#### **Neil Gillespie**

From: "Amy Hasselbring" <ahasselbring@bowenschroth.com>

To: <neilgillespie@mfi.net>

Cc: "Derek Schroth" <dschroth@bowenschroth.com>

**Sent:** Monday, April 25, 2016 10:37 AM Attach: Application Rebecca Ann Fletcher.pdf

Subject: JNC Application - Fletcher

Mr. Gillespie,

Attached is the application of Rebecca Ann Fletcher. Thanks.

Amy McCain Hasselbring Florida Registered Paralegal and Legal Assistant to Derek A. Schroth Bowen & Schroth, P.A. 600 Jennings Avenue Eustis, FL 32726

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#### APPLICATION FOR NOMINATION TO THE CIRCUIT COURT

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

DATE	: Septem	ber 25, 2015	_Florida Bar I	No.:	014672	.2
GENE	RAL:		Social Secu	rity No.:		
1.						
	Name Re	becca Ann Fletcher	E-mail:	beckyflet	cher@emb	parqmail.com
	Date Admitted	o Practice in Florida:	Septemb	er 25, 199	98	
	Date Admitted	o Practice in other States:	N/A			
2.	State current el office.	mployer and title, including	professional <sub> </sub>	position a	nd any pub	lic or judicial
	The Law Fir	m of Fletcher & Proctor, par	rtner/owner.			
3.	Business addre	ss: 1 NE 1 <sup>st</sup> Ave. Suit	te 209			
	City Ocala	County	Marion	State	FI ZI	P <u>34470</u>
	Telephone (3	52 ) 629-7222	FAX	(352) 3	51-3880	
4.	Residential add	ress: 4855 NW 80th	Court			
	City Ocala	County	Marion	State	FIZI	P <u>34482</u>
	Since	May 2015 Telep	ohone <u>(352</u>	2) 812 - 0	570	
5.	Place of birth:	Elwood, Indiana				
	Date of birth:	4-11-1961	Age: _	54		
6a.	Length of reside	ence in State of Florida:	44 years			
6b.	Are you a regis	tered voter? ✓ Yes □ No				
	If so, in what co	ounty are you registered?	Mari	on		
7.	Marital status:	Divorced				
	If married:	Spouse's name				
		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.

Charles A.Fletcher, 6530 Nina Rosa Drive, Orlando, Florida 32819 Married 4/3/81 Divorced September 29,1993 in Orlando, Florida Case No. DR 93-972

8.	Children			
	Name(s)	Age(s)	Occupation(s) Field Research supervisor/	Residential address(es)
	Kyle Allan Fletcher	26	Universal Studios	6530 Nina Rosa Drive Orlando, Florida 32819
	Tyler Aaaron Fletcher		Student/ Publix	6530 Nina Rosa Drive
		22		Orlando, Florida 32819
9.	Military Service (Including Reserves)			
	Service E	Branch	Highest Rank	Dates
	n/a			
	Rank at time of discha	rge	Type of d	ischarge
	Awards or citations			
HEAL	TH:			
10.	Are you currently addi- beverages? If yes, sta	•	•	of narcotics, drugs, or intoxicating
	No.			
11a.	have you received tre	atment or a d	liagnosis from a profe	ve you consulted a professional or essional for any of the following hilia, ExhibitionismorVoyeurism?
	Yes □ No ✓			
	furnish the Chairperson respect to any such h	n of the Commi nospitalization, sychiatrist, Ps	ission any information , consultation, treatm ychologist, Psychothe	nal, hospital and other facility to the Commission may request with ent or diagnosis. ["Professional' rapist or Mental Health Counselor.]
	r rodoc docombo odom		lag.i.eeiei	
11b.	In the past ten years h your ability to work in a	•	•	you which would interfere with er?
	Experiencing Spending Mo	periods of Hy	with extremely poor ju	

Issuing checks without sufficient funds
Defaulting on a loan
Experiencing frequent mood swings
Uncontrollable tiredness
Falling asleep without warning in the middle of activity
Yes □ No ✓
If yes, please explain

12a.	Do you currently have a physical or mental impairment which in any way limits your ability or fitness to properly exercise your duties as a member of the Judiciary in a competent and professional manner?
	Yes □ No ✓
12b.	If your answer to the question above is Yes, are the limitations or impairments caused by your physical or mental health impairment reduced or ameliorated because you receive ongoing treatment (with or without medication) or participate in a monitoring or counseling program?
	Yes □ No □ N/A
	Describe such problem and any treatment or program of monitoring or counseling.
13.	During the last ten years, have you ever been declared legally incompetent or have you or your property been placed under any guardianship, conservatorship or committee? If yes, give full details as to court, date and circumstances.
	No
14.	During the last ten years, have you unlawfully used controlled substances, narcotic drugs or dangerous drugs as defined by Federal or State laws? If your answer is "Yes," explain in detail. (Unlawful use includes the use of one or more drugs and/or the unlawful possession or distribution of drugs. It does not include the use of drugs taken under supervision of a licensed health care professional or other uses authorized by Federal law provisions.)
	No
15.	In the past ten years, have you ever been reprimanded, demoted, disciplined, placed on probation, suspended, cautioned or terminated by an employer as result of your alleged consumption of alcohol, prescription drugs or illegal use of drugs? If so, please state the circumstances under which such action was taken, the name(s) of any persons who took such action, and the background and resolution of such action.
1	No

16.	Have you ever refused to and/or were under the influerer requested to submit entity requesting that you reason why you refused to	uence of alcohol of to such a test, the submit to the te	or drugs? If so, please ne type of test required st, the outcome of you	state the date you d, the name of the
	No			
17.	In the past ten years, have reason? If so, please exp	•	emory loss or impaired	I judgment for any
	No			
	EDUCATION:			
18a.	Secondary schools, co	lleges and law s	schools attended.	
	Schools	C I a s s Standing	Dates of Attendance	Degree
	Valencia Community College Orlando, Florida	1st (4.0)	1981-1989	Associate Arts
	University of Central Florida, Orlando, Fl	1st (4.0)	August 1993- May 1995	Bachelor Arts
	University of Florida	29th of 193	August 1995- May 1998	Juris Doctor

18b	List and describe academic scholarships earned, honor societies or other awards.
	Valencia Community College
	I graduated #1 in class with 4.0 grade point average.
	University of Central Florida
	I was inducted into the Golden Key Honor Society. I was a founding member of Alpha Phi Sigma, the Criminal Justice and Legal Studies Honor Society. I was a member of Lambda Alpha Elipson, the Criminal Justice Fraternity and Phi Alpha Delta, the Pre Law Fraternity. I remained on the President's Honor Roll during the one and half years I attended UCF. In 1994, I was awarded Outstanding Scholastic Achievement and Excellence in Legal Studies Courses. In April 1995, I was
	awarded with a scholarship (Founders' Day Honors) in recognition of academic excellence. At graduation, I was honored with a number of awards: College of Health & Public Affairs Outstanding Academic Achievement for Summa Cum Laude

in the Department of Criminal Justice/ Legal Studies. Highest Academic
Achievement 4.0 Grade Point Average. Outstanding Undergraduate Achievement
in Legal Studies. (Legal Studies Student of the Year).
University of Florida College of Law
After the first semester of law school, I was ranked second in my class. In June
1996, I received the Book Award for Contracts. Throughout law school, I was recognized for completing each term with either High Honors or Honors. In January 1998, I was awarded a Professional Tuition Scholarship. I graduated at the top 15% of the class. Ranking #29 out of 193 graduates.
recognized for completing each term with either High Honors or Honors. In January 1998, I was awarded a Professional Tuition Scholarship. I graduated a

NON-I	LEGAL EMPLOY	MENT:				
19.	List all previous full-time non-legal jobs or positions held since 21 in chronological order and briefly describe them.					
	Date	Position	Employe	r Address		
	1978- 1993	Management	Winn Dix	Orlando, ie Florida		
	Feb 1994-					
	July 1995	Server	Frogger's Restaura	1 1		
PROF	ESSIONAL ADN	IISSIONS:				
20.	having speci to practice, g	ts (including state bar al admission requirement giving the dates of admis uspended or resigned.	nts to which you	u have ever been admitte		
	Court or Adr	ministrative Body		Date of Admission		
	State of Florid			September 25, 1998		
	Federal Bar- Middle Distric	United States District Cou	rt of the	March 1999/ resigned		

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 Fire	m	Address	Date	es	
	Assistant State Attorney	Marion Cou State Attorn Office		110 NW 1st Ave, #5000 Ocala, Florida	May Janu 2004	•	
	Partner	Groland, Pro	octor &	500 E University Ave. Gainesville, Florida and 1 NE 1st Ave Ste. 209, Ocala, F		I-July	
	Partner/ Owner	Proctor & FI	etcher	500 E University Ave. Gainesville, Florida and 1 NE 1st Ave Ste. 209, Ocala, F	July . Janı	•	
	Partner/ Owner	Fletcher & F	Proctor	1 NE 1st Ave. Suite 209 Ocala, Florida	Jan 2011 pres		
22.	which you possess prior practice or if	; additionally, it you are not no cal clients or f	f your praction	nt practice including ctice is substantially cing law, give details ents and the proble	different f s of prior	rom your practice.	
	My practice is primarily Criminal Defense. I represent citizens in Marion County and the surrounding areas who have been arrested or are being investigated for committing a crime. I also represent individuals who are seeking an injunction for protection against another or a person whom an injunction has been sought against them. From 1998-2004, I was an Assistant State Attorney and represented the State of Florida in criminal prosecutions.						
23.	What percentage of of practice (include	• • •		rts in the last five yea	rs or last 1	ive years	
		Court		Area of	f Practice		
	Federal Appellate		%	Civil	1	%	
	Federal Trial		%	Criminal	99	%	
	Federal Other		%	Family		%	
	State Appellate		%	Probate	_	%	
	State Trial	100	%	Other		%	

	State Admir	nistrative		%						
	State Other		-	%						
			-	%						
	TOTAL		100	%	TOTAL		100	%		
24.	In your life judgment w	•	ny (numb	per) of	the cases you	have tried	I to ve	rdict or		
	Jury?	90			Non-jury?		apro	x 50		
	Arbitration ?				Administrativ	e Bodies?				
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 year						ears or			
27a.	tried to jud	gment before	a judge,	list the	erdict before a ju names and tel ers (include app	ephone nu	ımbers			
	1	dra Keller 201 tega 352-671-5		5 / Mario	on County					
	Co-counsel	hony Robinette Carrie Proctor 3 unt 352-671-58	352- 629-7		Marion County					
	l e	nk Dykes 2013- Adam Suess 8			County					
	1	thew Hall 2013 Thibeault 352			n County					

State v. Troy Williams 2009-CF-5007/ Marion County
Co-counsel Carrie Proctor 352-629-7222
ASA Nicholas Camuccio 352-671-5800
State v. Robert Williams 2010-CF-2248/ Marion County
Former ASA (current Honorable Judge) Thomas Thompson III 352-401-7888

27b.	For your last 6 cases, which were settled in mediation or settled without mediation or trial, list the names and telephone numbers of trial counsel on all sides and court case numbers (include appellate cases).
	State v. Kamaria Arrington 2014- CF-4017/ Marion County ASA Esteban Alverez 352-671-5800
	State v. Cameron McLemore 2015-MM-4738/ Marion County ASA Kervon Montfort 352-671-5800
	State v. Chong Lee 2015-MM-3716/ Marion County ASA Farheen Khan 352-671-5800
	State v. Sean Ralston 2015-MM-4662/ Marion County ASA Katrina Self 352-671-5800
	State v. James Haynes 2015-CF-4533/ 2014-CF-2912/ Marion County ASA Nicole Munroe 352-671-5800
	State v. Joseph Brogan 2015-CT-4420/ Marion County ASA Katrina Self 352-671-5800
27c.	During the last five years, how frequently have you appeared at administrative hearings? ** average times per month ** I appear in court almost every day for some type of criminal hearing. Status, Pre-Trial, Change of Plea or Evidentiary Hearing.
27d.	During the last five years, how frequently have you appeared in Court?  25 average times per month (almost every day/ sometimes a few times in a day)
27e.	During the last five years, if your practice was substantially personal injury, what percentage of your work was in representation of plaintiffs?%  Defendants?% n/a
28.	If during any prior period you have appeared in court with greater frequency than during the last five years, indicate the period during which this was so and give for such prior periods a succinct statement of the part you played in the litigation, numbers of cases and whether jury or non-jury.

29. For the cases you have tried to award in arbitration, during each of the past five years, indicate whether you were sole, associate or chief counsel. Give citations of any reported cases. N/A 30. List and describe the six most significant cases which you personally litigated giving case style, number and citation to reported decisions, if any. Identify your client and describe the nature of your participation in the case and the reason you believe it to be significant. Give the name of the court and judge, the date tried and names of other attorneys involved. State v. Ike Hunter Case No. 1997-CF-1868 Marion County with the Honorable Angel presiding. I represented the State of Florida in this case where the Defendant was charged with Sexual Battery. I was fortunate enough to sit second chair with Former ASA, current Honorable Judge Robert Hodges. Counsel on the other side was Charles Horn. I handled cross examination and direct examination of several witnesses. This case is significant to me because it involved an elderly lady who was brutally raped by a stranger. It was my first felony trial and I learned not only the legal aspects of a very serious case but also how to deal with a very fragile victim. Further, it was my first experience in dealing with complex legal issues such as DNA. State v. Tom Jones Case No. 2001-CF-2227 I represented the State of Florida in this case where the Defendant was charged with 2nd degree Murder of his wife. I was honored to have my supervisor, Chief Assistant Ric Ridgway sit second chair on this case. Janice Orr was the attorney for the Defendant. I did the opening statement and cross examination of several witnesses. I also handled all pre-trial legal issues and trial legal issues. This case was different than most murder cases in the fact that the victim survived the shooting and gave details to paramedics and law enforcement about what had occurred. She died ten days later. Her statements, however, were not admissible, so we had to investigate to determine a way to prove the case without her statements. This case provided me the opportunity to work with a very experienced prosecutor who happened to be my supervisor and to show him my ability to handle a serious case and the pressures of balancing the needs of the surviving family and all legal issues. State v. Robert Fabsits, 2003-CF-2357, Bay County, Honorable Michael Overstreet. I represented Robert Fabsits, a young man charged with DUI Mansalughter. The Assistant State Attorney was Dustin Stephenson. Co-counsel was my partner Gordan Groland. This case was significant because it presented many complex legal and factual issues. Factually, my client had given a blood sample approximately one hour after the accident. There was an issue as to whether he was over the legal limit at the time of the accident. Also, there was an issue as to fault in the accident, which legally can be a defense in the case. We employed experts to review the case and give opinions as to these issues. Further, there were legal issues which ultimately were litigated and decided in favor of my client. This was one of the first cases I worked on as a defense attorney. It taught me to have empathy with persons charged with serious charges. Although Mr. Groland was listed as counsel on the case and was to sit with

me in trial, I handled the case preparation of the entire case. It gave me the opportunity to work with experts on complicated issues. I also had the opportunity to research, draft

legal motions and argue the law before the court. A Motion to Suppress and Motion to Dismiss were granted on the morning the jury trial was to begin

State v. Donald Klienmeyer 2003-CF-4904, Marion County, Honorable David Eddy. Co-counsel was my partner, Carrie Proctor. The State was represented by Assistant State Attorney Jennifer Bass. I represented Mr. Klienmeyer who was charged with Aggravated Battery with a Firearm. I handled the opening, closing, cross examination and direct examination of the majority of the witnesses. I was responsible for all legal arguments. My client was looking at 25 years to life in prison if convicted as charged. He had a viable and legitimate self defense claim which in our opinion was supported by the evidence. This case was significant because it involved serious allegations with serious consequences for our client. He was a young man who was a corrections officer with no history of violence. There were interesting issues regarding the police investigations or lack thereof and the law of self defense. Our client was acquitted by a jury. It taught me how to deal with the stress of representing an individual I truly believed justice would only be served with a not quilty verdict.

State v. Leo Dorbad, 2006-CF-2874, Alacuha County the Honorable Maurice V. Giunta presiding. I represented Leo Dorbad who was charged with First Degree Murder. Counsel for the State was Assistant State Attorney Ralph Grabel and Assistant State Attorney Pamela Brockway. I tried this case twice. This case was significant, not only for the seriousness of the charge, but for the many legal issues that presented itself within the case. Our client had shot his roommate in the face killing her. He attempted to revise her and called 911 immediately. When paramedics and law enforcement arrived they noted Mr. Dorbad's behavior was not as they would expect a person's behavior to be after an accidental shooting. Mr. Dorbad was arrested that night with no forensic testing and no further investigation. The State basically argued that Mr. Dorbad's behavior indicated he was guilty of premeditated murder. In trial preparation, we employed the use of several experts, including a medical examiner, firearms expert, and psychiatrist. Our medical examiner gave a different opinion of how the incident might have occurred. (The State's medical examiner adopted our version during the second trial). We had hired and intended on presenting testimony from a psychiatrist who would testify as to "shock" and how a person might react after a shooting. I filed pre trial motions to exclude several hearsay statements that the State intended to introduce. The court denied my motions. The court also ruled that our psychiatrist would not be permitted to testify. The first trial ended in a hung jury. Not long after the first trial, the case was tried again. The court made the same rulings on my motions for the second trial. My client was found guilty of second degree murder by the jury. Although, I did not handle the appeal, my motions, memorandums of law and arguments made a clear record for appeal and the First DCA overturned Mr. Dorbad's verdict. (Leo Dorbad v. State, 12 So. 3d 255, Fla. 1st DCA 2009) The First DCA stated that the hearsay statements should not have been admitted and that our psychiatrist should have been permitted to testify. This case was later cited by Judge Belvin Perry in the Casey Anthony trial.

	presiding. Co-co Former Assistan on a Law Enforc significant becau enforcement offi- cross examination In this case, our deputy, mistaker client. Mr. Walke	ounse t Star emer use it cer a on an clien nly be er att	nt Officer and Resisting an Office dealt with the interesting legal is cting outside the legality of the lad direct examination of several with was walking home late at night elieved that our client had stolen empted to go inside his house ar	The State was represented by ur client was charged with Battery or without Violence. This case was sue of self defense against a law aw. I handled the opening, closing, vitnesses and all legal arguments. and had his GPS in his hand. A the GPS and began to chase our and the deputy ran inside Mr.
	scuffle began. Nowas tried before	⁄lr. W a jur		at he required surgery. This case supporting a judgment of acquittal.
31.	not personally w	ritte ntial	n any legal documents recently responsibility. Please describ	you personally wrote. If you have , you may attach writing for which be your degree of involvement in
	See Attached 2054.	Mot	ion for Judment of Acquittal S	tate v. Phillip Walker, 2009-CF-
PRIO	R JUDICIAL EXP	ERIE	NCE OR PUBLIC OFFICE:	
32a.			udicial office or been a candidal and the dates of service or da	ate for judicial office? If so, state ates of candidacy.
·	No		***************************************	
32b.	List any prior qu	uasi-	judicial service:	
	Dates		Name of Agency	Position Held
	Types of is heard:	ssue	es .	
32c.			or been a candidate for any ot dates of service or candidacy.	her public office? If so, state the
	No			

32d.	If you have had prior judicial or quasi-judicial experience, N/A
	(i) List the names, phone numbers and addresses of six attorneys who appeare before you on matters of substance.
	(ii) Describe the approximate number and nature of the cases you have handle during your judicial or quasi-judicial tenure.
	(iii) List citations of any opinions which have been published.
	(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.
	(v) Has a complaint about you ever been made to the Judicial Qualification Commission? If so, give date, describe complaint, whether or not there was finding of probable cause, whether or not you have appeared before the Commission, and its resolution.
	(vi) Have you ever held an attorney in contempt? If so, for each instance state name of attorney, approximate date and circumstances.
	(vii) If you are a quasi-judicial officer (ALJ, Magistrate, General Master), have yo ever been disciplined or reprimanded by a sitting judge? If so, describe.
BUSI	NESS INVOLVEMENT:
•	If you are now an officer, director or otherwise engaged in the management of ar 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.
	Fletcher & Proctor Inc., Partner/ Owner of Law Firm. I will resign my duties upo appointment.
•	Since being admitted to the Bar, have you ever been engaged in any occupatio business or profession other than the practice of law? If so, give detail including dates.
	no
•	State whether during the past five years you have received any fees or compensation of any kind, other than for legal services rendered, from any business enterprise, institution, organization, or association of any kind. If so, identify the source of such compensation, the nature of the business enterprise institution, organization or association involved and the dates such

	compensation was paid and the amounts.					
	No					
	POSSIBLE BIAS OR PREJUDICE:					
34.	The Commission is interested in knowing if there are certain types of cases, groups of entities, or extended relationships or associations which would limit the cases for which you could sit as the presiding judge. Please list all types or classifications of cases or litigants for which you as a general proposition believe it would be difficult for you to sit as the presiding judge. Indicate the reason for each situation as to why you believe you might be in conflict. If you have prior judicial experience, describe the types of cases from which you have recused yourself.					
none						

#### **MISCELLANEOUS:**

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

No

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

  No
- 35c. Have you ever had the adjudication of guilty withheld for a crime which is a felony or first degree misdemanor?

No

36a.	Have you ever been sued by a client? If so, give particulars including name of client, date suit filed, court, case number and disposition.
	no
36b.	Has any lawsuit to your knowledge been filed alleging malpractice as a result of action or inaction on your part?
	no
36c.	Have you or your professional liability insurance carrier ever settled a claim against you for professional malpractice? If so, give particulars, including the amounts involved.
	no

37a.	Have you ever filed a personal petition in bankruptcy or has a petition in bankruptcy been filed against you?
	Yes. Discharge November 7, 2011.
37b.	Have you ever owned more than 25% of the issued and outstanding shares or acted as an officer or director of any corporation by which or against which a petition in bankruptcy has been filed? If so, give name of corporation, your relationship to it and date and caption of petition.
	no
38.	Have you ever been a party to a lawsuit either as a plaintiff or as a defendant? If so, please supply the jurisdiction/county in which the lawsuit was filed, style, case number, nature of the lawsuit, whether you were Plaintiff or Defendant and its disposition.
	Yes. 1. Gordon H. Groland vs. Groland, Proctor & Fletcher, P.A., Proctor and Fletcher, P.A., Proctor and Fletcher, L.L.C, and Carrie Proctor and Becky Fletcher. Case No. 2006-CA-3073. Alaucha County. I was a listed Defendant. In 2005, I, along with my partner entered into a contract to purchase the law firm from Gordon Groland, our senior partner. In 2006, a law suit began due to disputes about the agreements that were made. We attempted to continue to honor the agreement for several years. Due to the unforseen change in the economy, in 2011, we were no longer finacially able to honor the contract. A judgment was entered against the law firm and against me personally. The judgment was discharged in the bankruptcy listed above.
	2. U.S. Trust Bank v. Rebecca Fletcher Case No. 2014-CA-2365. Marion County. Foreclosure of residential home. I am the Defendant in the case. In 2004, my home suffered major structural damage which was not covered by insurance. The value of the home was decreased by \$150,000.00. I attempted to renegotiate with my mortgage company, to no avail. When I filed bankruptcy in 2011, I included the home in the bankruptcy. I have been attempting to sell the house to avoid the foreclosure. The bank has declined every offer to date, however I do have an offer pending and I am waiting on the bank approval.
39.	Has there ever been a finding of probable cause or other citation issued against you or are you presently under investigation for a breach of ethics or unprofessional conduct by any court, administrative agency, bar association, or other professional group. If so, give the particulars.
	No
40.	To your knowledge within the last ten years, have any of your current or former co- workers, subordinates, supervisors, customers or clients ever filed a formal complaint or formal accusation of misconduct against you with any regulatory or investigatory agency, or with your employer? If so, please state the date(s) of such formal complaint or formal accusation(s), the specific formal complaint

	or formal accusation(s) made, and the background and resolution of such action(s). (Any complaint filed with JQC, refer to 32d(v).			
	no			
41.	Are you currently the subject of an investigation which could result in civil, administrative or criminal action against you? If yes, please state the nature of the investigation, the agency conducting the investigation and the expected completion date of the investigation.			
	No			
42.	In the past ten years, have you been subject to or threatened with eviction proceedings? If yes, please explain.			
	No			
43a.	Have you filed all past tax returns as required by federal, state, local and other government authorities?			
	Yes ✓ No □ If no, please explain.			
43b.	Have you ever paid a tax penalty?			
	Yes ✓ No □ If yes, please explain what and why. See below			
43c.	Has a tax lien ever been filed against you? If so, by whom, when, where and why?			
	Yes. A federal tax lien was filed against me in Marion County Florida in January 2012 due to back income taxes owed. In preceding years, I was in a position to pay my federal income tax in a lump sum at the end of each year. After the unexpected decline in the economy which caused a major decrease in my salary, I was unable to pay my federal income tax in lump sum as I had anticipated. Unfortunately, I owed taxes for a three year period. (2008-2010). I attempted to negotiate a settlement with the IRS which was denied. I have been in a payment plan with the IRS and have been making monthly payments to pay the remaining back taxes. I have since paid 2008 and a large portion of 2009 taxes. Since 2011, I have made quarterly tax payments and have not incurred any additional tax debt.			
	ONORS AND PUBLICATIONS:			
44.	If you have published any books or articles, list them, giving citations and dates.			
	n/a			
45.	List any honors, prizes or awards you have received. Give dates.			
	In 2010, I was presented with the President Award for Inn of Court for my participation and contribution to the D.R. Smith Inn of Court			

46.	List and describe any speeches or lectures you have given.  In April 2003, I was the main speaker for the Victim Rememberance Program at the Marion County Courthouse. I spoke about the effect of my step-brother's death in the terriost attacks to the World Trade Center as well as my role as a prosecutor in the prosecution of those charged with the death of others.				
	For several years, I have volunteered and helped teach a mock trial class at the Marion Technical Institute High School.				
47.	Do you have a Martindale-Hubbell rating? Yes □ If so, what is it?No ✓				

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.		
	Marion County Bar Association		
	D.R. Smith Inn of Court Treasurer 2009-2014 President Elect 2013-2014		
	Marion County Association for Criminal Defense Lawyers Secretary 2009-2010 Vice President 2010-2012 President 2012-2014		
	Private Attorney Liaison to the Bench/Bar May 2014- to present Board Member at Large July 2015- to present		
	Florida Association of Criminal Defense Lawyers Chapter Representative 2013-2014		
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.		
	N/A		
48c.	List your hobbies or other vocational interests.  I am an avid Gator fan and enjoy all gator sports, especially football. I love to exercise, attend sporting events, music, take my dog to the dog park and spend time at the beach. I also have volunteered for several years at the Marion		

	Technical Institute as an attorney coach. In that position, I have taught trial practice to high school juniors and seniors and coached them at the State Competition. I have been a judge several times for the high school students participating in the We the People Competition.			
48d.	Do you now or have you ever belonged to any club or organization that in practic or policy restricts (or restricted during the time of your membership) it membership on the basis of race, religion, national origin or sex? If so, deta the name and nature of the club(s) or organization(s), relevant policies an practices and whether you intend to continue as a member if you are selecte to serve on the bench.			
	No			
48e.	Describe any pro bono legal work you have done. Give dates.			
	During the course of my practice as a criminal defense attorney, I have represented many clients pro-bono in criminal cases.			

S	UPPLEMENTAL INFORMATION:			
49a.	Have you attended any continuing legal education programs during the past five years? If so, in what substantive areas?			
	2/26/15 Foreclosure 101			
	1/28/15 Dealing with Stress in Legal Field 4/4/14 Fifth Circuit Professionalism Conference			
	11/20/13 Florida Gun Law/ National Firearms 10/14/10 Fifth Circuit Ethics and Professionalism Conference			
49b.	Have you taught any courses on law or lectured at bar association conferences, law school forums, or continuing legal education programs? If so, in what substantive areas?			
	No			
50.	Describe any additional education or other experience you have which could assist you in holding judicial office.			
	When I was 18 years old, I was one of the first females in the Orlando division to			
	participate in management training at Winn Dixie. In 1979, women were not considered for management positions. Due to my diligence in pursuing the			
	opportunity, I was given the chance to participate in the training program. I worked			
	for Winn Dixie for 15 years and was in a management position when I retired to stay home with my children. Unfortunately and unexpectedly, not long after my			
	resignation from Winn Dixie, I was divorced. I was unemployed and had only			
	competed two years of college. I returned to school at the University of Central			

	Florida and completed my bachelor's degree in a year and half. I was encouraged by a few teachers to apply for law school. I moved to Gainesville and started law school as a single mother of two young children. My children were 5 and 2 at the time. Despite the hurdles of being a single mother, I completed law school in the top 15 % of my class. I believe these experiences would assist me in holding a judicial position as I strongly believe that I have the compassion and empathy to relate to people who may appear in court. I have had many struggles in my life, but I have proven that when there are obstacles in my life, I have not only overcome them but I have exceeded the normal expectations. I have always taken pride in my job whether it be at Winn Dixie, as a waitress (when I was going to college) or as a lawyer. I am proud of the accomplishments I have made in my life and I believe that my past experiences will help me be a competent and honorable judge.			
51.	Explain the particular potential contribution you believe your selection would bring to this position.			
	I believe that I will contribute to the Fifth Judicial Circuit as a judge because I know that I will educate myself as to the particular field of law that I am assigned. I will be respectful to attorneys and litigants that are in my courtroom, as well as requiring and earning respect for the position in return. I will have compassion and empathy for individuals while upholding the law and serving justice. Having been on both sides of criminal law, I know there are two sides to every situation and I believe this will help to be fair and impartial.			
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.			
	N/A			
53.	Give any other information you feel would be helpful to the Commission in evaluating your application.			
	In 1998, when I graduated from law school, I had the grades and the class standing to be employed at a law firm making substantially more money. I applied and interviewed only for positions as an Assistant State Attorney. I went to law school to be a prosecutor to serve the citizens of Florida. I had passion for the law and for being in a courtroom. Although I have dedicated my career to criminal law, I love the law in general. I have the dedication and the ability to educate myself in any field of law necessary for the position. In the 17 years that I have been practicing law in Marion County, I have earned the respect of most attorneys, judges and clients that I have had the privilege to work with, appear before or represent. I would be extremely honored to be a member of the Judiciary of the Fifth Judicial Circuit.			

#### **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.

Ric Ridgway, Chief Assistant State Attorney, 110 NW 1<sup>st</sup> Ave. #5000, Ocala, FI 34475 (352) 671-5914 (352) 598-2214

Greg Graham, Chief of Police, 402 South Pine Ave. Ocala, FI 34471 (352) 369-7000

Honorable John Futch, Retired Judge 1441 S.W. 42<sup>nd</sup> St., Ocala, FI 34471 (352) 854-3098

Honorable Sarah Ritterhoff Williams, 110 NW 1<sup>st</sup> Ave. Ocala, FI 34475 (352) 401-6781

Honorable R. James McCune, 110 NW 1<sup>st</sup> Ave. Ocala, FI 34475 (352) 401-7824

Renee Thompson, Attorney at Mateer Harbert, 7 E Silver Springs #500, Ocala, FI 34470 (352) 351-8003

Carrie Proctor, Attorney at Fletcher & Proctor, 1 NE 1<sup>st</sup> Ave. Ste. 209, Ocala, Fl 34470 (352) 629-7222 (352) 538-1099

William Miller, Assistant Public Defender, 204 NW 3<sup>rd</sup> Ave. Ocala, FI 34475 (352) 671-5454

Stacy Youmans, Attorney at Blanchard, Merriam & Adel, 4 SE Broadway, Ocala, FI 34471 (352) 732-7318 (352) 816-1168

Frances Lynch, Former teacher at MTI, Teacher at Trinity Catholic, 494 4 SE 44<sup>th</sup> St. Ocala, FI 34480

(352)598-7885

#### 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(I), 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 28th day of Alphanhar, 2015.

Printed Name

Rebeus Metcher

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.

Rev. 100209-OGC

#### **FINANCIAL HISTORY**

State the amount of gross income you have earned, or losses you have incurred (before

•	deducting expenses and taxes) from the practice of law for the preceding three-year period. This income figure should be stated on a year to year basis and include year to date information, and salary, if the nature of your employment is in a legal field.				
	Current year to date	\$43,219			
		2014 \$59,186	2013 \$62,176	2012 \$76,265	
	Last Last 3 years				
2.	deducting expenses to period. This income	out not taxes) from the figure should be state	e earned, or losses you e practice of law for the d on a year to year bas your employment is in	e preceding three-year sis and include year to	
	Current year to date List Last 3 years	\$37,666 2014 \$52,748	2013 \$54,816	2012 \$49,311	
3.	taxes) you have earn	ed in the preceding t	es incurred (before de three years on a year l generally describe the s	by year basis from all	
	Current year to date List Last 3 years				
4.	expenses) from all so	ources other than the	e earned or losses incompractice of law for the rally describe the source	preceding three-year	
	Current year to date List Last 3 years			***	

1.

# FORM 6 FULL AND PUBLIC DISCLOSURE OF FINANCIAL INTEREST

#### PART A - NET WORTH

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

My net worth as of <u>September 25,2015</u> was \$ -156,200.00.

#### PART B - ASSETS

#### **HOUSEHOLD GOODS AND PERSONAL EFFECTS:**

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

The aggregate value of my household goods and personal effects (described above) is \$ 15,000

DESCRIPTION OF ASSET (specific description is required - see instructions p. 3)

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

Household furnishings 5000
2006 Acura TSX 7500
Golf Cart 2500

PART C - LIABILITIES		
LIABILITIES IN EXCESS OF \$1,000 (See instructions on page 4):  NAME AND ADDRESS OF CREDITOR	AMOUNT OF LIABILITY	
Student Loans, US Dept of Education, Granite Management Resources 4 Barrell Court P.O.Box 3420 Concord, N.H. 03302-3420	118,200	

JOINT AND SEVERAL LIABILITIES	REDITOR	AMOUNT OF LIABILITY		
N/A				
	PA	RT D - INCOME		
attachments, OR (2) file a sv	vorn statement identify		including all W2's, schedules, and amount of income which exceeds D, below.	
✓ I elect to file a copy of m	y latest federal income	tax return and all W2's, schedu	les, and attachments.	
(if you check this box and PRIMARY SOURCE OF INCOM			complete the remainder of Part D.]	
NAME OF SOURCE OF INCOM	E EXCEEDING \$1,000	ADDRESS OF SOURCE OF IN	NCOME AMOUNT	
	# 11444			
NAME OF BUSINESS ENTITY 	COME [Major customers, cli NAME OF MAJOR SOUR OF BUSIENSS' INCOM	CES ADDRESS	orting person—see instructions on page 6] PRINCIPAL BUSINESS ACTIVITY OF SOURCE	
N/A				
PART E	- INTERESTS IN SPE	CIFIC BUSINESS [Instruction BUSINESS ENTITY #2	' - '	
NAME OF BUSINESS ENTTITY	N/A			
ADDRESS OF BUSINESS ENTITY				
PRINCIPAL BUSINESS ACTIVITY				
POSITION HELD WITH ENTITY				
I OWN MORE THAN A 5% INTEREST IN THE BUSINESS NATURE OF MY				
IF ANY OF PARTS A THROU	IGH E ARE CONTINUE	ED ON A SEPARATE SHEET.	PLEASE CHECK HERE	
OATH	er i ja er er i e Angelia ku	STATE OF FLORIDA	ti, editir edilippi dise	
I, the person whose name app		COUNTY OF Murion	•	
of this form, do depose on oath or affirmation and say that the information disclosed on this form and any attachments hereto is true, accurate, and complete.		Sworn to (or affirmed) and subscribed before me this $\frac{28}{100}$ day of $\frac{2}{100}$		
		_,2015 by_ Racheel A Dawr		
		Kache	reef A NOWY	
		(Signature of Notary Public—Sta	te of Florida)	
		(Print, Type, or Stamp Commissi	oned Name of Notary Public)	
		Personally Known <u></u> OR Produc	ced Identification	
SIGNATURE		Type of Identification Produced		



#### 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: September 28, 2	2015	
JNC Submitting To:		
		ca Ann Fletcher / at Fletcher & Proctor,Inc.
Telephone Number: (3	52) 62	9-7222 Attorney No.: 0416722
Gender (check one):		Male ✓ Female
Ethnic Origin (check one):	/	White, non Hispanic
		Hispanic
		Black
		American Indian/Alaskan Native
		Asian/Pacific Islander
County of Residence:	Marior	n County

,29

#### 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:	ReBeca Ann Fletcher
Signature of Applicant:	R. a. Sletcher
Date: 9/70/11	

## WRITING SAMPLE

### IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT, IN AND FOR MARION COUNTY, FLORIDA

CASE NO: 42-2009-CF-2054

STATE OF FLORIDA,
Plaintiff,

vs.

PHILIP WALKER,
Defendant.

#### **MOTION FOR JUDGMENT OF ACQUITTAL**

#### **Count III Loitering and Prowling**

**COMES NOW** the Defendant, **PHILIP WALKER**, by and through undersigned counsel, and files this Motion for Judgment of Acquittal and states as follows:

In viewing the facts in the light most favorable to the State, at 2:00 in the morning, the Defendant was walking in the area of 11 Fir Drive Terrace, which is one house away from the Defendant's residence. Deputy Todd Winkler saw the Defendant walking and observed a GPS receiver in his hand. The Deputy asked the Defendant to stop and the Defendant cursed at the deputy and ran toward his residence. The Deputy did not observe the Defendant commit any crime and had no further information that would give the Deputy reasonable suspicion that the Defendant had committed or was about commit to a crime.

The State must prove that the Defendant loitered or prowled in a place, at a time, or in a manner not usual for law-abiding individuals and that such loitering and prowling was under circumstances that warranted justifiable and reasonable alarm or immediate concern for safety of persons or property in the vicinity.

In <u>Hunter v. State</u>, 2010 WL 1222625 (Fla. App. 4 Dist.), the 4<sup>th</sup> DCA overturned a conviction for possession of cocaine and resisting arrest without violence because the Court held

that the Motion to Suppress should have been granted. In <u>Hunter</u>, the defendant, a black male, was sitting under a tree with another black male, in between a closed church and an apartment complex sometime between 11:00 p.m and midnight. The officers were working a burglary deterrence action plan and received a call regarding suspicious activity regarding the two males. The officers observed the defendant rummaging through his pockets. The officer believed it was in an area that normal people wouldn't be. The officers intent at that point was to investigate the two men. The officer approached the defendant and announced his presence by saying "Police". The defendant and the other male ran around to the corner of the residence and the officer followed them and stopped them as they tried to enter the residence. The officer arrested the defendant, searched him, and found cocaine.

The 4<sup>th</sup> DCA held, that the officers did not have reasonable suspicion of loitering and prowling sufficient to stop the defendant. In explaining the Loitering and Prowling statute, the court stated, "With respect to the first element, the state must establish that the defendant engaged in incipient criminal behavior which law abiding people do not usually engage in due to the time, place or manner of the conduct involved. The gist of this element is conduct which comes close to, but falls short of the actual commission or attempted commission of a substantive crime and which must be alarming in nature, pointing toward an imminent breach of the peace or threat to public safety. The statute is not directed at mere idling."

Further, the conduct constituting the offense of loitering and prowling must be complete before any police action. The fact that a defendant fled after observing the police could not be retroactively used to support a suspicion of imminent criminal conduct. Mere flight from officers, without the officers having a factually based reasonable suspicion that criminal conduct either occurred or was imminent, is insufficient.

The court held "because they were as close to the residences as they were to the churches, the facts do not suggest they were engaged or were about to engage in criminal activity. It is equally likely that they were sitting outside their residence enjoying a summer evening.

The court also held that since the officers had no reasonable suspicion to stop the defendant, they were not engaged in the lawful execution of a legal duty.

In Hollingsworth v. State, 991 So.2d 990 (Fla. 4<sup>th</sup> DCA 2008), the 4<sup>th</sup> DCA held that deputies lacked reasonable suspicion of loitering and prowling to justify an investigatory stop. In Hollingsworth, at 10:00 pm sheriff deputies responded to a call regarding the sale of narcotics. The deputies saw the defendant walking toward them in an area where all the businesses were closed. After noticing the officers' presence, the defendant proceeded at a fast pace in the opposite direction. The officers observed the defendant duck behind a parked van. One of the deputies ordered the defendant to stop. The defendant continued to walk. After the deputy caught up with the defendant he detained her and asked her to explain her presence. She stated that she was there to purchase crack cocaine. The defendant was arrested for loitering and prowling and search incident to arrest revealed drugs.

The Court held that the defendant's conduct of walking alone on a public street at 10:00 p.m. surrounded by closed businesses did not raise a justifiable and reasonable alarm or point toward an imminent breach of the peace or threat to the public safety. Although the defendant later attempted to conceal herself, this conduct occurred after the deputies started to pursue her, not when she was first observed. Her response to the police pursuit cannot be used retroactively to support an imminent suspicion of criminal activity.

The Supreme Court of Florida reviewed several cases in <u>State v. Ecker</u>, 311 So.2d 104 (1975) which related to the loitering and prowling statute. The Supreme Court held that the

statute was constitutional under circumstances where peace and order are threatened or where the safety of persons or property is jeopardized. The police must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant a finding that a breach of peace is imminent or the public safety is threatened.

The Court further held that the defendant cannot be required to explain his presence and conduct without first being properly advised of Miranda.

In <u>Ecker</u>, the defendant was observed in front of an apartment building. He was asked for identification by law enforcement and when he could not provide any, he was arrested for loitering and prowling. The Supreme Court held that the complaint showed no circumstances that threaten the public safety, and therefore a charge of loitering could not be properly established.

It is interesting to note, that in all the above cited cases, the defendants were in fact involved in criminal activity as was determined after their arrest. The courts, however, overturned their convictions based upon the legality of the initial charge of loitering and prowling. In the instant case, Mr. Walker actually was not involved in any criminal activity but was merely walking to his own home.

In this case, Mr. Walker's conduct, of walking in front of his own home, does not rise to a justifiable and reasonable alarm or point toward an imminent breach of the peace or threat to the public safety. Therefore, a Judgment of Acquittal should be granted as to Count III.

#### Resisting Arrest with Violence and Battery on Law Enforcement Officer (Count I and II)

In viewing the facts in the light most favorable to the State, after DeputyWinkler made contact with the Defendant, the Defendant ran to the front door of his residence and began

banging on it. The Defendant told Deputy Winkler that he lived at the residence. Deputy Winkler asked the Defendant if he had any identification and the Defendant cursed at Deputy Winkler and pushed Deputy Winkler. This occurred on the Defendant's covered front porch. The Defendant's wife opened the door and the Defendant went inside and attempted to shut the door on Deputy Winkler. Deputy Winkler grabbed the Defendant in an attempt to get him back outside and the Defendant again tried to shut the door and keep the deputy from entering his house. According to Deputy Winkler, the Defendant struck him in the head and in the chest. At that point, Deputy Winkler squeezed himself into the doorway and entered the Defendant's residence. The Deputy took the Defendant to the ground. The Deputy claims that the Defendant attempted to grab his taser and firearm as he was trying to place the Defendant under arrest. The Deputy claims that the Defendant continued to be combative while he was trying to handcuff and arrest the Defendant.

In order for the Defendant to be convicted of Battery on Law Enforcement Officer or Resisting with Violence, the State must prove that the law enforcement officer was engaged in the lawful performance of his duties when the battery or the resisting occurred. Florida Statute Section 776.051(1) states that a person is not justified in the use of force to resist an arrest by a law enforcement officer, or to resist a law enforcement officer who is engaged in the execution of a legal duty, if the law enforcement officer was acting in good faith and he or she is known or reasonably appears to be a law enforcement officer. For the deputy to be engaged in the lawful performance of his duties, he would need to establish he had probable cause to arrest the Defendant and even if he had probable cause to arrest, exigent circumstances must have existed for the deputy to enter the Defendant's property and the Defendant's residence.

As we learned from Hunter v. State, 2010 WL 1222625 (Fla. App. 4 Dist.) if the deputy

did not have reasonable suspicion to stop the defendant, he was not engaged in the lawful execution of a legal duty.

The following cases were decided prior to 2008, when the Legislature amended Florida Statute 776.051(1) to include the language resisting an officer in the "execution of a legal duty" as well as resisting "arrest". The cases have not been expressly overturned and still constitute the state of the law.

In Taylor v. State\_,740 So.2d 89 (Fla. 1st DCA 1999) the 1st DCA overturned convictions of Battery on a Law Enforcement Officer and Resisting an Officer with Violence. In Taylor, a deputy went to the defendant's home at 5:00 a.m. in response to a noise complaint. It was the second time the deputy had been to the residence that morning for the same complaint. The deputy heard loud music coming from an open doorway. The deputy walked up to the doorway and motioned for the defendant to turn the music down. The defendant lowered the music. The deputy asked the defendant why he did not turn the music down earlier and the defendant responded by cursing at the deputy. The deputy asked the defendant to give his name and identification and to come outside. The defendant did not move so the deputy entered the residence and walked up to the defendant. The deputy touched the defendant's arm in an attempt to take him outside and the defendant pushed the deputy away. A brief struggle took place and the defendant was pepper sprayed and taken into custody.

The court held that the State failed to prove that the deputy was engaged in the lawful performance of his legal duties. The deputy was acting within the scope of his duty by investigating the noise compliant, but that fact alone would not give the deputy the authority to enter the defendant's home. He didn't have permission to enter the house and did not have probable cause to arrest the defendant for any offense before he entered the home and moreover,

there were no exigent circumstances that would justify a warrantless entry into the residence, even if probable cause had existed for arrest. The defendant was intoxicated and belligerent, but there was no indication that he was a danger to himself or others.

The State argued that Florida Statute 776.051(1) does not allow a defendant to use force against the deputy even if the arrest is illegal. The court held however, that Florida Statute 776.051(1) only applies when the defendant is charged with resisting arrest. It does not apply if the defendant is resisting the officer in the performance of another duty. This principal has now been superceded by the amendment to the Statute.

The <u>Taylor</u> court, however, indicating that some jurisdictions including the 5<sup>th</sup> Circuit had extended 775.051(1) to include illegal detainments as well as arrests. The court stated "we do not think that section 776.051(1) can be extended to a situation in which an officer has entered someone's house without any arguable legal justification. An unlawful entry to a person's house is a far greater invasion of privacy than an unlawful arrest or detention on the street.

The Florida Supreme Court stated, "Absent consent, a search warrant, or an arrest warrant, a police officer may enter a private home only when there are exigent circumstances for the entry. The zone of protection under the Fourth Amendment extends to the curtilage of the home.

The United States Supreme Court has stated that the Fourth Amendment has drawn a firm line at the entrance to the house. Absent exigent circumstances that threshold may not be crossed without a warrant. Payton v. New York, 445 U.S. 573 (1980). The circumstances in which the Supreme Court has applied the exigent circumstances exception are few in number and carefully delineated. They include pursuing a fleeing felon, preventing the destruction of evidence, searching incident to a lawful arrest, and fighting fires. Outside of these established categories,

the Supreme Court has often heard and steadfastly rejected, the invitation to carve out further exceptions to the warrant requirement for searches of the home. Further, the exigent circumstances cannot be created by the law enforcement officer. See <u>State v. Garcia</u>,866 So.2d 124 (Fla. 4<sup>th</sup> DCA 2004).

The 2<sup>nd</sup> DCA overturned convictions for Resisting Arrest with Violence and
Battery on a Law Enforcement Officer when the defendant pushed an officer in her yard, after the
officer entered her property illegally. Rodriguez v. State, 964 So.2d 833 (Fla. 2<sup>nd</sup> DCA 2007). In
Rodriguez, the police came to the defendant's property to investigate a hit and run in relation to
the defendant's husband. The husband confronted the officer in a profane way and told the
deputy to leave him alone. The deputy attempted to come unto the property to arrest the husband
for obstructing his investigation. The defendant attempted to lock the front gate of her property.
The deputy grabbed the defendant's hand and pushed through the gate. As he entered the
curtilage of the defendant started striking the deputy. Outside the front door of
the house, the defendant started striking the deputy. The husband went inside the house and the
deputy followed him inside. The husband came at the deputy with an axe and the deputy shot
and killed the husband. The defendant ran outside after the deputy and pummeled the deputy.

The Defendant was convicted of Resisting Arrest with Violence and Battery on Law Enforcement Officer. The 2<sup>nd</sup> DCA stated that if a law enforcement officer does not have consent, a search warrant, or an arrest warrant, he may not enter a private home or its curtilage except when it is justified by exigent circumstances. The court held that there were no exigent circumstances in this case. The court said, "the State's evidence did not merely fail to prove that the deputy was engaged in the lawful performance of a legal duty; it affirmatively proved the contrary.

Again, this case was decided prior to the amendment of the Statute but has not been explicitly overturned. Certainly the concept that law enforcement officers may not enter a person's property without a warrant or exigent circumstances still constitutes the law.

In this case, it is clear that Deputy Winkler did not have probable cause to arrest the Defendant for loitering and prowling and even if the deputy did have probable cause to arrest the Defendant, loitering and prowling is a second degree misdemeanor. Deputy Winkler cannot enter the curtilage of the Defendant's home or the Defendant's home. There are no exigent circumstances that would allow the warrantless entry into the Defendant's constitutionally protected property. This principal of law has been valid since at least 1980 when the United States Supreme Court decided Payton v. New York (cited earlier), long before Deputy Winkler became a police officer.

Florida State Statute, 775.061(1) specifically states that the law enforcement officer must be acting in good faith for the statute to be applicable. Black's law dictionary defines "good faith" as "an intangible and abstract quality with notechnical meaning or statutory definition and it encompasses, among other things, an honest belief, the absence of malice and the absence of design to defraud or to seek an unconscionable advantage, and an individual's personal good faith is concept of his own mind an inner spirit and, therefore, may not conclusively be determined by his protestations alone."

In criminal law, "good faith" is often applied when law enforcement officers rely on a widely-accepted interpretation of the law as it stood on the date of the conduct. See <u>Brown v</u>.

<u>State</u>, 24 So 3d. 671 (Fla. 5<sup>th</sup> DCA 2009) and when a law enforcement officer acts upon a search warrant obtained by a judge that later turns out to be based upon erroneous information. See <u>Albo v</u>. State, 477 So.2d 1071(Fla. 3rd DCA 1985).

There is no evidence what-so-ever that Deputy Winkler was acting in good faith. Under the facts of this case, it is clear that Deputy Winkler was angry at the Defendant for not cooperating with him and showing an identification. Therefore, with no justification, Deputy Winkler followed the Defendant onto his property, entered the curitalge of the Defendant's home and then entered the Defendant's home without permission or without any legal justification.

Count 1 of the Information charging Resisting an Officer with Violence states that the Defendant did "knowingly and willfully resist, obstruct, or oppose Deputy Todd Winkler, who was then and there in the lawful execution of a legal duty, or execution of legal process, to wit: **criminal investigation**, by offering or doing violence to the person of such officer." The State must prove the crime as is charged in the information.

DeputyWinkler was not conducting a criminal investigation because no crime had been committed. Deputy Winkler was attempting to conduct a <u>citizen encounter</u>. The Defendant has the legal right to refuse to have a citizen encounter with Deputy Winkler. Since the State failed to prove that the Deputy Winkler was in the process of a criminal investigation, and since Deputy Winkler was not in the lawful execution of a legal duty and was not acting in good faith, the Court should grant a JOA as to Count I.

It is unclear, as to whether 776.051(1) applies to Count II, Battery on a Law Enforcement Officer. The plain language of the Statute uses the term "resist a law enforcement officer" and does not mention "battery on a law enforcement officer". Further, the standard jury instructions do not give the Court the option to read 776.051(1) to the jury as an instruction to Battery on Law Enforcement Officer. In such case, the State would have to prove that Deputy Winkler was in the lawful execution of a legal duty when the battery occurred. As argued above, it has been proven that Deputy Winker was not in the lawful execution of a legal duty when the battery

occurred. Even if Section 776.051(1) does apply to Battery on Law Enforcement Officer, the same argument applies that Deputy Winkler was not acting in good faith. The Court should grant a Judgment of Acquittal as to Count II.

It is well settled in the law that a person has the right to use reasonable force to remove a trespasser from his property and his home. Raker v. State, 94 So.613 (Fla. 1922). The Defendant should not be prohibited from using reasonable force to prevent a stranger from entering the curtilage of his property and his home, simply because that stranger happens to be a law enforcement officer. Whether a deputy is trespassing is a matter of law. See State v. Smith, 348 So.2d 637 (Fla. 2<sup>nd</sup> DCA 1977)

Since Deputy Winkler did not have any legal authority to enter the Defendant's residence or the curtilege of the home, the deputy becomes a mere trespasser and the Defendant can use reasonable force necessary to remove the deputy from his property. See <u>Kee v. State</u>, 580 So.2d 796 (Fla. 3<sup>rd</sup> DCA 1991). In <u>Kee</u>, plain clothed officers entered the defendant's office-apartment to arrest the defendant after he propositioned an undercover officer for sexual acts. In the melee that erupted, the defendant battered one of the plain clothed officers. The state could not prove at the time of the battery that the defendant knew the victim was a police officer. The court held that the right of a person to protect his property includes the right to use reasonable force in ejecting trespassers. The Court in <u>Kee</u> cites to a 1952 Florida Supreme Court case.

The Supreme Court of Florida held in 1952 that one whose home is assaulted without lawful authority may use such force as is necessary to repel the assailant. Where a deputy sheriff attempts to arrest party in home without warrant, arrested party may use reasonable force proportionate to injury attempted to effect his escape. Alday v. State, 57 So.2d 333 (Fla 1952).

In Alday, a deputy went to the Defendant's home in relation to a call that the defendant

and his house keeper were drunk at the defendant's home. The deputy entered into the defendant's home without a warrant and undertook to arrest the house keeper. An altercation took place between the defendant and the deputy. The deputy shot the defendant in the chest and the defendant struck the deputy over the head with a gun barrel, killing him. The Court held that the deputy did not have authority to go into the defendant's home and therefore the defendant had the authority to use proportionate force to remove the deputy. Because the defendant used more force than necessary, the charge was reduced from murder to manslaughter.

Since Deputy Winkler did not have any legal authority to enter the Defendant's residence or the curtilege of the home, the deputy becomes a mere trespasser and the Defendant can use reasonable force necessary to remove the deputy from his property. Therefore any force used was justified under the law and the Court should grant the JOA as to Counts I and II.

Finally, although an accused is prevented by statute from resisting arrest with violence if the officer is acting in good faith, even if the arrest is technically illegal, a second statute permits the accused to defend himself against unlawful or excessive force, even when being arrested.

In <u>Ivester v. State</u> 398 So.2d 926 (Fla. 1<sup>st</sup> DCA 1981), the defendant was charged with Resisting an Arrest With Violence and sought to depose the officer about use of force while on duty. He was denied the opportunity to do so. The 1<sup>st</sup> DCA held that since the accused can use force to defend himself against excessive force, the Defendant should have been allowed to conduct further discovery. See also <u>Wright v. State</u>, 705 So.2d 102 (4<sup>th</sup> DCA 1998) where defendant was pepper sprayed during arrest and the court held that while a person cannot use force to resist arrest, a person may resist the use of excessive force in making an arrest and therefore a jury instruction as to self defense should have been given.

It is clear in this case that Deputy Winkler used excessive force to arrest the Defendant.

Deputy Winkler received minor injuries, if any, and the Defendant was beaten to the point he had to be hospitalized. Therefore, the Court should grant the Judgment of Acquittal as to Counts I and II.

#### **CONCLUSION**

In viewing all three charges in the light most favorable to the State, the State did not prove the required elements in any of the three counts and the Court should grant a JOA as to Count I, Count II and Count III.

I HEREBY CERTIFY that a copy of the foregoing has been furnished by US Mail/Hand Delivery to Elizabeth Gibson, State Attorney's Office, 110 NW 1<sup>st</sup> Ave, Ste 5000, Ocala, Florida 34475, on this // day of April, 2010.

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