCPLS OF SOCIOLOGY		A	3.00	3.00	3.00

EARNED HRS 3.00 GRADE PTS 12.00 HRS CARRIED 3.00

UNIVERSITY OF FLORIDA 3LS 1995 SUMMER
MAY-AUGUST - 12 WEEKS

MAR 3023	PRIN OF MARKETING		B+	3.00	3.00	3.00

EARNED HRS 3.00 GRADE PTS 10.50 HRS CARRIED 3.00

UNIVERSITY OF FLORIDA 3LS 1995 FALL

CCJ 3024	ADV PRIN CRIM JUSTICE		A	3.00	3.00	3.00
ECO 2023	PRIN MICROECONOMICS		B	3.00	3.00	3.00
FIN 3408	BUSINESS FINANCE		B	4.00	4.00	4.00
POS 4931	NORMATIVE ISSUES PCL		A	3.00	3.00	3.00

EARNED HRS 13.00 GRADE PTS 45.00 HRS CARRIED 13.00

UNIVERSITY OF FLORIDA 4LS 1996 SPRING

BUL 4310	LEGAL ENVIRON BUSINES		A	4.00	4.00	4.00
FIN 4244	DEBT & MONEY MARKETS		A	4.00	4.00	4.00
MAN 3021	PRINS OF MANAGEMENT		A	4.00	4.00	4.00
PAD 3003	INTRO TO PUBLIC ADMIN		A	3.00	3.00	3.00
POS 4970	SENIOR THESIS		A	4.00	4.00	4.00

ELECTED TO THE SOCIETY OF PHI KAPPA PHI
EARNED HRS 19.00 GRADE PTS 76.00 HRS CARRIED 19.00

UNIVERSITY OF FLORIDA 4LS 1996 SUMMER
MAY-JUNE - 6 WEEKS

ECO 3100	MANAGERIAL ECONOMICS		A	4.00	4.00	4.00

EARNED HRS 4.00 GRADE PTS 16.00 HRS CARRIED 4.00

UNIVERSITY OF FLORIDA 4LS 1996 SUMMER
MAY-AUGUST - 12 WEEKS

ISM 3011	INFO SYST IN ORGANIZA		A	2.00	2.00	2.00

EARNED HRS 2.00 GRADE PTS 8.00 HRS CARRIED 2.00

(SEE NEXT PAGE)

If photocopied, the word "COPY" will appear. A black and white or color copy of this transcript is not official.

A transcript explanation and a test for authenticity are printed on the back of this document.

An official transcript has heat-sensitive ink on the reverse side.

UNIVERSITY OF FLORIDA

Official Academic Transcript

Office of the University Registrar
222 Criser Hall, Box 114000
Gainesville, FL 32611-4000

www.ufl.edu
www.registrar.ufl.edu
352-392-1374

Do Not Release to Third Party Without Student Permission

STUDENT NAME: HUNTER W CARROLL
SOCIAL SECURITY NUMBER: [redacted] UFID: 3756-9640
DATE OF BIRTH: [redacted]
GENDER: MALE
BASIS OF ADMISSION: HIGH SCHOOL
COLLEGE: FREDRIC G LEVIN COLLEGE OF LAW
MAJOR: LAW
RESIDENCY STATUS: FLORIDA RESIDENT
DATE PRINTED: APRIL 22, 2013
TYPE OF CREDIT: SEMESTER HOURS
COPIES REQUESTED: 04 COPY NUMBER: 02 PAGE NO.: 02

This transcript is not valid without the university seal and signature of the University Registrar.

Stephen J. Fritz Jr.
University Registrar

Prefix & Course Number	Course Title	Course Notation	Grade	Credit	Credit Earned	Credit for GPA
UNIVERSITY OF FLORIDA		4LS		1996 SUMMER		
				JUNE-AUGUST - 6 WEEKS		
FIN 4504	EQUITY & CAPITAL MKT		A	4.00	4.00	4.00
EARNED HRS 4.00 GRADE PTS 16.00 HRS CARRIED 4.00						
UNIVERSITY OF FLORIDA		4LS		1996 FALL		
FIN 4414	FINANCIAL MANAGEMENT		A	4.00	4.00	4.00
QMB 3250	STATISTCS BUS DECIS		A	4.00	4.00	4.00
RMI 3011	RISK AND INSURANCE		A	4.00	4.00	4.00
EARNED HRS 12.00 GRADE PTS 48.00 HRS CARRIED 12.00						
UNIVERSITY OF FLORIDA		4LS		1997 SPRING		
[illegible] 4504	OPERATIONS MANAGEMENT		B	4.00	4.00	4.00
[illegible] 4604	ADMIN LAW REGUL POLIT		A	3.00	3.00	3.00
PEL 1121	GOLF 1		A	2.00	2.00	2.00
PEL 1341	TENNIS 1		A	2.00	2.00	2.00
PEM 1376	BACKPACKING 1		W	2.00		
AWARDED BACHELOR OF ARTS						
GRADUATED MAY 03 1997						
WITH HONORS						
MAJOR POLITICAL SCIENCE						
AWARDED BACHELOR OF SCIENCE IN BUSINESS ADMINISTRATION						
GRADUATED MAY 03 1997						
WITH HONORS						
MAJOR FINANCE						
MINOR BUSINESS ADMINISTRATION						
EARNED HRS 11.00 GRADE PTS 40.00 HRS CARRIED 11.00						
UNIVERSITY OF FLORIDA		1LW		1997 FALL		
ADMITTED TO COLLEGE OF LAW						
LAW 5000	CONTRACTS		A	4.00	4.00	4.00
LAW 5100	CRIMINAL LAW		B+	3.00	3.00	3.00
LAW 5700	TORTS		A	4.00	4.00	4.00
LAW 5792	LEGAL RES & WRITING		S	2.00	2.00	
LAW 6930	INTRO TO LAW		S	1.00	1.00	
EARNED HRS 14.00 GRADE PTS 42.50 HRS CARRIED 11.00						
UNIVERSITY OF FLORIDA		1LW		1998 SPRING		
LAW 5301	CIVIL PROCEDURE		B	4.00	4.00	4.00
LAW 5400	PROPERTY		B+	4.00	4.00	4.00
LAW 5501	CONSTITUTIONAL LAW		B+	4.00	4.00	4.00
LAW 5793	APPELLATE ADVOCACY		S	2.00	2.00	
EARNED HRS 14.00 GRADE PTS 40.00 HRS CARRIED 12.00						
UNIVERSITY OF FLORIDA		2LW		1998 FALL		
LAW 6330	EVIDENCE		B	4.00	4.00	4.00
LAW 6430	ESTATES & TRUSTS		B	3.00	3.00	3.00
LAW 6503	FLORIDA CONSTITU LAW		A	2.00	2.00	2.00
LAW 6570	INTELLECT PROPERTY		B	3.00	3.00	3.00
LAW 6750	PROFESS RESPONSIBILTY		B	2.00	2.00	2.00
LAW 6760	LEGAL ACCOUNTING		A	2.00	2.00	2.00
EARNED HRS 16.00 GRADE PTS 52.00 HRS CARRIED 16.00						
UNIVERSITY OF FLORIDA		2LW		1999 SPRING		
LAW 6063	CORPORATIONS		B+	3.00	3.00	3.00
LAW 6112	ADVERSARY SYSTEM		A	3.00	3.00	3.00
LAW 6531	LOCAL GOVT TAX FINAN		B+	3.00	3.00	3.00
LAW 6936	PRESIDENTIAL IMPEACH		A	2.00	2.00	2.00
LAW 6955	LEGAL DRAFTING		B	2.00	2.00	2.00
EARNED HRS 13.00 GRADE PTS 47.00 HRS CARRIED 13.00						
UNIVERSITY OF FLORIDA		3LW		1999 FALL		
LAW 6111	POLICE & POLICE PRAC		B+	3.00	3.00	3.00
LAW 6363	TRIAL PRACTICE		S	4.00	4.00	
LAW 6520	ADMINISTRATIVE LAW		C+	3.00	3.00	3.00
LAW 6710	FAMILY LAW		B+	3.00	3.00	3.00
LAW 6930	HEALTH CARE LAW		B+	3.00	3.00	3.00
EARNED HRS 16.00 GRADE PTS 39.00 HRS CARRIED 12.00						
UNIVERSITY OF FLORIDA		3LW		2000 SPRING		
EDA 6232	PUBLIC SCHOOL LAW		A	3.00	3.00	
LAW 6521	FLORIDA ADMINIS LAW		B	2.00	2.00	2.00
LAW 6526	JOURNAL LAW/PUBLIC		S	1.00	1.00	
LAW 6942	PROSECUTOR LAB		A	2.00	2.00	2.00
LAW 6942	CRIM CLINIC-PROSECUT		S	4.00	4.00	
POS 6933	GOVT. ADMIN IN FL		A	3.00	3.00	
NO GRADE POINTS FOR NON-LAW COURSE(S)						
AWARDED JURIS DOCTOR						
GRADUATED MAY 13 2000						
WITH HONORS						
EARNED HRS 15.00 GRADE PTS 14.00 HRS CARRIED 4.00						
SUM TOTAL 88.00 UF CUM GP 234.50 UF CUM HC 68.00						
UF CUM GPA = 3.44						
END OF TRANSCRIPT.						

If photocopied, the word "COPY" will appear. A black and white or color copy of this transcript is not official.

A transcript explanation and a test for authenticity are printed on the back of this document.

-072312

UNIVERSITY OF FLORIDA TRANSCRIPT EXPLANATION

... Privacy Act of 1974, as amended, this transcript is released to ... any other party without the written consent of the student

Colleges, Schools and Special Designations:

	Fisher School of Accounting	JP	Joint Program
	Agricultural and Life Sciences		Levin College of Law
	Design, Construction and Planning		Liberal Arts and Sciences
	Arts and Sciences	MR	Multiple Colleges
	Warrington College of Business Administration	MO	Medicine
	M.E. Rinker Sr. School of Building Construction	NE	School of Natural Resources and Environment
	[illegible]	ND	Nursing Doctorate
CE	Continuing Education	NR	Nursing
	[illegible]	PS	Physician Assistant
	[illegible]		Pharmacy Doctorate
	[illegible]		Physical Education, Health and Recreation
	[illegible]	PH	Pharmacy
	[illegible] and Conservation		Public Health and Health Professions Physical Therapy Doctorate
	Health and Human Performance		University College
	Public Health and Health Professions		[illegible]
	[illegible]		[illegible]
	Jewish Library Studies		Veterinary Medicine
	Journalism and Communication		

Grading prior to May 11, 2009

Grade	Points	Description
A	[illegible]	Excellent
B	[illegible]	Good
C	[illegible]	Average
D	[illegible]	Poor
S	0.00	Satisfactory
	[illegible]	Law School Honors
	[illegible]	Failure

Grading beginning May 11, 2009

Grade	Points	Definition
A	4.00	Excellent
A-	[illegible]	
B+	[illegible]	
B	3.00	Good
B-	[illegible]	
C+	[illegible]	
C	2.00	Average
C-	[illegible]	
D+	[illegible]	
D	1.00	Poor
D-	[illegible]	
S	0.00	Satisfactory
[illegible]	0.00	Law Honors
[illegible]	0.00	Failing

Non-Grade / No Grade Points

Grade	Description
[illegible]	Failure
[illegible]	Incomplete
[illegible]	No grade reported
[illegible]	[illegible]
[illegible]	Withdrawn
[illegible]	[illegible] unsatisfactory work

Non-Punitive Grades and Symbols / No Grade Points Not in GPA

Grade	Description
H	Deferred Grade
I	Incomplete
N	No Grade
[illegible]	[illegible]
W	Withdrawn
X	[illegible]

[illegible]	Cumulative [illegible]
[illegible]	Cumulative UF grade points
[illegible]	Cumulative UF hours

... cumulative GPA is based on the student's most recent academic program ... Satisfactory and unsatisfactory grades are not calculated into the UF grade ... equivalent ... dividing the grade points ... cumulative ...

Academic Type Notations

[illegible]

HUNTER W. CARROLL
Matthew Eastmoore
1777 Main Street, Ste. 500
Sarasota, FL 34236
(941) 366-8888 ~ telephone
(941) 954-7777 ~ facsimile
hcarroll@matthewseastmoore.com

PROFESSIONAL ASSOCIATIONS

Matthews Eastmoore, 2007-Present, Shareholder since 2009
Carlton & Carroll, P.A., 2005-2007, Manager, Lakewood Ranch Office
Carlton Fields, P.A., 2002-2005, Associate

LAW CLERK

Chief Justice Wells, Supreme Court of Florida, 2000-2002
Senior Staff Attorney

EDUCATION

University of Florida, College of Law, J.D., with honors, 2000
Book Award, Florida Constitutional Law • Chair, S.G. Constitution Revision Commission • Student Honor Court Vice Chancellor
University of Florida, B.S., finance, with honors 1997
University of Florida, B.A., political science, with honors 1997
Outstanding Male Graduate • UF Hall of Fame • Florida Blue Key • Matthews Society • Omicron Delta Kappa • Student Government

PRACTICE AREAS

Civil litigation, with emphasis in commercial matters • Governmental law • Appellate practice • Education law

PROFESSIONAL ACTIVITIES

The Florida Bar, Young Lawyers Division, Bd of Governors, 2008 to 2013
Budget Committee, Chair 2011-2013, Vice Chair, 2010-2011
Legislative Affairs Committee, Chair 2010-2011, Vice Chair 2009-2010
Executive Committee, Member, 2010-2013
Sarasota County Bar Association
Treasurer, 2012-Present
Board of Directors, 2009-Present
Editor, The Docket, 2006-2007
Young Lawyers Board, 2007-2012
Sarasota County Law Library Board of Trustees, 2010-Present
Judge Scheb Inn of Court
Treasurer, 2009-Present
Teen Court of Sarasota, Inc.
Volunteer, 1989-Present
Board of Directors/Assistant Treasurer, 2008-Present
Dennis Wood Memorial Award, 2007

BAR ADMISSIONS

Florida; U.S. Supreme Court; Eleventh Circuit Court of Appeal; U.S. District Courts for the Middle, Southern, and Northern Districts of Florida

OTHER

AV® Martindale Hubbell • Super Lawyers • Legal Elite • Best Lawyers

REPORTED DECISIONS

North Port Road and Drainage District v. West Villages Improvement District, 82 So. 3d 69 (Fla. 2012)

Rocco v. Glenn, Rasmussen, Fogarty & Hooker, 32 So. 3d 111 (Fla. 2d DCA 2009)

Hess Corporation v. Grillasca, 27 So. 3d 684 (Fla. 2d DCA 2009)

Ey v. State, 982 So. 3d 618 (Fla. 2008)

Lee v. CSX Transportation, Inc., 958 So. 2d 578 (Fla. 2d DCA 2007)

Bush v. State, 945 So. 2d 1207 (Fla. 2006)

Wright v. State, 911 So. 2d 81 (Fla. 2005)

Goldberg v. Florida Power & Light Company, 899 So. 2d 1105 (Fla. 2005)

Town of Belleair v. Florida Power Corporation, 897 So. 2d 1261 (Fla. 2005)

Florida Power Corporation v. City of Winter Park, 887 So. 2d 1237 (Fla. 2004)

State v. Green, 887 So. 2d 1089 (Fla. 2004)

Florida Birth-Related Neurological Injury Compensation Ass'n v. Ferguson, 869 So. 2d 686 (Fla. 2d DCA 2004)

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR SARASOTA COUNTY, FLORIDA

W.S. MEDIA, INC., a Florida corporation; and PHYSICIANS GROUP, LLC, a Florida Limited Liability Company,

Plaintiffs,

v. Case No.: 2012-CA-0265-NC

PETER J. BRUDNY, an individual, and JEFFREY LAUFFER, an individual,

Defendants,

_____/

PLAINTIFFS' MEMORANDUM OF LAW FOR MAY 29, 2012 OMNIBUS HEARING REGARDING MOTION TO DISMISS; MOTION TO TRANSFER VENUE; AND MULTIPLE DISCOVERY OBJECTIONS

Plaintiffs, W.S. Media, Inc. and Physicians Group, LLC, files their Memorandum of Law in support of its positions for the May 29, 2012 hearing. Plaintiffs separately filed a memorandum relating to the Motion to Disqualify Counsel.

INTRODUCTION

This case involves the theft of corporate trade secrets and medical records by a former employee (Defendant Lauffer) in furtherance of a conspiracy between that employee and his attorney (Defendant Brudny) to extort Three Million Dollars. After these extortion efforts were rebuffed, Defendants disseminated confidential information to third parties without authorization and contrary to Defendant Lauffer's employment agreement with Plaintiff Physicians Group, seeking to economically damage Plaintiffs. Defendants now seek to stonewall Plaintiffs, raising meritless objections in an effort to prevent the case from moving forward. In fact, Defendants steadfastly refuse to participate in any discovery, despite their obligations under Florida's Rules of Civil Procedure. Plaintiffs will address

Defendants multiple motions below, which were joined into one omnibus motion. Plaintiffs also respond to Defendants' discovery objections.

MOTION TO TRANSFER VENUE

Plaintiffs alleged that one or more of the causes of action occurred in Sarasota County. (Cmpt. ¶10). Moreover, Defendant Lauffer executed an employment agreement in which he agreed that "venue for any action hereon shall lie in Sarasota County, Florida." (Cmptl. ¶10, Ex.C, p.11, ¶14.6). Defendant Lauffer violated his employment agreement. Venue is appropriate in Sarasota County because several of the causes of action accrued in Sarasota.

Defendant Brudny moved to transfer venue, contending that Sarasota County is not an authorized venue because neither of the Defendants reside in Sarasota. (Mot. ¶4).[1] With no citation to case authority, Defendants rely only on section 47.011, Florida Statutes, which provides that "Actions shall be brought only in the county where the defendant resides, **where the cause of action accrued**, or where the property in litigation is located." (Emphasis added). While the motion focuses only Defendants' residency, it contains absolutely no analysis as to where the causes of action accrued. In fact, Defendants simply state that Plaintiffs did not plead sufficient facts to show that one or more of the causes of action accrued in Sarasota, but Defendants ignore the numerous pages of specific factual allegations, none of which Defendants controvert. (Mot. ¶5). Accordingly, Defendants utterly failed in its burden to bring forth evidence to show that the causes of action did not accrue in Sarasota County.

1. **The Law on Venue.**

Selecting venue is the "plaintiff's prerogative" and "plaintiff's selection will not be disturbed if it is one of the alternatives provided by the statute." Breed Technologies, Inc. v. AlliedSignal, Inc., 861

[1]Defendant Lauffer joined the motion but added no new argument.

So. 2d 1227, 1230 (Fla. 2d DCA 2003) (reversing trial court's transfer of venue order because plaintiff's original venue selection was appropriate under the venue statutes). Indeed, the plaintiff's venue selection is "favored under Florida law." Ivey v. Padgett, 502 So. 2d 22, 23 (Fla. 5th DCA 1987) (reversing trial court order changing venue because cause of action accrued in county plaintiff sued in). The Defendants, not Plaintiffs, shoulder the burden to prove that Plaintiffs' venue selection was improper. Breed Technologies, 861 So. 2d at 1230.

Venue is appropriate in this Court because one or more of the causes of action pled by Plaintiffs accrued in Sarasota County. Section 47.011 – the general venue provision – and section 47.041 – applicable to multiple pled causes of action – are the relevant statutes at issue. Where, as here, there are multiple causes of action alleged, venue is appropriate in each county where one of those causes of action accrued. McDaniel Reserve Realty Holidings, LLC v. BSE Consultants, Inc., 39 So. 3d 504, 2010 (Fla. 4th DCA 2010). In that case, plaintiff sued three defendants in Palm Beach County. Each of the three defendants, two individuals and one Florida corporation, resided in Brevard County, and contended the venue should be in either Brevard County where they resided or in Hendry County where the alleged property in question was located. Id. at 508. The Fourth District concluded that Palm Beach County was an authorized venue, because at least one of the multiple causes of action accrued in Palm Beach County. Id. at 510.

Just like in McDaniel Reserve, the Defendants live out of this forum. Lauffer lives in Charlotte County; Brundy lives in Hillsborough County. Just as venue was authorized in Palm Beach County in McDaniel Reserve, venue here is authorized in Sarasota County because several of the causes of action accrued here. Accordingly, Plaintiffs' selection of Sarasota County as the venue for this lawsuit is authorized by statute, and that selection is favored under Florida law.

2. **Causes of Action Accrued in Sarasota County.**

Several of the causes of actions accrued in Sarasota. Even if only one cause of action accrued in Sarasota County, Sarasota County would be an appropriate and authorized venue.

A. ***Theft of trade secrets (count III) – both Defendants.*** The cause of action for violations of the Uniform Trade Secrets Act accrued in Sarasota County. Physicians Group alleges that Lauffer stole electronic documents off of Physicians Group's data servers, which are located in Sarasota County. (Cmpt. ¶20; Balot Affidavit; Lauffer Depo). Defendants then disseminated those documents. (Cmpt. ¶¶21, 27-29, 63). Under Florida's Uniform Trade Secrets Act, see §688.001, Fla. Stat. et seq., both the person who stole the trade secrets as well as all disclosing persons are liable for the misappropriation. See §688.002(2), Fla. Stat.

A cause of action for theft accrues for venue purposes in the county where the property was taken. See John Hall Elec. Contracting, Inc. v. Allstate Const., Inc., 917 So. 2d 310, 311 (Fla. 1st DCA 2005) (cause of action for civil theft/conversion accrues in county where funds stolen); Martin v. Kuhl, 528 So. 2d 71, 72 (Fla. 4th DCA 1988) (venue for theft/conversion cause of action is proper either where property stolen or where property currently is located). While these cases are not chapter 688 causes of action, there does not appear to be any case law discussing where a chapter 688 cause of action accrued.

A computer data server is like a giant file cabinet, and the theft of information off of that server is the same as if Defendants physically broke into Plaintiffs' business and took paper files. There is no functional difference for venue purposes between a common law conversion count, statutory cause of action for civil theft, or a statutory cause of action for misappropriation of trade secrets. Thus, the case law interpreting venue for conversion / civil theft counts is equally applicable here. Venue is

appropriate in the county where the physical theft occurred, which here, is in Sarasota County.

B. Civil conspiracy (count VI) – both Defendants. The civil conspiracy cause of action accrued in Sarasota as the economic impact to Plaintiffs was first felt in Sarasota County. In reliance on Tucker v. Fianson, 484 So. 2d 1370 (Fla. 3d DCA 1986), the Second District has applied the tort venue analysis to civil conspiracy causes of action. Lane v. Hemophilia of The Sunshine State, Inc., 793 So. 2d 992, 995 (Fla. 2d DCA 2001). This is consistent with the purpose of the civil conspiracy cause of action, which provides that "the gist of a civil action for conspiracy is not the conspiracy itself, but the civil wrong which is done pursuant to the conspiracy." American Diversified Ins. Svcs, Inc. v. Union Fidelity Life Ins. Co., 439 So. 2d 904, 906 (Fla. 2d DCA 1983) (internal quotation omitted).

In Tucker, an attorney did negligent work from his desk in Broward County, but that negligent act caused economic harm in Miami-Dade County, which was the last act necessary for defendant to be liable to plaintiff. 484 So. 2d at 1371. Colorfully, the court note that "while lawyer Tucker negligently shot his arrow into the air of Broward County, it did no harm and had no effect until it feel to earth in Dade." Id. at 1371.

Here, the Defendants conspired to extort money from and otherwise to harm Physicians Group. (Cmpt. ¶79). When Physicians Group refused to give into Defendants $3 million dollar extortion demand, Defendants continued their conspiracy to harm Physicians Group. The economic impact of Plaintiffs' civil wrong was first felt, and continues to this day to be felt, in Sarasota County. (Balot Affidavit). Under the Tucker analysis, which the Second District in Lane adopted for civil conspiracy cases, this cause of action accrued in Sarasota County.

C. FDUTPA and Unfair Competition (Counts I and II) – both Defendants.

Common law tort actions accrue where the last event necessary to make the defendant liable took place, which is where the plaintiff first suffers injury. Rocco v. Glenn, Rasmussen, Fogarty & Hooker, P.A., 32 So. 3d 111, 115 (Fla. 2d DCA 2009). This concept is based on the Third District's decision in Tucker, 484 So. 2d at 1371, as noted above, which provides that the damages are incurred by the plaintiff where the economic impact is felt. For Physicians Group, that is here in Sarasota, where its corporate headquarters is located. Moreover, venue is appropriate in an unfair competition action in *any county* where *any overt act constituting unfair competition* occurred. Harr v. West Florida Seafood, Inc., 521 So. 2d 349, 351 (Fla. 2d DCA 1988). Here, the theft of trade secrets and other confidential information from data servers located in Sarasota County constitutes such an overt act. Venue is appropriate in Sarasota. The same analysis applies with regard to Florida's Deceptive and Unfair Trade Practices Act.

D. Breach of Contract (Count V) – Lauffer. Lauffer and Physicians Group contractually agreed that "venue for any action hereon shall lie in Sarasota County, Florida." (Cmpt, Ex. C, p.11, ¶14.6). The breach of contract accrued in Sarasota, both as the act of taking confidential/trade secret information occurred in Sarasota, as did the economic harm that has befallen Physicians Group. See Williams Steel industries, Inc. v. Taylor Woodrow Const. Corp., 510 So. 2d 357, 358 (Fla. 2d DCA 1987). Moreover, these parties agreed to Sarasota County as the proper venue, which is permitted. General Home Development Corp. v. Kwirant, 819 So. 2d 255, 257-58 (Fla. 2d DCA 2002).

E. Conclusion on venue. Pursuant to section 47.041 and McDaniel Reserve, 39 So. 3d at 510, if one cause of action accrued in Sarasota, then venue is authorized here. As multiple causes

of action accrued in Sarasota for venue purposes, venue is authorized in Sarasota County, and because Plaintiffs' venue selection is favored by Florida law, venue should remain here.

3. Defendants Presented No Evidence on the Section 47.122 Convenience Factors.

Without any analysis or evidentiary support, Defendants baldly state that venue should be changed for the convenience of the parties, witnesses, or on account of the interests of justice. (Mot. ¶7). This is contrary to controlling Second District case law, which places the burden on the party seeking to change the venue. J.L.S. v. R.J.L., 708 So. 2d 293, 295 (Fla. 2d DCA 1998). Moreover, the moving party must also demonstrate that there would be a "substantial inconvenience or undue expense" in order to justify a venue change. See Ashland Oil, Inc. v. Florida Dep't of Transp., 352 So. 2d 567, 569 (Fla. 2d DCA 1977).

Despite Defendants' protestations, this is a non-issue. Defendant Lauffer contractually agreed to venue in Sarasota County. A contractual agreement on venue "encompasses and controls the grounds of convenience as well as other statutory grounds to change venue set out in Chapter 47." General Home Development, 819 So. 2d at 258. Thus. Defendant Lauffer has no authority to seek a change of venue, and his attorney/agent and fellow conspirator, Defendant Brudy, is also bound by this decision. Even if there were no contractual provision, transfer is not warranted because Defendants did not demonstrate any basis for transfer.

Regarding the convenience of the witnesses, the Second District provides that this factor does not apply where, as here, some witnesses are in this venue and other witnesses are outside of this venue. See, e.g., John Christen Corp. v. Maita, 571 So. 2d 24, 25 (Fla. 2d DCA 1990) (reversing trial court's section 47.122 venue transfer where witnesses lived in both original venue and transfer venue); accord Velez v. Mell D. Leonard & Associates, 338 So. 2d 896, 897 (Fla. 2d DCA 1976). Plaintiffs have

provided testimony that some of the witnesses live, work, or do both in Sarasota County. (Balot Affidavit). There is no evidence brought by either Defendant. But even if they did, the reality of the situation is whatever county in which this case is litigated, some of the witnesses will be inconvenienced, and thus there is no basis to transfer venue. That is the point the Second District made in John Christen.

Regarding the convenience of the parties, Defendant Lauffer is a Charlotte County resident, Defendant Brundy is a Hillsborough County resident, and Plaintiffs are Sarasota County residents. Regardless of which venue this case is located, someone is going to be inconvenience. In fact, the most convenient venue is Sarasota, as that is between where the two defendants live. Again, where there is this split, there is no justification to change venue.

Regarding the interests of justice, that factor would apply if "the forum may not afford a fair and impartial decision." Ashland Oil, 352 So. 2d at 569. There is no allegation by Defendants that Sarasota Circuit Judges are incapable of providing a fair and impartial decision. The factor may also apply if there was little other reason for venue to lie in this county other than plaintiff's choice of venue. Westchester Fire Ins. Co. v. Fireman's Fund Ins. Co., 673 So. 2d 958, 959 (Fla. 3d DCA 1996). Here, as demonstrated above, there are numerous connections and ties to Sarasota County. This factor simply is inapplicable.

Based on the analysis above, the contractual agreement on venue proves dispositive on this issue. But even if that is not considered, Defendants failed to meet their burden to demonstrate any of the factors justifying a change of venue over Plaintiffs' presumptively favored venue selection. The Court should deny the change of venue motion.

4. **A Note about the Separate Pinellas County Case.**

Defendants may contend that there was a "virtually identical" lawsuit that was previously pending in Pinellas County that has been dismissed. Such an argument, however, is incorrect. There was a lawsuit between W.S. Marketing, Inc. as plaintiff (*not* W.S. Media, Inc., a plaintiff here) versus Peter Brudny, Peter J. Brudny, P.A., Kathryn Fenderson Scott, Charles Scott, and Scott & Fenderson, P.A. in the case styled, W.S. Marketing, Inc. v. Peter J. Brudny, Peter J. Brudny, P.A., Kathryn Fenderson Scott, Charles Scott, and Scott & Federson, P.A., 10-12447-CI-19, which was dismissed without prejudice. There was no adjudication on the merits.

The parties there are substantially different than the parties here. Neither plaintiff here, W.S. Media, Inc. or Physicians Group, LLC, were plaintiffs in the Pinellas case.[2] Defendant Lauffer was not a defendant in the Pinellas case. Moreover, there are multiple additional claims against Defendant Brudny than were alleged in the Pinellas case. As the parties and claims are different, it is not correct to say that the plaintiffs in this action are forum shopping or that they have previously dismissed the lawsuit. But even if the Court considered this to be a continuation of the Pinellas County case, rule 1.420 permits a plaintiff to dismiss and refile once, and there is no requirement in that rule or case law that the case be refiled in the same circuit. Here, there is no impediment to the lawsuit being filed in Sarasota. Simply put, the motion to transfer venue must be denied.

MOTION TO DISMISS

Defendants make a half-hearted attempt to suggest that Plaintiffs did not plead with enough specificity. That is incorrect; Plaintiffs pled with sufficient specificity for each count to state a cause of

---

[2]W.S. Media, Inc. attempted to become a plaintiff in the Pinellas Case but ultimately was not permitted. Here, W.S. Media, Inc. has alleged that it is the successor in interest to W.S. Marketing, Inc. See Cmpt. ¶3.

action.

1. **Count 1 - FDUTPA.** Defendants cherry-pick one isolated allegation and fail to acknowledge or analyze the remaining allegations applicable to Count 1. Plaintiffs incorporated paragraphs 1-38 into Count 1, which set forth an elaborate plot with specific actions taken by both Defendants conspiring to damage Plaintiffs. Certainly, the Post at issue is a component of the basis for this cause of action, but so are other facts. When viewed with all allegations, there is substantial basis to conclude that Plaintiffs stated a cause of action.

There is no dispute that FDUTPA protects legitimate business enterprises such as Plaintiffs, as section 501.202(2) states a primary purpose of the act is "to protect . . . legitimate business enterprises from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce." Defendants argument is essentially that Defendants were not engaged in "trade or commerce" within the meaning of the statute, with citation to State v. Shapiro & Fisherman, 59 So. 3d 353 (Fla. 4th DCA 2011). "Trade or commerce" is defined as "the advertising, soliciting, providing, offering, or distributing, whether by sale, rental, or otherwise, of any good or service, or any property, whether tangible or intangible, or any other article, commodity, or thing of value, wherever situated." §501.203(8), Fla. Stat. The statute also includes "the ***conduct*** of any trade or commerce, however denominated . . . ." Id. Plaintiffs' allegations meet this standard.

The Shapiro & Fishman case actually demonstrates that Plaintiffs have properly alleged a cognizable cause of action. The court noted that the investigatory subpoenas at issue there centered on "the law firm's conduct in the processing of foreclosure cases, as opposed to the initial applications for

mortgages or the initial lending relationships." 59 So. 3d at 356.[3] Here, Count 1 specifically alleges that it involves Defendants "solicit[ation of] potential clients to initiate a lawsuit against ASK-GARY, in order to disparage Plaintiff's business." Cmpt. ¶42. This, coupled with Defendants plan to extort Plaintiffs and launch a media smear campaign certainly is an unfair method of competition within the meaning of the statute. Cmpt. ¶44.

Defendants also suggest that Plaintiffs did not suffer actual damages. That argument, in reality, is a summary judgment issue, not an issue for a motion to dismiss. Plaintiffs alleged that they sustained actual damages. Cmpt. ¶45. The Court on a motion to dismiss is required to construe these allegations in the light most favorable to Plaintiffs. Moreover, Plaintiffs also seek injunctive relief, for which actual damages are not required. §501.211(1), Fla. Stat. In any event, Defendants' motion seeks dismissal, not summary judgment. Plaintiffs stated a cause of action for violations of FDUTPA, and dismissal must be denied.

2. **Count 2 - Unfair Competition**. Florida permits a common law unfair competition cause of action. CBS, Inc. v. Garrod, 622 F.Supp. 532, 536 (M.D. Fla. 1985). The three elements are "(1) time, labor, and money expended by the plaintiff, (2) competition, and (3) commercial damage." Id. at 536. Plaintiffs have alleged ultimate facts as to those elements. Defendants suggest that Plaintiffs did not allege competition. Yet, Plaintiffs alleged facts that show competition, and in fact, actually alleged competition. Cmpt. ¶¶11-17. It is mystifying how Defendants contend that Plaintiffs did not

---

[3]The two federal cases cites by the Shapiro & Fishman also do not help Defendants. In one, the mortgage servicer did not "advertise, solicit, provider, offer or distribute anything." 59 So. 3d at 356, quoting Trent v. Mortgage Electronic Registration Systems, Inc., 618 F.Supp.2d 1356 (M.D. Fla. 2007). In the other, the court concluded that following Florida's civil theft demand statute did not constitute trade or commerce. Shapiro v. Fishman, 59 So. 3d at 356, citing Kelly v. Palmer, Reifler, & Associates, P.A., 681 F.Supp.2d 1356 (S.D. Fla. 2010).

allege competition when the allegations of the Complaint conclusively show that competition was alleged. Plaintiffs stated a cause of action.

3. **Count 3 - Theft of Trade Secrets.** Defendants complain that Plaintiff did not expressly cite to Florida's Uniform Trade Secrets Act, section 688.001, et. seq. Of course, in their second paragraph in their motion on this count, they reference this act, so apparently Defendants are on notice. Defendants otherwise make a general allegation that there are not sufficiently pled facts; however, the Complaint belies that statement. Defendant Brudny contends that there are no allegations of "theft" against him. That is incorrect. Under section 688.002(2), "misappropriation" includes both the actual theft of the trade secret ***as well as*** the disclosure of the trade secret. Here, Plaintiffs alleged that Defendant Brudny disclosed those trade secrets. Cmpt. ¶63. That is sufficient to state a cognizable claim under the Act.

Finally, Defendants suggest that Counts 1, 2, 4, and 5 would be barred as they are all based on the misappropriation of trade secrets. That is not the case. Pursuant to section 688.008(2), the Act expressly does not apply to (a) contractual remedies; (b) any civil remedy not based on the misappropriation of the trade secret; or (c) any criminal remedies not based on the misappropriation of the trade secret. Plaintiffs carefully alleged other conduct not based on Defendants' theft/misappropriation of the trade secrets in those other counts. There is no bar to those other counts.

4. **Count 4 – Interference with Contract.** Defendants first contend there is no cause of action for interference with contract. That simply is incorrect. See Toledo v. Hillsborough County Hosp. Auth., 841 So. 2d 482, 483 (Fla. 2d DCA 2003); see also Florida Telephone Corp. v. Essig, 468 So. 2d 543, 544 (Fla. 5th DCA 2003). Plaintiffs stated the cause of action.

Defendants also raise the issue of whether of whether Physicians Group, LLC, a Florida limited

liability company is the appropriate party. It is. That entity is an active business entity that has undergone a name change to Physicians Group of Sarasota, LLC. Physicians Group, LLC, a Florida limited liability company is the entity that entered into the Employment Agreement with Defendant Lauffer, and that is the entity before the Court (albeit not referencing the name change). Thus, the Physicians Group entity that filed suit is the appropriate entity.[4]

5. **Count 5 – Civil Conspiracy.** As the Second District has recently reminded, "A cause of action for conspiracy requires showing (a) a conspiracy between two or more parties, (b) to do any unlawful act or to do a lawful act by unlawful means, (c) the doing of some overt act in pursuance of the conspiracy, and (d) damage to the plaintiff as a result of the acts performed pursuant to the conspiracy." Olson v. Johnson, 961 So. 2d 356, 359 (Fla. 2d DCA 2007). Civil conspiracies exist as independent torts. Wilcox v. Stout, 637 So. 2d 335, 336 (Fla. 2d DCA 1994). Here, Plaintiffs alleged with great specificity each of those elements.

Defendants contend with only citation to federal case law that civil conspiracy is not an independent tort. As these cases from the Second District make clear, Defendants are simply wrong. The Court should not be lead into error by Defendants. Plaintiffs have stated a cause of action.

6. **Preemption Issue.** Defendant Brudny in a throw-away paragraph suggests that the Court lacks jurisdiction because the Florida Supreme Court has jurisdiction to establish the rules relating to solicitation of clients and advertising. Certainly, FDUPTA applies to lawyers and law firms. See Law Offices of David J. Stern, P.A., v. Banner, 50 So. 3d 1221 (Fla. 4th DCA 2010) (approving class certification in FDUTPA claim, among others). Moreover, section 501.212 provides for the only

[4]To ensure that there is no concern, Physicians Group would be willing to bring in as an additional plaintiff the Physicians Group, LLC, a Delaware entity as well as correct the name misnomer.

exclusion of and/or industrice from the mandates of FDUTPA. No such preclusion exists for attorneys, and it therefore must be presumed that the Legislature intended to include attorneys within the reach of FDUTPA. This lawsuit is not about the regulation of the practice of law; it is about extortion, theft, and improper competition, among other things. This Court has jurisdiction to redress the wrongs that Defendants have visited on Plaintiffs.

DEFENDANTS' DISCOVERY OBJECTIONS

Plaintiffs requested each Defendant to produce documents and respond to interrogatory questions. Plaintiffs propounded that discovery to Defendant Lauffer on February 27, 2012, and to Defendant Brudny on March 12. Without objecting to any particular question, each of the Defendants simply objected to engaging in any discovery while their motions remained pending to (1) disqualify the Shutts & Bowen firm; (2) to transfer venue; and (3) to dismiss the complaint. Defendant Brundy also filed a motion to stay discovery, which Defendant Lauffer joined. Plaintiffs have also sought non-party discovery, again all of which has been objected to by Defendants.

Neither Defendant sought to have any of these discovery objections / request to stay heard by the Court. Separately, both Defendants have refused to participate or schedule any non-party discovery. Defendants actions here are designed for the purpose of delay and not for any legitimate purpose.

Defendants are required to show good cause before Plaintiffs' rights to take discovery may be impeded. See, e.g., Deltona Corp. v. Bailey, 336 So. 2d 1163, 1169 (Fla. 1976). Defendants have utterly failed to do so. Plaintiffs address each of Defendants' claimed reasons for delay seriatim and explain why such claim fails to show good cause.

1. **Discovery signed by the Shutts firm.** With respect to Defendants claim that the Shutts firm physically signed the discovery, attorneys at the Matthews Eastmoore firm advised early on that

such discovery was specifically adopted.[5] (Exhibit 1). That offer has fallen on deaf ears. The reality of the situation is the Shutts lawyers have appeared as attorneys for Plaintiffs and, under the Rules, are entitled to sign pleadings, motions, discovery, etc. There is no exception in the Rules to delay in the light of a pending motion to disqualify, especially here, where attorneys are a separate law firm confirm the discovery requests. Defendants refusal to recognize the Matthews Eastmoore attorney's offer with respect to the discovery demonstrates this issue is not a basis for good cause for Defendants.

2. **The pending motion to transfer venue.** Defendants also assert they are not obligated to participate in discovery while there is a pending motion to transfer venue. Importantly, there is no challenge to the Court's jurisdiction. The objective of a motion to transfer venue is simply ***where*** the lawsuit will be litigated, not ***if*** the lawsuit will be litigated.

In a recent filing, Defendants cited Gleneagle Ship Management Co. v. Leodakos, 602 So. 2d 1282 (Fla. 1992), suggesting that the pendency of a motion to transfer venue is grounds to stay discovery. The focus of that case, however, was on the ***jurisdictional challenge***, not the venue challenge, and whether to permit jurisdictional discovery pending the resolution of the jurisdictional challenge. In fact, the motion for protective order which was the basis for the challenge that was ultimately resolved by the Florida Supreme Court was based on the jurisdictional challenge, not the venue challenege. Id. at 1283 ("The petitioners filed a motion for protective order on the grounds that until the trial court determined whether it had jurisdiction, Leondakos' discovery request was

---

[5]There is no legal basis to ignore a pleading/discovery signed by an attorney for a party. While Defendants challenge the Shutts firm, unless and until such firm and its attorneys are disqualified, the Shutts lawyers remain attorneys for Plaintiffs. The fact that Defendants ignore Matthews Eastmoore's legally unnecessary but specific representation of adopting discovery signed by the Shutts firm is further evidence that Defendants attempt here is delay only for improper purposes.

premature."). Gleneagle Shop is inapposite here: nothing in Gleneagle Ship suggests that the pendency of a motion to transfer venue is a basis not to conduct discovery.

Thus, regardless of the outcome of the motion to transfer venue, the case will continue. Defendants have not shown good cause as to why discovery should be abated during the pendency of the motion to dismiss.

3. **The pending motion to dismiss.** Defendants mainly rely on a federal court case, which is curious, as under the federal rules, certain discovery is obligated to occur relatively soon after the lawsuit is filed even without request. See Fed. R. Civ. P. 26(a)(1). But in all events, this case is proceeding under Florida's rules, not the federal rules. As the Florida Supreme Court has long ago held, there is no prohibition on conducting discovery where there is a pending motion to dismiss. See, e.g., Deltona Corp., 336 So. 2d at 1169. It is the obligation of Defendants to show good cause. Id.

Defendants also cite Connolly v. Sebeco, Inc., 89 So. 2d 484 (Fla. 1956). That case had nothing to do with whether discovery should occur during the pendency of a motion to dismiss. It was a summary judgment case.

Defendants finally cite Exit 242 Tourist Info. v. Florida's Room Service, Inc., 792 So. 2d 1285 (Fla. 5th DCA 2001), for the for the claimed proposition that "'expensive and intrusive' discovery should not be allowed until plaintiff sets forth a cognizable claim, properly pleaded, that would support a judgment." Defendants, however, failed to inform the Court that the discovery sought in that case involved substantial personal financial records, which is a substantial omission. Id. at 1285. As the Court is well aware, Florida has a constitutional right of financial privacy, and the person seeking such financial discovery must show a "compelling reason" to obtain such financial information. Mogul v. Mogul, 730 So. 2d 1287, 1290 (Fla. 5th DCA 1999). Discovery of personal financial information is

qualitatively different than other discovery. Thus, any reliance on Exit 242 is wholly distinguishable as Plaintiffs here are not seeking personal financial information. The Court is bound to follow Deltona Corp.

At bottom, Defendants have failed to show any cause, much less good cause, as to why they should not have to participate in discovery. This Court should overrule all of the discovery objections, deny the motion to stay discovery, and rule that Defendants must produce and respond to all discovery no later than June 30, 2012 without any further objection. (Giving 30 days of the date of the Order likely will result in additional delay, as that there likely will be a fight over the form of the order should the Court request a party to draft it).

CONCLUSION

This Court should deny the motion to transfer venue, deny the motion to dismiss, require that answers be filed on or before June 18, deny the motion to stay/overrule all discovery objections, and require that the response and production occur no later than June 30, 2012 without any further objection.

Respectfully submitted,

/s/ Hunter W. Carroll
A. Lamar Matthews, Jr., FBN 0051390
Hunter W. Carroll, FBN 0297630
hcarroll@matthewseastmoore.com
MATTHEWS EASTMOORE
1777 Main Street, Suite 500
Sarasota, FL 34236
(941) 366-8888 ~ Telephone
(941) 954-7777 ~ Facsimile

-and-

John E. Johnson, FBN 593000

William P. Cassidy, FBN 0332630
Nicole Deese Newlon, FBN 0832391
SHUTS & BOWEN, LLP
4301 West Boy Scout Blvd., Ste. 300
Tampa, FL 33602
(813) 229-8900 ~ Telephone
(813) 229-8901 ~ Facsimile

-and-

Gregory A. Zitani, FBN 0188956
WEST COAST LAW, PPLC
4046 Sawyer Road, Ste. D.
Sarasota, FL 34233
(941) 552-0373 ~ Telephone
(941) 377-3886 ~ Facsimile

CERTIFICATE OF SERVICE

I CERTIFY that a true and correct copy of the foregoing was served on the 23rd day of May, 2012, via electronic mail and First Class US mail to:

Paul M. Weekley
pweekley@wsvlegal.com
Jessica D. Dareneau
jdareneau@wsvlegal.com
WEEKLEY SCHULTE VALDES, LLC
1635 North Tampa Street, Ste. 100
Tampa, FL 33602
(941) 225-4611 ~ facsimile
Attorneys for Defendant Brudny

Raymond A. Haas
haas@haaslewis.com
Dorothy Difiore
ddifiore@haaslewis.com
HAAS, LEWIS, DIFIORE, P.A.
Post Office Box 23567
Tampa, FL 33623
(813) 254-8555 ~ facsimile
Attorneys for Defendant Lauffer

/s/ Hunter W. Carroll

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR SARASOTA COUNTY, FLORIDA

W.S. MEDIA, INC., a Delaware corporation; and
PHYSICIANS GROUP, LLC, a Florida Limited
Liability Company, now known as
PHYSICIANS GROUP OF SARASOTA, LLC,

Case No.: 2012-CA-000265-NC

Plaintiffs,

v.

PETER J. BRUDNY, an individual, and
JEFFREY LAUFFER, an individual,

Defendants,

JEFFREY LAUFFER,

Counterclaim Plaintiff,

v.

W.S. MEDIA, INC, a Delaware corporation, and PHYSICIANS GROUP, LLC, a Florida corporation,

Counterclaim Defendants,

-and-

W.S. MARKETING, INC., a Florida corporation, et al.

Third-party Defendants.

PLAINTIFFS' MOTION FOR JUDGMENT ON THE PLEADINGS REGARDING DR. LAUFFER'S COUNTERCLAIM

Plaintiffs / Counterclaim Defendants, W.S. MEDIA, INC. and PHYSICIANS GROUP OF SARASOTA, LLC, move the Court pursuant to Rule 1.140(c) for judgment on the pleadings

with respect to the Counterclaim filed by Jeffrey Lauffer against Plaintiffs. In support, Plaintiffs state:

1. On or about November 16, 2012, Defendant Jeffrey Lauffer filed a four-count Counterclaim against WS Media, Inc. and Physicians Group, LLC (the Florida limited liability company, which is now known as Physicians Group of Sarasota, LLC).

2. Counterclaim Defendants have answered and raised various defenses, including the failure to state a cause of action as to each of the four counts. Dr. Lauffer filed a Reply only denying each of the Counterclaim Defendants' defenses without pleading any new issues. Accordingly, the pleadings are closed with respect to the Counterclaim, and this motion for judgment on the pleadings is appropriate.

3. As more fully detailed below, each count fails to state a cause of action. Thus, Counterclaim Defendants are entitled to judgment as a matter of law at this time.

MEMORANDUM OF LAW

"A motion for judgment on the pleadings is governed by the same legal test as a motion to dismiss for failure to state a cause of action." Lutz v. Protective Life Ins. Co., 951 So. 2d 884, 889 (Fla. 4th DCA 2007). "A motion for judgment on the pleadings . . . is appropriate where the complaint fails to state a cause of action. It is similar to a motion to dismiss and raises only questions of law arising out of the pleadings." Shay v. First Federal of Miami, Inc., 429 So. 2d 64, 65 (Fla. 3d DCA 1983). "The motion must be decided on the pleadings only, without reference to any other affidavits, depositions, or other showings of fact." Id. While motions for judgment on the pleadings admit all well-pled facts of the non-moving party, conclusions of law are not admitted. See Harris v. Kearney, 786 So. 2d 1222, 1225 (Fla. 4th DCA 2001).

Here, each count alleged by Dr. Lauffer fails as a matter of law for one or more reasons, including a failure to state a cause of action. Accordingly, Counterclaim Defendants are entitled to judgment on the pleadings as a matter of law.

Count I - Abuse of Process:

Dr. Lauffer attempts to state a cause of action against both Physicians Group and WS Media for abuse of process. Dr. Lauffer failed to allege each element of this cause of action.

"A cause of action for abuse of process contains three elements: (1) that the defendant made an illegal, improper, or perverted use of process; (2) that the defendant had ulterior motives or purposes in exercising such illegal, improper, or perverted use of process; and (3) that, as a result of such action on the part of the defendant, the plaintiff suffered damage." S&I Investments v. Payless Flea Market, Inc., 36 So. 3d 909, 917 (Fla. 4th DCA 2010). "The usual case of abuse of process involves some form of extortion[.]" Id. The cause of action for abuse of process is concerned with the improper use of process ***after*** it has been issued. Id. "Where the process was used to accomplish the result for which it was intended, ***regardless of an incidental or concurrent motive of spite or ulterior purpose,*** there is no abuse of process." Id. (emphasis in original, internal quotations omitted)"

The Second District has held that "there must be an improper willful act during the course of the proceedings to constitute an abuse of process." Peckins v. Kaye, 443 So. 2d 1025, 1026 (Fla. 2d DCA 1983). An ulterior motive, without an improper willful act, is entirely insufficient to state a cause of action for above of process. Id.; see also Valdes v. GAB Robins North America, Inc., 924 So. 2d 862, 866-67 (Fla. 3d DCA 2006) (affirming dismissal of abuse of process claim where complaint failed to allege any improper willful acts after process issued).

Here, Dr. Lauffer failed to allege any improper, willful act occurring after process was issued that could form the basis of an abuse of process claim. Dr. Lauffer's best allegation is that

Counterclaim Defendants have an improper purpose in this lawsuit. Counterclaim ¶8. That bare allegation is insufficient to state a cause of action; Dr. Lauffer has failed to allege the first element. See Peckins, 443 So. 2d at 1026; Valdes, 924 So. 2d at 866-67. Counterclaim Defendants are entitled to judgment on the pleadings.

Count II - Tortious Interference of a Business Relationship:

Dr. Lauffer next attempts to state a cause of action against Physicians Group for tortious interference with a business relationship. Dr. Lauffer, however, woefully fails to allege the most basic elements for tortious interference with a prospective business relationship.

"A party seeking redress pursuant to a claim for tortious interference with a business relationship must show (1) the existence of a business relationship, not necessarily evidenced by an enforceable contract, (2) knowledge of the relationship on the part of the defendant, (3) an intentional and unjustified interference with the relationship, and (4) damage to the plaintiff as a result of the tortious interference with the relationship." ISS Cleaning Services Group, Inc. v. Cosby, 745 So. 2d 460 (Fla. 4th DCA 1999). Like here, an "action for tortious interference with a ***prospective*** business relationship [also] requires a business relationship evidenced by an actual and identifiable understanding or agreement which in all probability would have been completed if the defendant had not interfered." Id. (emphasis in original).

Here, Dr. Lauffer failed to allege the existence of ***any*** business relationship, much less an actual or identifiable understanding or agreement that in all probability would have been completed if Physicians Group had not interfered. Instead, Dr. Lauffer's best allegation simply alleges that Physicians Group engaged in "a systematic plan to harass and discredit Dr. Lauffer and interfere with his ability to obtain gainful employment in his community." Counterclaim ¶11. This is totally different than alleging the existence of one or more prospective business relationships.

This allegation is also deficient because, as the Second District has held, there can be no tortious interference as a matter of law with the community at large. Southern Alliance Corp. v. City of Winter Haven, 505 So. 2d 489 (Fla. 2d DCA 1987). The Florida Supreme Court has adopted this position. See Ethan Allen, Inc. v. Georgetown Manor, Inc., 647 So. 2d 812, 815 (Fla. 1994). Contrary to controlling law, Dr. Lauffer specifically and improperly alleges interference with the "community" in paragraph 11.

Dr. Lauffer also failed to allege the second element -- Physician Group's knowledge of the unalleged prospective business relationship. Similarly, he failed to allege the third element -- an intentional and unjustified interference with the unalleged prospective business relationship. In a nutshell, Dr. Lauffer came nowhere close to alleging the proper elements to state a cause of action for tortious interference with a prospective business relationship. Physicians Group is entitled to judgment on the pleadings as to Count II.

Count III - Defamation:

Dr. Lauffer's third count attempts to state a cause of action against Physicians Group for defamation. Again, he failed to allege the elements for this cause of action.

"The elements of a cause of action for defamation are: (1) the defendant published a false statement (2) about the plaintiff (3) to a third party and (4) that the falsity of the statement caused injury to the plaintiff." Bass v. Rivera, 826 So. 2d 534, 535 (Fla. 2d DCA 2002).

Here, Dr. Lauffer does not allege that Physicians Group itself actually published any article asserting that Dr. Lauffer suffers from psychiatric problems for which he failed to obtain treatment. Counterclaim ¶14. Nor does he allege any specific or identifiable publication that contained the alleged defamatory statement. Instead, Dr. Lauffer generically references that Physicians Group somehow assisted in causing some unnamed article by some unnamed person

or entity to be publish with the alleged false statement.[1] This failure to allege that Physicians Group actually ***published*** a false statement defeats the defamation cause of action as Dr. Lauffer has not alleged the first element of the claim. Physicians Group is entitled to judgment on the pleadings.

Count IV - Intentional Infliction of Emotional Distress:

Dr. Lauffer's final count attempts to state a cause of action against Physicians Group for intentional infliction of emotional distress. First, there is no such independent claim here because it sounds in the tort of defamation. Second, even if there were an independent claim, Dr. Lauffer failed to allege the elements for this cause of action.

---

[1] While this is outside the four-corners of the pleadings, Physicians Group notes that Dr. Lauffer himself testified under oath in a deposition noticed by Defendant Brudny's then counsel ***in a case to which Physicians Group was not a party*** as follows:

Q Are you currently licenses as a chiropractor?
A I am.
Q The mental leave, is that self-imposed or did another doctor put you on it?
A There's been a lot of things happening in my life over the past four or five years since I left Physicians Group. Because of these things, I'm experiencing some difficulties with patient/clinic interactions, having some breakdowns, so I went to see a psychiatrist.
The psychiatrist told me that I need to take some medication, possibly to go back to work. I know what the problem is. I'm not taking medication to go to work. So what -- whatever you want to call that; I call it a mental leave.
Q Okay, But what I mean is: Has a doctor actually ordered you to stay out of work or is this something you're doing because you believe it's best for you?
A I -- I didn't have the follow-up. From what the exact doctor's recommendations were, his recommendations were, "Take this medication." And I'm a chiropractor. We're not crazy about the medications.
I know what the problem is. For me, the problem is not a lack of medication. So I guess to some degree, I made my own decision. I think he would probably stand behind it, but I -- I -- this, I don't know.
Q Fair enough. That begs --
A I couldn't go back to work, period.

Jones v. Eberle, Sixth Circuit, Pasco County, 2009-CA11192, Deposition of Jeffrey Lauffer, dated September 21, 2010. With no further reference in the Counterclaim, Physician Group assumes this is the supposed publication.

"To state a cause of action for intentional infliction of emotional distress, a complaint must allege four elements: (1) deliberate or reckless infliction of mental suffering; (2) outrageous conduct; (3) the conduct caused the emotional distress; and (4) the distress was severe. Behavior claimed to constitute the intentional infliction of emotional distress must be so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency." Liberty Mut. Ins. Co. v. Steadman, 968 So. 2d 592, 594 (Fla. 2d DCA 2007) (internal citations and quotations omitted). Continuing, the Second District also held that "[i]n applying that standard, the subjective response of the person who is the target of the actor's conduct does not control the question of whether the tort of intentional infliction of emotional distress occurred. Rather, the court must evaluate the conduct as objectively as is possible to determine whether it is atrocious, and utterly intolerable in a civilized community." Id. at 595. Finally, the Second District held: "Whether conduct is outrageous enough to support a claim of intentional infliction of emotional distress is a question of law, not a question of fact." Id. at 595 (internal citations and quotations omitted).

An intentional infliction of emotional distress claim will not lie where a person pursues a legal right in a permissible manner, "even if he knows that his conduct will cause emotional distress to the plaintiff." State Farm Mut. Auto Ins. Co. v. Novotny, 657 So. 2d 1210, 1212 (Fla. 5th DCA 1995). As the court explained: "It is not enough that the intent is tortious or criminal; it is not enough that the defendant intended to inflict emotional distress; and it is not enough if the conduct was characterized by malice or aggravation which would entitle the plaintiff to punitive damages for another tort." Id. at 1213.

As the basis for his claim, Dr. Lauffer contends that Physicians Group made a false statement to law enforcement for the purpose of having Dr. Lauffer convicted of the crime of extortion. Counterclaim ¶¶18-21. Dr. Lauffer also contends that Physicians Group required him

to sit through a few depositions in a civil case where he had no relevant testimony. Counterclaim ¶22.

Interestingly, Dr. Lauffer did not attempt to allege a defamation claim for the alleged false report to law enforcement. Of course, had he done so, he would have run into at least a qualified privilege defense, if not an absolute privilege defense, associated with criminal judicial proceedings that would bar the defamation claim. See Fridovich v. Fridovich, 598 So. 2d 65, 69-70 (Fla. 1992). As a matter of policy, "a plaintiff is not permitted to make an end-run around a successfully invoked defamation privilege by simply renaming the cause of action and repleading the same facts. Obviously, if the sole basis of a complaint for emotional distress is a privileged defamatory statement, then no separate cause of action exists. In short, ***regardless of privilege***, a plaintiff cannot transform a defamation action into a claim for intentional infliction of emotional distress simply by characterizing the alleged defamation statements as 'outrageous.'" Id. (emphasis in original; internal citations omitted). To be clear, where the alleged outrageousness is defamation, there is not "an independent tort for the recovery of damages for emotional distress." Ford v. Rowland, 562 So. 2d 731, 735-36 (Fla. 5th DCA 1990) (allegations that defendant accused plaintiff of being a prostitute might give rise to defamation, but such allegation does not give rise to independent tort of intentional infliction of emotional distress); Boyles v. Mid-Florida Television Corp., 431 So. 2d 627, 635-36 (Fla. 5th DCA 1983) (allegations that defendant implied plaintiff was a murderer and rapist who taunted mentally retarded patients might give rise to defamation claim, but no independent cause of action exists for intentional infliction of emotional distress).

A simple review of Dr. Lauffer's allegations reveals the crux of this alleged cause of action is that Physicians Group made an allegedly false statement to law enforcement. This is nothing more than a prohibited end-run around an un-alleged defamation claim (which would

then permit Physicians Group to raise privilege issues). As a matter of law, this is not an independent tort for intentional infliction of emotional distress.

Even if the Court believed an intentional infliction of emotional distress count could co-exist with defamation, Dr. Lauffer failed to state a cause of action for intentional infliction of emotional distress. Valdes v. GAB Robins North America, Inc., 924 So. 2d 862, 865-66 (Fla. 3d DCA 2006). In the Valdes case, the defendant allegedly made false statements to law enforcement to have the plaintiff arrested and convicted of workers compensation fraud and misstatements. The court concluded that defendant's false statements to law enforcement seeking to have plaintiff jailed did not rise to the level of outrageousness necessary to state successfully a cause of action for intentional infliction of emotional distress. Thus, if false statements to law enforcement designed to have plaintiff convicted of workers compensation fraud is insufficient as a matter of law, Dr. Lauffer's allegation here that Physicians Group made a false statement to law enforcement to have Dr. Lauffer prosecuted for extortion is similarly insufficient.

That leaves Dr. Lauffer's bald allegation that he had to sit through a couple of depositions as a non-party. Certainly, that does not come close to extremely high level of outrageousness required for this cause of action. See Novotny, 657 So. 2d at 1212-13 (holding as a matter of law that subjecting person to interview is insufficient for intentional infliction of emotional distress claim). This conclusion is consistent with other, more egregious factual situations that courts have concluded as a matter of that that there is no intentional infliction of emotional distress. See LeGrande v. Emmanuel, 889 So. 2d 991, 994 (Fla. 3d DCA 2004) (falsely accusing pastor in front of congregation that pastor stole church funds and labeling pastor "Satan" insufficient for cause of action); Garcia v. Carnival Corp., 838 F.Supp.2d 1334, 1339 (S.D. Fla. 2012) (following disagreement in casino on cruise ship, numerous crew members grabbing and

throwing individual to floor, handcuffing her, and confining her to quarters insufficient for cause of action); Bilbrey v. Myers, 91 So. 3d 887, 892 (Fla. 5th DCA 2012) (falsely telling numerous individuals that person is a homosexual with an immoral character and trying to break up relationship with fiancé insufficient for cause of action).

Even if the Court disagreed with the alleged actions taken by Physicians Group, the motion for judgment on the pleadings must still be granted because Dr. Lauffer failed to allege behavior so outrageous in character and so extreme in degree as to go beyond all possible bounds of decency. Physicians Group is entitled to judgment on the pleadings.

CONCLUSION

Each of the four counts contained in Dr. Lauffer's Counterclaim failed to state a cause of action. Counterclaim Defendants are therefore entitled to have their motion for judgment on the pleadings granted with prejudice.

WHEREFORE, Counterclaim Defendants WS Media, Inc. and Physicians Group of Sarasota, LLC request that the Court enter judgment on the pleadings with prejudice in their favor.

Respectfully submitted,

/s/ Hunter W. Carroll
A. Lamar Matthews, Jr., FBN 0051390
Primary:
ALMatthews@matthewseastmoore.com
Secondary: Linda@matthewseastmoore.com
Hunter W. Carroll, FBN 0297630
Primary: hcarroll@matthewseastmoore.com
Secondary: amy@matthewseastmoore.com
MATTHEWS EASTMOORE
1777 Main Street, Ste. 500
Sarasota, FL 34236
(941) 366-8888 ~ Telephone
(941) 954-9999 ~ Facsimile

-and-

John E. Johnson, FBN 593000
William P. Cassidy, FBN 0332630
Primary: jjohnson@shutts.com
wcassidy@shutts.com
Secondary: thamric@shutts.com
lwhite@shutts.com
zashley-catalan@shutts.com
SHUTS & BOWEN, LLP
4301 West Boy Scout Blvd., Ste. 300
Tampa, FL 33602
(813) 229-8900 ~ Telephone
(813) 229-8901 ~ Facsimile

-and-

Gregory A. Zitani, FBN 0188956
Primary: filings1@westcolaw.com
Secondary: filings2@westcolaw.com
WEST COAST LAW, PPLC
4046 Sawyer Road, Ste. D.
Sarasota, FL 34233
(941) 552-0373 ~ Telephone
(941) 377-3886 ~ Facsimile

CERTIFICATE OF SERVICE

I CERTIFY on this 11th day of January, 2013, that I served a true copy of the foregoing document by electronic mail on:

Paul M. Weekley
Jessica D. Dareneau
Primary: pweekley@wsvlegal.com
Secondary: mhservice@wsvlegal.com
mgservice@wsvlegal.com
WEEKLEY SCHULTE VALDES, LLC
1635 North Tampa Street, Ste. 100
Tampa, FL 33602
(941) 225-4611 ~ facsimile
Attorneys for Defendant Brudny

Raymond A. Haas
Dorothy Difiore
Primary: haas@haaslewis.com
Secondary: satchel@haaslewis.com
HAAS, LEWIS, DIFIORE, P.A.
Post Office Box 23567
Tampa, FL 33623
(813) 254-8555 ~ facsimile
Attorneys for Defendant Lauffer

/s/ Hunter W. Carroll

IN THE SECOND DISTRICT COURT OF APPEAL
STATE OF FLORIDA

ROBIN R. LANE,

Appellant,

v.

THE LAW OFFICES OF CHARLES W. EHRLICH,

Appellees.

Case No.: 2D13-1528

L.T. Case No.: 2007-CA-4079

ANSWER BRIEF OF APPELLEE THE LATE CHARLES W. EHRLICH AND THE NON-EXISTENT ENTITY, LAW OFFICES OF CHARLES W. EHRLICH

Hunter W. Carroll
Florida Bar Number 0297630
MATTHEWS EASTMOORE
1777 Main Street, Ste. 500
Sarasota, FL 34236

Attorneys for Appellee, the late Charles W. Ehrlich, and the non-existent entity, Law Offices of Charles W. Ehrlich

TABLE OF CONTENTS

TABLE OF AUTHORITIES i

STATEMENT OF THE CASE AND FACTS 1

SUMMARY OF THE ARGUMENT 14

ARGUMENT 15

I. THE TRIAL COURT CORRECTLY DISMISSED AND ALTERNATIVELY DENIED MS. LANE'S SUCCESSIVE RULE 1.540 MOTION ENTITLED "MOTION TO DEEM ORDERS BY JUDGE SILVER AS VOID." 16

A. Standard of review 16

B. Jurisdiction and Law of the Case 16

C. Administrative Orders A-2007-002 and A-2009-005 are administrative orders, not recusal orders. (In response to Ms. Lane's Point I.) 21

D. Administrative Orders A-2007-002 and A-2009-005 apply to attorneys of record. (In response to Ms. Lane's Point II.) 25

E. Administrative Orders are not recusal orders. (In response to Ms. Lane's Point III.) 26

F. The reasons for this Court's disqualification of Judge Silver in 2D11-4913 are not relevant to a void analysis. (In response to Ms. Lane's Point IV.) 27

G. Public policy demands finality. (In response to Ms. Lane's Point V.) 29

CONCLUSION 29

CERTIFICATE OF SERVICE

CERTIFICATE OF COMPLIANCE

TABLE OF AUTHORITIES

PRIOR PROCEEDINGS IN THIS COURT

Lane v. Law Offices of Charles W. Ehrlich,
2D09-5935, 29 So. 3d 1127 (Fla. 2d DCA 2010) 11

Lane v. Law Offices of Charles W. Ehrlich,
2D10-5860, 80 So. 3d 1031 (Fla. 2d DCA 2012) ..... passim

Lane v. Law Offices of Charles W. Ehrlich,
2D11-4913, 75 So. 3d 731 (Fla. 2d DCA 2011) ..... passim

Lane v. Law Offices of Charles W. Ehrlich,
2D12-3657, 99 So. 3d 953 (Fla. 2d DCA 2012) ..... passim

CASES

Atlas v. City of Pembroke Pines,
441 So. 2d 652 (Fla. 4th DCA 1983) 17

Bank One, N.A. v. Batronie,
884 So. 2d 346 (Fla. 2d DCA 2004) 17

Barber v. Mackenzie,
562 So. 2d 755 (Fla. 3d DCA 1990) 20

Cascone v. Foster,
774 So. 2d 773 (Fla. 1st DCA 2000) 24, 27

Dage v. Deutsche Bank Nat'l Trust Co.,
95 So. 3d 1021 (Fla. 2d DCA 2012) 21

Doe ex rel. Doe, Publix Super Markets, Inc.,
814 So. 2d 1249 (Fla. 2d DCA 2002) 20, 28, 29

Ginsberg v. Holt,
86 So. 2d 650 (Fla. 1956) 24, 25, 27

Hatcher v. Davis,
798 So. 2d 765 (Fla. 2d DCA 2001) 23

Leach v. Salehpour,
19 So. 3d 342 (Fla. 2d DCA 2009) 16

Livingston v. State,
441 So. 2d 1083 (Fla. 1983) 25

Melbourne v. Wright,
760 So. 2d 1100 (Fla. 5th DCA 2000) 25

Paul v. Wells Fargo Bank, N.A.,
68 So. 3d 979 (Fla. 2d DCA 2011) 18

Plichta v. Plichta,
899 So. 2d 1283 (Fla. 2d DCA 2005) 15, 28

Purcell v. Deli Man, Inc.,
411 So. 2d 378 (Fla. 4th DCA 1982) 17, 18

Steeprow Enterprises, Inc. v. Lennar Homes, Inc.,
590 So. 2d 21 (Fla. 4th DCA 1991) 17, 18

Sterling Factors Corp. v. U.S. Bank Nat'l Ass'n,
968 So. 2d 658 (Fla. 2d DCA 2007) 21, 28

Sume v. State,
773 So. 2d 600 (Fla. 1st DCA 2000) 27

Town Centre of Islamorada, Inc. v. Overby,
592 So. 2d 774 (Fla. 3d DCA 1992) 27

Wendel v. Wendel,
852 So. 2d 277 (Fla. 2d DCA 2003) 20

OTHER AUTHORITIES

Art. V, §2(b), Fla. Const 23

Chapter 38, Florida Statutes 23

Fla. R. Civ. P. 1.260 3

Fla. R. Civ. P. 1.540 ..... passim

Fla. R. Jud. Admin. 2.215 23

Fla. R. Jud. Admin. 2.330 ..... passim

13th Circuit Administrative Order A-2007-002 ..... 21, 25

13th Circuit Administrative Order A-2007-022 22

13th Circuit Administrative Order A-2009-005 ..... 5, 21, 22, 25

13th Circuit Administrative Order A-2011-038 5

STATEMENT OF THE CASE AND FACTS

This is the fifth time this Court is touching this case, and the third time in which Ms. Lane re-attacks Judge Silver's November 16, 2010 Judgment dismissing Ehrlich with prejudice ("the Judgment"). This Court affirmed Judge Silver's Judgment in case number 2D10-5860 in a per curiam affirmance. Due to multiple later-in-time recusals, as well as successive rule 1.540 motions, Ms. Lane has kept alive her recurring attacks upon that Judgment, and she has continued her defamatory and incorrect statements concerning the judiciary.

Ms. Lane is also wrong concerning a fundamental issue -- the identity of the parties. While Ms. Lane putatively sued the "Law Office of Charles W. Ehrlich," she stipulated in 2010 that no such entity existed while she was represented by counsel. (AE 13) She ignores that stipulation as if it did not occur. Furthermore, totally lacking in her brief is ***any*** discussion as to why she failed to substitute parties following the Suggestion of Death associated with Mr. Ehrlich.

The actual order on appeal is Judge Barton's "Order Dismissing and Alternatively Denying All Postjudgment Motions Directed At Ehrlich," rendered on February 26, 2013. (AE 1).[1]

---

[1] Citations to Ehrlich's Appendix will be in the form (AE x y), with "x" as the tab number and "y" as the page number, if any. Citations to Ms. Lane's Appendix will be in the form (AL x). With exception of this Court's certified dockets, all documents

That Order disposed of two successive rule 1.540 motions as well as a successive rule 2.330(h) motion. That Order also made clear that any and all pending issues relating to Ehrlich were being resolved adverse to Ms. Lane.

Importantly, based on the wording of her notice of appeal as well as her Amended Initial Brief, Ms. Lane is ***only*** seeking review of the denial of successive rule 1.540 motion entitled "Motion to Deem Orders by Judge Silver as Void." (AL A-1). She is not seeking review of the denial of the other successive rule 1.540 motion or the denial of the rule 2.330(h) motion. Those matters are now entirely waived.

There is a significant amount of unusual procedural issues that have been addressed, and readdressed, in the various appellate cases. While some of that history is set forth below, the issues Ms. Lane complains about in this case have been looked at, and rejected, by numerous judges, numerous times already. Ms. Lane avoids any discussion of this history, attempting by her omission to fit her argument into this current appeal, which confusing she implies is by writ of certiorari. (Am. In. Br. pp. 3-5).

---

have been filed with the trial court. Regardless, this Court can take judicial notice of its own files, and Ehrlich would request this Court to do so here.

Ehrlich sets forth the relevant history of this case to aid this Court's review. Ehrlich then provides, in chronological order, the dates that various activities occurred.

1. Background.

Charles Ehrlich ("Mr. Ehrlich") passed away in June 2010. He was a family law attorney based in St. Petersburg.

At the time of his death, Mr. Ehrlich was a defendant in the underlying legal malpractice lawsuit brought by Ms. Lane, which stemmed from Ms. Lane's divorce from her former husband, attorney Anthony "Tony" Cunningham. Ms. Lane has been and continues to be a member in good standing with The Florida Bar.

Following Mr. Ehrlich's death, Mr. Ehrlich's counsel filed a Suggestion of Death as required by rule 1.260. Ms. Lane, who was then represented by counsel, failed to seek substitution of parties in a timely fashion. On account of that failure, Judge Silver dismissed Mr. Ehrlich with prejudice in Judge Silver's November 16, 2010 Order ("the Judgment"). (AE 13).

At the time of the Judgment, the operative pleading in the underlying case -- the Third Amended Complaint -- purported to sue Mr. Ehrlich individually as well as an entity entitled "Law Offices of Charles W. Ehrlich." When faced with numerous certifications from Florida's Secretary of State demonstrating that there was no such entity, Ms. Lane, through her then attorney, stipulated that there was no such entity, and that

stipulation was referenced in open Court as well as incorporated into the Judgment. Accordingly, the Judgment also dismissed with prejudice the non-existent entity. (Collectively, Mr. Ehrlich and the non-existent entity are referred to as "Ehrlich" throughout the remainder of this brief.)

Ms. Lane appealed the Judgment in case number 2D10-5860. Important to the instant appeal (2D13-1528), in case number 2D10-5860, Ms. Lane raised this identical argument regarding the administrative assignment orders. This Court affirmed the Judgment in a per curiam affirmance on February 10, 2012. (AE 16). Subsequent to that disposition, Ms. Lane made numerous filings in this Court in 2D10-5860. Included in these later filings, Ms. Lane again re-raised this identical argument regarding the administrative assignment orders in her motion to recall mandate and grant rehearing, clarification, and written opinion. By Order dated June 15, 2012, this Court denied all relief, including denying that motion. (AE 20).

2. Judge Silver becomes disqualified.

During the pendency of the appeal in 2D10-5860, Ms. Lane continued to pursue her legal malpractice lawsuit against the other remaining defendants, Akerman Senterfitt and one of its attorneys, William Kalish (collectively, the "Akerman Defendants"). The case was set for trial. Ms. Lane was unhappy about that, and she was trying to get it postponed.

On August 23, 2011, attorney Joryn Jenkins noticed her appearance in the trial court. Importantly, this occurred nine months ***after*** Judge Silver rendered his Judgment. Due to an existing administrative order (A-2009-005), the clerk administratively reassigned the case to another judge -- Judge Bergmann. Upon learning of this, Chief Judge Menendez entered another administrative order (A-2011-038) that had the effect of reassigning the case back to Judge Silver. (AE 7).

Thereafter, on September 13, 2011, Ms. Lane sought to disqualify Judge Silver, citing the reassignment back to Judge Silver despite the existence of Ms. Jenkins having appeared as co-counsel of record. She also referenced (incorrectly) that nine persons involved in the case were current or former members of the Trenam law firm or were in the local Inn of Court with Judge Silver.

Interestingly, on September 13, 2011, Ms. Jenkins filed in the trial court a "Notice of Non-Representation" of Ms. Lane. This notice came just 24 days after her appearance in the trial court.

After Judge Silver denied the disqualification motion, on October 5, 2011, Ms. Lane, through Ms. Jenkins, petitioned this Court for writ of prohibition in 2D11-4913. Without obtaining a response from the Akerman Defendants, this Court, on October 11, 2011, entered an order deeming Ms. Lane's disqualification

motion legally sufficient; thus, this Court directed that a new trial judge be appointed. (AE 28).

Since Ms. Jenkins effectuated the disqualification of Judge Silver, Ms. Jenkins has not appeared further in the trial court on behalf of Ms. Lane.

To be clear, in the 2D10-5860 case, Ms. Lane filed the entirety of her petition and appendix (including her motion to disqualify Judge Silver) from the 2D11-4913 case. (AE 29).

3. Judge Silver's recusal and the impact on 2D10-5860

Judge Silver's recusal and argument that all of his orders were void on account of the administrative assignment orders were before this Court during the pendency of 2D10-5860. Ms. Lane discussed this for nine pages in her Appellant's Notice of Supplemental Authority, which she filed in 2D10-5860 on November 7, 2011. (AE 14). On November 29, 2011, in the 2D10-5860 case, she made a twelve-page argument on this issue in her response to Ehrlich's Motion to Strike Appellant's Notice of Supplement Authority and Motion to Amend Motion. (AE 15). She also attached her complete petition for writ of prohibition and appendix from the 2D11-4913 case. (AE 29).

This Court issued its per curiam affirmance in 2D10-5860 on February 10, 2012. (AE 16). Ms. Lane did not immediately seek to reconsider this Court's decision. Instead, on May 18, 2012, she filed in 2D10-5860 her suggestion of death, which in

footnote 8 raised this issue. (AE18). Thereafter, on June 6, 2012, Ms. Lane filed in this Court in 2D10-5860 her motion to recall mandate. (AE 19). In that filing, she again argued the Judge Silver recusal issue based on the administrative assignment orders. By order dated June 15, 2012, this Court denied Ms. Lane's motion to recall mandate and struck her suggestion of death. (AE 20).

4. Judge Sabella and the first postjudgment motion.

Following Judge Silver's recusal, Judge Sabella became the successor judge.

On October 31, 2011, Ms. Lane filed a motion in the trial court pursuant to rules 1.540 and 2.330(h). As it related to Ehrlich, Ms. Lane attacked the Judgment. Parenthetically, while Ms. Lane made direct arguments to this Court in 2D10-5860 that the the Judge Silver recusal was reason for the appeal to be reversed, she never requested this Court in 2D10-5860 to relinquish jurisdiction for Judge Sabella to consider her 1.540 / 2.330 motion before this Court issued its decision in 2D10-5860.[2]

On April 26, 2012, Judge Sabella conducted a hearing on Ms. Lane's motion as it related to Ehrlich. After a lengthy hearing, Judge Sabella denied Ms. Lane any relief with respect

[2] Ms. Lane did request that this Court relinquish jurisdiction for the trial court to consider other issues. This Court denied that request.

to Ehrlich. Judge Sabella reduced that ruling into a written order signed May 3, 2012, and docketed on May 4, 2012.

Instead of immediately appealing, Ms. Lane sought to have Judge Sabella reconsider the ruling. Ehrlich made a limited appearance to contest further jurisdiction. By Order dated June 7, 2012, and docketed on June 8, 2012, Judge Sabella dismissed and alternatively denied Ms. Lane's motion seeking reconsideration.

5. The 2D12-3657 appeal.

On July 6, 2012, Ms. Lane filed a notice of appeal of Judge Sabella's May 3 Order denying Ms. Lane's motion, and his June 7 Order, dismissing and alternatively denying her attempt to have the trial court reconsider that ruling.

Prior to briefing, this Court and Ehrlich raised the issue of whether the appeal was timely. Ms. Lane opposed, and she also separately moved this Court (again) to rescind its ruling in 2D10-5860. (AE 24). This Court concluded that Ms. Lane's motion for reconsideration in the trial court did not toll the time to file an appeal. (AE 25).

Accordingly, by Order dated October 12, 2012, this Court dismissed the 2D12-3657 appeal as untimely. (AE 25). In that same Order, this Court also denied as moot Ms. Lane's attempt to have this Court rescind its ruling in 2D10-5860. (AE 25).

6. Ms. Lane files two successive rule 1.540 motions.

On June 30, 2012, in the trial court, Ms. Lane filed two successive rule 1.540 motions directed at Ehrlich. One motion was entitled "Motion to Deem Orders By Judge Silver as Void." (AE 2). The thrust of that motion was that Judge Silver had been recused the moment he was assigned the case in 2007.

The other motion was entitled "Motion for Evidentiary Hearing and Injunctive Relief, and Motion to Strike Ehrlich's Motion to Tax Costs." The thrust of this motion was to enjoin undersigned counsel (and anyone else) from representing Ehrlich so that she could proceed unopposed with her attack on the Judgment.

7. Judge Sabella is recused.

Judge Sabella provided the parties an entire day to address the multiple issues in the case (many between the Akerman Defendants and Ms. Lane), including the two successive rule 1.540 motions. During that July 20, 2012, hearing, Ehrlich made a limited appearance to oppose those motions.

That hearing, however, devolved into a discussion as to whether Judge Sabella's judicial assistant may become a witness in the case. Ultimately, Judge Sabella recused himself on the trial court's own motion. Judge Sabella entered an Order to that effect on July 20, 2012.

8. The successive rule 2.330(h) motion.

On July 23, 2012, Ms. Lane filed in the trial court a motion and later an amended motion seeking a further reconsideration of Judge Sabella's May 4, 2012 Order (then on appeal in 2D12-3657) denying reconsideration of Judge Silver's Judgment (which this Court had affirmed in 2D10-5860.)

This motion was filed during the pendency of the 2D12-3657 appeal. This Court denied Ms. Lane's request to relinquish jurisdiction for the trial court to conduct a hearing on this further reconsideration motion.

9. Judge Wolfe and his recusal.

After Judge Sabella recused himself, the case was assigned to Judge Wolfe. After a brief scheduling hearing, Ms. Lane sought Judge Wolfe's recusal. Ultimately, Judge Wolfe recused himself. There were no substantive rulings by Judge Wolfe.

10. Judge Barton.

Following Judge Wolfe's recusal, this case was assigned to Judge Barton.

On February 5, 2013, Judge Barton conducted a hearing on the two successive rule 1.540 motions as well as the successive rule 2.330(h) motion. Again, Ehrlich made a limited appearance to oppose these attempts. (AE 3). Because Ms. Lane represented to Judge Barton that there was, in fact, a filing in this case within the 90-day window following the suggestion of death,

Judge Barton permitted Ms. Lane a two-week period to obtain this document and provide it to the Court.

After Ms. Lane failed to provide Judge Barton this non-existent document, Judge Barton entered the Order on appeal. (AE 1).

11. Recap of the timeline of events - in date order.

April 6, 2007	Ms. Lane files suit against Ehrlich and others.
December 17, 2009	Ms. Lane files her notice of appeal concerning a sanctions order obtained by the Akerman Defendants (assigned case number 2D09-5935).
March 19, 2010	Ms. Lane voluntarily dismisses the appeal in 2D09-5935.
June 30, 2010	Suggestion of Death docketed with trial court clerk (served the day prior).
November 16, 2010	Judge Silver dismisses Ehrlich with prejudice for failure to substitute party defendant following Mr. Ehrlich's death.
November 30, 2010	Ms. Lane files her notice of appeal relating to Judge Silver's Judgment dismissing Ehrlich with prejudice (assigned case number 2D10-5860).
August 23, 2011	Ms. Joryn Jenkins appears in the trial court as an additional attorney for Ms. Lane.
September 13, 2011	Ms. Lane files in the trial court a motion seeking Judge Silver's disqualification.
September 13, 2011	Ms. Jenkins files a notice of non-representation of Ms. Lane in the trial court.

October 5, 2011	Ms. Lane, through Ms. Jenkins, files a petition for writ of prohibition in this Court (assigned case number 2D11-4913).
October 11, 2011	This Court in 2D11-4913 deems Ms. Lane's motion to disqualify Judge Silver legally sufficient and orders his disqualification.
October 31, 2011	Ms. Lane in the trial court serves her initial motion pursuant to rule 1.540 and 2.330(h).
November 4, 2011	Ms. Lane in 2D10-5860 serves her "Appellant's Notice of Supplemental Authority" that discusses the Judge Silver recusal.
November 26, 2011	Ms. Lane in 2D10-5860 serves her "Response to Appellee Ehrlich's Motion to Strike Appellant's Notice of Supplemental Authority and Motion to Amend Notice," which again discusses the Judge Silver recusal and attaches the original petition and appendix from 2D11-4913 as an exhibit.
February 10, 2012	This Court in 2D10-5860 affirms Judge Silver's Judgment dismissing Ehrlich with prejudice.
March 5, 2012	The mandate issues in 2D10-5860.
April 26, 2012	Judge Sabella conducts a hearing on Ms. Lane's initial rule 1.540 / 2.330(h) motion and orally denies it.
May 3, 2012	Judge Sabella enters an Order denying Ms. Lane's initial rule 1.540 / 2.330(h) motion, which Order is docketed May 4.
May 17, 2012	Ms. Lane in 2D10-5860 serves her "Notice of Filing Suggestion of Death and Request to Review Improper Appearance by Appellee's Counsel Causing Manifest Injustice" (containing erroneous February 10, 2012, certificate of service).

June 7, 2012	Judge Sabella enters an Order dismissing and alternatively denying Ms. Lane's unauthorized motion seeking Judge Sabella to reconsider his May 3 Order, which Order is docketed June 8.
June 9, 2012	Ms. Lane in 2D10-5860 serves her "Motion to Recall Mandate and Grant Rehearing, Clarification and Written Opinion." Among other things, that motion raises the identical issues that Ms. Lane later files in her successive rule 1.540 motions.
June 15, 2012	This Court in 2D10-5860 denies Ms. Lane's motion seeking to recall the mandate and strikes her suggestion of death.
June 30, 2012	Ms. Lane files in the trial court her two successive rule 1.540 motions, entitled "Motion to Deem Orders by Judge Silver as Void" and "Motion for Evidentiary Hearing and Injunctive Relief, and Motion to Strike Ehrlich's Motion to Tax Costs."
July 6, 2012	Ms. Lane files her notice of appeal relating to Judge Sabella's May 3 and June 7 Orders (assigned case number 2D12-3657).
July 20, 2012	Judge Sabella conducts an all-day hearing; ultimately, Judge Sabella enters an Order recusing himself.
July 23, 2012	Ms. Lane files in the trial court her successive rule 2.330(h) motion seeking to reconsider Judge Sabella's May 4, 2012 Order.
October 12, 2012	This Court dismisses the appeal in 2D12-3657 as untimely and denies as moot Ms. Lane's request to rescind this Court's decision in 2D10-5860.
December 8, 2012	Ms. Lane files her motion seeking to disqualify Judge Wolfe.
January 11, 2013	Judge Wolfe enters his Order of Recusal.

February 5, 2013	Judge Barton conducts a hearing on all postjudgment motions affecting Ehrlich, and Judge Barton permits Ms. Lane a two-week period to provide him with a document she claimed was filed in this case during the 90-day period following the Suggestion of Death.
February 26, 2013	Judge Barton enters the Order Dismissing and Alternatively Denying All Postjudgment Motions Directed at Ehrlich (the Order on Appeal).
March 28, 2013	Ms. Lane files her notice of appeal relating to Judge Barton's Order (assigned case number 2D13-1528).

SUMMARY OF THE ARGUMENT

The trial court correctly rejected Ms. Lane's "void" claim in all respects for four basic reasons, each reason being a sufficient basis to deny her any relief. First, the trial court was without jurisdiction to consider a successive rule 1.540 motion. Second, Ms. Lane already presented her "void" argument to this Court in 2D10-5860, which rejected that argument, which ruling is now law of the case. Third, rule 1.540(b)(4) does not provide the trial court jurisdiction to permit relief of a "voidable" judgment. Fourth, on the merits, her argument is contrary to controlling law. The Chief Judge's administrative orders are assignment orders, not recusal orders. Thus, the administrative orders may not be construed to mean that Judge Silver was recused the moment he was assigned the case.

Ehrlich needs finality. Ms. Lane has had multiple bites at the proverbial apple, and it is time to conclusively end Ehrlich's involvement, so that his estate may close and final distributions made.

Judge Barton did not abuse his direction when he dismissed and alternatively denied Ms. Lane's "Motion to Deem Order by Judge Silver as Void."

ARGUMENT

Ms. Lane challenges Judge Barton's determination to dismiss and alternatively deny her successive postjudgment motion entitled "Motion to Deem Orders by Judge Silver as Void." The thrust of her motion was that Judge Silver was disqualified the moment he became the trial judge in this matter by virtue of an existing administrative assignment order, and thus, every ruling he made prior to his recusal was void, not voidable.

Ehrlich pauses to note that Judge Barton's order disposed of three separate, successive postjudment motions. Ms. Lane has advised this Court, in her notice of appeal (AL A-1, p.1), and in her Amended Initial Brief (Am In. Br. p.11), that she is only seeking review of the denial of one of those motions. Having not raised challenges to the denial of the two other successive postjudgment rulings referenced in Judge Barton's order, Ms. Lane has waived any further challenge to those issues. Plichta v. Plichta, 899 So. 2d 1283, 1287 (Fla. 2d DCA 2005) ("Issues

raised on appeal for the first time in a reply brief are not properly before this court and will not be considered.").

Before addressing the issues raised by Ms. Lane, logical clarity requires an examination of the trial court's jurisdiction to consider Ms. Lane's successive rule 1.540 as well as the law of the case doctrine. Ehrlich initially performs that analysis. Then, Ehrlich refutes, on a point by point basis, each of Ms. Lane's contentions.

I. THE TRIAL COURT CORRECTLY DISMISSED AND ALTERNATIVELY DENIED MS. LANE'S SUCCESSIVE RULE 1.540 MOTION ENTITLED "MOTION TO DEEM ORDERS BY JUDGE SILVER AS VOID."

A. Standard of review.

This Court applies the abuse of discretion standard of review when reviewing a trial court's ruling on a rule 1.540 motion. See Leach v. Salehpour, 19 So. 3d 342, 344 (Fla. 2d DCA 2009).

B. Jurisdiction and Law of the Case.

Ms. Lane continues to ignore that Ehrlich was dismissed with prejudice from the underlying lawsuit, which dismissal has been affirmed on appeal by this Court in 2D10-5860. (AE 16). Presumably knowing this failing, she did not cite a jurisdictional basis in her "Motion to Deem Orders by Judge Silver as Void." (AE 2). Regardless of that failing, there can be no doubt that this motion is brought pursuant to rule 1.540, as that is the only rule that arguably could give the trial

court jurisdiction to collaterally attack the Judgment. See Bank One, N.A. v. Batronie, 884 So. 2d 346, 348-49 (Fla. 2d DCA 2004) ("After rendition of a final judgment, the trial court loses jurisdiction over the case except to enforce the judgment and except as provided by rule 1.540."). Of the five enumerated bases within rule 1.540, the only one that potentially could apply would be 1.540(b)(4), which provides authority to relieve a party from a final judgment where that judgment is void.

Ms. Lane's motion is a ***successive rule 1.540 motion.*** In 2011, Ms. Lane filed her first postjudgment motion attacking the Judgment, which she expressly identified as being brought pursuant to rule 1.540 and 2.330(h). (AE 21). As this Court noted in 2D12-3657, Ms. Lane failed to timely appeal Judge Sabella's denial of that initial postjudgment motion. Lane v. Law Offices of Charles W. Ehrlich, 99 So. 3d 953 (Fla. 2d DCA 2012) (table). (AE 25). The fact that Ms. Lane's instant motion is a successive motion raises the potential of a jurisdictional bar.

A trial court is without jurisdiction to entertain a successive motion for rule 1.540 relief on matters that were, or could have been raised, in the initial rule 1.540 motion. See Purcell v. Deli Man, Inc., 411 So. 2d 378, 378-79 (Fla. 4th DCA 1982); Steeprow Enterprises, Inc. v. Lennar Homes, Inc., 590 So. 2d 21, 22-23 (Fla. 4th DCA 1991); Atlas v. City of Pembroke

Pines, 441 So. 2d 652, 652 (Fla. 4th DCA 1983). The gist of these cases is that a successive rule 1.540 motion does not provide jurisdiction over the party previously dismissed from the lawsuit. For that reason, Ehrlich's appearance below was limited, not general appearance.

While this jurisdictional bar should apply here, Ehrlich notes that this Court recently distinguished the Steeprow case in Paul v. Wells Fargo Bank, N.A., 68 So. 3d 979 (Fla. 2d DCA 2011). In Paul, this Court explained that the successive motion rule "provides a rationale against successive motions but is not an absolute bar; it should be ignored where its strict application would work an injustice." Id. at 985. Even if Paul applied here, Ms. Lane failed to demonstrate that applying a bar would work an injustice on her, which was her burden to do under Paul. Nor can she ever show that here, as she previously raised this very issue with this Court, as will be discussed later. Moreover, her position is contrary to controlling law. For those reasons, Paul does not apply; the normal jurisdictional bar discussed in Purcell and the other cited cases does apply. Ms. Lane's motion is jurisdictionally barred.

Even if this jurisdictional bar did not apply, however, the law of the case doctrine precludes this contention from being litigated again in this proceeding. Ms. Lane actually raised in the 2D10-5860 appeal her "void" argument based on the

administrative assignment orders, which argument this Court rejected, repeatedly.

Specifically, Ms. Lane filed her "Notice of Supplemental Authority," and argued the administrative order issue at pages 2-8. (AE 14). She filed her "Response to Appellee Ehrlich's Motion to Strike Appellant's Notice of Supplemental Authority and Motion to Amend Notice," and argued this same issue throughout the entire twelve pages of argument. (AE 15). She even attached to the appendix of that filing the entirety of the writ of prohibition and appendix containing the original disqualification motion. (AE 29).

After the Court denied Ms. Lane's appeal, she filed her "Notice of Filing Suggestion of Death and Request to Review Improper Appearance by Appellee's Counsel Causing Manifest Injustice," which she referenced this issue in footnote 8 (although this Court would like strike this filing). (AE 18). She also filed her "Motion to Recall Mandate and Grant Rehearing, Clarification, and Written Opinion," where, at pages 3-8 of that filing, Ms. Lane strenuously argued that by virtue of an existing administrative order, Judge Silver sought to disqualify himself in cases where Ms. Jenkins or attorneys at the Trenam Kemker firm were "attorneys of record." (AE 19). This Court denied that motion. Ms. Lane filed each of these papers in case 2D10-5860.

"Under the law of the case doctrine, questions of law that have actually been decided on appeal must govern the case in the same court and in the trial court through all subsequent stages of the proceedings. This includes questions of law that were implicitly addressed or necessarily considered." Wendel v. Wendel, 852 So. 2d 277, 283 (Fla. 2d DCA 2003). Yet, that is precisely what Ms. Lane is attempting to do here by rehashing her void argument on account of the administrative orders. Ms. Lane may not now re-litigate this same issue, as it is barred by the law of the case doctrine.

Even if she were not barred by the law of the case doctrine, the trial court still was without jurisdiction to consider the motion because, under controlling case law, an order entered by a judge who is later disqualified is voidable, not void. See Doe ex rel. Doe, Publix Super Markets, Inc., 814 So. 2d 1249, 1251 (Fla. 2d DCA 2002); see also Barber v. Mackenzie, 562 So. 2d 755 (Fla. 3d DCA 1990) (discussing Florida's common law that orders of a disqualified judge are voidable, not void). That is what happened here - Judge Silver was disqualified nearly a year ***after*** he entered the Judgment dismissing Ehrlich because Ms. Joryn Jenkins appeared in the trial court for a mere 22 days on behalf of Ms. Lane. Ms. Jenkins appearance came more than 9 months after Judge Silver entered the Judgment.

At best for Ms. Lane, Judge Silver's Judgment was voidable, not void. That distinction is critical, as Ms. Lane may not attack a voidable judgment via rule 1.540(b)(4). Dage v. Deutsche Bank Nat'l Trust Co., 95 So. 3d 1021, 1024 (Fla. 2d DCA 2012); *citing* Sterling Factors Corp. v. U.S. Bank Nat'l Ass'n, 968 So. 2d 658, 665 (Fla. 2d DCA 2007) (providing that a voidable judgment is not subject to relief under rule 1.540(b)(4)). Accordingly, there was no jurisdictional basis for Ms. Lane to have filed this motion against Ehrlich at all, and the trial court was without jurisdiction to have even considered it. The trial court correctly dismissed the motion.

C. Administrative Orders A-2007-002 and A-2009-005 are administrative orders, not recusal orders. (In response to Ms. Lane's Point I.)

Ms. Lane contends that the administrative orders entered by the Chief Judge of the Thirteenth Judicial Circuit constitute an automatic recusal of a sitting circuit judge and are not assignment orders. Contrary to Ms. Lane's position, the Chief Justice's assignment order is an administrative order, not a recusal order.

When Judge Silver became a circuit judge in 2007, the Chief Judge entered Administrative Order A-2007-002, which provided that Judge Silver indicated an intent to disqualify himself whenever "any attorney associated with the law firm of Trenam, Kemker, Scharf, Barkin, Frye & Mullis P.A. is attorney of

record." (AE 4). For that reason, the Chief Judge directed that the Clerk "shall reassign all cases in which any attorney associated with the law firm of Trenem, Kemker . . . is attorney of record[.]" (AE 4). Similarly, Administrative Order A-2007-022 directed that the Clerk to reassign any case in which Ms. Joryn Jenkins appears as attorney of record. (AE 5).

In 2009, the Chief Judge consolidated those two administrative orders into A-2009-005. (AE 6). The same affected persons were included, and several more names were added. As the previous administrative orders provided, the assignment would occur if any of those individuals appeared as "attorney of record."

Ms. Lane avoids the fact that when Judge Silver rotated into Division H in 2009, the existing parties were the Akerman firm, Mr. Kalish, Mr. Ehrlich, and the non-existent entity, Law Office of Charles W. Ehrlich.[3] None of the parties or their attorneys were then associated with the Trenam firm or were any of the specified individuals in any of those administrative orders. Those administrative orders were not implicated at all

[3] Ms. Lane states that attorney Joseph Rugg, Akerman Senterfitt's Tampa office managing attorney, was a defendant, and this should have disqualified Judge Silver. In May 2008, Ms. Lane (though her then attorney) agreed to dismiss Mr. Rugg (an Akerman attorney) from the lawsuit, as there were no allegations against him individually. Judge Isom signed the dismissal order. (AE 26). This dismissal predated Judge Silver's involvement in the underlying case. Ms. Lane has not re-filed against Mr. Rugg.

under the plain text of those orders.[4] For that reason, this Court does not need to address Ms. Lane's contention.

Even if this Court did address the merits, it is without merit. Florida's constitution provides that the power to make judicial assignments is vested in the Chief Justice, who may delegate it to a circuit's Chief Judge. See art. V, §2(b) and (d). Florida Rule of Judicial Administration 2.215 provides further clarification of this appointment power. Nothing in those authorities authorizes a Chief Judge to recuse a sitting trial judge. In fact, a Chief Judge may not use an administrative order to limit judicial discretion or otherwise to impose terms or conditions to a statute or court rule. Hatcher v. Davis, 798 So. 2d 765, 766 (Fla. 2d DCA 2001).

The authority for a trial judge to recuse herself or himself is found in rule 2.330, which vests the decision to recuse with only the then presiding judge. Chapter 38, Florida Statutes, also contains a number of provisions relating to disqualification. Nothing in those authorities authorizes a Chief Judge to recuse an assigned judge. In fact, no circuit judge may order the recusal of another circuit judge on the same

[4] The undercurrent of Ms. Lane's argument is that the clerk of court should know the professional resume of every practicing attorney and be able to divine if an attorney was ever associated with a law firm, even if that person has not been with that firm for decades. Ms. Lane provides no authority requiring this herculean, if not quixotic, effort on behalf of the clerk's office.

court. Ginsberg v. Holt, 86 So. 2d 650, 651 (Fla. 1956) ("Each judge of the court exercises the same jurisdiction and one judge may not oust his [or her] colleague from the trial of a case on any such theory as the appellant proposes.").

The First District considered an analogous situation where a circuit judge had entered a standing order whenever a certain attorney appeared in a case. Later, that circuit judge vacated the order, and the aggrieved attorney appealed. In reviewing two Florida Supreme Court decisions, the court explained "a judge's decision to order recusal administratively in a class of cases is a professional decision that creates no right on the part of a lawyer or a litigant. A party who fears that a judge is biased may file a motion to disqualify the judge under [rule 2.330], but . . . that right exists only in a particular case." Cascone v. Foster, 774 So. 2d 773, 774 (Fla. 1st DCA 2000). The court went further and rejected the identical principle that Ms. Lane advances here:

> Cascone argues that, even though he may not have been entitled to the standing recusal order, the trial judge was bound to follow it once it was entered. In support of this argument, he relies on the general principle that a judge who enters an order of disqualification may not take any further action in the case. The application of this principle is limited, however, to an order disqualifying a judge from presiding over a particular case. If the principle were applied to a standing recusal order, like the one in this case, the judge would be forced to comply with the order in perpetuity. This would result in the same kind of general disqualification

> the supreme court condemned in Ginsberg v. Holt, 86 So. 2d 650 (Fla. 1956) and Livingston v. State, 441 So. 2d 1083 (Fla. 1983).

Id. (internal citations omitted).

These authorities demonstrate that the Chief Judge's administrative orders could not be recusal orders. While the Chief Judge may make assignments, the Chief Judge is without authority to recuse of any of her or his fellow circuit judges on the same court. This is fatal to Ms. Lane's argument.

Finally, Ehrlich notes that Ms. Lane re-cites to cases she previously argued to this Court, including Melbourne v. Wright, 760 So. 2d 1100 (Fla. 5th DCA 2000). Nothing in that decision or any of the other decisions she cites supports Ms. Lane contention that Judge Silver stood recused the moment he was assigned the case.

D. Administrative Orders A-2007-002 and A-2009-005 apply to attorneys of record. (In response to Ms. Lane's Point II.)

Ms. Lane makes the unremarkable argument that an attorney is the agent of her or his client. Based on that principle, she contends that the administrative orders applied equally to parties. Again, none of the parties or their attorneys were associated with Trenam. Thus, this issue, like Point I, does not need to be addressed.

Ms. Lane implies that Mr. Kalish and Judge Silver practiced together at the Trenam firm. Ms. Lane is factually wrong, and

she knows it. Just to assuage any concern based on this implication, Ehrlich notes that Ms. Lane contended in her petition in 2D11-4913 that Judge Silver was a shareholder at Trenam from 2001 to 2007. (AE 29, Pet. p.13). Ms. Lane took the deposition of Mr. Kalish on November 25, 2009. In that deposition, Mr. Kalish testified that he left the Trenam firm in 1990, and he has not practiced at Trenam since that time. (AE 27 p.9). Ms. Lane was physically present at the deposition. (AE 27 p.9).

If Ms. Lane were so concerned about Mr. Kalish's time at the Trenam law firm that predated Judge Silver's time at the Trenam firm, she had 10 days to file a motion to recuse Judge Silver on that basis pursuant to rule 2.330(e). She did not. In fact, her recusal motion did not come until September 13, 2011, almost two years after she learned that Mr. Kalish departed the Trenam firm in 1990. She is not entitled to any relief.

E. Administrative Orders are not recusal orders. (In response to Ms. Lane's Point III.)

Ms. Lane continues with the same argument she made in Points I and II. She attempts to differentiate this point by arguing that the administrative orders imply a conflict between Judge Silver and the individuals on the list.

That argument also is foreclosed under the same law that the Chief Judge's administrative orders are not recusal orders. See Ginsberg, 86 So. 2d at 651; Cascone, 774 So. 2d at 774.

F. The reasons for this Court's disqualification of Judge Silver in 2D11-4913 are not relevant to a void analysis. (In response to Ms. Lane's Point IV.)

Ms. Lane makes a lengthy argument that the reason for Judge Silver's disqualification was more than Ms. Jenkins' three-week appearance in this lawsuit, four years after Ms. Lane filed the lawsuit.[5] She contends that Judge Silver's disqualification was also based on her statements concerning Mr. Kalish and the alleged apparent witnesses.[6] That argument is beside the point -- this Court in 2D11-4913 did require Judge Silver's recusal.

Judge Silver's recusal afforded Ms. Lane the ability to file a rule 2.330(h) motion so that Judge Silver's previous rulings could be reconsidered, as those orders were voidable,

---

[5]A party may not bring an attorney into a case after it has been assigned to a judge and then move to disqualify the judge. Sume v. State, 773 So. 2d 600 (Fla. 1st DCA 2000); Town Centre of Islamorada, Inc. v. Overby, 592 So. 2d 774 (Fla. 3d DCA 1992).

[6] While Ms. Lane is fond of arguing that the allegations in her recusal motion are fact, Ms. Lane always forgets that the initial recusal of a trial judge is not whether the allegation is true, but whether the allegation is legally sufficient to support recusal. There has never been a factual resolution as to whether her spurious allegations are true. This Court in 2D11-4913 did not conclude her allegations were true. In that case, this Court merely said "petitioner's motion to disqualify the judge filed in the circuit court is deemed legally sufficient." Lane v. Law Offices of Charles W. Ehrlich, 75 So. 3d 731 (Fla. 2d DCA 2011) (table). (AE 28).

not void. See Doe ex rel. Doe, Publix Super Markets, Inc., 814 So. 2d 1249, 1251 (Fla. 2d DCA 2002). Ms. Lane did file a motion to reconsider (which was also brought pursuant to rule 1.540 as well). After Judge Sabella denied Ms. Lane's motion, this Court dismissed her untimely appeal in 2D12-3657. See Lane v. Law Offices of Charles W. Ehrlich, 99 So. 3d 953 (Fla. 2d DCA 2012) (table). (AE 25).

Ms. Lane made clear in both her notice of appeal and her Amended Initial Brief that she was only seeking review of the denial of her "Motion to Deem Orders By Judge Silver as Void," and she was not seeking review of Judge Barton's denial of her successive rule 2.330(h) motion, filed after Judge Sabella's recusal. For that reason, review of the denial of those motions is now waived. Plichta v. Plichta, 899 So. 2d at 1287.

Ms. Lane's "Motion to Deem Orders By Judge Silver as Void" could only have been brought under rule 1.540. Yet, an attack on a voidable judgment is not permitted under rule 1.540. See Sterling Factors Corp. v. U.S. Bank Nat'l Ass'n, 968 So. 2d 658, 665 (Fla. 2d DCA 2007). Accordingly, Ms. Lane's Point IV has no relevance in the review of the dismissal or denial of a rule 1.540 motion, and such argument is meritless. The trial court did not have jurisdiction to even consider the motion.

G. Public policy demands finality. (In response to Ms. Lane's Point V.)

Ms. Lane's final argument is that public policy should require reversal of Judge Barton's ruling on her "Motion to Deem Orders by Judge Silver as Void." Yet, Ms. Lane wholly ignores the controlling case law that orders entered before a trial judge is recused are voidable, not void. See Doe, 814 So. 2d at 1251. Not only did she not cite to Doe, she makes no argument why the Doe holding is incorrect in any fashion.

The only public policy that has been violated is that of the doctrine of finality. This case must end. The trial court dismissed Ehrlich with prejudice more than two years ago. Ms. Lane then lost the first round of postjudgment motions. Yet, she continues to attack the Judgment with impunity, using the same arguments. All during this time, the Mr. Ehrlich's estate has been open, waiting for the finality to permit final distributions.

Judge Barton did not abuse his discretion when he dismissed and alternatively denied Ms. Lane's successive rule 1.540 motion seeking to deem Judge Silver's Judgment void.

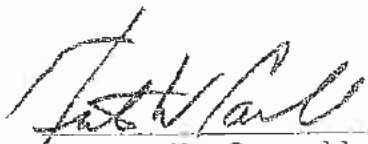
CONCLUSION

The time has come for true finality for Ehrlich. Judge Barton correctly dismissed and alternatively denied each of Ms. Lane's successive postjudgment challenges. The trial court had

no jurisdiction to consider Ms. Lane's continued assaults on the Judgment. Moreover, the law of the case doctrine applied. Even if there were no jurisdictional bar, controlling case law demonstrates that Mr. recycled arguments are meritless.

This Court should affirm Judge Barton's order dismissing and alternatively denying Ms. Lane's "Motion to Deem Orders By Judge Silver as Void."

Respectfully submitted,



Hunter W. Carroll, FBN 0297630
MATTHEWS EASTMOORE
1777 Main Street, Ste. 500
Sarasota, FL 34236
Telephone: (941) 366-8888
Facsimile: (941) 954-7777
hcarroll@matthewseastmoore.com
amy@matthewseastmoore.com

Attorneys for Appellee, the late Charles W. Ehrlich, and the non-existent entity, Law Offices of Charles W. Ehrlich

CERTIFICATE OF SERVICE

I CERTIFY, this 3d day of May, 2013, that a true and correct copy of the foregoing Answer Brief and the corresponding Appendix has been furnished electronic mail as well as by First Class U.S. Mail to:

Robin R. Lane, Esq.
345 Bayshore Blvd, Apt. 1813
Tampa, FL 33606
ePlaintiff@gmail.com
laneltd@live.com
arie@schinnar.com
Attorney for Appellant

Mark J. Criser, Esq.
Patrick M. Causey, Esq.
HILL WARD HENDERSON
P.O. Box 2321
Tampa, FL 33601
mcriser@hwhlaw.com
tmcdonald@hwhlaw.com
pcausey@hghlaw.com
Attorneys for Akerman Defendants

Hunter W. Carroll, Esq.

CERTIFICATE OF COMPLIANCE REGARDING TYPE SIZE AND STYLE

I FURTHER CERTIFY, this 3d day of May, 2013, that the type size and style used throughout Appellant's Initial Brief is Courier New 12-point font, which is compliant with Florida Rule of Appellate Procedure 9.210(a)(2).

Hunter W. Carroll, Esq.