

Neil Gillespie

From: "Amy Hasselbring" <ahasselbring@bowenschroth.com>
To: <neilgillespie@mfi.net>
Cc: "Derek Schroth" <dschroth@bowenschroth.com>
Sent: Monday, April 25, 2016 10:50 AM
Attach: Application Paul L. Militello.pdf
Subject: JNC Application -
Mr. Gillespie,

Attached is the application of Paul L. Militello. Thanks.

Amy McCain Hasselbring
Florida Registered Paralegal and
Legal Assistant to Derek A. Schroth
Bowen & Schroth, P.A.
600 Jennings Avenue
Eustis, FL 32726
Telephone: 352-589-1414 Ext. 316
Facsimile: 352-589-1726
e-mail: ahasselbring@bowenschroth.com

APPLICATION FOR NOMINATION TO THE CIRCUIT COURT

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

DATE: October 1, 2015 Florida Bar No.: 0971987

GENERAL: Social Security No.: [REDACTED]

1. Name Paul L. Militello E-mail: militelli.paul@gmail.com

Date Admitted to Practice in Florida: April 21, 1993

Date Admitted to Practice in other States: N/A

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

Paul Militello, P.A., President/Partner

3. Business address: 107-B West Main Street

City Inverness County Citrus State FL ZIP 34450

Telephone (352) 637-2222 FAX (352) 726-2210

4. Residential address: 1008 SE 46th Street

City Ocala County Marion State FL ZIP 34480

Since December 2012 Telephone (352) 229-3151

5. Place of birth: Tampa, Florida

Date of birth: December 18, 1964 Age: 50

6a. Length of residence in State of Florida: 50 years

6b. Are you a registered voter? Yes No

If so, in what county are you registered? Marion

7. Marital status: Divorced

If married: Spouse's name N/A

Date of marriage N/A

Spouse's occupation N/A

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.

Former Spouse: Melisa L. Militello

Address: 3857 SE 40th Street, Ocala, Florida 34480

Date of Divorce: September 3, 2010; Place of Divorce: Ocala, Florida

Circuit Court in and for Marion County, Florida, Case No.: 2008-5564-DR-FG

8. Children

<i>Name(s)</i>	<i>Age(s)</i>	<i>Occupation(s)</i>	<i>Residential address(es)</i>
Paul Samuel Militello	20	Student	387 SE 40 th Street, Ocala, Florida 34480
Molly Lee Militello	16	Student	387 SE 40 th Street, Ocala, Florida 34480

9. Military Service (including Reserves)

<i>Service</i>	<i>Branch</i>	<i>Highest Rank</i>	<i>Dates</i>
N/A			
Rank at time of discharge _____		Type of discharge _____	
Awards or citations _____			

HEALTH:

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

No

11a. During the last ten years have you been hospitalized or have you consulted a professional or have you received treatment or a diagnosis from a professional for any of the following: Kleptomania, Pathological or Compulsive Gambling, Pedophilia, Exhibitionism or Voyeurism?

Yes No

If your answer is yes, please direct each such professional, hospital and other facility to furnish the Chairperson of the Commission any information the Commission may request with respect to any such hospitalization, consultation, treatment or diagnosis. ["Professional" includes a Physician, Psychiatrist, Psychologist, Psychotherapist or Mental Health Counselor.]

Please describe such treatment or diagnosis.

N/A

11b. In the past ten years have any of the following occurred to you which would interfere with your ability to work in a competent and professional manner?

- Experiencing periods of no sleep for 2 or 3 nights
- Experiencing periods of hyperactivity
- Spending money profusely with extremely poor judgment

- Suffered from extreme loss of appetite
- Issuing checks without sufficient funds
- Defaulting on a loan
- Experiencing frequent mood swings
- Uncontrollable tiredness
- Falling asleep without warning in the middle of an activity

Yes No

If yes, please explain.

N/A

12a. Do you currently have a physical or mental impairment which in any way limits your ability or fitness to properly exercise your duties as a member of the Judiciary in a competent and professional manner?

Yes No

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

Yes No

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

N/A

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

No

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

No

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

No

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

No

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

No

EDUCATION:

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

<i>Schools</i>	<i>Class Standing</i>	<i>Dates of Attendance</i>	<i>Degree</i>
Hernando High School		1981-1983	High School Diploma
University of Florida		1983-1989	Bachelor of Arts of Criminology and Law
University of Florida College of Law		1990-1992	Juris Doctorate

18b. List and describe academic scholarships earned, honor societies or other awards.
 Criminology & Law Honor Society 1988-1989
 College of Law Honors 3 of 6 Semesters
 College of Law Teaching Fellowship Award 1991

NON-LEGAL EMPLOYMENT:

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

<i>Date</i>	<i>Position</i>	<i>Employer</i>	<i>Address</i>
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1996-1998	Law Enforcement Academy Instructor	Withlacoochee Technical College	1201 West Main Street, Inverness, Florida 34450
2015-Current	Professor of Business Law	College of Central Florida	3001 SW College Road, Ocala, Florida 34474

PROFESSIONAL ADMISSIONS:

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

<i>Court or Administrative Body</i>	<i>Date of Admission</i>
The Florida Bar	1993
United States District Court- Middle District of Florida	1994
United States Federal Court of Appeals, Eleventh Circuit	1994

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

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

<i>Position</i>	<i>Name of Firm</i>	<i>Address</i>	<i>Dates</i>
Office Staff	Law Office of Gene Auui	Brooksville, FL	Summer 1987
Library Staff	Levin College of Law Legal Information Center	Gainesville, FL	Summer 1991
Intern Law Clerk	Honorable Richard Tombrink, Jr.	20 N. Main St., Rm 444, Brooksville, FL 34601	Summer 1992
Certified Legal Intern	Public Defender Richard Parker	35 North Main St., Gainesville, FL 32601	August 1992-December 1992

Assistant State Attorney	Brad King, State Attorney	110 NW 1 st Ave, Suite 5000, Ocala, FL 34480	1993-1997
Partner	Carney & Militello, P.A.	7655 W. Gulf to Lake Hwy, Suite 2, Crystal River, FL 34429	1997-2001
Partner	Militello & Militello, P.A.	107-B West Main Street, Inverness, Florida 34450	2001- July 31, 2009
Sole Practitioner/ Officer/ Director	Paul Militello, P.A.	107-B West Main Street, Inverness, Florida 34450	August 1, 2009- Current

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

My current law practice consists of all areas of criminal defense, representing debtors in a chapter 7 bankruptcy, simple wills and estate planning, and injunctions for protection. Previously, I handled family law matters consisting of dissolutions of marriage, custody and dependency for approximately seven (7) years. I also handled civil litigation. During the time I was actively practicing family law I was also a certified family law mediator. Approximately seven (7) years ago I started eliminating family and civil litigation from my case load.

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

Court		Area of Practice	
Federal Appellate	_____ %	Civil	_____ 5 %
Federal Trial	_____ 1 %	Criminal	_____ 75 %
Federal Other	_____ %	Family	_____ 5 %
State Appellate	_____ 1 %	Probate	_____ %
State Trial	_____ 98 %	Other	_____ 15 %
State Administrative	_____ %		
State Other	_____ %		
	_____ %		_____

TOTAL	100 %	TOTAL	100 %
24. In your lifetime, how many (number) of the cases you have tried to verdict or judgment were:			
Jury?	<u>52</u>	Non-jury?	<u>50</u>
Arbitration?	<u>N/A</u>	Administrative Bodies?	<u>N/A</u>

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.

None

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.

None

(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).

- Florida Highway Patrol Trooper David DeCarlis, (352) 754-6767 (Trooper has retired since this matter); Paul Militello, Paul Militello, P.A., (352) 637-2222; Case No.: 2015-TR-312; State vs. Richard Mc Neece
- Ronda Gayle O'Haver (Pro Se Petitioner); Paul Militello, Paul Militello, P.A., (352) 637-2222; Case No.: 2015-DR-1180; Ronda Gayle O'Haver vs. Jay McElhatten (Citrus County Injunction)
- Carole Hoenow (Pro Se Petitioner); Paul Militello, Paul Militello, P.A., (352) 637-2222; Case No.: 2014-DR-1580; Carole Hoenow vs. Sheila Brown (Citrus County Injunction)
- Love V. Baumle (Pro Se Petitioner); Paul Militello, Paul Militello, P.A., (352) 637-2222; Case No.: 2014-DR-2887; Love V. Baumle vs. Donald Gouchenouer (Marion County Injunction)
- Dayanna Lopez, (Formerly with Community Legal Services of Mid-Florida, Inc.) (386) 257-6573 Ext 2448; Paul Militello, Paul Militello, P.A., (352) 637-2222; Case No.: 2014-DR-298; Andrina C. Egan vs. Joshua Myers (Sumter County Injunction)
- Joanne Corr (Pro Se Petitioner); Paul Militello, Paul Militello, P.A., (352) 637-2222; Case No.: 2014-DR-199; Joanne Corr vs. Rhonda Hendrickson (Citrus County Injunction)

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).

Jeremy Smith, Office of the State Attorney, (352) 341-6670; Paul Militello, Paul Militello, P.A., (352) 637-2222; Case No.: 2015-MM-92; State of Florida vs. Eric Locke

Jeremy Smith, Office of the State Attorney, (352) 341-6670; Paul Militello, Paul Militello, P.A., (352) 637-2222; Case No.: 2015-MM-564; State of Florida vs. Reece Sisto

Paul Norville, Office of the State Attorney, (352) 341-6670; Paul Militello, Paul Militello, P.A., (352) 637-2222; Case No.: 2013-CF-848; State of Florida vs. Harold Bean, III

Brian Trehy, Office of the State Attorney, (352) 341-6670; Paul Militello, P.A., (352) 637-2222; Case No.: 2015-CF-21; State of Florida vs. Dylan Rieder

Jeremy Smith, Office of the State Attorney, (352) 341-6670; Paul Militello, Paul Militello, P.A., (352) 673-2222; Case No.: 2015-MM-460 State of Florida vs. Tyler Zane Dodson

Jeremy Smith, Office of the State Attorney, (352) 341-6670; Paul Militello, Paul Militello, P.A., (352) 637-2222; Case No.: 2013-CT-173; State of Florida vs. Jacob Nuyttens

- 27c. During the last five years, how frequently have you appeared at administrative hearings?
1-2 average times per month
- 27d. During the last five years, how frequently have you appeared in Court?
15 average times per month
- 27e. During the last five years, if your practice was substantially personal injury, what percentage of your work was in representation of plaintiffs? N/A% Defendants? N/A%
28. If during any prior period you have appeared in court with greater frequency than during the last five years, indicate the period during which this was so and give for such prior periods a succinct statement of the part you played in the litigation, numbers of cases and whether jury or non-jury.
N/A
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.
Please see additional pages attached marked as Exhibit "A" *
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.

As an example of legal writing I have attached a motion and two (2) appellate briefs.

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.

I was a candiidate for a circuit court judidical position within the Fifth Judicial Circuit of Florida in 2005, December 2013, and August 2014.

32b. List any prior quasi-judicial service:

<i>Dates</i>	<i>Name of Agency</i>	<i>Position Held</i>
N/A		

Types of issues heard: N/A

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

N/A

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

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

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.

Paul Militello, P.A.- I am the director of a professional association that is the business entity for my law practice, which consists of only one lawyer, myself. Should I be appointed to judicial office, I would resign, or otherwise work to close my practice in accordance with The Florida Bar Rules.

PMSM Properties LLC- managing member of LLC which owns my office building. This position would not interfere with my judicial duties should I be appointed to judicial office. I would not resign.

PJM Investments LLC- I am one of three members (my father and brother being the other members) of LLC, which owns a vacant lot in Inverness, Florida. This position would not interfere with my judicial duties should I be appointed to judicial office. I would not resign.

- 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.

I'm currently an adjunct professor of a Business Law Course at the College of Central Florida, located in Ocala, Florida.

- 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.

PMSM Properties LLC receives rental income for the use of the office building from Paul Militello, P.A., and for the use of a conference room by First Choice Reporting. This income is paid monthly in the amount of \$1,500.00 from Paul Militello, P.A. and in the monthly amount of \$450.00 from First Choice reporting, for a total monthly rent income of \$1,950.00.

PJM Investments LLC received a total of \$1,500.00 for rental income in 2012. This was paid in monthly installments of \$500.00 for three months in 2012 for a short term rental agreement of a vacant lot. The lot was rented by the neighboring business, Ridgeline Tires, for the use of parking. This rental agreement has since been terminated, and no other income has been received.

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?

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.

Gabriel Rosko v. Paul Militello, Small Claims Court for Citrus County, Florida, Case No. 1999-SC-2710: I was sued in Small Claims Court for a return of fee. The Plaintiff on this case was actually the son of my client, not my client. The suit was filed on September 28, 1999. It was then dismissed on November 3, 1999. The Plaintiff received a sum of \$300.00.

John Sexon v. Paul Militello, Circuit Court for Citrus County, Florida, Case No. 2011-CA-1779: My former client, Mr. Sexon, filed a suit against me pro se from prison. The suit was filed on May 6, 2011. I was never served with the suit; however, I did become aware of it from the Clerk records. No other action was taken. The case was dismissed on July 18, 2012 for failure to prosecute.

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

No

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

No

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

No

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

None

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.

Militello & Militello, P.A. v. Brian Brendel, Small Claims for Citrus County, Florida, Case No. 2002-SC-5: During my time with Militello & Militello, P.A. I was a plaintiff in a suit against a former client, Mr. Brendel, in small claims court for unpaid fees for legal services. The case was dismissed on October 28, 2002.

Militello & Militello, P.A. v. Kelly Stephens, Small Claims for Citrus County, Florida, Case No. 2002-SC-67: During my time with Militello & Militello, P.A. I was a plaintiff in a suit against a former client, Ms. Stephens, in small claims court for unpaid fees for legal services. The case was dismissed on October 28, 2002.

Militello & Militello, P.A. v. Richard Daniel, Small Claims for Citrus County, Florida, Case No. 2002-SC-507: During my time with Militello & Militello, P.A. I was a plaintiff in a suit against a former client, Richard Daniels, in small claims court for unpaid fees for legal services. I was awarded a judgment in the amount of \$1,500.00 for fees, plus \$65.00 for costs plus, 9% interest.

Militello & Militello, P.A. v. Pamela Summers, Small Claims for Citrus County, Florida, Case No. 2002-SC-1121: During my time with Militello & Militello, P.A. I was a plaintiff in a suit against a former client, Ms. Summers, in small claims court for unpaid fees for legal services. I was awarded a judgement in the amount of \$800.00 for fees, plus \$215.00 for costs, plus 9% interest.

Militello & Militello, P.A. v. Kelly Monahan and Sherri Monahan, Small Claims for Citrus County, Florida, Case No. 2003-SC-525: During my time with Militello & Militello, P.A. I was the plaintiff in a suit against my former clients, Kelly Monahan and Sherri Monahan, in small claims court. I was awarded a judgment in the amount of \$2,500.00 for fees, plus \$85.00 for costs, plus 6% interest.

Militello & Militello, P.A. v. Cassandra Brennan, Small Claims for Citrus County, Florida, Case No. 2007-SC-1089: During my time with Militello & Militello, P.A. I was a plaintiff in a suit against a former client, Ms. Brennan, in small claims court for unpaid fees for legal services. The case was dismissed on January 9, 2006.

Militello & Militello, P.A. v. John Parry, Small Claims for Citrus County, Florida, Case No. 2007-SC-1091: During my time with Militello & Militello, P.A. I was a plaintiff in a suit against a former client, Mr. Parry, in small claims court for unpaid legal fees for legal

services. The case was settled at a settlement conference, in which the Defendant agreed to pay me monthly payments of \$100.00 until the total fee of \$4,503.02 was paid in full.

Gabriel Rosko v. Paul Militello, Small Claims Court for Citrus County, Florida, Case No. 1999-SC-2710: I was the defendant in small claims court for a return of fee. The plaintiff on this case was actually the son of my client, not my client. The suit was filed on September 28, 1999. It was then dismissed on November 3, 1999. The Plaintiff received a sum of \$300.00

John Sexon v. Paul Militello, Circuit Court for Citrus County, Florida, Case No. 2011-CA-1779: My former client, Mr. Sexon, filed a suit against me pro se from prison. The suit was filed on May 6, 2011. I was never served with the suit; however, I did become aware of it from the Clerk records. No other action was taken. The case was dismissed on July 18, 2012 for failure to prosecute.

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).

None

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.

None

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

Criminology and Law Honor Society at the University of Florida for 1987- 1989

University of Florida College of Law teaching fellowship award for teaching property law to first year students, 1991.

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

I was honored to speak before the Fifth District Court of Appeals. I was invited and asked to speak on behalf of the new class of lawyers as a result of my bar exam score.

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

N/A

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.

Citrus County Bar Association Member: 1997- Present, Past President, Vice President, Treasurer, Law Week Committee, Scholarship Committee

Florida Association of Criminal Defense Lawyers: 2002- Present

National Association of Consumer Bankruptcy Attorneys: 2010- 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.

Florida Trail Association: 2012- Present

48c. List your hobbies or other vocational interests.

My hobbies include hiking, camping, visiting national parks, and playing board games.

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.

None

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

My pro bono practice involves providing legal services to indigent or deserving clients on a case by case basis. I typically charge a very reduced fee, around 25% of my normal fee. I have done this since 2001 when I started Militello & Militello, P.A.

SUPPLEMENTAL INFORMATION:

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

Numerous continuing education courses and seminars in Criminal Law and Bankruptcy. Most recently I attended the Florida Association of Criminal Defense Lawyers Annual Meeting in Miami, Florida.

- 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?

I was a volunteer instructor on property law at the University of Florida College of Law. I also taught legal topics at the Law Enforcement Academy at the Withlacoochee Technical Institute. I am currently a professor of a Business Law Course at the College of Central Florida in Ocala, Florida.

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

I formerly held a Florida Real Estate Salesman License. I hold an inactive Florida State Certified Building Contractor's License. I have varied agricultural experience while in high school, including timber estimation and cattle. I competed yearly raising and showing steers in the Hernando County Fair. In the legal field I have had the opportunity to work in a government agency (Office of the State Attorney), as a sole practitioner in private practice, and as a managing partner of a five member firm.

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

I believe my legal experience, my business experience, my personal morals, and my punctuality and dependability make me a well rounded candidate.

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.

I have previously submitted five (5) applications to the Fifth Judicial Circuit Nominating Commission. The approximate dates of these submissions are: 1999, 2005, September 2013, October 2013, and July 2014.

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

N/A

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.

Richard Buxman, 550 W. Main St, Tavares, FL, 32778, (352) 742-4236

J. Melanie Slaughter, 2337 E. Silver Springs Blvd, Ocala, FL 34470, (352) 789-6363

Andrew Pozzuto, 108 N. Magnolia Ave, Ste 600, Ocala, FL 34475, (352) 732-9191

Honorable Richard Howard, 110 N. Apopka Ave, Inverness, FL 34450, (352) 341-6705

Honorable Mark Yerman, 110 N. Apopka Ave, Inverness, FL 34450, (352) 341-6713

Keith Taylor, P.O. Box 2016, Lecanto, FL 34460, (352) 795-0404

Honorable William H. Hallman, III, 215 E. McCollum Ave, Bushnell, FL 33513, (352) 569-6920

Conrad Juergensmeyer, 20 North Main Street, Room 400, Brooksville, Florida 34601, (352) 754-4255

Honorable Lisa Herndon, 110 NW 1st Avenue, Ocala, Florida 34475, (352) 401-7815

Amy Berndt, 110 NW 1st Avenue, Suite 5000, Ocala, Florida 34475, (352) 671-5864

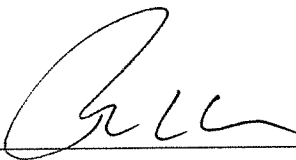
CERTIFICATE

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

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

Dated this 1st day of October, 2015.

Paul L. Militello
Printed Name


Signature

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

FINANCIAL HISTORY

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

Current year to date	\$180,543.00		
List Last 3 years	\$240,724.00	\$246,788.00	\$203,428.00

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

Current year to date	\$72,086.00		
List Last 3 years	\$96,115.00	\$82,664.00	\$68,599.00

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

	\$18,201.00 Rental		
	Income & \$500.00		
Current year to date	Teaching Income \$24,268.00	\$24,000.00	\$25,500.00 Rental
List Last 3 years	Rental Income	Rental Income	Income

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

	\$8,490.00 Rental		
	Income & \$436.00		
Current year to date	Teaching Income		
List Last 3 years	\$11,320.00	\$18,000.00	-\$5,163.00

**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 December 31, 2014 was \$689,256.53.

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 \$ 19,000.00

ASSETS INDIVIDUALLY VALUED AT OVER \$1,000:

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

VALUE OF ASSET

DESCRIPTION OF ASSET (specific description is required – see instructions p. 3)	VALUE OF ASSET
1008 SE 46 th Street, Ocala, Florida 34480	\$341,606.00
33% of PJM Investments .5 acres of vacant land on Hwy 44, Inverness, FL	\$56,706.00
50% of 14 acres of vacant land, Remington Road, Hernando County, FL	\$58,786.00
50% of 9 acres of vacant land, Cortez Blvd, Hernando County, FL	\$42,500.00
PMSM Properties, LLC, 107-B West Main Street, Inverness, Florida 34450	\$205,000.00
Paul Militello, P.A., 107-B West Main Street, Inverness, Florida 34450	\$10,000.00
Vacant lot located in Belle Estates, Suwanee County, Florida	\$5,300.00
Brannen Bank Checking Account	\$2,000.00
SunTrust Bank Checking Account	\$2,000.00
IRA Stock (Facebook Inc.)	\$7,802.00
IRA Stock (Google Inc.)	\$30,654.74
IRA Stock (Apple Inc.)	\$30,133.74
IRA Stock (Bayer AG Sponsored ADR)	\$12,579.71
IRA Stock (Celgene Corp)	\$4,250.68
IRA Stock (Constellation Brands Inc.)	\$4,908.50
IRA Stock (International Paper Co)	\$5,358.00
IRA Stock (Claymore Exchange)	\$8,958.00
IRA Stock (Ishares TR NASDAQ Biotechnology ETF)	\$6,067.00
IRA Stock (Powershares Global Exchange)	\$7,350.00
IRA Stock (Inland American Real Estate Trust Inc.)	\$11,405.29
Cash in Simple IRA (The Principal Financial Group)	\$14,890.87

PART C - LIABILITIES

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

NAME AND ADDRESS OF CREDITOR	AMOUNT OF LIABILITY
American Honda Finance Corporation, P.O. Box 105027, Atlanta, GA 30358	\$18,000.00
Promissory Note to Paul R. Militello; 4983 SW 36 th Lane, Ocala, Florida 34474	\$180,000.00

JOINT AND SEVERAL LIABILITIES NOT REPORTED ABOVE:

NAME AND ADDRESS OF CREDITOR	AMOUNT OF LIABILITY

PART D - INCOME

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

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

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

NAME OF SOURCE OF INCOME EXCEEDING \$1,000	ADDRESS OF SOURCE OF INCOME	AMOUNT
2014 Income from practice of law, Paul Militello, P.A.	107-B W. Main Street, Inverness, FL 34450	\$96,115.00

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

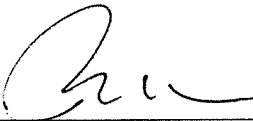
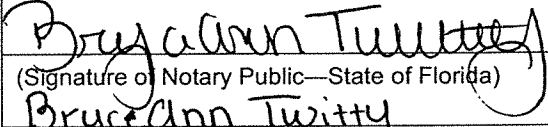
NAME OF BUSINESS ENTITY	NAME OF MAJOR SOURCES OF BUSIENSS' INCOME	ADDRESS OF SOURCE	PRINCIPAL BUSINESS ACTIVITY OF SOURCE
PMSM Properties, LLC	Rent from Paul Militello, P.A.	107-B W. Main St., Inverness, Florida 34450	Law Practice
PMSM Properties, LLC	Rent from First Choice Reporting Services, Inc.	P.O. Box 865039, Orlando, Florida 32886	Rent from Court Reporter Business

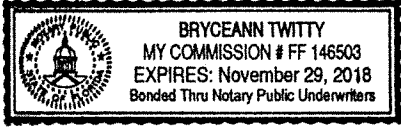
PART E – INTERESTS IN SPECIFIC BUSINESS [Instructions on page 7]

	BUSINESS ENTITY #1	BUSINESS ENTITY #2	BUSINESS ENTITY #3
NAME OF BUSINESS ENTITTY			
ADDRESS OF BUSINESS ENTITY			
PRINCIPAL BUSINESS ACTIVITY			
POSITION HELD WITH ENTITY			
I OWN MORE THAN A 5% INTEREST IN THE BUSINESS			

NATURE OF MY OWNERSHIP INTEREST			
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IF ANY OF PARTS A THROUGH E ARE CONTINUED ON A SEPARATE SHEET, PLEASE CHECK HERE

<p style="text-align: center;">OATH</p> <p>I, the person whose name appears at the beginning of this form, do depose on oath or affirmation and say that the information disclosed on this form and any attachments hereto is true, accurate, and complete.</p> <p style="text-align: center;"></p> <p style="text-align: center;">SIGNATURE</p>	<p>STATE OF FLORIDA COUNTY OF <u>Citrus</u></p> <p>Sworn to (or affirmed) and subscribed before me this <u>1st</u> day of <u>October</u>, 20<u>15</u> by <u>Paul L. Militello</u>,</p> <p style="text-align: center;"></p> <p style="text-align: center;">(Signature of Notary Public—State of Florida)</p> <p style="text-align: center;"><u>Bryceann Twitty</u></p> <p style="text-align: center;">(Print, Type, or Stamp Commissioned Name of Notary Public)</p> <p>Personally Known <input checked="" type="checkbox"/> OR Produced Identification <input type="checkbox"/></p> <p>Type of Identification Produced _____</p>
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INSTRUCTIONS FOR COMPLETING FORM 6:

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

PART A – NET WORTH

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

To total the value of your assets, add:

- form;
- (1) The aggregate value of household goods and personal effects, as reported in Part B of this form;
 - (2) The value of all assets worth over \$1,000, as reported in Part B; and
 - (3) The total value of any assets worth less than \$1,000 that were not reported or included in the category of "household goods and personal effects."

To total the amount of your liabilities, add:

- (1) The total amount of each liability you reported in Part C of this form, except for any amounts listed in the "joint and several liabilities not reported above" portion; and,
- (2) The total amount of unreported liabilities (including those under \$1,000, credit card and retail installment accounts, and taxes owed).

PART B – ASSETS WORTH MORE THAN \$1,000

HOUSEHOLD GOODS AND PERSONAL EFFECTS:

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

ASSETS INDIVIDUALLY VALUED AT MORE THAN \$1,000:

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

How to Identify or Describe the Asset:

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

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

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

How to Value Assets:

- Value each asset by its fair market value on the date used in Part A for your net worth.
- Jointly held assets: If you hold real or personal property jointly with another person, your interest equals your legal percentage of ownership in the property. However, assets that are held as tenants by the entirety or jointly with right of survivorship must be reported at 100% of their value.
- Partnerships: You are deemed to own an interest in a partnership which corresponds to your interest in the equity of that partnership.
- Trusts: You are deemed to own an interest in a trust which corresponds to your percentage interest in the trust corpus.
- Real property may be valued at its market value for tax purposes, unless a more accurate appraisal of its fair market value is available.
- Marketable securities which are widely traded and whose prices are generally available should be valued based upon the closing price on the valuation date.
- Accounts, notes, and loans receivable: Value at fair market value, which generally is the amount you reasonably expect to collect.
- Closely-held businesses: Use any method of valuation which in your judgment most closely approximates fair market value, such as book value, reproduction value, liquidation value, capitalized earnings value, capitalized cash flow value, or value established by “buy-out” agreements. It is suggested that the method of valuation chosen be indicated in a footnote on the form.
- Life insurance: Use cash surrender value less loans against the policy, plus accumulated dividends.

PART C—LIABILITIES

LIABILITIES IN EXCESS OF \$1,000:

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

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

How to Determine the Amount of a Liability:

- Generally, the amount of the liability is the face amount of the debt.
- If you are the only person obligated to satisfy a liability, 100% of the liability should be listed.

— If you are jointly and severally liable with another person or entity, which often is the case where more than one person is liable on a promissory note, you should report here only the portion of the liability that corresponds to your percentage of liability. *However*, if you are jointly and severally liable for a debt relating to property you own with one or more others as tenants by the entirety or jointly, with right of survivorship, report 100% of the total amount owed.

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

Examples:

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

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

JOINT AND SEVERAL LIABILITIES NOT REPORTED ABOVE:

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

PART D – INCOME

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

PRIMARY SOURCES OF INCOME:

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

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

Examples:

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

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

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

— If more than \$1,000 of income was gained from the sale of property, then you should list as a source of income the name of the purchaser, the purchaser's address, and the amount of gain from the sale. If the purchaser's identity is unknown, such as where securities listed on an exchange are sold through a brokerage firm, the source of income should be listed simply as "sale of (name of company) stock," for example.

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

SECONDARY SOURCE OF INCOME:

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

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

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

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

Examples:

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

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

PART E – INTERESTS IN SPECIFIED BUSINESS

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

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

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

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.

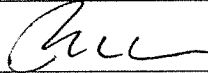
CONSUMER'S AUTHORIZATION FOR FDLE
TO OBTAIN CONSUMER REPORT(S)

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:

Paul L. Militello

Signature of Applicant:



Date: October 1, 2015

No. 30 Significant Cases

1. State v. Justin Morgan, Circuit Court for Citrus County, Florida, Case No. 2010-CF-1184
5th DCA Case No.: 5D11-3421
Morgan v State, 112 So.3d 112 (Fla. 5th DCA 2013)

I represented Mr. Morgan, a 21 year old man arrested for Internet Soliciting of a Minor for Sex. Mr. Morgan was arrested as part of an undercover operation designed to catch sexual predators targeting children on the internet. I represented Mr. Morgan as Trial Counsel. Pretrial Motions were filed to dismiss the case based on the defense of entrapment, which were denied.

During the trial, I was able to establish that Mr. Morgan was responding to personal ads of adult women, that Mr. Morgan was soliciting sex from what he believed to be an adult mother who insisted Mr. Morgan involve her child, and that law enforcement used questionable methods which created likelihood that Mr. Morgan was not really interested in sex with children. I moved for a jury instruction on entrapment, which was denied by the trial court. Even though I was unable to argue entrapment, Mr. Morgan was acquitted on three of the four charges, and convicted of one. That conviction was subsequently reversed by the District Court of Appeal based on the failure to give the entrapment instruction as requested by the Defense. Before the retrial, the State dropped the remaining charges against Mr. Morgan.

I feel the case is significant because Mr. Morgan was one of 22 defendants arrested as part of an undercover operation. Numerous motions to raise the entrapment defense were raised by other Defendants and all denied. The outcome of Mr. Morgan's case both provided him with a full acquittal and provided the legal protection of the possible defense of entrapment for future citizens accused in this situation.

2. State v. Larry Sadler, Circuit Court Case for Citrus County Florida is sealed.
5th DCA Case No.: 5D05-737
State v. Sadler, 920 So.2d 647(Fla. 5th DCA 2005)

I represented Mr. Sadler both at the trial court level and before the 5th DCA as appellate counsel. I filed a motion to dismiss Mr. Sadler's criminal charges, which was granted. The State subsequently re-filed charges within the statute of limitations. I argued that the Court's use of the expression "go hence without day" in dismissing Mr. Sadler's first charge indicated that the court was dismissing the charge "with prejudice". The State appealed. I represented Mr. Sadler before the Appellate Court, which affirmed the dismissal noting that "go hence without day" has legal significance indicating the Defendant is forever discharged.

This case is legally significant as creating precedent as an exception to the general rule that the state may re-file dismissed criminal charges within the statute of limitations. As Judge Howard frequently continues to use this term in court when the State dismisses charges, the case continues to be binding authority should the State attempt to refile charges as they did against Mr. Sadler.

3. State v Eric Chester, Circuit Court for Citrus County, Florida, Case No.: 1995-CF-586

I represented the State Attorney as the prosecutor of a Sexual Battery case against Mr. Chester who was charged (along with five (5) other individuals) with the gang rape of an intoxicated woman. The case received significant media coverage and caused shockwaves and

division in the community. The DNA testing involving six co-defendants, the most complex testing done by FDLE at that time.

Chester's defense counsel filed an expiration of speedy trial time. Since Chester had originally been arrested as a juvenile on the charge before adult charges were filed, his speedy trial time ran from the date of the juvenile arrest. The Court refused to extend the time and also refused to empanel a jury during the 15 day recapture period. Diligent research uncovered that the Defense had filed their notice on the last day of the 179 day window, which was actually one day premature; I was able to address this flaw at the hearing to discharge the Defendant, which required the Defendant to refile the notice. This allowed the 15 day recapture window to fall a few days later on a Saturday, with jury trial set to commence the following Monday. The case went to trial one day before the expiration of a speedy trial window, which would have barred prosecution. Chester was convicted even though the victim could not testify regarding the actual assault because she was unconscious.

The case is significant because the victim's life had been torn apart. Her small children had witnessed the assault and she was further victimized by the Defendant's claims that she had consensually had sex with six (6) men at the same time. The community seemed torn apart between who they believed. The case is personally significant to me as I was able to resolve the case by bringing all the evidence before the jury and helping find closure for the victim and community.

4. State v. Todd Castonguay, Circuit Court for Citrus County, Florida, Case No.: 1994-CF-725

I prosecuted Mr. Castonguay for the Office of the State Attorney. I was assigned the case near the date of the jury trial, having taken the case over from another assistant state attorney. Mr. Castonguay was charged with aggravated battery for intentionally striking a child riding a bike with his motor vehicle. The child was not physically hurt, but was adamant that the Defendant had intentionally backed his vehicle into her. During the trial, I became aware of inconsistencies between the victim's sworn testimony to the jury during the trial and her statements before trial. In the middle of her testimony, I requested an adjournment, which was granted, and I questioned the victim about the inconsistencies. The victim eventually acknowledged fabricating the crime and that the accident had been unintentional. She burst into tears saying she thought this was the way to get a new bicycle. I returned from the adjournment and immediately dropped all charges against Mr. Castonguay mid trial.

The case is personally significant because the goal of a prosecutor is seek justice, not simply convictions. There is a difference between prosecuting a person you believe is guilty, with weak evidence, which I did many times, and this situation where it became apparent that an innocent man was being prosecuted. Both the Court and Defense Counsel commended my act of addressing these inconsistencies which only I was aware, to the detriment of the case for the prosecution, but in the furtherance of the pursuit of justice.

5. State v. Sonia Haviland, Circuit Court for Hernando County, Florida, Case No.: 2011-CF-174

I represented Ms. Haviland on a DUI manslaughter charge. Ms. Haviland was the driver of a motor vehicle which was involved in an accident, which resulted in the death of her passenger, who was actually the owner of the vehicle and the intended driver. Ms. Haviland had gone out for a night of celebration with the victim with the understanding that she would not be driving as she was unfamiliar with the roads in Tampa. During the discovery phase of the case, I was able to present considerable mitigating evidence of the night's activities which established that Ms. Haviland had come to drive the vehicle at the urging of others who believed her to be sober and able to drive. The valet parking attendant from the Hard Rock Casino testified he took

the keys from the owner of the car and placed them in the hands of the Defendant, telling her "you need to drive." On a separate issue, I was able to establish reasonable doubt through a forensic review of her blood alcohol levels which created a possibility that she was under the legal limit at the time of the actual accident, but became impaired afterwards before the blood draw.

The punishment code in these cases creates a "guidelines" sentence of approximately 10 to 15 years in prison. The mitigation and the doubt were sufficient to cause both the prosecutor and the Court to accept a probation sentence without incarceration below the State guidelines.

6. State v. James Crace, Circuit Court for Citrus County, Florida, Case No.: 2001-CF-308

I was appointed to represent Mr. Crace, who was charged with Home Invasion Robbery. The eye witness identification of the Defendant was the cornerstone of the State's case. The case proceeded to jury trial and the victim testified that Mr. Crace had robbed her at knife point and, that she was completely sure it was Mr. Crace who robbed her. During cross examination, it came to light that the victim had cataract surgery since the incident, and I suggested her vision was poor. She commented she would never forget looking into his eyes while she was robbed. I asked her the question "Do you recall what color were his eyes?" to which she replied, "Brown." I returned to my counsel table, sat down and looked over to see Mr. Crace having light baby blue eyes. I asked leave of court to allow Mr. Crace to step up to the jury and allow each juror to look into his eyes. He was acquitted. A few weeks later, his Co-defendant went to trial, and was convicted and sentenced to Life in prison.

This case illustrates unpredictable nature of live testimony; the need to keep cross examination a dynamic in reacting to the live testimony. The nature of a jury trial is that no matter how prepared the lawyer or witness, live questioning under oath subject to cross examination will result in uncovering the true strengths and weaknesses in the evidence.

IN THE CIRCUIT COURT FOR THE FIFTH JUDICIAL CIRCUIT
IN AND FOR CITRUS COUNTY, FLORIDA

STATE OF FLORIDA

Plaintiff,

vs.

CASE NO.: 2010-CF-1184

JUSTIN TIMOTHY MORGAN,

Defendant.

MOTION TO DISMISS BASED ON OBJECTIVE AND SUBJECTIVE ENTRAPMENT

COMES NOW, the Defendant, JUSTIN TIMOTHY MORGAN, by and through his undersigned attorney, pursuant to *Rule 3.190 Rules of Criminal Procedure and Florida Statute § 77.201* and hereby moves this Honorable Court to dismiss the Information filed in this cause on the grounds of entrapment, and as grounds in support thereof, states the following:

1. The Defendant is charged with Use of Internet to Lure a Parent of a Child, Traveling to Meet Minor for Illegal Sexual Conduct, Attempted Lewd/Lasc Battery on Child 12 years of age but less than 16 years of age and Attempted Lewd/Lasc Exhibition by Defendant 18 years of age or older.

2. The instant charges arose from the online undercover operation known as “Operation Grim Reaper” which took place in October, 2010.

3. Detective Vickie Callahan of the Polk County Sheriff’s Office assisted with the operation and posed an ad in the personal section on the website Craglist.com titled “Opened Minded Mom looking to share intimate fun”.

4. The Advertisement is clearly a solicitation or offer for sexual intimacy with a 38 year old female.

5. In *Madera v. State*, 943 So. 2d 960, (Fla 4th DCA, 2006) the Fourth District Court

of Appeal addressed entrapment as a matter of law. In Madera a 37 year old defendant with no criminal history was approached by a confidential informant (CI) acting as an agent for law enforcement. The defendant became romantically interested in the CI who led him to believe she was also romantically interested in him. The CI first brought up the topic of illegal drug use and continually asked the defendant if he knew where he could buy or obtain drugs for her. The CI then made promises of an intimate relationship, to include sexual relations, if he could assist her in obtaining drugs. Further, the CI played on the defendant's sympathies by saying she needed drugs to cope with cancer. The District Court stated that without the prodding and improper conduct of the CI there would have been no crime by the defendant who was gainfully employed, had no prior history and was not even suspected of a crime. Citing Curry v. State, 876 So. 2d 29 (Fla. 4th DCA 2004) the Court found that the defendant's due process rights were violated by this egregious conduct and that the defendant was objectively entrapped as a matter of law.

6. The Fifth District Court of Appeal in Bist v. State, 35 So. 3d 936 (Fla. 5th DCA, 2010), cites to and adopts the reasoning of Madera and Curry where due process rights had been violated by affirmative and unacceptable conduct by law enforcement or its agent. The Fifth District distinguishes Bist and Madera and Curry and in doing so stated "Here, we do not have a situation where law enforcement **incentivized, induced, or otherwise manufactured the instrumentalities** for the crime to occur." The Court held that there was no entrapment and denied the defendant's motion to dismiss. (In Bist, the defendant initiated an online chats with a person he believed to be a 13 year old daughter and engaged in explicit conversations directly with her.)

7. As in Madera, Detective Callahan in the instant case incentivized the instrumentalities for the crime to occur by offering **sex with an adult along with offering sex**

with a child.

8. Detective Callahan's ad is posted under the sub category "Intimate Encounters" in the Personal Ads of the website Craigslist.com.

9. The ad stated "Open Minded Mom Looking to share intimate fun- w4m – 38". The abbreviation "w4m - 38" translates to "A 38 year old Woman is looking for a Man". The ad was silent in regard to a child being involved in any fashion.

10. The Defendant responded to the Ad, and Detective Callahan and the Defendant then exchange a series of emails back and forth. The Defendant's email address is jthefireman@yahoo.com. Detective Callahan's email address during this operation is mystysecrets@aol.com.

11. The evidence in this case is comprised of 34 screen captures which include the entire text of the emails sent between Detective Callahan and the Defendant. In addition to the text emails, the Defendant sent one photograph of himself to Detective Callahan, and Detective Callahan emailed the Defendant two photographs, one of herself and one of a child. The emails and the photos are attached to this motion as composite exhibits "A"

12. The Defendant responded to the ad with "I'm 25 a firefighter for Marion county, in great shape handsome. well Hung, very pleasing . very experienced. Excellent endurance. Available any time. will not be dissatisfied!"

13. The Defendant was not seeking sex with a child; he was seeking sex with a "Opened Minded Mom looking to share intimate fun". Nowhere in the conversation does he describe specific sexual acts that he is willing to perform on the "child", nor does he comment on the pictures of the "child" that he received. Each time he is prodded about sharing intimate fun or having sex with the "child" he replies vaguely and diverts back to his desire to have sex with the "mother".

14. The Defendant was gainfully employed, has no other criminal backgrounds and was otherwise unknown to law enforcement, was induced and/or acquiesced to the idea of participating in sexual activity with the “daughter” based on the promises of sex with the “Mom”.

15. Pursuant to the Fifth District Court of Appeal’s reasoning in the Bist opinion, the promise of sex for drugs in the Madera case is no different than then incentivized promise of sex with the mother in this case. The Defendant’s due process rights were violated by law enforcement’s egregious conduct and he was objectively entrapped to commit a crime he would not otherwise have been willing to commit.

16. Further, even in the absence of egregious conduct of law enforcement rising to the level of objective entrapment, the Defendant was induced to commit this crime which he was not otherwise predisposed to commit pursuant to *F.S. § 777.201* which states:

(1) A law enforcement officer, a person engaged in cooperation with a law enforcement officer, or a person acting as an agent of a law enforcement officer perpetrates an entrapment if, for the purpose of obtaining evidence of the commission of a crime, he or she induces or encourages and, as a direct result, causes another person to engage in conduct constituting such crime by employing methods of persuasion or inducement which creates a substantial risk such crime will be committed by a person other than one who is ready to commit.

17. In a case factually similar to the instant case, United States v. Poehlman, 217 F.3d 692 (9th Cir. 2000), the United States Court of Appeals, Ninth Circuit held that the government though as an agent posing as a mother seeking a sexual mentor for her three daughters induced the defendant to commit the offense.

18. In the Ninth Circuit’s analysis it cited United States v. Davis, 36 F. 3d 1424 (9th Cir. 1994) and stated “Inducement can be any government conduct creating a substantial risk that an otherwise law-abiding citizen would commit an offense, including **persuasion**, fraudulent representations, threats, coercive tactics, harassment, **promises of reward**, or pleas based on

need, sympathy or friendship.”

19. The Ninth Circuit in analyzing various cases addressing the issue of inducement states, “Causes like *Jacobson*, *Sherman*, and *Sorrells* demonstrate that even very subtle governmental pressure, if skillfully applied, can amount to inducement.” *Poehlman* pg. 701.

20. In *Poehlman*, during the defendant’s email chats with the government agent he continued to focus his attentions on the mother no the daughters and it was the government agent who first suggested that the defendant develop a sexual relationship with the daughters, not the defendant.

21. In the instant case, like *Poehlman*, the Defendant, during his email chats with Detective Callahan focused on having sex with the “Mom”, it was Detective Callahan who first suggested sex with the “daughter” and it was Detective Callahan who continued to have to redirect the Defendant back to the “daughter” as his continued focus was on having sex with the “Mom”.

22. The Court found in *Poehlman*, that “through its aggressive intervention”, the government induced Poehlman to commit the offense.” *Poehlman*, pg. 702-703

23. In the instant case, like in *Poehlman*, it was Detective Callahan’s repeated aggressive interventions redirecting the Defendant’s focus away from the “Mom” in the email chats back to the “daughter” that induced the commission of this crime.

24. It is a combination of the aggressive intervention of Detective Callahan with the promises of the reward of sex with the mother coupled with sex with the child that induces the defendant to commit the crime. As in *Poehlman*, this governmental conduct constitutes inducement.

WHEREFORE, for the above-stated reasons, the Defendant, JUSTIN TIMOTHY MORGAN, respectfully request this Honorable Court enter its order dismissing the Information

filed in this cause on grounds of entrapment.

DATED this ____ day of August, 2011.

PAUL MILITELLO, P.A.

PAUL L. MILITELLO
107B West Main Street
Inverness, Florida 34450
Tel. (352) 637-2222
Fax (352) 726-2210
Florida Bar No.: 0971987
Attorney for the Defendant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the forgoing was furnished to the Office of the State Attorney, 110 North Apopka Avenue, Inverness, Florida 34450, via Courthouse Mail this ____ day of August, 2011.

PAUL L. MILITELLO

IN THE DISTRICT COURT OF APPEAL
FOR THE FIFTH DISTRICT
STATE OF FLORIDA

JOHN ROBERT STEELE,

Appellant,

v.

5DCA CASE NO.: 5D14-217
L.T. CASE NO.: 2003-CF-1109

STATE OF FLORIDA,

Appellee.

_____ /

APPEAL FROM THE FIFTH JUDICIAL CIRCUIT COURT
IN AND FOR CITRUS COUNTY, FLORIDA

INITIAL BRIEF OF APPELLANT

PAUL MILITELLO, P.A.

PAUL L. MILITELLO
107B West Main Street
Inverness, Florida 34450
352/637-2222
E-mail: militello.paul@gmail.com
Florida Bar No.: 0971987
COUNSEL FOR APPELLANT

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PREFACE

In this Brief, the Appellant, JOHN ROBERT STEELE, will be referred to as STEELE. The following symbols will be used:

(M) — Motion to Correct Illegal Sentence and Award Credit for Time Served.

(O) — Order on Motion to Correct Illegal Sentence and Award Credit for Time Served.

STATEMENT OF CASE AND FACTS

STEELE was charged with 60 counts of Possession of Child Pornography. STEELE entered a plea of no contest on all 60 counts on August 11, 2004, and was sentenced on each count to a 15 month commitment to the Department of Corrections followed by five (5) years of sex offender probation. (See the commitment and sentence attached to the Motion to Correct Illegal Sentence and Award Credit for Time Served.)

STEELE completed the 15 month incarcerative portion of his split sentence on all 60 counts in the Florida Department of Corrections and he was released from custody on August 31, 2005. STEELE had served 386 days in the Department of Corrections between August 11, 2004 and August 31, 2005. (M.)

STEELE subsequently violated his probation. On May 19, 2006, STEELE entered a plea of no contest to the probation violation and was sentenced to a one (1) year and one (1) day term of imprisonment on each Count 1 through 29, consecutive with each other for total sentence of 29 years. On Counts 30 through 60, STEELE was sentenced to one (1) year and one (1) day on each count to run concurrent with each other and concurrent with Counts 1 through 29. The Court ordered STEELE to receive all credit for time served. (See Order of Revocation of Sex Offender Probation attached to the Motion to Correct Illegal Sentence and Award Credit for Time Served.)

On January 28, 2009, STEELE filed pro-se correspondence that the Trial Court interpreted as a Motion for Credit Time Served. The Court granted the Motion for Credit Time Served on February, 9, 2009, but delegated the “administrative task” of calculating the correct amount of prison credit to the Department of Corrections. (O.)

A little over thirty (30) days later, on March 17, 2009, the State filed a Motion to Correct Illegal Sentence seeking to correct the original sentence from August 11, 2004. The Motion alleged that original sentence was illegal because the 15 month incarcerative portion followed by five (5) years of probation on each count exceeded the statutory maximum of five (5) years for a third degree felony. (M.)

STEELE was no longer serving the sentence that the motion sought to modify, as he was at the time of the motion, serving the 29 consecutive one (1) year and one (1) day sentences he received as a result of the Violation of Probation.

The Court granted the State’s Motion to Correct Illegal Sentence on March 19, 2009, and resentenced STEELE to 15 months prison on Count 1. On Counts 2 through 60, he was sentenced to five (5) years straight probation, concurrent with each other, but consecutive with count 1. The Court then amended its previously filed Order on April 6, 2009, and sentenced STEELE to 15 months prison on

Count 1, followed by 45 months of probation. On Counts 2 through 60, he was sentenced to five (5) years straight probation, concurrent with each other, but consecutive with count 1. The sentence was nunc pro tunc to August 11, 2004. The resentencing unlawfully deprives STEELE of his credit for time served on Counts 2 through 60 by modifying his previous prison sentence on these counts to straight probation and directing DOC to recalculate STEELE's release date accordingly. Therefore STEELE has been stripped of his credit time served on Counts 2 through 60 and he remains incarcerated on a sentence he has legally completed.

SUMMARY OF THE ARGUMENT

The Trial Court erred in denying the Motion to Correct Illegal Sentence and Award Credit for Time Served.

STEELE was originally sentenced on all 60 Counts to a 15 month term of incarceration followed by five (5) years of probation.

After completing the incarceration portion of his sentence, STEELE violated his probation and was sentenced to a one (1) year and one (1) day sentence on Counts 1 through 29 consecutive to one another. Pursuant to *State v Rabedeau*, 2 So.3d 191 (Fla. 2009), STEELE is entitled to his credit for time served on each consecutive count and should have been released.

The Trial Court illegally resentenced STEELE on the original sentence to straight probation on Counts 2 through 29, after he had completed the original incarceration, thereby removing his prison credit timed served on those counts. That resentence violates double jeopardy, and therefore STEELE's current sentence is illegal.

ARGUMENT

THE COURT ERRED IN DENYING STEELE'S MOTION TO CORRECT ILLEGAL SENTENCE, AS THE SENTENCE VIOLATES DOUBLE JEOPARDY BY RESENTENCING STEELE FROM PRISON TO PROBATION, NUNC PRO TUNC TO HIS ORIGINAL SENTENCING DATE, AFTER HE HAD COMPLETED HIS ORIGINAL INCARCERATION, THEREBY REMOVING PRISON CREDIT TIME SERVED FROM HIS CURRENT INCARCERATION.

STEELE's Motion to correct illegal sentence was denied without an evidentiary hearing. Pursuant to Fla. R. App. 9.141(b)(2)(D), unless the record shows conclusively that the appellant is entitled to no relief, the order shall be reversed and the cause remanded.

The record fails to establish that STEELE is not entitled to relief, to the contrary, the facts in the record, none of which were contradicted in the Trial Courts Order of denial, establish unequivocally that STEELE's sentence is illegal and that he is entitled to relief.

The Court records demonstrate on their face that STEELE is entitled to relief, as the judgment and sentence shows unequivocally that STEELE was sentenced to 15 months prison on all 60 counts. Upon violating his probation, STEELE was resentenced to prison on all counts for one (1) year and one (1) day with Counts 1 through 29 being consecutive.

The Florida Supreme Court decision of *State v Rabedeau*, 2 So.3d 191 (Fla.

2009) (decided on January 29, 2009, perhaps not coincidentally, a little over a month before the State sought to readdress STEELE's 2004 sentence as illegal) mandates credit time served on concurrent sentences to be given on each and every count on a resentencing to a consecutive sentence.

Therefore, pursuant to *Rabedeau*, STEELE should receive 386 days of credit spent on each of the concurrent sentences on each and every count after he was resentenced to the consecutive sentences after the probation violation. *Id.*

In denying the motion which is the subject of this appeal, the Trial Court has acknowledged the holding in *Rabedeau*, but has sought to distinguish the facts in the instant case. (O.)

The Trial Court held that *Rabedeau* does not apply to STEELE because after granting the State's Motion to Correct illegal Sentence, STEELE was only resentenced to prison on Count 1, nunc pro tunc to the original sentence date and therefore has no credit time served on Counts 2 thru 60. (O.)

The Trial Court violated double jeopardy when it resentenced STEELE in an attempt to remove credit time served for a prison sentence that STEELE had already served.

An Order altering a sentence by removing prison credit violates a defendant's double jeopardy rights. *Elbert v. State*, 27 So.3d 188 (Fla. 2nd DCA 2010). A Defendant cannot be resentenced on offenses for which the defendant

prison term is expired, even if the sentence was illegal. *Willingham v. State*, 833 So.2d 237 (Fla. 4th DCA 2002), *Ellis v. State*, 913 So.2d 1255 (Fla. 2nd DCA 2005), *Pate v State*, 908 S.2d 613 (Fla. 2nd DCA 2005) *Maybin v State*, 884 So.2d 1174 (Fla. 2nd DCA 2004).

When a defendant violates the probationary portion of a split sentence, he is entitled to credit for time served on the incarcerative portion. *Layman v. State*, 787 So.2d 44 (Fla. 2nd DCA 2001). Therefore irregardless of the illegality of STEELE's original sentence, at the time the State moved to correct the original sentence STEELE had served the time and therefore he is entitled to credit time served for 386 days he served on Counts 1-60, and the Trial Court lacked jurisdiction to resentence him.

STEELE's entitlement to the credit time served is apparent from the record. The Commitment to the Department of Corrections shows STEELE was sentence to each count for an incarceration of 15 months. This Court cannot undo that after STEELE has served that sentence.

CONCLUSION

This Honorable Court should reverse the denial of the Defendant's Motion to Correct Illegal Sentence, and remand the matter to the Trial Court with instructions to immediately enter an order correcting the illegal sentence and awarding the Defendant 386 days credit for time served from August 11, 2004 to August 31, 2005 on all Counts 1 thru 60 that he is entitled to under the law, and release him immediately from the Department of Corrections.

Respectfully submitted,

PAUL MILITELLO, P.A.

/s/ Paul L. Militello
PAUL L. MILITELLO
107B West Main Street
Inverness, Florida 34450
352/637-2222
E-mail: militello.paul@gmail.com
Florida Bar No.: 0971987
COUNSEL FOR APPELLANT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic mail this 3rd day of February, 2014 to the Honorable Pamela Jo Bondi, Attorney General, Office of the Attorney General, 444 Seabreeze Blvd., Suite 500, Daytona Beach, Florida 32118, crimappdab@myfloridalegal.com, and by U.S. Mail to the Defendant, John Robert Steele, DC # 168223, Marion Correctional Institute, Post Office Box 158, Lowell, Florida 32663-0158.

CERTIFICATE OF COMPLIANCE WITH FONT REQUIREMENT

I HEREBY CERTIFY that the size and type of font used in this brief is 14 point Times New Roman font, a font which is proportionately spaced.

DESIGNATION

I HEREBY DESIGNATE the following primary e-mail address pursuant to Florida Rule of Judicial Administration 2.516: militello.paul@gmail.com.

PAUL MILITELLO, P.A.

/s/ Paul L. Militello _____
PAUL L. MILITELLO
107B West Main Street
Inverness, Florida 34450
352/637-2222
Florida Bar No.: 0971987
COUNSEL FOR APPELLANT

IN THE DISTRICT COURT OF APPEAL
FOR THE FIFTH DISTRICT
STATE OF FLORIDA

JOHN MORGAN ETHRIDGE,

Appellant,

v.

5DCA CASE NO.: 5D13-2018
L.T. CASE NO.: 2012-CF-959

STATE OF FLORIDA,

Appellee.

_____ /

APPEAL FROM THE FIFTH JUDICIAL CIRCUIT COURT
IN AND FOR CITRUS COUNTY, FLORIDA

INITIAL BRIEF OF APPELLANT

PAUL MILITELLO, P.A.

PAUL L. MILITELLO
107B West Main Street
Inverness, Florida 34450
352/637-2222
E-mail: militello.paul@gmail.com
Florida Bar No.: 0971987
COUNSEL FOR APPELLANT

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PREFACE

In this Brief, the Appellant JOHN MORGAN ETHRIDGE will be referred to as Ethridge. The following symbols will be used:

(R1)—Volume 1 Record on Appeal.

(T1)—Volume 1 Transcript of Change of Plea on February 25, 2013.

(T2)—Volume 2 Transcript of Sentencing Hearing on April 25, 2013.

STATEMENT OF THE CASE AND FACTS

On April 24, 2012, a Detective with the Citrus County Sheriff's Office was conducting an investigation regarding child pornography. During the investigation, the Detective was able to download a video containing child pornography from Ethridge's computer using peer-to-peer network software. (R1. 26) Subsequently, a search warrant was obtained for Ethridge's home. During the search, numerous video images of child pornography were found on Ethridge's computer and external hard drive. Ethridge admitted to downloading the contraband videos using a peer-to-peer software application (R1. 26) and that he kept them saved for future viewing. (T2. 7)

Ethridge was charged by an Amended Information on February 25, 2013 with one (1) count of Promoting a Sexual Performance by a Child pursuant to F.S. 827.071(3) and thirty-nine (39) counts of Possession of Material including a Sexual Performance by a Child 10 or more images pursuant to F.S. 827.071(3) and F.S. 775.0847. (R1.51-62) Ethridge entered an open plea of no contest to the charges on February 25, 2013 to a sentencing cap of forty (40) years, which had been offered by the Trial Court. (T1. 11)

During Ethridge's change of plea on February 25, 2013, the state presented a factual basis for Count 1- Promoting a Sexual Performance by a Child, in violation

of F.S. 827.071(3). The factual basis was that a law enforcement officer utilized peer to peer software program to download a video clip containing child pornography from Ethridge's personal computer. (T1. 16) Further the State offered "That file was found in a file sharing portion of his computer that would be available to be downloaded by other people, hence the promoting charge." (T1. 16)

Ethridge's sentencing was held on April 25, 2013. Before the sentence was imposed, the State offered additional facts regarding the Promoting charge. "She [Detective Pruitt] downloaded files on different dates from that computer, then noticed that they were child pornography when she looked through them. She then—subpoenas were issued to track down the IP address. That IP address was eventually found to be at the Defendant's house." (T2. 6)

The prosecutor advised the Trial Court "So the one—the count of Promotion is one of the files that Detective Pruitt downloaded from his computer." (T2. 75)

Ethridge had participated in Discovery. (T1. 18) During the sentencing, the State offered a victim impact statement to the Court which was intentionally not shared with Counsel or Ethridge. (T2. 9) According to the prosecutor, he received the victim impact statement from a database held by the Attorney General's Office. The State admitted the statement had not been provided to Ethridge or his counsel.

(T2. 9) The State argued the impact statement was confidential; therefore Ethridge was not entitled to it. (T2. 9) The Court considered this statement before passing sentence. (T2. 9) After considering the statement which was read aloud into the record, the court ordered that portion of the record sealed and not to be opened. (T2. 10)

Ethridge was sentenced on April 25, 2013 to fifteen (15) years on Count 1 for Promoting a Sexual Performance by a Child, followed by a consecutive fifteen (15) years on Count 2 for Possession of Material including a Sexual Performance, followed by a consecutive eight (8) years on Count 3 for Possession of Material including a Sexual Performance, followed by two (2) years of Sex Offender Probation on each of the remaining counts. (T2. 85-87) This resulted in a sentence of thirty-eight (38) years prison. (T2. 85) Ethridge filed a Motion to Withdraw his plea, which was denied without hearing. (R1. 106-108, 112-113) This timely appeal followed.

SUMMARY OF THE ARGUMENT

Fla. R. Crim. P. 3.172(a) requires that prior to accepting a guilty or nolo contendere plea, the trial court must receive in the record factual information to establish the offense to which the defendant has entered his plea. The facts presented in the instant case failed to establish the offense of Promoting Child Pornography in violation of F.S. 827.071(3). The charge was based on the Deputy gaining access to Ethridges's computer and extracting a single contraband video using peer-to-peer software without Ethridge's knowledge or consent. The only act done by Ethridge was to download the image and leave it on his computer. The Court committed fundamental error in adjudicating and sentencing Ethridge for the charge of promoting when the factual basis offered by the State failed to establish Ethridge produced, directed, or promoted a sexual performance by a child.

During Ethridge's sentencing hearing, the Court committed fundamental error in considering a victim impact statement that was withheld from Counsel. The statement from the family of a child pictured in one of the images found on Ethridge's computer was provided to the State from the Attorney General's Office. The State admitted they had intentionally withheld the statement to Defense Counsel stating it was confidential, but then proceeded to use the statement during the sentencing hearing by reading the statement in open court. Ethridge had a right

to have his Counsel have access to, and review the statement prior to, or at least during his sentencing. Once the failure to provide the statement was brought to the attention of the Court, the Court erred in failing to conduct a Richardson Hearing. Instead, the Court ordered that portion of the record sealed, thereby preventing Counsel from any review.

A criminal defendant is entitled to confront and cross examine the evidence used against him. The rules regarding discovery require tangible papers or objects that the prosecution intends to use in a hearing against a defendant to be disclosed and allow defense counsel to inspect those items. When the Court itself determined that the statement had been withheld from Ethridge, the Trial Court erred in considering the contents of the statement without conducting a Richardson hearing to remedy the violation.

Counsel rendered ineffective assistance of counsel when he failed to object and thereby allowed Ethridge to be convicted and sentenced for a violation of F.S. 827.071(3) when the facts did not establish Ethridge produced, directed, or promoted a sexual performance by a child.

Such deficient assistance is clear on the record, and Ethridge was prejudiced by being convicted of a crime the evidence did not support. Counsel was also ineffective in failing to object to the submission of a statement from the victim at sentencing, when the statement had been withheld from Counsel intentionally.

I. ARGUMENT

THE COURT COMMITTED FUNDAMENTAL ERROR IN ACCEPTING THE DEFENDANT'S PLEA TO PROMOTING A SEXUAL PERFORMANCE BY A CHILD BECAUSE THE EVIDENCE WAS INSUFFICIENT TO SUPPORT A CONVICTION.

Fla. R. Crim. P. 3.172(a) requires that prior to accepting a guilty or nolo contendere plea; the trial court must receive in the record factual information to establish the offense to which the defendant has entered his plea. Ethridge argues the facts presented at his plea and sentencing failed to establish the offense of Promoting Child Pornography in violation of F.S. 827.071(3).

The standard of review for the application of the law to the factual findings is *de novo*. *Carattini v. State*, 774 So.2d 927 (Fla. 5th DCA 2001). The promoting charge was based on the Deputy gaining access to Ethridges's computer and extracting a single contraband video using peer-to-peer software. The only act done by Ethridge was to download the image and leave it on his computer. The State failed to establish Ethridge produced, directed, or promoted a sexual performance by a child.

The Fifth District Court of Appeal recently addressed a similar factual situation in *Biller v. State*, 109 So.3d 1240 (Fla. 5th DCA 2013). Biller, like Ethridge, had downloaded illegal images on his computer using peer-to-peer

software. *Id.* As in *Ethridge*, a law enforcement officer in *Biller* was able to download an illicit video using peer-to-peer networking software. *Id.*

The 5th DCA held that the *Biller*'s conduct of allowing access to computer files of pornographic images of children through a peer-to-peer sharing network did not constitute "transmitting" child pornography, as necessary to support a conviction for transmission of pornography by electronic device. *Id.* *Biller* had used a peer-to-peer software program which allowed access to other users of the software to access files contained on *Biller*'s computer. *Id.* at 1241 Just as in the instant case, *Biller*'s charge is based on a law enforcement officer using peer-to-peer software and retrieving images from an accessible folder on *Biller*'s computer.

In *Biller*, the criminal charge filed on these facts was "transmitting" child pornography using an electronic device, in violation of F.S. 847.0137(2). *Ethridge* on the other hand was charged with "promoting" a sexual performance of a child, in violation of F.S. 827.071(3).

F.S. 847.0137(1)(b) defines "transmitting" as the act of sending and causing to be delivered any image, or information, or data from one or more persons or places to one or more other persons or places over or through any medium, including the Internet, by use of any electronic equipment. The question in *Biller*

was whether, by allowing access to files through a sharing network, Biller “sent” images to another person. *Biller*. This Court found two possible constructions of the statute. One which required that Biller affirmatively do more than maintaining the files in a shared folder knowing other individuals could access them. The Court construed the statute most favorable to Biller and found that the files were not “sent” when the files were accessed and downloaded by law enforcement agents. *Id.*

In this instant case, the facts are identical in that the Ethridge computer had sharing network software and that law enforcement accessed and downloaded an illicit file. Under Florida Statute 827.071(3), Ethridge is guilty of promoting a sexual performance by a child if he “produces, directs, or promotes” any performance.

F.S. 827.071(1)(d) states “Promote” means to procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmute, publish, distribute, circulate, disseminate, present, exhibit, or advertise or to offer or agree to do the same.

Based on the Court’s ruling in *Biller*, Ethridge’s identical actions cannot be considered “transmitting” or “sending” as he did not affirmatively dispatch the images using a function on his computer. By the same logic, Ethridge did nothing

to affirmatively produce, direct, or promote, as Ethridge had no knowledge that the Sheriff's Office had retrieved the image. Therefore Ethridge should not be guilty of promoting a sexual performance. Under statutory lenity principles when a criminal statute is susceptible of more than one construction, the statute must construe most favorable to the Appellant. *Biller*.

In *Dydek v State*, 400 So.2d 1255 (Fla. 2nd DCA 1981), Dydek entered a plea of nolo contendere to the charges of possession of cocaine and possession of drug paraphernalia. *Id.* at 1256. In finding a factual basis, the Court considered facts presented during a motion hearing. *Id.* at 1257. Dydek also stipulated that the state could prove a prima facie case. *Id.* at 1256-1257. He then appealed. During appellate review, the Appellate Court found that the evidence was insufficient to support a conviction in regard to the drug paraphernalia charge, and reversed the conviction. *Id.* at 1257.

The *Dydek* Court held that prior to accepting a guilty or nolo contendere plea; the trial court must receive in the record factual information to establish the offense to which the defendant has entered his plea, citing Fla. R. Crim. P. 3.172(a).

During the motion hearing, the trial court in *Dydek* had received evidence that Dydek had in his possession cocaine and a gold cigarette case, which

contained among other items a spoon and a pipe with a white residue. *Id.* at 1257. The information in the case specified the item of paraphernalia to be the gold cigarette case. *Id.* After the motion to suppress was denied, Dydek entered a plea of nolo contendere and stipulated to a factual basis. *Id.* at 1256-1257. The Appellate Court found that notwithstanding Dydek's stipulation to a factual basis, Dydek could not be convicted on the facts before the trial court, therefore the trial court erred in accepting Dydek's plea to the charge.

It should be noted that Dydek neither raised this issue in front of the trial court or on his appeal. Although Dydek's counsel had not objected or even addressed the deficient factual basis, the Court stated a fundamental error that is apparent on the face of the record will always be considered by an appellate court. *Id.* at 1258.

Even though Ethridge did not object or raise the issue before the Trial Court as to the validity of a factual basis for the charge of promoting a sexual performance by a child, this Court should likewise find the Trial Court committed fundamental error when it accepted Ethridge's plea without sufficient facts to support the charge of promoting under F.S. 827.071(3). In addressing the question of fundamental error in *Dydek*, the 2nd DCA stated "We can think of no error more

fundamental than the conviction of a defendant in the absence of a prima facie showing of the essential elements of the crime charged.” *Id.*

The allegation stated in the amended information, Count 1, states that Ethridge “ did unlawfully produce, direct or promote a sexual performance, to-wit babyshivid salve play 4 yo cries squirms resists (toddler serie)(2).mpg, a presentation of a child engaged in sexual activity, knowing the character and content thereof.”

Although no other Florida courts have specifically addressed what acts or are required to establish the element of promoting, the facts present in several other cases wherein appellate courts have reviewed convictions for promoting a sexual performance of a child, shed some light on that issue.

In *State v. Parrella*, 736 So.2d 94 (Fla. 4th DCA 1999), the Court affirmed the conviction for F.S. 827.071(4) possession of child pornography with intent to promote, when the defendant affirmatively offered to sell video tapes containing child pornography to undercover officers who came to his home.

In *Wade v. State*, 751 So.2d 669 (Fla. 2nd DCA 2000), the Court affirmed a conviction for possession of child pornography with intent to promote, when a search of the defendant’s hotel room revealed six printed reproductions of a single image, and various other multiple reproductions of the same contraband image. In

validating the convictions the Court relied on part of F.S. 827.071(4) which states “The possession of three or more copies of such photograph, motion picture, representation, or presentation is prima facie evidence of an intent to promote.” *Id.* at 671.

In *Schmitt v State*, 563 So.2d 1095 (Fla. 4th DCA 1990), reversed in part, on other grounds, the defendant was charged under the promoting statute, as he directed and created the videos by using a camera to video record nude minor children. *Id.*

In the instant case, Ethridge did not create, reproduce, or attempt to sell the images. He had simply downloaded the images using the same peer-to-peer software that law enforcement used to extract the image from Ethridge’s computer.

Those actions, by themselves do not support the charge of Promoting a Sexual Performance of a Child.

II. ARGUMENT

THE COURT COMMITTED FUNDAMENTAL ERROR BY NOT ALLOWING THE DEFENDANT TO REVIEW OR INSPECT A VICTIM IMPACT STATEMENT, WHICH IT CONSIDERED AS EVIDENCE BEFORE SENTENCING AND THEN SEALED IT FROM THE RECORD.

Before accepting a plea, the Court must inquire whether counsel for the defendant has reviewed the discovery disclosed by the state, whether such discovery included a listing or description of physical items of evidence, and whether counsel has reviewed the nature of the evidence with the defendant. Fla. R. Crim. P. 3.172. The standard of review for the application of the law to the factual findings is *de novo*. *Carattini v. State*, 774 So.2d 927 (Fla. 5th DCA 2001).

During the sentencing of Ethridge, the State produced a victim impact statement purportedly authored by a family member of a child who was sexually abused in one of the video's discovered on Ethridge's computer. When questioned by the Court, the State acknowledged they had intentionally not provided the statement to Ethridge or his Counsel.

Fla. R. Crim. P. 3.220(b)(1)(K) requires the State to make available for inspection all tangible items the state intends to use at hearings. The State's explanation was that the statement was confidential. No authority was cited to establish the confidentiality of this statement.

Fla. R. Crim. P. 3.220(b)(2) permits a court to determine, in camera, if reports contain sensitive information and prohibit the disclosure. However, the State is not permitted to unilaterally make that decision to withhold evidence. Here, the State had made no effort to have an in camera hearing to determine whether the contents of the statement warranted keeping them confidential. In situations where a court does require disclosure, Fla. R. Crim. P. 3.220(b)(3) states that the court may then prohibit the state from introducing evidence not disclosed in fairness.

Immediately after saying the contents of the statement were confidential, the prosecutor then read the contents of the statement in open court. The prosecutor should not be able to “have his cake, and eat it too” by keeping a document from the accused and simultaneously presenting the document to the trial court in an effort to secure a harsh sentence.

Not only was Ethridge deprived of his rights under the Fla. R. Crim. P. 3.220, the Confrontation Clause of the 6th Amendment to the U.S. Constitution requires that Ethridge be provided with the opportunity to inspect and confront, through his counsel, the contents of this statement utilized in the hearing which resulted in his conviction. This type of testimonial “out of court” statement found in this statement is prohibited under *Crawford v. Washington*, 124 S.ct. 1354

(2004). The State's position that the statement is "confidential" does not justify depriving Ethridge of an opportunity to review the contents of a statement which the state used against him in a criminal case. As the statement was reviewed by the State and the Court, it appears the only party the statement was "confidential" from was Ethridge and his counsel.

Although Counsel failed to make a timely objection to the reading and sealing of this statement, Ethridge urges the Court to consider this a deprivation of his fundamental right to confront the testimonial statement of this witness. In depriving Ethridge of his right to confront the contents of this statement, the Court committed fundamental error.

III. ARGUMENT

COUNSEL WAS INEFFECTIVE WHEN HE ALLOWED DEFENDANT TO BE SENTENCED FOR PROMOTING A SEXUAL PERFORMANCE BY A CHILD WITHOUT A SUFFICIENT FACTUAL BASIS AND ALLOWED THE COURT TO CONSIDER A VICTIM IMPACT STATEMENT WHICH DEFENSE COUNSEL HAD NOT BEEN PERMITTED TO REVIEW OR INSPECT

The standard of review for an ineffectiveness claim is two-pronged: The Court must defer to the trial court's findings on factual issues but must review the court's ultimate conclusions on the performance and prejudice prongs *de novo*. *Bruno v. State*, 807 So.2d 55, 61-61 (Fla. 2001)

A claim of ineffective assistance of counsel may be raised on direct appeal when the facts upon which the claim is based clearly appear in the record. *Larry v. State*, 61 So.2d 1205 (Fla. 5th DCA 2011). Larry was convicted of delivery of a controlled substance within 1,000 feet of a convenience business. *Id.* at 1206. The un-rebutted evidence proved the business had at least 10,000 feet of retail space and therefore could not be considered a "convenience business" as defined by statute. *Id.* Larry's trial counsel failed to raise that defense. During the direct appeal, the 5th DCA found that the deficient performance of counsel prejudiced Larry as he was convicted of a more serious charge and reversed the conviction. *Id.*

As in *Larry*, Counsel in the instant case failed to address the inadequacy in the state's case by pointing out that the evidence simply didn't establish the elements of the offense. Counsel's failure to raise a defense to the charge of "promoting" child pornography was deficient and allowed Ethridge to be convicted of a more serious offense than the evidence established.

Further, Counsel was ineffective in idly standing by as the prosecutor first produced a "victim impact statement" he had withheld from Counsel, proceeded to read it into the record, and then sealed away from Counsel, and anyone else's future scrutiny. Certainly it could not be considered a strategic decision when Counsel had absolutely no idea what was in the contents of the statement. Ethridge was prejudiced by Counsel's failure to object to the contents of the victim impact statement.

CONCLUSION

Based on the arguments and authorities set forth in this brief, this Court must vacate the conviction and sentence regarding Count 1- Promoting Child Pornography, and reverse the judgment and sentence imposed upon Ethridge and remand to allow Ethridge to withdraw his plea on the remaining counts.

Respectfully submitted,

PAUL MILITELLO, P.A.

/s/ Paul L. Militello
PAUL L. MILITELLO
107B West Main Street
Inverness, Florida 34450
352/637-2222
E-mail: militello.paul@gmail.com
Florida Bar No.: 0971987
COUNSEL FOR APPELLANT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic mail this 6th day of November, 2013 to the Honorable Pamela Jo Bondi, Attorney General, crimappdab@myfloridalegal.com and to the Defendant, John Morgan Etheridge DC # U47890 Liberty Correctional Institution, 11064 NW Dempsey Barron Rd. Bristol, Florida, 32321-9711.

CERTIFICATE OF COMPLIANCE WITH FONT REQUIREMENT

I HEREBY CERTIFY that the size and type of font used in this brief is 14 point Times New Roman font, a font which is proportionately spaced.

DESIGNATION

I HEREBY DESIGNATE the following primary e-mail address pursuant to Florida Rule of Judicial Administration 2.516: militello.paul@gmail.com.

PAUL MILITELLO, P.A.

/s/ Paul L. Militello
PAUL L. MILITELLO
107B West Main Street
Inverness, Florida 34450
352/637-2222
Florida Bar No.: 0971987
COUNSEL FOR APPELLANT