APPLICATION FOR NOMINATION TO THE FLORIDA SUPREME COURT (REDACTED)

APPLICATION FOR NOMINATION TO THE FLORIDA SUPREME COURT

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

DATE: October 4, 2018 Florida Bar No.: 0028065

GENERAL: Social Security No.: 119.071(2)(a)

1. Name Robert J. Luck E-mail:

   Date Admitted to Practice in Florida: September 27, 2006

   Date Admitted to Practice in other States: April 25, 2008 (Alabama)

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

   Judge, District Court of Appeal of Florida, Third Appellate District

3. Business address: 2001 Southwest 117th Avenue

   City Miami County Miami-Dade State FL ZIP 33175

   Telephone (305) 229-3200 ext. 3230 FAX (305) 229-3206

4. 119.071(4)(d)

   Since November 2009 Telephone ( ) -

5. Place of birth: South Miami

   Date of birth: 119.071(4)(d) Age: 39

6a. Length of residence in State of Florida: Thirty-four years

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

   If so, in what county are you registered? Miami-Dade

7. Marital status: Married

   If married: Spouse's name 119.071(4)(d)

   Date of marriage

   Spouse's occupation

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

Not applicable.

8. Children

Name(s)	*Age(s)*	*Occupation(s)*	*Residential address(es)*
[redacted] 119.071(4)(d)			

9. Military Service (including Reserves)

Service	*Branch*	*Highest Rank*	*Dates*

Not applicable.

Rank at time of discharge _____ Type of discharge _____

Awards or citations _____

Service	*Branch*	*Highest Rank*	*Dates*

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.

Not applicable.

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.

Not applicable.

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.

Not applicable.

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.

Schools	*Class Standing*	*Dates of Attendance*	*Degree*
North Miami Beach Senior High School	Top 2 percent	1994-1997	High School Diploma
George Washington University	Not applicable	1997-1998	Not applicable
Broward College	Not applcable	1998	Not applicable
University of Florida	Highest Honors	1999-2000	Bachelor of Arts in Economics
University of Florida Levin College of Law	Magna Cum Laude (top 10)	2001-2004	Juris Doctor

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

Book Awards (highest grade in class) in Criminal Law, Constitutional Law, White Collar Crime, and Florida Administrative Law

Order of the Coif

Cypen Scholarship (academic scholarship awarded after the first year of law school)

Editor-in-Chief, Florida Law Review

Frank J. Maloney Award (Law Review's award for outstanding contribution as a first year member)

University of Florida Board of Masters (student government's supreme court)

Florida Blue Key (service honor society at the University of Florida)

Florida Bright Futures Scholarship (undergraduate scholarship for Florida state universities based on high school grades and SAT scores)

Presidential Academic Scholarship (undergraduate scholarship at George Washington University based on high school grades and SAT scores)

NON-LEGAL EMPLOYMENT:

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

Date	*Position*	*Employer*	*Address*
2000-2001	Legislative Correspondent	Senators Paul Coverdell (Georgia) and Jon Kyl (Arizona)	730 Hart Senate Office Building, Washington, DC 20510

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.

Florida Bar (September 27, 2006)

United States Court of Appeals for the Eleventh Circuit (April 4, 2007) (inactive)

Alabama State Bar (April 25, 2008) (inactive)

LAW PRACTICE: (If you are a sitting judge, answer questions 21 through 26 with reference

to the years before you became a judge.)

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

Position	*Name of Firm*	*Address*	*Dates*
Summer Associate	Kluger, Peretz, Kaplan & Berlin, LLP	201 South Biscayne Boulevard, Suite 1700, Miami, Florida 33131	2002
Summer Associate	Boies, Schiller & Flexner, LLP	401 East Las Olas Boulevard, Suite 1200, Ft. Lauderdale, Florida 33301	2003
Law Clerk/Staff Attorney	Chief Judge Ed Carnes, United States Court of Appeals for the Eleventh Circuit	Frank M. Johnson Federal Courthouse, One Church Street, Montgomery, Alabama 36104	2004-2005; 2006-2008
Adjunct Professor	Alabama State University	915 South Jackson Street, Montgomery, Alabama 36104	2007-2008
Law Clerk/JD	Greenberg Traurig, P.A.	333 Southeast 2nd Avenue, Suite 4400, Miami, Florida 33131	2005-2006
Assistant United States Attorney	United States Attorney's Office, Southern District of Florida	99 Northeast Fourth Street, Miami, Florida 33132	2008-2013

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.

In the years before I took the bench, I worked as a federal prosecutor in the United

States Attorney's Office in Miami. My last position there was as deputy chief (first-line supervisor) in the Major Crimes Section, where I supervised the Office's gun violence initiative. Before that, I was in the Economic Crimes Section, first assigned to the Medicare Fraud Strike Force, and then to the Securities and Investment Fraud Initiative. In those units, I investigated and prosecuted doctors, nurses, public employees, and company owners for paying kickbacks and defrauding the Medicare system, and accountants, chief executive officers of public companies, and businesspersons for embezzeling, manipulating the stock market, and running Ponzi schemes. Before my time in the U.S. Attorney's Office, I worked primarily on civil and criminal appeals as a law clerk for Judge Ed Carnes on the United States Court of Appeals for the Eleventh Circuit, and as part of the Greenberg Traurig firm's appellate section.

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	10 (2008-2013)	%	Civil		%
Federal Trial	90 (2008-2013)	%	Criminal	100 (2008-2013)	%
Federal Other		%	Family		%
State Appellate		%	Probate		%
State Trial		%	Other		%
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? 19 Non-jury? _____

Arbitration? _____ Administrative Bodies? _____

25. Within the last ten years, have you ever been formally reprimanded, sanctioned, demoted, disciplined, placed on probation, suspended or terminated by an employer or tribunal before which you have appeared? If so, please state the circumstances under which such action was taken, the date(s) such action was taken, the name(s) of any persons who took such action, and the background and resolution of such action.

No.

26. In the last ten years, have you failed to meet any deadline imposed by court order or

received notice that you have not complied with substantive requirements of any business or contractual arrangement? If so, please explain in full.

No.

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

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

27b. For your last 6 cases, which were settled in mediation or settled without mediation or trial, list the names and telephone numbers of trial counsel on all sides and court case numbers (include appellate cases).

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

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

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

28. If during any prior period you have appeared in court with greater frequency than during the last five years, indicate the period during which this was so and give for such prior periods a succinct statement of the part you played in the litigation, numbers of cases and whether jury or non-jury.

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

30. List and describe the six most significant cases which you personally litigated giving case style, number and citation to reported decisions, if any. Identify your client and describe the nature of your participation in the case and the reason you believe it to be significant. Give the name of the court and judge, the date tried and names of other attorneys involved.

United States v. Crecencio Hernandez, Southern District of Florida Case No. 08-21054-CR-Zloch. I was counsel for the United States. Pat Hunt (now a Federal Magistrate Judge) represented Mr. Hernandez. There was no trial; Mr. Hernandez pleaded guilty. Mr. Hernandez, as the captain of an old rickety fishing boat, attempted to smuggle dozens of Dominican nationals into the United States. As the boat approached Miami, Mr. Hernandez ran it aground on a sand bar and the boat tipped over. Six of the passengers couldn't swim and drowned as a result. At the time, this was one of the worst smuggling tragedies in the Southern District.

United States v. Lydia Menocal and Ofelia Macia, Southern District of Florida Case No. 10-20116-CR-Ungaro. I was co-counsel for the United States with Roy Altman. Manny Gonzalez represented Ms. Menocal; Juan Carrera represented Ms. Macia. There was no trial; Ms. Menocal and Ms. Macia pleaded guilty. Ms. Menocal and Ms. Macia owned and operated Florida Language Institute, a language school in Miami authorized to approve student visas for foreign nationals studying in the United States. Ms. Menocal signed off on hundreds of forms approving student visas for foreign nationals without requiring that they attend class, subverting post-September 11 rules that were put in place to prevent manipulation of the student visa program by terrorists. At the time of the indictment, this was the largest student visa fraud case ever prosecuted, and was mentioned by the Assistant Secretary for Homeland Security in testimony before a congressional subcommittee.

United States v. Junior Sylvin et al., Southern District of Florida Case No. 09-20264-CR-King. I was co-counsel for the United States with Russ Koonin. Robyn Blake, Michael Smith, Greg Samms, David Donet, Jeff Weinkle, Scott Sakin, Jan Smith, and Barry Greff represented the defendants. Junior Sylvin was the head of a gang that terrorized the Little Haiti neighborhood for years. Sylvin and three of his gang members were convicted at trial (May 2010) for running a drug trafficking organization, and sentenced to decades in federal prison. Another three pleaded guilty before trial. One was acquitted and another remains a fugitive.

United States v. Rene De Los Rios, Southern District of Florida Case No. 10-20527-CR-Lenard. I was co-counsel for the United States with Joe Beemsterboer. Jose Quinon represented Dr. De Los Rios. Dr. De Los Rios was the medical director at two HIV infusion clinics that billed Medicare. Dr. De Los Rios prescribed expensive medications that he knew his patients did not need and were not receiving. As a result, Medicare was fraudulently billed approximately $50 million. Dr. De Los Rios was convicted at trial (April 2011). He was sentenced to twenty years in prison, at the time, the second longest sentence for a doctor committing Medicare fraud in Miami.

United States v. Raul Diaz-Perera and Yenky Sanchez, Southern District of Florida Case No. 11-20049-CR-Altonaga. I was co-counsel for the United States with Adam Schwartz. Marty Feigenbaum represented Mr. Sanchez; Robert Abreu represented Mr. Diaz-Perera. Mr. Diaz-Perera was a former manager at the Department of Children and Families, and supervised Mr. Sanchez. The two of them stole and sold the Medicare numbers of hundreds of DCF clients in order to facilitate a Medicare fraud scheme. Mr. Diaz-Perera pleaded guilty. Mr. Sanchez was convicted at trial (September 2011).

United States v. Juan Carlos Rodriguez, Southern District of Florida Case No. 12-20148-CR-Dimitrouleas. I was counsel for the United States. Lane Abraham represented Mr. Rodriguez. Mr. Rodriguez was an accountant who set up an investment company, MDN Financial. Mr. Rodriguez solicited his accounting clients, and their friends and family members, to give him money to invest in stocks and bonds. Instead of investing the money, Mr. Rodriguez operated MDN Financial as a Ponzi scheme, using the money from new clients to pay back older clients, and pocketing the rest for himself. More than forty of his clients lost money, many their life savings, and were devastated when the scheme fell apart. Mr. Rodriguez pleaded guilty, and was sentenced above the sentencing guidelines to 84 months imprisonment. The case was profiled by the CNBC television program, "American Greed."

31. Attach at least one example of legal writing which you personally wrote. If you have not personally written any legal documents recently, you may attach writing for which you had substantial responsibility. Please describe your degree of involvement in preparing the writing you attached.

I authored these two opinions for the Third District Court of Appeal:

Miccosukee Tribe of Indians v. Lewis Tein, P.L., 227 So. 3d 656 (Fla. 3d DCA 2017), cert. denied, 138 S. Ct. 741 (2018); and

Leon v. Carollo, 246 So. 3d 490 (Fla. 3d DCA 2018).

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.

Yes. In September 2013, I was appointed as a circuit court judge for the Eleventh Judicial Circuit Court. I was elected in August 2016 to retain the seat. In March 2017, I was appointed to serve on the Third District Court of Appeal.

32b. List any prior quasi-judicial service:

Dates	*Name of Agency*	*Position Held*

Not applicable.

Types of issues heard:

32c. Have you ever held or been a candidate for any other public office? If so, state the office,

location and dates of service or candidacy.

No.

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

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

Elliot Kula, Kula & Associates, P.A.

Julissa Rodriguez, Greenberg Traurig, P.A.

Lauri Waldman Ross, Ross & Girten

Alejandra Lopez, United States Attorney's Office

Jonathan Greenberg, Miami-Dade Public Defender's Office

Elibet Caballero, Lewis Brisbois Bisgaard & Smith LLP

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

For my first two years as a circuit court judge, I was assigned to the felony division. On my first day, I had 580 cases, including burglaries, white collar embezzlements, sexual batteries, and murders. In those two years, I presided over more than forty jury trials. At the end of the two years, I had less than 300 cases on my docket -- the lowest in the felony division.

During my third year on the bench, I was assigned to the civil division. On my first day, I had approximately 2100 cases, including breach of contract, foreclosure, personal injury, and medical malpractice cases. In my year in the civil division, I tried fourteen jury trials, and left with fewer cases than I started.

For all three years, I was also assigned to the circuit court's appellate division, where I heard dozens of appeals from the county civil and criminal courts, and local governments.

For the last eighteen months, I have served on the Third District Court of Appeal. The court hears criminal, civil, family, dependency, and administrative appeals of every stripe. Each judge on the court is assigned as the primary judge on 262 appeals per year, and then sits as a second or third judge on another 524 cases. I have heard oral argument in more than one hundred appeals, and have written more than seventy opinions.

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

Gables Ins. Recovery, Inc. v. Citizens Prop. Ins. Corp., Nos. 3D15-2320 & 3D16-87, 2018 WL 4495365 (Fla. 3d DCA Sept. 20, 2018)

Jahangiri v. 1830 N. Bayshore, LLC, No. 3D17-529, 2018 WL 3747726 (Fla. 3d DCA Aug. 8, 2018)

Villafane v. Maradona, No. 3D17-40, 2018 WL 3747733 (Fla. 3d DCA Aug. 8, 2018)

Dimitri v. Commerical Ctr. of Miami Master Assoc., Inc., No. 3D16-2549, 2018 WL 3748396 (Fla. 3d DCA Aug. 8, 2018)

Rahimi v. Global Discoveries, Ltd., LLC, No. 3D16-2756, 2018 WL 3636531 (Fla. 3d DCA Aug. 1, 2018)

Bean v. Univ. of Miami, Nos. 3D16-2195 & 3D16-2221, 2018 WL 3636846 (Fla. 3d DCA Aug. 1, 2018)

DePrince v. Starboard Cruise Servs., Inc., 3D16-1149, 2018 WL 3636849 (Fla. 3d DCA Aug. 1, 2018) (en banc)

P&S & Co., LLC v. SJ Mak, LLC, No. 3D16-1585, 2018 WL 2422887 (Fla. 3d DCA May 30, 2018)

State v. Pena, 247 So. 3d 61 (Fla. 3d DCA 2018)

Diocese of Palm Beach, Inc. v. Gallagher, 249 So. 3d 657 (Fla. 4th DCA 2018) (sitting by designation), rev. denied, SC18-865, 2018 WL 4050485 (Fla. Aug. 23, 2018)

Muchnick v. Goihman, 245 So. 3d 978 (Fla. 3d DCA 2018)

Leon v. Carollo, 246 So. 3d 490 (Fla. 3d DCA 2018)

OneWest Bank, FSB v. Palmero, No. 3D14-3114, 2018 WL 1832326 (Fla. 3d DCA Apr. 18, 2018)

Nationstar Mortg., LLC v. Silva, 239 So. 3d 782 (Fla. 3d DCA 2018)

Liork, LLC v. BH 150 Second Ave., LLC, 241 So. 3d 920 (Fla. 3d DCA 2018)

Westberry v. State, 239 So. 3d 186 (Fla. 3d DCA 2018), rev. denied, SC18-286, 2018 WL 1737054 (Fla. Apr. 11, 2018)

Burton v. State, 237 So. 3d 1138 (Fla. 3d DCA 2018) (on rehearing)

DePrince v. Starboard Cruise Servs., Inc., No. 3D16-1149, 2018 WL 443153 (Fla. 3d DCA Jan. 17, 2018), vacated, 3D16-1149, 2018 WL 3636849 (Fla. 3d DCA Aug. 1, 2018) (en banc)

Garcia v. State, 237 So. 3d 1080 (Fla. 3d DCA 2017)

Lago v. Costco Wholesale Corp., 233 So. 3d 1248 (Fla. 3d DCA 2017)

Moreno v. State, 232 So. 3d 1133 (Fla. 3d DCA 2017)

Arko Plumbing Corp. v. Rudd, 230 So. 3d 520 (Fla. 3d DCA 2017), rev. denied, SC17-2059, 2018 WL 857420 (Fla. Feb. 13, 2018)

Bennett v. Mortg. Elec. Registration Sys., Inc., 230 So. 3d 100 (Fla. 3d DCA 2017), rev. denied, SC17-2203, 2018 WL 1225480 (Fla. Mar. 9, 2018)

Cardona v. Casas, 225 So. 3d 384 (Fla. 3d DCA 2017)

Ortiz v. State, 227 So. 3d 682 (Fla. 3d DCA 2017)

Noriega v. State, 228 So. 3d 170 (Fla. 3d DCA 2017), rev. denied, SC17-1683, 2017 WL 5090966 (Fla. Nov. 6, 2017)

Simon v. State, 225 So. 3d 934 (Fla. 3d DCA 2017)

Williams v. State, 225 So. 3d 349 (Fla. 3d DCA 2017)

Miccosukee Tribe of Indians v. Lewis Tein, P.L, 227 So. 3d 656 (Fla. 3d DCA 2017), cert. denied, 138 S. Ct. 741 (2018)

Montero v. State, 225 So. 3d 340 (Fla. 3d DCA 2017)

S.C. v. State, 224 So. 3d 249 (Fla. 3d DCA 2017)

Mukamal v. Marcum LLP, 223 So. 3d 422 (Fla. 3d DCA 2017)

Montesino v. State, 231 So. 3d 514 (Fla. 3d DCA 2017)

Faddis v. Luddy, 221 So. 3d 758 (Fla. 3d DCA 2017)

Ward v. State, 229 So. 3d 860 (Fla. 3d DCA 2017)

Ordonez-Medina v. State, 221 So. 3d 744 (Fla. 3d DCA 2017), rev. denied, SC17-1521, 2017 WL 6604563 (Fla. Dec. 27, 2017)

Leal v. Rodriguez, 220 So. 3d 543 (Fla. 3d DCA 2017)

Gomez v. S&I Properties, LLC, 220 So. 3d 539 (Fla. 3d DCA 2017)

Castro v. Pullmantur, S.A., 220 So. 3d 531 (Fla. 3d DCA 2017)

Reid v. State, No. 3D16-1051, 2017 WL 2348615 (Fla. 3d DCA May 31, 2017)

Krieger v. Fla. Fish & Wildlife Conservation Comm'n, 220 So. 3d 511 (Fla. 3d DCA 2017)

J.H. v. State, 220 So. 3d 508 (Fla. 3d DCA 2017)

Deauville Hotel Mgmt., LLC v. Ward, 219 So. 3d 949 (Fla. 3d DCA 2017)

Gilchrease v. State, 219 So. 3d 264 (Fla. 3d DCA 2017), rev. denied, SC 17-1208, 2017 WL 6520217 (Fla. Dec. 21. 2017)

Knight v. State, 217 So. 3d 1194 (Fla. 3d DCA 2017)

UV Cite III, LLC v. Deutsche Bank Nat'l Tr. Co., 215 So. 3d 1280 (Fla. 3d DCA 2017)

Yergin v. Georgopolos, 217 So. 3d 155 (Fla. 3d DCA 2017), rev. denied, SC17-836, 2017 WL 4684337 (Fla. 3d DCA 2017)

Flanders v. State, 217 So. 3d 160 (Fla. 3d DCA 2017)

Credo LLC v. Speyside Investments Corp., No. 3D17-815, 2018 WL 3862717 (Fla. 3d DCA Aug. 15, 2018) (dissent)

Sosataquechel v. State, 246 So. 3d 497 (Fla. 3d DCA 2018) (concur in part and dissent in part)

Schlesinger v. Jacob, 240 So. 3d 75 (Fla. 3d DCA 2018) (concur)

Siegel v. Cross Senior Care, Inc., 239 So. 3d 738 (Fla. 3d DCA 2018) (dissent), rev. denied, SC18-521, 2018 WL 3361051 (Fla. Jul. 10, 2018)

Ortiz v. Ortiz, 227 So. 3d 730 (Fla. 3d DCA 2017) (concur in part and dissent in part)

Adkins v. Sotolongo, 227 So. 3d 717 (Fla. 3d DCA 2017) (concur)

McGrath v. Martin, 238 So. 3d 361 (Fla. 3d DCA 2017) (concur in result)

Sayao v. Knightsbridge Bus. Network, Inc., 250 So. 3d 842 (Fla. 3d DCA 2018) (dissent)

A.P. v. State, 226 So. 3d 1083 (Fla. 3d DCA 2017) (per curiam)

Dep't of Children & Families v. Garcia, 245 So. 3d 919 (Fla. 3d DCA 2018) (per curiam)

G.F. v. Dep't of Children & Families, No. 3D18-292, 2018 WL 4495358 (Fla. 3d DCA Sept. 20, 2018) (per curiam)

Garrett v. State, 229 So. 3d 416 (Fla. 3d DCA 2017) (per curiam)

Hines v. New Urban Pine Road, LLC, 239 So. 3d 750 (Fla. 3d DCA 2018) (per curiam)

Jackson v. State, 227 So. 3d 587 (Fla. 3d DCA 2017) (per curiam)

Kane v. Kane, 247 So. 3d 57 (Fla. 3d DCA 2018) (per curiam)

Lammons v. State, 246 So. 3d 524 (Fla. 3d DCA 2018) (per curiam)

Martin v. State, 245 So. 3d 991 (Fla. 3d DCA 2018) (per curiam)

Montoya v. State, 245 So. 3d 993 (Fla. 3d DCA 2018) (per curiam)

Morales v. State, No. 3D17-1622, 2018 WL 4344370 (Fla. 3d DCA Sept. 12, 2018) (per curiam)

R. Plants, Inc. v. Dome Enters., Inc., 221 So. 3d 752 (Fla. 3d DCA 2017) (per curiam)

Reyes v. Infinity Indem. Ins. Co., 221 So. 3d 775 (Fla. 3d DCA 2017) (per curiam)

Rivera v. State, No. 3D17-1790, 2018 WL 4344058 (Fla. 3d DCA Sept. 12, 2018) (per curiam)

Robinson v. State, 233 So. 3d 1163 (Fla. 3d DCA 2017) (per curiam)

Rua-Torbizco v. State, No. 3D17-2675, 2018 WL 4344055 (Fla. 3d DCA 2018) (per curiam)

S.B. v. State, No. 3D17-1206, 2018 WL 4608788 (Fla. 3d DCA Sept. 26, 2018) (per curiam)

Sadlak v. Nationstar Mortg., LLC, No. 3D16-2666, 2018 WL 3446975 (Fla. 3d DCA Jul. 18, 2018) (per curiam)

Sanchez v. Miami-Dade Cty., 245 So. 3d 933 (Fla. 3d DCA 2018) (per curiam)

Santiago v. State, 238 So. 3d 343 (Fla. 3d DCA 2017) (per curiam)

Singleton v. State, 219 So. 3d 233 (Fla. 3d DCA 2017) (per curiam)

TM Wireless Comm. Servs., Inc. v. All Commerce, Inc., 246 So. 3d 541 (Fla. 3d DCA 2018) (per curiam)

U.S. Bank, N.A. v. Lease Capital, LLC, 245 So. 3d 1003 (Fla. 3d DCA 2018) (per curiam)

Rivera v. State, 24 Fla. L. Weekly Supp. 101c (Fla. 11th Cir. Ct. Apr. 19, 2016)

Harrell v. State, 23 Fla. L. Weekly Supp. 209a (Fla. 11th Cir. Ct. Jul. 9, 2015)

Virtual Imaging Servs., Inc. v. United Auto. Ins. Co., 22 Fla. L. Weekly Supp. 1145a (Fla. 11th Cir. Ct. May 8, 2015)

Lezcano v. State, 22 Fla. L. Weekly Supp. 788b (Fla. 11th Cir. Ct. Jan. 29, 2015), cert.

denied, 177 So. 3d 1024 (Fla. 3d DCA 2015)

State Farm Mut. Auto. Ins. Co. v. Romero, 22 Fla. L. Weekly Supp. 674a (Fla. 11th Cir. Ct. Jan. 5, 2015)

Americana Village Condo. Assoc., Inc. v. Wells Fargo Bank, N.A., 22 Fla. L. Weekly Supp. 324b (Fla. 11th Cir. Ct. Sept. 12, 2014), cert. denied, 189 So. 3d 774 (Fla. 3d DCA 2015)

Merlos v. State, 22 Fla. L. Weekly Supp. 188b (Fla. 11th Cir. Ct. Aug. 21, 2014)

United Auto. Ins. Co. v. Affiliated Heathcare Ctrs., Inc., 21 Fla. L. Weekly Supp. 871a (Fla. 11th Cir. Ct. May 9, 2014)

Sepulveda v. Westport Recovery Corp., 21 Fla. L. Weekly Supp. 391a (Fla. 11th Cir. Ct. Dec. 31, 2013), cert. granted, 145 So. 3d 162 (Fla. 3d DCA 2014)

Rubio v. State, 21 Fla. L. Weekly Supp. 389a (Fla. 11th Cir. Ct. Dec. 30, 2013) (concur)

(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.

State of Florida v. Ricardo Garganelly, Case No. F14-6023. Joanna Sandstrom represented the State of Florida. Jennifer Rodrigue represented Mr. Garganelly. Mr. Garganelly was charged with battering a person over the age of sixty-five. He had been found incompetent to proceed to trial, and on February 12, 2015, I held a hearing to decide where Mr. Garganelly should be placed until he was restored to competence. During the hearing, as I was making my findings, Mr. Garganelly rushed up from his seat and jumped at me. He and I tumbled down the steps of the bench, and as I was laying on the floor, Mr. Garganelly was on top of me, punching my head. My bailiff eventually ripped Mr. Garganelly off of me. I got up, dusted off my robe, fixed my chair, which had been knocked down, took my place on the bench, and dictated what had happened into the record. I then entered an order recusing myself from the case. Despite the bleeding and bruising, I declined medical attention and refused to file a worker's compensation claim. Hearing about the incident in Tallahassee, then-Chief Justice Jorge Labarga wrote me this note: "I want to commend you for the professionalism you displayed in handling what must have been a very disturbing situation. Your coolness and understanding was exemplary."

State of Florida v. Steven C. Bateman, Case No. F13-20190. Isis Perez represented the State of Florida. Benedict P. Kuehne and Michael T. Davis represented Mr. Bateman. Mr. Bateman, the former mayor of Homestead, was charged in 2013 with unlawful compensation, self-dealing, and illegal lobbying. The case went to trial within a year (September 2014), and lasted one week. There were a number of high profile witnesses and community leaders who testified, including Miami-Dade County Mayor Carlos Gimenez, and the media recorded every moment of the trial. The jury convicted Mr. Bateman on three counts, and after post-trial motions, I wrote a twenty-six page order granting

judgment of acquittal on one count, and denying it on two others. After he was found guilty, Mr. Bateman wrote to the probation office: "The court process was extremely professional. I cannot say enough about the professionalism of Judge Luck. He was extremely kind and honorable to everyone. He is an outstanding judge." My order was affirmed on appeal, Bateman v. State, 240 So. 3d 36 (Fla. 3d DCA 2017), and the Florida Supreme Court denied review. SC18-229, 2018 WL 1273063 (Fla. Mar. 9, 2018).

G.F. v. Department of Children and Families, No. 3D18-292, 2018 WL 4495358 (Fla. 3d DCA Sept. 20, 2018). Sanford Rockowitz represented G.F. Karla Perkins represented the Department of Children and Families. Sara Elizabeth Goldfarb represented the Guardian Ad Litem Program. G.F., the father to a nine year old girl, had his parental rights terminated by the dependency judge overseeing the little girl's case. On appeal, G.F.'s court-appointed attorney moved to withdraw pursuant to Jimenez v. Department of Health and Rehabilitative Service, 669 So. 2d 340 (Fla. 3d DCA 1996). Jimenez is similar to Anders in criminal cases. The court-appointed attorney for the parent files a motion representing that there are no non-frivolous issues to raise on appeal, and the attorney must withdraw to avoid violating the rules of professional conduct. It is then up to the appellate court to conduct an independent review of the record before granting the motion to determine if the court-appointed attorney's assessment of the case is correct. These motions are routinely made, and routinely granted. In G.F.'s case, after reviewing the record, and over the dissent of a colleague who would have granted the motion to withdraw, I found multiple non-frivolous issues that could be raised on appeal, and denied the motion and ordered briefing from the father's court-appointed attorney, the department, and the guardian ad litem. In its brief, the department conceded that the evidence did not support the ground for terminating the father's parental rights relied on by the dependency judge. We reversed the order terminating the father's parental rights.

State v. Pena, 247 So. 3d 61 (Fla. 3d DCA May 9, 2018). Assistant Attorney General Christina Dominguez represented the state. Manuel F. Herrera, Jr. and Dennis Gonzalez represented Mr. Pena. Mr. Pena was stopped by the Miami-Dade Police Department because the frame on his license tag provided by the auto dealer obstructed the MyFlorida.com at the top of the plate, contrary to section 316.605(1). The stop led to Mr. Pena's arrest (because his driver's license was suspended), and a seach of Mr. Pena's car, where law enforcement officers found controlled substances. Mr. Pena moved to suppress based on the illegal stop because blocking the top portion of the plate did not violate section 316.605(1). The trial court agreed, relying on a case from another district, and suppressed the evidence. The state appealed and we reversed, finding that the version of the statute applicable at the time of Mr. Pena's stop plainly and clearly prohibited any obstruction of the "Florida" at the top of the license plate. The opinion acknowledged the trial court's concern about the many Floridians who would be, and are, violating the tag-obstruction statute given the popularity of license plate frames. ("We share the ... concern that license plate rims and frames are 'a common practice of long-standing among the citizens of our state'; 'are frequently supplied by car dealers'; and 'many otherwise law abiding citizens install them specifically to show allegiance to a club, fraternity, college or sports team or, as a means of self-expression.'") But the opinion explained that it is for

the legislative branch to make the laws governing our streets and highways, and the legislature plainly outlawed obstruction of the "Florida" on state license plates. ("But the legislature gets to make the laws that govern our public roads and highways, and it has done so clearly and unambiguously by prohibiting the obscuring of the word "Florida" on state license plates.")

Adkins v. Sotolongo, 227 So. 3d 717 (Fla. 3d DCA Sept. 20, 2017). Ms. Adkins represented herself. Evan Abramowitz represented Mr. Sotolongo. And Emily Joyce Phillips represented the former Guardian Ad Litem. This was a child custody case. The trial court, years earlier, had appointed a guardian ad litem for the child. When the guardian was discharged, she sought fees from the parents. Ms. Adkins contested the fee request and sought to take the guardian's deposition. The trial court (effectively) denied the motion, and Ms. Adkins sought a petition for writ of certiorari. The Court granted the petition based on case law from decades earlier that extended certiorari jurisdiction to "circumstances involving the denial of the right to take testimony of an alleged material witness." I wrote a concurring opinion agreeing that we were bound by the earlier case law, but explaining that our earlier cases had unconstitutionally extended certiorari jurisdiction to mid-litigation discovery disputes that could have been remedied on direct appeal. "Loosening our certiorari jurisdiction to review all improper denials of material witness depositions," I explained, "is a backdoor way around the constitutional limitation on appeals from nonfinal orders, and usurps the Florida Supreme Court's authority to designate certain nonfinal orders as appealable."

(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.

Not that I am aware of.

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

No.

(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.

Not applicable.

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.

No.

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.

During the Fall of 2007 and Spring of 2008, I was an adjunct professor at Alabama State University teaching business law.

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.

I have not.

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.

There are no cases that would be difficult for me to preside over. Other than the Garganelly case I mentioned above, I have recused myself where: (a) I was related to one of the attorneys; (b) one of the parties was a close friend or relative; (c) one of the attorneys had a leadership role in my retention campaign; or (d) I was the trial judge on a case that has been appealed to the Third District.

MISCELLANEOUS:

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

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

Where convicted? _____ Date of Conviction: _____

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

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

Where convicted? _____ Date of Conviction: _____

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

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

Where convicted? _____ Date of Conviction: _____

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

No.

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

No.

36c. Have you or your professional liability insurance carrier ever settled a claim against you

for professional malpractice? If so, give particulars, including the amounts involved.

No.

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

No.

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

No.

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

Yes, I was the nominal plaintiff in a subrogation action brought by my insurance company against a man who hit my car, and the man's company. The case settled on the eve of trial. Robert Luck and Amica Mutual Insurance Company v. B&L Service Company and Saint Saintvil, Broward County Court Case No. COSO03008174.

39. Has there ever been a finding of probable cause or other citation issued against you or are you presently under investigation for a breach of ethics or unprofessional conduct by any court, administrative agency, bar association, or other professional group. If so, give the particulars.

No.

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

No.

41. Are you currently the subject of an investigation which could result in civil, administrative or criminal action against you? If yes, please state the nature of the investigation, the agency conducting the investigation and the expected completion date of the investigation.

No.

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

No.

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

Yes ☒ No ☐ If no, please explain. _____

43b. Have you ever paid a tax penalty?

Yes ☐ No ☒ If yes, please explain what and why. _____

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

No.

HONORS AND PUBLICATIONS:

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

Robert J. Luck & Michael L. Seigel, The Facts and Only the Facts, in Race to Injustice: Lessons Learned From the Duke Lacrosse Rape Case 3-26 (Michael L. Seigel ed., 2009)

Robert J. Luck, The Bad Habits of Legal Writers, and Why Young Lawyers Should Avoid Them, Young Lawyer, August 2008

Research Assistant Acknowledgment in Lyrissa Barnett Lidsky, Brandenburg and the United States' War on Incitement Abroad: Defending A Double Standard, 37 Wake Forest L. Rev. 1009, 1009 n.a1 (2002) ("This Article benefited from the research assistance of Sherica Bryan and Robert Luck.")

Research Assistant Acknowledgment in Michael L. Seigel & James L. Kelley, Lawyers Crossing Lines: Ten Stories xii (Carolina Academic Press, 2d ed. 2010) ("I also want to acknowledge the contribution of Robert J. Luck, who graciously agreed to serve as my copy editor and proofreader for this endeavor. A former stellar student of mine, Robert has lent a helping hand on nearly every project I have undertaken since his graduation. It is relationships like ours that makes teaching such a rewarding endeavor.")

Research Assistant Acknowledgment in Michael Seigel, Improbable Events: Murder at Ellenton Hall v (iUniverse 2005) ("He also thanks Robert Luck, whose legal research was indispensable to the development of the plot . . . .")

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

Director's Recognition, Federal Bureau of Investigation, September 2011, for outstanding prosecution skills and assistance to the FBI

Integrity Award, U.S. Department of Health and Human Services, Office of Inspector General, April 2012, for support for the mission of fighting health care fraud in South Florida

Award for Truly Exceptional Achievement & Merit (A-TEAM), United States Attorney's Office, January 2013, for work with Investor Fraud Summit

Outstanding Young Alumnus, University of Florida Alumni Association, April 2015

Justice Harry Lee Anstead Professionalism Award, Miami-Dade Trial Lawyers Association, August 2016

"Rodef Sholem" Pursuer of Peace Award, Miami Jewish Legal Society, November 2016

President's Outstanding Community Leader Award, Dade County Bar Association, October 2017

2017-2018 Justice Award, League of Prosecutors, February 2018

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

Presenter, Florida Supreme Court Mid-Year Review, Miami Beach Bar Association CLE Lunch, July 2018

Presenter, Appellate Jurisdiction for Trial Lawyers, June Continuing Legal Education Luncheon, Coral Gables Bar Association, June 2018

Panelist, Legal Writing: The "Write" Way to Avoid Reversal, Advanced Judicial College, May 2018

Lecturer, Sentencing Enhancements & Departures, Williams Rule Evidence, Interrogatory Verdict Forms & Jury Instructions, Case Management, and Post-Conviction Proceedings, Florida Judicial College Phase II, March 2018

Panelist, Uniform Motion Calendar Workshop, Student Division, Young Lawyers Division, Florida Bar, March 2018

Presenter, Appellate Court Committee Breakfast, Dade County Bar Association, February 2018

Moderator, Departures from the American Rule on Attorney's Fees, 2018 Annual Florida Chapters Conference, Federalist Society, February 2018

Panelist, Ask the Third DCA Judges, Monroe County Bar Association CLE Luncheon, November 2017

Panelist, The Do's and Don'ts of Motions for New Trial Based on Closing Argument in the Trial Court and on Appeal, Third District Court of Appeal Fall Seminar, Dade County Bar Association, November 2017

Lecturer, General Provisions: Article II, Sections 1 through 9 of the Florida Constitution, Constitution Revision Commission, August 2017

Panelist, Advanced Topics in Insurance Law: Everything the Florida Judge Would Want to Know, Advanced Judicial College, May 2017

Lecturer, Jury Selection, Sentencing Departures, Williams Rules Evidence, Interrogatory Verdict Forms & Jury Instructions, Stand Your Ground & Self-Defense, Florida Judicial College Phase II, March 2017

Panelist, Judicial Ethics, Bench and Bar Conference, Dade County Bar Association, February 2017

Panelist, Practicing with Professionalism, Young Lawyer's Division, Florida Bar, January 2017

James Otis Lecture, The 50th Anniversary of Miranda, Miami-Dade College, September 2016

Presenter, Domestic Violence Awareness Day, Pilgrams Seventh Day Adventist Church, August 2016

Lecturer, I'll Never Tell: Fifth Amendment Issues in Criminal Proceedings, Advanced Judicial College, May 2016

Panelist, Fifth Annual Circuit Court Boot Camp, Pincus Professional Education, April 2016

Speaker, Professionalism in the Civil Practice of Law, Miami Beach Bar Association, March 2016

Panelist, Dynamic Depositions and Pathways to the Bench, Dade County Bar Association, Bench & Bar Conference, February 2016

Panelist, Practicing with Professionalism, Florida Bar, March 2016, November 2015

Guest Lecturer, Criminal Prosecution and Defense Lawyering Workshop, University of Miami School of Law, March 2016, March 2014

Panelist, Legal Issues in Jury Selection, View from the Bench: SuperStars Mock Trial, February 2016

Panelist, Partnership for Professionalism, Spellman-Hoeveler Chapter of the American Inns of Court, November 2015

Panelist, Criminal Law Boot Camp for the Civil or Newer Criminal Attorney, Pincus Professional Education, September 2015

Lecturer, Hurst v. Florida, and the Latest Challenge to Florida's Capital Punishment Scheme, Florida Circuit Court Judges Conference, August 2015

Speaker, Winning the Appeal, Coral Gables Bar Association, August 2015

Panelist, Perfecting Your Legal Argument, Dade County Bar Association, Bench and Bar Conference, February 2015

Panelist, Professionalism Roundtable, Wilkie D. Ferguson, Jr. Bar Association, November 2014

Speaker, Ethical Governance Day, Miami-Dade Commission on Ethics & Public Trust, October 2014

Panelist, Does Your Ethics and Compliance Program Stand Up to the Test, Corporate Counsel Conference, Hispanic National Bar Association, March 2014

Panelist, Sixth Annual Judicial Forum, Wilkie D. Ferguson, Jr. Bar Association, February 2014

Panelist, Appellate Advocacy, Dade County Bar Association, Bench and Bar Conference, February 2014

Panelist, Southeast Regional Investor Fraud Summit, October 2012

Lecturer, Health Care Identity Theft Issues, National Advocacy Center, May 2012

Panelist, Health Care Fraud Issues, Southern District of Florida Bench and Bar Conference, April 2012

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

PROFESSIONAL AND OTHER ACTIVITIES:

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

Florida Bar: 2015-2018, Vice-Chair, Criminal Rules Subcommittee Chair, Criminal Rules Subcommittee Vice-Chair, Appellate Court Rules Committee

Dade County Bar Association

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

Cuban American Bar Association

Florida Association of Women Lawyers - Miami Dade Chapter

48c. List your hobbies or other vocational interests.

My wife and I have two children -- J., 12, and J., 9 -- so most of our free time is spent with the kids helping with school work, and attending baseball games and dance performances. I also enjoy reading historical non-fiction and presidential biographies. And I enjoy watching Miami Dolphins and Florida Gators football 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.

No.

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

Because I have worked for the courts and federal government for most of my career, I've been limited in the pro bono legal work that I could do. But in 2006 I, along with many others, helped research for and edit the Cuban American Bar Association's amicus curiae brief submitted to the en banc Eleventh Circuit Court of Appeals in United States v. Campa (the Cuban spies case).

In 2011 and 2012, I was appointed by the Chief Judge of the Southern District of Florida to serve on the committee to organize the bench and bar conference, and the ad hoc committee on attorney admissions, peer review, and attorney grievances.

In 2013, as part of Dade Legal Aid's Put Something Back program, I represented a victim of domestic violence seeking an injunction against an ex-boyfriend.

Since being appointed to the bench in 2013, I have served as a volunteer judge for local high schools and law schools.

Every year, I have judged the mock oral argument for the University of Miami Law School's appellate advocacy class.

Every year, I have judged the mock trial for the University of Miami Law School and Florida International University Law School's trial advocacy class.

Every year, I have judged practice rounds for the University of Miami Law School's moot court team.

In 2016, I reviewed and graded briefs for the Hispanic National Bar Association's annual moot court competition.

In 2017 and 2018, I judged the Florida Law Related Education Association's high school moot court competition.

And from 2013 to 2016, I was a Big Brother in the Big Brothers/Big Sisters program. I saw my Little Brother, Wadney, graduate from Booker T. Washington High School in Miami's Overtown neighborhood, and start Miami-Dade College.

SUPPLEMENTAL INFORMATION:

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

Yes, I have attended continuing judicial and legal education programs in professionalism and ethics, capital litigation, and diversity issues affecting the bench and bar.

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

Please see my answers to questions 33b and 46. I have taught and lectured on the following subjects: business law; health care fraud enforcement; appellate advocacy; capital litigation in Florida; professionalism; jury selection; self-incrimination; searches and seizures; domestic violence; judicial ethics; insurance law; Article II of the Florida Constitution; sentencing; the Williams Rule; jury instructions; self-defense; and appellate jurisdiction.

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

While it doesn't show up on a resume for most law-related positions, in my working life I have waited tables, bagged groceries, processed traffic tickets in a court clerk's office, and licked envelopes as an intern.

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

There are four potential contributions I'd bring to the Florida Supreme Court. First, a commitment to public service. Almost my entire working life has been dedicated to serving the state and country. For me, being a judge is not a capstone to a long career or a way to gracefully retire from day-to-day practice. This is what I want to do for the rest of my career as a way to serve our state and be a small part of ensuring that the rule of law prevails within its borders.

Second, I understand how the judiciary - what Hamilton called our least dangerous branch - fits into our system of government. Having worked in each of the three branches, I understand the modest role of the judge in reviewing the laws enacted by the legislature, the actions taken by the executive, and the findings of the lower courts. I have conducted myself that way for the last five years, and I will continue to do so as long as I am permitted to serve.

Third, I've spent my career writing about the law. I wrote letters and speeches for two United States Senators; edited the Florida Law Review; helped Judge Carnes write opinions for the federal appellate court; helped the partners at Greenberg Traurig write briefs to the state and federal appellate courts; and wrote briefs and hundreds of motions and responses as an Assistant United States Attorney. As a circuit court judge, I wrote more than one hundred civil and criminal orders and appellate decisions. As a district court judge, I have written more than seventy opinions on every area of state law.

And fourth, I have experience with the Florida Supreme Court's unique caseload, including death penalty, bar discipline, and procedural rules cases. Death Penalty: I worked on death penalty cases as a law clerk. And as a trial judge, I took classes on death penalty litigation; was certified to handle death penalty cases; and I presided over death penalty cases while assigned to the felony division. Bar Discipline: I've been appointed as a referee in, and presided over, a bar discipline matter. Procedural Rules: I've been appointed by the bar president to serve on the appellate court rules committee (mostly recently, as the committee's vice-chair). In June 2017, I argued in front of the Florida Supreme Court in support of the committee's rule amendments.

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 submitted two applications: one to the Eleventh Circuit Judicial Nominating Commission in March 2013; and another to the Third District Court of Appeal Judicial Nominating Commission in November 2016.

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

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.

Chief Judge Ed Carnes, United States Court of Appeals for the Eleventh Circuit

Judge Federico A. Moreno, United States District Court for the Southern District of Florida

Secretary Alexander Acosta, United States Department of Labor

U.S. Attorney Ariana Fajardo Orshan, United States Attorney's Office, Southern District of Florida

Chief Judge Bertila Soto, Eleventh Judicial Circuit of Florida

Judge Rodolfo A. Ruiz, Eleventh Judicial Circuit of Florida

Roy K. Altman, Podhurst Orseck, P.A.

Raoul Cantero, White & Case LLP

Elliot H. Scherker, Greenberg Traurig, P.A.

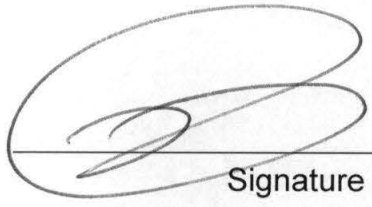
CERTIFICATE

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 4th day of October, 2018.

Robert Luck
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	$127,166		
List Last 3 years	2015: $139,538	2016: $139,538	2017: $143,706

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	$127,166		
List Last 3 years	2015: $139,538	2016: $139,538	2017: $143,706

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

Current year to date	$1,089		
List Last 3 years	2015: $803	2016: $536	2017: $1,254

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

Current year to date	$1,089		
List Last 3 years	2015: $803	2016: $536	2017: $1,254

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, 2017 was $1,098,020.53.

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 $ 30,000

ASSETS INDIVIDUALLY VALUED AT OVER $1,000:

DESCRIPTION OF ASSET (specific description is required – see instructions p. 3)	VALUE OF ASSET
Stock (American Electric Power)	$11,209.93
Stock (Exxon Mobile)	$6,449.54
Stock (Disney)	$6,483.00
Federal Thift Savings Plan	$42,845.27
Bank Account (Wells Fargo)	$475,633.57
Voya Financial	$6,143.73

PART C - LIABILITIES

LIABILITIES IN EXCESS OF $1,000 (See instructions on page 4): NAME AND ADDRESS OF CREDITOR	AMOUNT OF LIABILITY

JOINT AND SEVERAL LIABILITIES NOT REPORTED ABOVE: NAME AND ADDRESS OF CREDITOR	AMOUNT OF LIABILITY

PART B – ASSETS

ASSETS INDIVIDUALLY VALUED AT OVER $1,000 (con't):

Description of Asset	**Value of Asset**
Real Property	$363,001.00
Mutual Fund (Vanguard 500 Index Fund Investment)	$12,548.82

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
State of Florida	200 East Gaines Street, Tallahassee, Florida	$143,705.67

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

NAME OF BUSINESS ENTITY	NAME OF MAJOR SOURCES OF BUSIENSS' INCOME	ADDRESS OF SOURCE	PRINCIPAL BUSINESS ACTIVITY OF SOURCE

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

	BUSINESS ENTITY #1	BUSINESS ENTITY #2	BUSINESS ENTITY #3
NAME OF BUSINESS ENTTITY			
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			

IF ANY OF PARTS A THROUGH E ARE CONTINUED ON A SEPARATE SHEET, PLEASE CHECK HERE ☒

OATH

I, the person whose name appears at the beginning of this form, do depose on oath or affirmation and say that the information disclosed on this form and any attachments hereto is true, accurate, and complete.

SIGNATURE

STATE OF FLORIDA

COUNTY OF Miami-Dade

Sworn to (or affirmed) and subscribed before me this 3rd day of Oct, 2018 by ____

Michelle N Edelstein

(Signature of Notary Public—State of Florida)

(Print, Type, or Stamp Commissioned Name of Notary Public)

MICHELLE N EDELSTEIN
Notary Public - State of Florida
Commission # FF 906770
My Comm. Expires Nov 29, 2019
Bonded through National Notary Assn.

Personally Known ✓ *OR* Produced Identification ____

Type of Identification Produced ____

JUDICIAL APPLICATION DATA RECORD

The judicial application shall include a separate page asking applicants to identify their race, ethnicity and gender. Completion of this page shall be optional, and the page shall include an explanation that the information is requested for data collection purposes in order to assess and promote diversity in the judiciary. The chair of the Commission shall forward all such completed pages, along with the names of the nominees to the JNC Coordinator in the Governor's Office (pursuant to JNC Uniform Rule of Procedure).

(Please Type or Print)

Date: October 4, 2018

JNC Submitting To: Florida Supreme Court Judicial Nominating Commission

Name (please print): Robert J. Luck

Current Occupation: Judge, District Court of Appeal of Florida, Third Appellate District

Telephone Number: (305) 229-3200 ext. 3230 Attorney No.: 0028065

Gender (check one): ☒ Male ☐ Female

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

County of Residence: Miami-Dade

FLORIDA DEPARTMENT OF LAW ENFORCEMENT

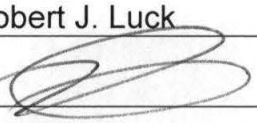
DISCLOSURE PURSUANT TO THE
FAIR CREDIT REPORTING ACT (FCRA)

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: Robert J. Luck

Signature of Applicant: 

Date: October 4, 2018

EXAMPLE OF LEGAL WRITING NUMBER ONE

qualified to testify as to the value of his or her property," A.G. v. State, 718 So.2d 854, 856 (Fla. 4th DCA 1998), the owner's testimony of value must be their own opinion or assessment of value, although they may take into consideration other sources to supplement and support their own knowledge of the value of the property. See id. (holding that the owner's own estimate of value that was "based on what his jeweler and his wife had told him" was sufficient to support the order of restitution); see also Yaun v. State, 898 So.2d 1016 (holding that the owner's assessments of the value of the stolen items based on her own research was sufficient to support the amount of restitution imposed).

[4] The only evidence to support the amount of restitution imposed in this case was the owner's testimony, which in turn was based solely on what the jeweler said. We are sympathetic to the victims of stolen property where, as here, the victims performed research and sought help from someone qualified to tell them how much it would cost to replace the missing items. But precedent says a witness's mere recitation of someone else's estimation of value is insufficient to support an order of restitution. "On remand, written estimates may suffice, so long as they satisfy the requirements of business records under section 90.803(6), Florida Statutes (2005), or are uncontested." Conway v. State, 115 So.3d 1058, 1059 (Fla. 4th DCA 2013) (quoting I.M. v. State, 958 So.2d 1014, 1015 (Fla. 1st DCA 2007)).

REVERSED and REMANDED.

WOLF, RAY, and MAKAR, JJ., CONCUR.

MICCOSUKEE TRIBE OF INDIANS of Florida, Appellant,

v.

LEWIS TEIN, P.L., et al., Appellees.

No. 3D16–2826

District Court of Appeal of Florida, Third District.

Opinion filed August 9, 2017.

Background: Indian tribe's former attorneys brought action against tribe alleging one count of civil remedies for criminal practices and four counts of malicious prosecution. The Circuit Court, Miami–Dade County, John W. Thornton, Jr., J., denied tribe's motion to dismiss. Tribe appealed.

Holdings: The District Court of Appeal, Luck, J., held that:

(1) tribe's limited waiver of sovereign immunity in previous case did not extend beyond that case to subsequent lawsuit involving tribe's conduct over a five-year period, and

(2) tribe's waiver of sovereign immunity in four prior lawsuits did not extend to subsequent lawsuit against tribe for malicious prosecution, even though the subsequent case was related and arose out of the same facts.

Reversed and remanded with instructions.

See also 92 So.3d 232, 165 So.3d 9, 814 F.3d 1202, 975 F.Supp.2d 1298, 2015 WL 235433, 2015 WL 9438244

1. Indians ⇨252

District Court of Appeal would review trial court's denial of tribe's motion to dismiss, which was based on tribal sovereign immunity, as an appeal of a non-final

order rather than a petition for writ of certiorari.

2. Indians ⇐252

The issue of tribal sovereign immunity is a legal issue subject to a de novo standard of review.

3. Indians ⇐235

Indian tribe's limited waiver of sovereign immunity when it disclosed, in previous wrongful death case to which it was not a party, checks and check stubs purporting to show payments to tribe's counsel for tribal members, did not extend beyond that case to subsequent lawsuit between counsel and tribe involving tribe's conduct over a five-year period; counsel in the previous case repeatedly stated that their request for finding of waiver was limited to disclosure of checks and check stubs, trial court limited scope of discovery to disclosure of checks and check stubs, and District Court of Appeal affirmed the limited nature of the waiver.

4. Indians ⇐235

Indian tribe's waiver of sovereign immunity in four prior lawsuits did not extend to subsequent lawsuit against tribe for malicious prosecution, even though the subsequent case was related and arose out of the same facts.

5. Indians ⇐250

Trial court is not precluded from sanctioning Indian tribe for bad faith conduct or vexatious litigation in case where conduct occurs.

6. Indians ⇐250

When an Indian tribe chooses to litigate in state courts, it must follow same rules that apply to all litigants: no lying, no destroying evidence, and no filing claims without basis in law or fact.

7. Indians ⇐235

General rule is that an Indian tribe's sovereign immunity waiver in litigating one case does not waive immunity in subsequent cases.

8. Indians ⇐235

Even if Indian tribe waives its sovereign immunity by suing non-tribe party, immunity waiver does not extend to non-tribe's compulsory counterclaims in same litigation.

9. Indians ⇐235

General rule, that tribe's sovereign immunity waiver in litigating one case does not waive immunity in subsequent cases or in compulsory counterclaims, still holds even if tribe's sovereign immunity is deeply troubling to courts, and results in unfairness and inequity to non-tribe party.

10. Indians ⇐235

Even when tribe engages in vexatious and bad faith litigation in prior lawsuit, unfairness and inequity to non-tribe party does not waive tribe's sovereign immunity in subsequent case arising out of same facts.

11. Indians ⇐235

When prior litigation, in which Indian tribe waived sovereign immunity, ends and new case begins is point that the waiver becomes unclear and not explicit.

An Appeal from a non-final order from the Circuit Court for Miami–Dade County, John W. Thornton, Jr., Judge. Lower Tribunal No. 16–21856

Saunooke Law Firm, P.A., and Robert O. Saunooke (Miramar); Alston & Bird LLP, George B. Abney, Daniel F. Diffley, and Michael J. Barry (Atlanta, Georgia), for appellant.

Colson Hicks Eidson, P.A., Curtis B. Miner, Roberto Martinez, and Stephanie Casey, for appellees.

Rice Pugatch Robinson Storfer & Cohen PLLC, and Craig A. Pugatch, for United South and Eastern Tribes, Inc., as amicus curiae.

Before ROTHENBERG, C.J., and SCALES and LUCK, JJ.

LUCK, J.

"There are reasons to doubt the wisdom of perpetuating the doctrine" of tribal immunity. Kiowa Tribe of Oklahoma v. Mfg. Techs., Inc., 523 U.S. 751, 758, 118 S.Ct. 1700, 140 L.Ed.2d 981 (1998). It "can harm those who are unaware that they are dealing with a tribe, who do not know of tribal immunity, or who have no choice in the matter, as in the case of tort victims." Id. No one knows this more than Guy Lewis and Michael Tein. The Miccosukee Tribe of Indians of Florida, according to Lewis and Tein's complaint, spent five years filing false lawsuits, suborning perjury, and obstructing justice, in an effort to damage the attorneys' finances, reputations, and law firm. Whatever its wisdom, tribal immunity endures, and Indian tribes are not subject to the civil jurisdiction of our courts absent a clear, explicit, and unmistakable waiver of tribal sovereign immunity or a congressional abrogation of that immunity. Because neither exception to tribal immunity has been established in this case, we reverse the trial court's denial of the Miccosukee Tribe's motion to dismiss.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

The Bermudez Wrongful Death Case. In 2000, the Bermudez family filed a wrongful death action against Tammy Billie and Jimmie Bert, two members of the Miccosukee Tribe, based on their involvement in a 1998 car accident in which Gloria Bermudez was killed and her husband and son were injured. The Tribe was not a party to the action. In 2005, Lewis and Tein were hired to take over Billie and Bert's defense in the wrongful death action.[1] Damages were awarded in 2009 in the amount of $3.177 million to the Bermudez family. Following entry of the 2009 civil judgment, the Bermudez family began collections proceedings against Tammy Billie and Jimmy Bert; the family also sought to enforce the judgment against the Tribe itself, even though the Tribe was not a party to the suit.

In September 2011, Bernardo Roman, the Tribe's new attorney, provided the Bermudez family attorney with copies of sixty-one checks and check stubs from the Tribe's general account, payable to Lewis and Tein in the amount of $3,111,567. By doing so, the Tribe falsely represented to the trial court that the Tribe paid for the defense of Tammie Billie and Jimmie Bert in the wrongful death action. (In fact, the Tribe loaned the money to Billie and Bert to pay for their attorney's fees out of their quarterly dividends that all Tribe members receive.) Based on Roman's actions, the Bermudez attorney launched, what turned out to be, a false claim of perjury and fraud on the court against Lewis and Tein. During these proceedings, Roman filed a motion for protective order and to quash a subpoena for deposition.

In Miccosukee Tribe of Indians of Florida v. Bermudez, 92 So.3d 232 (Fla. 3d DCA 2012), this court held that the Tribe and Roman's conduct in providing the Ber-

1. From 2005 to 2010, Lewis and Tein represented the Tribe and individual Tribe members in various legal proceedings.

mudez attorney with the checks constituted a waiver of the Tribe's sovereign immunity. This Court explained that:

> [T]here can be no mistake about what occurred in our case. Mr. Roman, in an act approved by the Tribe, admittedly, has purposefully sought to participate in or influence a state court proceeding. We can conceive of no motive for the Tribe or Mr. Roman to have done so. The only plausible legal conclusion that can be drawn from the actions of Mr. Roman and the Tribe in this case is the one made by the trial court—the Tribe's and Mr. Roman's conduct constituted a clear, explicit, and unmistakable waiver of the Tribe's claim to sovereign immunity.

Id. at 235. This Court further expressed bewilderment as to the purpose of the Tribe's actions. Id. at 233 ("[F]or reasons mystifying to us ... [the Tribe] supplied plaintiff's counsel with copies of checks drawn on the Miccosukee Tribe General Account payable to Lewis Tein."). After numerous hearings and discovery in the Bermudez proceedings, the trial court found that Lewis and Tein did not commit perjury and did not engage in fraud on the court or misconduct.

State Court Action. On April 2, 2012, the Tribe filed an action against Lewis and Tein in Miami–Dade circuit court, alleging malpractice, breach of fiduciary duty, fraud, fraud in the concealment, conspiracy to defraud, civil RICO conspiracy, civil racketeering, theft, and conversion. The trial court granted Lewis and Tein's motion for summary judgment and, alternatively, dismissed the case for lack of subject matter jurisdiction because the complaint was predicated on an intra-tribal dispute. In Miccosukee Tribe of Indians of Florida v. Lewis, 165 So.3d 9 (Fla. 3d DCA 2015), this court affirmed the summary judgment because "the Tribe's expert was unable to identify a single invoice by the Lawyers that he believed was fraudulent, illegal, or excessive." Id. at 12. Subsequently, the trial court awarded Lewis and Tein reasonable attorney's fees as a sanction against the Tribe. In its order the trial court expressly found that the Tribe knew the claims were unfounded and frivolous and that "[t]he Tribe and Roman filed this lawsuit in bad faith."

Federal Court Action. On July 1, 2012, the Tribe filed an action against Lewis and Tein and other parties in federal court, alleging, in part, federal racketeering, conspiracy to engage in racketeering, fraud, aiding and abetting fraud, state racketeering, and breach of fiduciary duty. See Miccosukee Tribe of Indians of Fla. v. Cypress, 975 F.Supp.2d 1298, 1301–02 (S.D. Fla. 2013). The federal court dismissed the lawsuit for lack of subject matter jurisdiction, id. at 1308, and the Eleventh Circuit Court of Appeals affirmed. See Miccosukee Tribe of Indians of Fla. v. Cypress, 814 F.3d 1202 (11th Cir. 2015). After a hearing on sanctions, the federal district court issued a written order sanctioning the Tribe and Roman in the amount of $975,750, and remarked that Roman's "behavior [was] egregious and abhorrent." See Miccosukee Tribe of Indians of Florida v. Cypress, No. 12-22439-CIV, 2015 WL 235433, at *19 (S.D. Fla. Jan. 16, 2015) ("Here, the wrongful conduct is the filing of the complaints with no reasonable factual basis to support their allegations").

Second State Court Action. On November 16, 2013, the Tribe filed a second state court action, asserting essentially the same claims that were dismissed in federal court. On July 30, 2015, the trial court dismissed the second state court action based on res judicata grounds, stating that, "[a]t bottom, this case is simply another attempt to make the same claims that two prior judges have determined are

factually baseless, or are outside the Court's jurisdiction as tribal governance." See Miccosukee Tribe of Indians of Fla. v. Cypress, No. 2013CA35936, 2015 WL 9438244, at *3 (Fla. 11th Cir. Ct. Jul. 30, 2015).

This Case. On August 22, 2016, Lewis and Tein filed a complaint against the Tribe, alleging one count of civil remedies for criminal practices pursuant to section 772.103(3), Florida Statutes, and four counts of malicious prosecution premised on the Bermudez wrongful death action (count two),[2] the 2012 state court action (count three), the federal court action (count four), and the second state court action (count five). The complaint sought both economic and non-economic damages.

The Tribe filed a motion to dismiss for lack of subject matter jurisdiction based on tribal sovereign immunity. Lewis and Tein responded that the Tribe's sovereign immunity waiver in the Bermudez case applied broadly to this case, too, and that, alternatively, the Tribe's litigation conduct in knowingly filing frivolous lawsuits against Lewis and Tein waived the Tribe's immunity.

The trial court denied the motion because, it concluded, the Bermudez decision found an explicit waiver of immunity, and the Tribe's litigation conduct in the four prior cases "demonstrated a clear, explicit and unmistakable waiver of sovereign immunity with regard to this matter." This appeal followed.

STANDARD OF REVIEW

[1, 2] We have jurisdiction to review appeals of non-final orders that determine, as a matter of law, a party is not entitled to sovereign immunity. Fla. R. App. P. 9.130(a)(3)(C)(xi) ("Appeals to the district courts of appeal of non-final orders are limited to those that ... determine ... that, as a matter of law, a party is not entitled to qualified immunity.").[3] "The issue of sovereign immunity ... is a legal issue subject to a de novo standard of review." Plancher v. UCF Athletics Ass'n, Inc., 175 So.3d 724, 725 n.3 (Fla. 2015); see also Sanderlin v. Seminole Tribe of Florida, 243 F.3d 1282, 1285 (11th Cir. 2001) ("We review de novo the district court's dismissal of a complaint for sovereign immunity.").[4]

2. Following the appeal in this case, the trial court granted a motion to dismiss for failure to state a cause of action as to the malicious prosecution claim pertaining to the Bermudez wrongful death action (Count II).

3. Traditionally, the Florida courts had reviewed a trial court's denial of a tribe's motion to dismiss based on sovereign immunity under its certiorari jurisdiction. See Seminole Tribe of Fla. v. McCor, 903 So.2d 353, 357 (Fla. 2d DCA 2005) (Canady, J.) ("We have previously exercised our common law certiorari jurisdiction to review a trial court order denying a motion to dismiss where the motion was based on the assertion that the trial court lacked subject matter jurisdiction because the suit was barred by tribal sovereign immunity. Certiorari jurisdiction exists in this context because the inappropriate exercise of jurisdiction by a trial court over a sovereignly-immune tribe is an injury for which there is no adequate remedy on appeal." (citations omitted)). In 2014, however, the Florida Supreme Court added determinations by the trial court that a party is not entitled to sovereign immunity as one of the few non-final orders that are appealable. In re Amends. to Fla. R. App. P. 9.130, 151 So.3d 1217, 1217–18 (Fla. 2014) ("[W]e modify the Committee's proposal to authorize appeals from nonfinal orders which determine, as a matter of law, that a party is not entitled to sovereign immunity."). Because of this amendment, we review this case as an appeal of a non-final order rather than a petition for writ of certiorari.

4. Because "[t]ribal immunity is a matter of federal law," Kiowa Tribe, 523 U.S. at 756, 118 S.Ct. 1700, we rely on a number of federal court decisions throughout this opinion.

DISCUSSION

The Tribe contends the trial court erred in concluding that it waived its immunity. First, the Tribe claims, its immunity waiver in Bermudez was limited to the issue in that case—the disclosure of the sixty-one checks and check stubs by the Tribe's attorney—and did not extend beyond that to a separate lawsuit involving conduct over a five year period. Second, the Tribe argues, its litigation conduct in the first and second state court actions and the federal court action was not an express waiver of its tribal immunity.

> "As a matter of federal law, an Indian tribe is subject to suit only where Congress has authorized the suit or the tribe has waived its immunity." Congressional waiver or abrogation of tribal sovereign immunity must be unequivocal and does not arise by implication. Likewise, a waiver of tribal immunity by a tribe must be clear.
>
> "Absent an effective waiver or consent, it is settled that a state court may not exercise jurisdiction over a recognized Indian tribe."

Seminole Tribe of Fla. v. McCor, 903 So.2d 353, 358 (Fla. 2d DCA 2005) (Canady, J.) (citations omitted). This is a waiver case (there is no allegation that Congress abrogated the Tribe's sovereign immunity), and for us to find the Tribe waived its immunity, the party claiming the waiver must "show a clear, express and unmistakable waiver of sovereign immunity by the Tribe." Cupo v. Seminole Tribe of Fla., 860 So.2d 1078, 1079 (Fla. 1st DCA 2003).

1. The Limited Waiver in Bermudez

[3] One of the basic principles of appellate law is that the holding of a decision cannot extend beyond the facts of the case. See Adams v. Aetna Cas. & Sur. Co., 574 So.2d 1142, 1153 (Fla. 1st DCA 1991) ("It is elementary that the holding in an appellate decision is limited to the actual facts recited in the opinion, so the supreme court's statements hypothesizing about the absence of a written rejection, being contrary to the actual facts in this case, are pure dictum."); see also UPS Supply Chain Sols., Inc. v. Megatrux Transp., Inc., 750 F.3d 1282, 1293 (11th Cir. 2014) ("The holdings of a prior decision can reach only as far as the facts and circumstances presented to the Court in the case which produced that decision." (quotation omitted)); Twyman v. Roell, 123 Fla. 2, 166 So. 215, 217 (1936) ("To be of value as a precedent, the questions raised by the pleadings and adjudicated in the case cited as a precedent must be in point with those presented in the case at bar."); Rey v. Philip Morris, Inc., 75 So.3d 378, 381 (Fla. 3d DCA 2011) ("No Florida appellate decision is authority on any question not raised and considered, although it may be involved in the facts of the case." (quotation omitted)). Our conclusion in Bermudez—that "the Tribe's and Mr. Roman's conduct constituted a clear, explicit, and unmistakable waiver of the Tribe's claim to sovereign immunity," Bermudez, 92 So.3d at 235—is, likewise, limited to the facts of that case.

These are the facts of the Bermudez case. The Bermudezes sought to have the trial court reconsider its sanctions order based on new information they received showing that the Tribe had paid Lewis and Tein's attorney's fees. To their motion, the Bermudezes attached copies of sixty-one checks and check stubs showing payments from the Tribe to Lewis and Tein that the Bermudezes claimed they received from Roman, the Tribe's attorney. In response, Lewis and Tein subpoenaed Roman for a deposition. Roman filed an emergency motion for protective order and to quash the subpoena based on tribal immunity.

a. Response to Emergency Motions for Protective Order and to Quash Subpoenas. Lewis and Tein responded to Roman's motion. In their response, Lewis and Tein said that if the Tribe authorized Roman to disclose the checks to the Bermudezes, then it "waived its sovereign immunity as to the subject matter of the act." Roman's "act" of giving the checks "waived sovereign immunity as to the subject matter of his action." Lewis and Tein described the nature and limitation of the sovereign immunity waiver. "If [ ] Roman was actually working in his tribal capacity," they wrote, "then he waived sovereign immunity as to the subject matter of his disclosure by injecting himself and the Tribe into this case." Lewis and Tein, then, defined "the subject matter of the disclosure—the checks and the check stubs, as well as the underlying documents pertaining to them."

Lewis and Tein relied, primarily, on a federal district court decision out of Idaho, Knox v. United States Department of the Interior, No. 4:09-CV-162-BLW, 2012 WL 465585, at *1 (D. Idaho Feb. 13, 2012). Lewis and Tein, describing Knox, wrote that the tribal members in that case "had injected themselves into the litigation by seeking to file an amicus brief and declaration of the tribal officers concerning the Tribes' gaming operation." Lewis and Tein acknowledged that "the filing of these documents did not waive the Tribes' sovereign immunity generally." However, quoting from the Knox case, Lewis and Tein wrote that by inserting itself in the litigation, the Idaho tribe gave a limited waiver of its immunity "to resist a deposition limited to the topics covered in their Declarations." (This last part was bolded.) The Idaho federal court, the pair explained, "granted the plaintiffs the right to take deposition of the tribal members limited to the matters contained in the tribal official's declarations." In the response's conclusion section, Lewis and Tein sought the same limited relief as in Knox: to take the deposition of Roman in connection with the disclosure of the sixty-one checks and check stubs.

b. Hearing on Emergency Motions for Protective Order and to Quash Subpoenas. At the hearing on Roman's motion to quash, Lewis and Tein made the same points. Citing again to the Knox case, they told the trial court:

> The [Knox] Court granted the motion to compel attendance of these [tribal] lawyers at the depositions to quote, "Answer questions limited to the matters relevant to the contents of the declarations they filed in this case," unquote.
>
> That is all we are seeking.

Lewis and Tein defined the scope of the inquiry to "questions about when [Roman] gave those records, what [he] said to the person [he] gave the records to, how [he] got the records, where [he] gave it to [the Bermudezes], [and his] communications with the [Bermudezes' attorney]."

At the end of the hearing, the trial court explained that it was "inclined to say that there is a waiver by the production of those documents." However, the trial court continued, "I think there is a limited issue here and I am limiting the scope of the discovery to those questions that [Lewis and Tein] just proffer[ed] that he wanted to ask." "I'm going to find that there is sovereign immunity," the trial court ruled, but "I believe the actions of turning those checks over have at least resulted in a limited waiver of that immunity. So to that extent, I'm going to overrule [Roman's] immunity objection." After the trial court gave its oral ruling, Lewis and Tein clarified the scope of any appeal, "So the only thing that Your Honor is ruling on today ... is so it's a narrow issue for the—the narrow issue for the Third DCA is [ ] Roman's emergency motion." The trial

court's written order denied Roman's emergency motion to quash the subpoena, and confirmed its "find[ing] that Mr. Roman gave a limited waiver of sovereign immunity by disclosing checks and check stubs to plaintiffs' counsel."

c. Response to Miccosukee Tribe of Indians of Florida's Petition for Writ of Certiorari. As promised, the Tribe filed a petition for writ of certiorari with our court to quash the trial court's order. In their response to the petition, Lewis and Tein summarized their position that "[e]ven if sovereign immunity applies, Mr. Roman gave a limited waiver, as the trial court found here, by voluntarily disclosing the checks and check stubs to [the Bermudezes]." Lewis and Tein described the trial court's order under review as finding "a limited waiver, thus permitting [Roman's] deposition." Lewis and Tein argued the trial court's "decision to allow the deposition should be affirmed because ... Mr. Roman's actions constituted a limited waiver of sovereign immunity." Relying again on the Knox case, Lewis and Tein wrote that Roman "waived sovereign immunity as to the subject matter of his disclosure" and they "are permitted to take discovery from [ ] Roman regarding the subject matter of the disclosure—the checks and check stubs, as well as the underlying documentation pertaining to them." Lewis and Tein concluded that the trial court was correct in "finding that [ ] Roman gave a limited waiver of sovereign immunity by injecting himself into the trial court litigation."

d. The Bermudez Decision. In Bermudez, we described the Tribe's petition as seeking "certiorari relief from an order denying the Tribe's Motion for Protective Order and to Quash Subpoena for Deposition issued to" Roman, the Tribe's attorney. Bermudez, 92 So.3d at 232. We, likewise, explained that "the inquiry desired to be made of [Roman] [was] solely whether Lewis Tein, PL's legal bills were made by the Tribe or the individual defendants." Id. at 234. It was in this context that we found "the Tribe's and Mr. Roman's conduct constituted a clear, explicit, and unmistakable waiver of the Tribe's claim to sovereign immunity," id. at 235, and denied the petition for writ of certiorari.

* * *

From this record, the extent of the Tribe's immunity waiver in the Bermudez case is clear. The Tribe was immune from the Bermudez lawsuit but waived its immunity to a limited extent to allow Roman's deposition about the disclosure of the sixty-one checks and check stubs. Lewis and Tein asked for a limited waiver, and described the waiver as allowing them to depose the Tribe's attorney about the disclosure. The trial court granted a limited waiver on those terms. Lewis and Tein, in the Bermudez appeal, described the trial court's order as a limited waiver in arguing to deny the Tribe's certiorari petition.

We rely on the same Knox case that Lewis and Tein relied on, and that we cited in Bermudez. In Knox, "the Tribes asked, and were granted, the right to file an amicus brief accompanied by Declarations [of three tribe members] that discussed the Tribes' gaming operations." Knox, 2012 WL 465585, at *1. The federal district court concluded that although the filing of these declarations "did not waive the Tribes' sovereign immunity generally, it did waive the right" of the three tribal executives "to resist a deposition limited to topics covered in their Declarations." Id. If the Tribe dips its toe in the litigation waters, the reasoning goes, it can be asked about its toe but not the whole body.

Here, too, Roman, on the Tribe's behalf, dipped his toe in the ongoing Bermudez litigation by giving to the Bermudezes the

checks and check stubs. As in Knox, the Tribe maintained its immunity generally, but waived it to the limited extent that its tribal attorney was subject to a deposition about the checks. That was the limited waiver advocated by Lewis and Tein, adopted by the trial court, and the subject of the petition for writ of certiorari that was before the court in Bermudez.

Importantly, filing the declarations in Knox, while a limited immunity waiver, did not open up the Idaho tribes to being hauled into court as defendants in that case. The federal district court had "already denied plaintiffs' attempt to add the Tribes as defendants, holding that the Tribes were protected by sovereign immunity." Id. The amicus brief and attached declarations didn't open the sovereign immunity door any more than allowing the deposition of the tribal executives on the subject of the declarations.

Likewise in this case, the Bermudez limited immunity waiver did not open the door to the Miccosukee Tribe being hauled into court in the underlying Bermudez case, or any subsequent cases. The limited waiver in Bermudez opened the door a crack for the Roman deposition about the checks, but it didn't bust the door open to allow in everything that happened after the deposition, including the allegations of the Tribe's perjury, obstruction of justice, and vexatious litigation in the five years that followed.

While participating in litigation is not a one-way street, as we explained in Bermudez, the length of the street extends only so far as the Tribe's participation. In Knox, the Idaho tribes participated in the litigation to the extent they filed the amicus brief and attached the declarations of the three tribal executives. Tribal immunity was waived only to allow the plaintiffs in that case to depose the tribal executives about the substance of the declarations. In Bermudez, the Tribe participated by authorizing Roman to give the checks to the plaintiffs. Lewis and Tein argued for a limited immunity waiver to depose Roman about the checks and check stubs; the trial court granted the "limited waiver"; and we refused to quash the limited waiver by denying the petition for writ of certiorari.

Our holding in Bermudez could not have found a waiver of sovereign immunity beyond what the facts dictated, what Lewis and Tein requested, and what the trial court ordered. We did no more than deny the petition to review the trial court's order allowing the Tribe's attorney to be deposed about the checks and check stubs, and confirm the limited waiver of immunity. Reading Bermudez for a broader waiver of the Tribe's immunity, as the trial court did here, is not supported by the facts of the Bermudez case, Lewis and Tein's opposition to the motion to quash, the trial court's order, and the parties' arguments before this court.

2. The Tribe's Litigation Conduct

[4] In addition to the Bermudez limited waiver, the trial court found a clear, explicit, and unmistakable waiver of the Tribe's sovereign immunity based on the Tribe's litigation conduct during the five years after Bermudez—frivolous lawsuits, false statements, and obstruction of justice. The Tribe contends that bad litigation conduct in one case does not constitute an immunity waiver in a subsequent, related case.

[5, 6] We begin by noting that nothing in this opinion precludes a trial court from sanctioning a tribe for bad faith conduct or vexatious litigation in the case where the conduct occurred. Where the tribe chooses to litigate in our courts, it must follow the same rules that apply to all litigants: no lying; no destroying evidence; no filing claims without a basis in law or fact. Here,

for example, the trial court sanctioned the Miccosukee Tribe in the first and second state court actions for claims that were "baseless" and brought in "bad faith." Assuming the allegations in the complaint are true, the sanctions were entirely proper in the case where the Tribe was actively litigating.

[7] This case presents a much narrower issue: Was the Miccosukee Tribe's litigation in Bermudez, the first and second state court actions, and the federal court action a clear, explicit, and unmistakable waiver of its sovereign immunity, opening the door to the Tribe being sued by Lewis and Tein in a subsequent, related case for malicious prosecution and civil liability under section 772.103(3)? The general rule is that a tribe's immunity waiver in litigating one case does not waive immunity in subsequent cases. Two decisions of the federal appellate courts explain the point well.

In McClendon v. United States, 885 F.2d 627 (9th Cir. 1989), two couples sued the Colorado River Tribe for breach of a lease agreement. Id. at 628. The federal trial court dismissed the case for lack of subject matter jurisdiction based on tribal sovereign immunity. Id. at 629. On appeal, the couples argued that the Tribe waived its immunity regarding its rights to the leased property because it had initiated and litigated an earlier case over the same property in 1972. Id. at 629–30. The Ninth Circuit affirmed, explaining that while "[i]nitiation of a lawsuit necessarily establishes consent to the court's adjudication of the merits of that particular controversy," the "tribe's waiver of sovereign immunity may be limited to the issues necessary to decide the action brought by the tribe; the waiver is not necessarily broad enough to encompass related matters, even if those matters arise from the same set of underlying facts." Id. at 630. "The initiation of the suit, in itself," the court continued, "does not manifest broad consent to suit over collateral issues." Id. at 631. In response to the argument "that allowing the Tribe to sue without exposing itself to suit for subsequent related matters is unfair," the Ninth Circuit, quoting from the United States Supreme Court, explained: "[t]he perceived inequities of permitting the Tribe to recover from a non-Indian for civil wrong in instances where a non-Indian allegedly may not recover against the Tribe simply must be accepted in view of the overriding federal and tribal interests in these circumstances." Id. (quoting Three Affiliated Tribes v. Wold Eng'g, 476 U.S. 877, 893, 106 S.Ct. 2305, 90 L.Ed.2d 881 (1986)).

Likewise, in Jicarilla Apache Tribe v. Hodel, 821 F.2d 537 (10th Cir. 1987), an oil company sued the tribe "seeking to pay adjusted bonuses to preserve its interests in certain oil and gas leases." Id. at 538. The federal trial court dismissed the lawsuit "for lack of jurisdiction over the Tribe." Id. The tribe's earlier litigation over the same oil and gas leases, the court explained, was not "a sufficiently unequivocal expression of waiver in subsequent actions related to the same leases." Id. at 539.

[8] The United States Supreme Court has extended the general rule—that the tribe's immunity waiver in one lawsuit does not open the door to waiver in a related suit—to compulsory counterclaims.[5] That is, even if the tribe waives its immunity by suing a non-tribe party, the immunity waiver does not extend to the

5. There is an exception for recoupment counterclaims arising out of the same facts as the underlying lawsuit, but the exception does not apply to Lewis and Tein's claims (and they do not contend that it does).

non-tribe's compulsory counterclaims in the same litigation.

In Oklahoma Tax Commission v. Citizen Band Potawatomi Indian Tribe, 498 U.S. 505, 111 S.Ct. 905, 112 L.Ed.2d 1112 (1991), the tribe sued the state for injunctive relief prohibiting the state from collecting state cigarette taxes on tribe property. Id. at 507, 111 S.Ct. 905. The state counterclaimed for a declaratory judgment that its tax lien was enforceable and an injunction for the tribe to stop selling cigarettes without collecting state taxes. Id. at 507–08, 111 S.Ct. 905. The tribe moved to dismiss the counterclaims because it had not waived its sovereign immunity and could not be sued by the state. Id. at 508, 111 S.Ct. 905. The state responded that its counterclaims were "compulsory" under Federal Rule of Civil Procedure 13(a), which requires a party to bring a counterclaim that "arises out of the transaction or occurrence that is the subject matter of the opposing party's claim." Id. at 509, 111 S.Ct. 905; Fed. R. Civ. P. 13(a). Even where the tribe is affirmatively litigating based on the same facts as the opposing party's claim, the Court held, "a tribe does not waive its sovereign immunity from actions that could not otherwise be brought against it merely because those actions were pleaded in a counterclaim to an action filed by the tribe." Citizen Band, 498 U.S. at 509, 111 S.Ct. 905.

[9, 10] The general rule still holds even if the tribe's sovereign immunity is deeply troubling to the courts, and results in unfairness and inequity to the non-tribe party. See Lewis v. Norton, 424 F.3d 959, 963 (9th Cir. 2005) ("We agree with the district court's conclusion that this case is deeply troubling on the level of fundamental substantive justice. Nevertheless, we are not in a position to modify well-settled doctrines of tribal sovereign immunity. This is a matter in the hands of a higher authority than our court."); Wichita & Affiliated Tribes of Oklahoma v. Hodel, 788 F.2d 765, 781 (D.C. Cir. 1986) ("Immunity doctrines inevitably carry within them the seeds of occasional inequities; in this case the Wichitas have used the courts as both a sword and shield. Nonetheless, the doctrine of tribal immunity reflects a societal decision that tribal autonomy predominates over other interests."). For example, even where a tribe engages in vexatious and bad faith litigation in a prior lawsuit, the unfairness and inequity to the non-tribe party still does not waive the tribe's immunity in a subsequent case arising out of the same facts.

In Beecher v. Mohegan Tribe of Connecticut, 282 Conn. 130, 918 A.2d 880 (2007), the tribe sued one of its former employees to enjoin him "from communicating any confidential information pertaining" to the tribe. Id. at 883. In a subsequent lawsuit, the former employee, now the plaintiff, alleged the tribe's earlier lawsuit was "vexatious," in that it was "an attempt to extort money" and part of a larger "threat[ ] to disclose confidential information" about the former employee. Id. at 882–83. The bad faith purpose of the tribe's earlier lawsuit, the former employee alleged, was to "restrain [him] from making adverse comments [about the tribe] to relevant state authorities" while the tribe was "in need of regulatory approval in order to purchase various gambling enterprises in Pennsylvania." Id. at 883. The tribe moved to dismiss the former employee's lawsuit "because, absent consent or congressional abrogation, it enjoy[ed] sovereign immunity from suit in state court as a federally recognized Indian tribe." Id. The former employee "argued that the [tribe] had waived that immunity by having commenced the prior action against the plaintiffs in state court." Id. The Connecticut Supreme Court

agreed with the tribe "that, in bringing the prior action in state court, it consented only to the adjudication of the merits of that action, and not to the adjudication of any subsequent state court claims." Id. at 883–84.

"In its prior action," the court explained, the tribe "necessarily consented to the state court adjudication of its affirmative claims, including any special defenses and recoupment counterclaims related thereto." Id. at 886. However, "[t]hat consent to the adjudication of its affirmative claims did not . . . constitute a blanket waiver of its tribal sovereign immunity in the prior action, let alone in any subsequent action." Id. Applied to the former employee's allegations of vexatious litigation, threats, and extortion, the court held that his "present claim, which alleges that the defendant's prior action constituted vexatious litigation, neither falls within any valid exception to nor constitutes a waiver of the broad tribal sovereign immunity federal law affords to Indian tribes." Id. In response, the former employee, too, appealed to the court's "reason and simple fairness." Id. at 887. "Neither reason nor fairness," the Connecticut Supreme Court concluded, "permits us to disregard the well established doctrine of tribal sovereign immunity." Id. at 887.

We are persuaded by Beecher. First, its reasoning is consistent with the United States Supreme Court and federal appellate court cases that have applied immunity and found no waiver even where the results are deeply troubling, unjust, unfair, and inequitable. Beecher, likewise, is consistent with the federal case law that the tribe's immunity waiver in one suit does not waive immunity in a second suit arising out of the same subject matter. If the unfairness and inequity of a tribal employee negligently killing or battering someone is not enough to waive immunity,[6] it follows that allegations of vexatious and bad faith litigation are also not enough to waive or abrogate it.

Second, we are persuaded by Beecher because we cannot find a single case, and none has been cited to us, holding that litigation conduct in one lawsuit is a clear, explicit, and unmistakable waiver of tribal immunity in a subsequent, related lawsuit. In all the cases that have been brought to our attention, the Indian tribe explicitly waived immunity in that case, or the tribe's active participation in litigation waived immunity in the case in which they participated, and not a subsequent case.[7]

6. See, e.g., Furry v. Miccosukee Tribe of Indians of Fla., 685 F.3d 1224 (11th Cir. 2012) (finding tribal immunity where tribal employees knowingly overserved alcohol to casino patron and watched her get into her car intoxicated, resulting in the patron's death in an automobile accident); Miller v. Coyhis, 877 F.Supp. 1262 (E.D. Wis. 1995) (finding tribal immunity where one tribal employee assaulted and battered another).

7. See Rupp v. Omaha Indian Tribe, 45 F.3d 1241, 1244 (8th Cir. 1995) (the "Tribe's act of filing suit to quiet title in the disputed lands, combined with explicit language found in its complaint and its explicit waiver of immunity with respect to the counterclaims during the pendency of its suit, constitute[d] an express and unequivocal waiver of the Tribe's sovereign immunity"); Confederated Tribes of the Colville Reservation Tribal Credit v. White (In re White), 139 F.3d 1268, 1271 (9th Cir. 1998) (tribal agency filing collection action in the bankruptcy case waived immunity in that bankruptcy case); United States v. James, 980 F.2d 1314, 1320 (9th Cir. 1992) (tribe having affirmatively provided documents in case, it waived immunity with regard to those documents in that case); United States v. Oregon, 657 F.2d 1009, 1014 (9th Cir. 1981) (tribe waived sovereign immunity by intervening in the case and consenting to litigate all disputes in federal district court); Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria v. Ceiba Legal, LLP, 230 F.Supp.3d 1146 (N.D. Cal. 2017) (Indian tribe sued under federal Lanham Act and was

The tribe's waiver in one case—whether by explicit waiver or active participation—does not represent a waiver in a subsequent case in the same litigation.

[11] Applied here, the Miccosukee Tribe waived its sovereign immunity in Bermudez by participating in the litigation (giving the checks and check stubs to the Bermudezes), and in the first and second state court actions and the federal court action, by affirmatively litigating as the plaintiff. Because of the immunity waivers, the state and federal courts in those cases were entitled to sanction the Tribe for its litigation conduct—and they did. The immunity waivers in those four cases, however, do not extend to subsequent litigation, even if the subsequent case is related and arises out of the same facts. Where the prior litigation ends and the new case begins is the point that the waiver becomes unclear and not explicit. As in all the cases cited in footnote seven, the Tribe's conduct and active participation opened itself up to litigation in the same cases in which the conduct occurred and the participation happened—the Bermudez case, the first and second state court actions, and the federal court action—but it did not act as a clear, explicit, and unmistakable waiver in a subsequent case on the same subject matter, like this one.

CONCLUSION

It is a "settled and invariable principle, that every right, when withheld, must have a remedy, and every injury its proper redress." Marbury v. Madison, 5 U.S. 137, 147, 1 Cranch 137, 2 L.Ed. 60 (1803). Lewis and Tein had a right not to have their reputations ruined and their business destroyed by the Tribe. Like any injured party, if the allegations are true they should have proper redress for their injuries. But just as every right has its remedy, every rule has its exception. The exception here is sovereign immunity. Granting immunity to Indian tribes is a policy choice made by our elected representatives to further important federal and state interests. It is a choice to protect the tribes understanding that others may be injured and without a remedy. The immunity juice, our federal lawmakers have declared, is worth the squeeze. Still, some suffer from the squeezing, including car accident victims, beaten detainees, and Lewis and Tein. We can only respond by repeating the words of Justice O'Connor in the Three Affiliated Tribes case:

> The perceived inequity of permitting the Tribe to recover from a non-Indian for civil wrongs in instances where a non-Indian allegedly may not recover against the Tribe simply must be accepted in view of the overriding federal and tribal interests in these circumstances, much in the same way that the perceived inequity of permitting the United States or North Dakota to sue in cases where they could not be sued as defendants because of their sovereign immunity also must be accepted.

Three Affiliated Tribes, 476 U.S. at 893, 106 S.Ct. 2305. Because the Tribe did not clearly, unequivocally, and unmistakably waive its immunity as to this case, we reverse the trial court's order and remand for the trial court to grant the Tribe's motion to dismiss on sovereign immunity

therefore liable for attorney's fees resulting from the same litigation); United States v. Snowden, 879 F.Supp. 1054, 1056 (D. Or. 1995) (once tribe voluntarily appeared in court and complied with subpoena, it waive immunity with regard to those documents in the case in which the documents were subpoenaed); Cal. Valley Miwok Tribe v. Cal. Gambling Control Comm'n, No. D068909, 2016 WL 3448362, at *2 (Cal. Ct. App. June 16, 2016) (tribe liable to pay costs in lawsuit that it brought against state agency).

grounds and dismiss the case as to the Tribe.

Reversed and remanded with instructions.

The BANK OF NEW YORK MELLON, etc., Appellant,

v.

Keith A. SIMPSON, Appellee.

No. 3D16–2445

District Court of Appeal of Florida, Third District.

Opinion filed August 9, 2017

Rehearing Denied September 26, 2017

Background: After mortgagor and mortgagee had entered into settlement and release agreement and consent final judgment was entered in foreclosure proceeding, mortgagor challenged judgment for mistake, inadvertence, or fraud. The Circuit Court, Miami–Dade County, No. 11–32903, Eric William Hendon, J., entered order vacating judgment. Mortgagee appealed.

Holding: The District Court of Appeal, Suarez, J., held that vacation of consent final judgment was not warranted based on inadvertence, mistake, or fraud.

Reversed and remanded.

1. Appeal and Error ⇐982(1)

The standard of review of an appeal from the grant of a motion for relief from judgment based on mistake, inadvertence, or fraud is usually abuse of discretion. Fla. R. Civ. P. 1.540(b).

2. Judgment ⇐90

Vacation of consent final judgment based on settlement and release agreement in foreclosure proceeding was not warranted based on inadvertence, mistake, or fraud; motion for relief from judgment was based on generalized allegation of fraudulent practices in the mortgage industry, there was no evidence of any fraud in the underlying mortgage and note documents, and there was no evidence of duress. Fla. R. Civ. P. 1.540(b).

An appeal from a non-final order from the Circuit Court for Miami–Dade County, Eric William Hendon, Judge. Lower Tribunal No. 11–32903

Lapin & Leichtling, LLP and Adam B. Leichtling and Anne Janet Hernandez Anderson, for appellant.

Jacobs Keeley, PLLC and Bruce Jacobs and Court Keeley, for appellee.

Before SUAREZ, EMAS, and LOGUE, JJ.

SUAREZ, J.

The Bank of New York Mellon ["BNYM"] appeals from the lower court's order vacating the December 6, 2013 Consent Final Judgment of Foreclosure, as well as the Settlement and Release Agreement between BNYM and homeowner Keith A. Simpson ["Simpson"]. We reverse and remand for reinstatement of the Final Judgment.

Simpson defaulted on his mortgage in 2011. In 2013 the parties entered into a Settlement and Release Agreement [SRA] by which the Simpsons agreed to enter into a Consent Final Judgment in exchange for an extended foreclosure sale date and BNYM's waiver of its right to seek a deficiency judgment. The SRA in-

EXAMPLE OF LEGAL WRITING NUMBER TWO

246 So.3d 490
District Court of Appeal of Florida, Third District.

Alfonso "Alfie" LEON, Appellant,
v.
Joe CAROLLO, et al., Appellees.

No. 3D18–220
|
Opinion filed May 2, 2018

Synopsis

Background: Unsuccessful candidate in election for city commission seat brought action challenging the election and alleged that the winning candidate failed to meet a residency requirement. After a bench trial, the Circuit Court, Miami–Dade County, Thomas J. Rebull, J., dismissed action as an improper post-election challenge and also concluded that winning candidate had met the residency requirement. Unsuccessful candidate appealed.

[Holding:] The District Court of Appeal, Luck, J., held that city charter's requirement that a candidate for city commission reside in the district for one year prior to qualifying was a qualification to run for office rather than an eligibility requirement to hold office.

Affirmed.

West Headnotes (3)

[1] **Municipal Corporations**
Eligibility
Public Employment
Elective office

For municipal candidates, courts, when deciding a post-election challenge to a candidate's constitutional eligibility to hold office, look to the city's constitution, i.e., its charter, for the eligibility requirements to hold office. Fla. Stat. Ann. § 102.168(3)(b).

Cases that cite this headnote

[2] **Election Law**
Grounds
Municipal Corporations
Eligibility

If a post-election challenge is to the winning candidate's failure to meet the municipality's eligibility requirements for holding office, then it is a proper attack on the candidate ineligibility under statute allowing for post-election challenges to a candidate's eligibility, but if the challenge is to the winning candidate's qualifications to run for office, i.e., the failure to meet one of the necessary, statutory steps to qualify to run for office, then it is an improper post-election challenge, and must be dismissed. Fla. Stat. Ann. § 102.168(3)(b).

Cases that cite this headnote

[3] **Election Law**
Grounds
Municipal Corporations
Eligibility
Public Employment
Residence or domicile

City charter's requirement that a candidate for city commission reside in the district for one year prior to qualifying was a qualification to run for office rather than an eligibility requirement to hold office, and thus an unsuccessful candidate in election for city commission seat could not maintain post-election challenge in which he alleged that the winning candidate failed to meet the one-year residency requirement; one-year residency requirement was for candidates and not commissioners, and the title and other parts of the charter referred to the section containing the one-year residency requirements as a qualification provision. Fla. Stat. Ann. § 102.168(3)(b).

1 Cases that cite this headnote

*491 Lower Tribunal No. 17–26678, An Appeal from the Circuit Court for Miami–Dade County, Thomas J. Rebull, Judge.

Attorneys and Law Firms

KYMP, LLP, Juan–Carlos "J.C." Planas and Matthew S. Sarelson, Miami, for appellant.

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Before, ROTHENBERG, C.J., and SCALES and LUCK, JJ.

Opinion

LUCK, J.

As a general rule, Florida courts have no inherent power to determine an election contest after a candidate has been elected. The legislature created a narrow exception to the no-inherent-power rule for post-election challenges where the successful candidate is ineligible for the nomination or office in dispute. The issue in this case is whether the requirement in the Miami city charter that a city commission candidate reside in the district at least one year before the qualifying date is an eligibility requirement, and therefore, within the narrow exception created by the legislature. Because we conclude that it is not, the courts have no inherent power to determine this post-election contest based on Miami's one-year-residency requirement for city commission candidates, and the case was properly dismissed by the trial court.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

On November 21, 2017, Joe Carollo won a run-off election against Alfonso "Alfie" Leon for the district three seat on the Miami city commission. The results were certified on November 27, and eight days later, Leon filed an emergency amended verified complaint contesting the election *492 under Florida Statutes section 102.168(3)(b).

The complaint alleged that Miami city charter section 4(c) required commission candidates to reside in the district at least one year prior to qualifying for election. Carollo, Leon's complaint alleged, did not reside in district three within one year of the September 23, 2017 qualifying deadline for the commission election. Leon sought a judgment overturning the election because Carollo was ineligible to serve as the district three commissioner, and an order to rescind the certification of Carollo as the winner of the November 21 election.

The trial court held a four-day bench trial in January 2018. At the end of it, and after post-trial briefing, the trial court dismissed the lawsuit as an unauthorized and improper post-election challenge under section 102.68(3)(b) because the one-year-residency requirement was not an eligibility requirement to hold office. The trial court also concluded, on the merits, that Carollo had proven he resided in district three at least one year before qualifying for election.

Leon appeals both rulings. We do not address the merits of Leon's residency challenge because we agree with the trial court that the lawsuit was due to be dismissed as an unauthorized post-election challenge to Carollo's qualifications to run for office. [1]

DISCUSSION

While at common law there was no right to a post-election challenge, the legislature added section 102.168(3)(b) to allow a post-election challenge based on the "[i]neligibility of the successful candidate for nomination or office in dispute." [2] § 102.168(3)(b), Fla. Stat. (2017); see also Burns v. Tondreau, 139 So.3d 481, 485 (Fla. 3d DCA 2014) ("Because 'there is no common law right to contest elections, any statutory grant must necessarily be construed to grant only such rights as are explicitly set out.... In 1999, the Florida Legislature amended section 102.168 to allow for post-election challenges based on the successful candidate's ineligibility for the nomination or office in dispute." (quoting McPherson v. Flynn, 397 So.2d 665, 668 (Fla. 1981))). In Burns, we explained what section 102.168(3)(b) means by a successful candidate's "ineligibility" for office.

[1] Section 102.168(3)(b) ineligibility, we concluded in Burns, refers to "constitutional ineligibility"—"the constitutional requirement for holding the office sought." Burns, 139 So.3d at 484. Section 102.168(3)(b) allows a post-election challenge to "a candidate's constitutional eligibility to hold office." Id. For municipal ***493** candidates, like the Miami district three commissioner, we look to the city's constitution—its charter—for the eligibility requirements to hold office. See id. ("[T]he City is a municipality, and the paramount law of a municipality is its charter .... [Thus], the City's Charter establishes a person's eligibility to serve as mayor." (quotation omitted)); see also id. at 487 ("[T]he Charter sets forth the constitutional eligibility requirements for holding the office at issue.").

The Burns court was careful to distinguish "constitutional eligibility" from qualification requirements, i.e., the "candidate's required steps to qualify to run for office." Id. Section 102.168(3)(b), we explained, does not allow post-election challenges to "the necessary, statutory steps" taken by the candidate "to qualify to run for office." Id. "[Q]ualification issues," we said, "cannot be raised after an election has been held." Id. Therefore, any post-election challenge to a candidate's qualifications to run for office is not authorized by section 102.168(3)(b).

[2] When faced, as here, with a section 102.168(3)(b) post-election challenge to election results, we are left with this question: does it challenge whether the winning candidate met the eligibility requirements in the constitution or charter for holding office; or does it challenge whether the winning candidate took the required steps to qualify to run for office. If the challenge is to the winning candidate's failure to meet the municipality's eligibility requirements for holding office, than it is a proper section 102.168(3)(b) attack on the candidate's "ineligibility." If the challenge is to the winning candidate's qualifications to run for office (the failure to meet one of the necessary, statutory steps to qualify to run for office), then it is an improper post-election challenge, and must be dismissed.

Leon contends that the requirement in section 4(c) of the Miami charter that commission candidates reside in the district "at least one (1) year before qualifying" is an eligibility requirement for holding office in the city of Miami, and Carollo did not live in district three for at least one year before he qualified for the election. We disagree with Leon, and agree with the trial court in its thorough and well-reasoned ruling that the requirement in section 4(c) that a commission candidate reside in the district at least one year before qualifying was a required step to qualify to run for office, rather than a "constitutional eligibility" requirement to hold office, and therefore, the court had no inherent power to hear Leon's section 102.168(3)(b) post-election challenge.

The plain language of Miami charter section 4(c)

[3] We start with the best evidence of whether section 4(c) is an eligibility requirement to hold office or a qualification requirement to run for office—its text:

> *Qualifications of mayor and city commission; mayor, city commissioners, and other officers and employees not to be interested in contracts, etc.; franks, free tickets, passes or service.* Candidates for mayor shall be residents of the city for at least one (1) year prior to qualifying and shall be electors therein. Further, candidates for the city commission shall have resided within the district at least one (1) year before qualifying and be electors in the district, and shall maintain residence in that district for the duration of their term of office. The mayor, city commissioners, and other officers and employees shall not be interested in the profits and emoluments of any contract, job, work or service for the municipality. The mayor or any city commissioner who shall cease to possess any of the qualifications herein required ***494** shall forthwith forfeit his or her office, and any such contract in which any member is or may become interested may be declared void by the city commission.

Section 4(c) provides that the one-year-residency requirement applies to "candidates for the city commission." By its own terms, the one-year-residency

requirement is imposed on "candidates." There is no similar requirement for sitting "city commissioners."

The framers of the charter knew how to distinguish between requirements for "city commissioners" and those for "candidates," and did so in section 4(c). In the very next sentence after the one-year-residency requirement, the charter imposes on "city commissioners" the requirement that they "not be interested in the profits or emoluments of any contract, job, work, or service for the municipality." Not "candidates," but "city commissioners."

The framers of the charter also knew how to distinguish between residency requirements on "candidates" and ones for sitting officials. Section 4(c) imposes the one-year-residency requirement for "[c]andidates for mayor," as it does for "candidates for the city commission." Yet elsewhere in the charter the "mayor" is separately required to "resid[e] within the city at least one (1) year before qualifying." In section 4(c), "[c]andidates for mayor" must reside in the city at least one year before the qualifying date, and in section 4(b), the "mayor" must reside in the city at least one year before qualifying. There is no parallel provision for "city commissioners." The framers of the charter knew how to require that sitting elected officials reside in a particular place at least one year before an election, but chose not to include that requirement for "city commissioners." Only for "candidates for the city commission."

There are other clues in the charter that tell us the one-year-residency requirement is a qualification to run for office rather than an eligibility requirement to hold office. The title of section 4(c) says that what follows is a "[q]ualifications" provision. See Aramark Unif. & Career Apparel, Inc. v. Easton, 894 So.2d 20, 25 (Fla. 2004) ("We have previously stated that in determining legislative intent, we must give due weight and effect to the title of the section. The title is more than an index to what the section is about or has reference to; it is a direct statement by the legislature of its intent. (citation and quotation omitted)); Ex parte Knight, 52 Fla. 144, 41 So. 786, 788 (1906) ("The title is a part of the act, and should be construed as such in determining the subject designed to be regulated by the act."); see also Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 221 (Thomas/West 2012) ("The title and headings are permissible indicators of meaning."). And other parts of the charter tell "persons desiring to run for the office of city commissioner" what they need to do to be "qualified as provided" in section 4(c).

Spence–Jones v. Dunn

Because the text of section 4(c) requires a one-year residency for "candidates for the city commissioner" and not for "city commissioners," and the title and other parts of the charter refer to section 4(c) as a qualification provision, that should be the beginning and the end of our answer that the one-year-residency provision is a qualification to run for office rather than an eligibility requirement to hold the office. See Schoeff v. R.J. Reynolds Tobacco Co., 232 So.3d 294, 313 (Fla. 2017) (Lawson, J., concurring in part and dissenting in part) ("[O]ur first (and often only) step in statutory construction is to ask what the Legislature actually said in the statute based upon the common meaning of the words ***495** used." (citation omitted)); see also Holly v. Auld, 450 So.2d 217, 219 (Fla. 1984) ("[W]hen the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning." (quotation omitted)). But if we needed to look further at our precedent, it also supports the conclusion that section 4(c) is a qualification requirement to run for office.

We read it that way in Spence-Jones v. Dunn, 118 So.3d 261 (Fla. 3d DCA 2013). In Spence–Jones, the sitting Miami city commissioner filed to run for a third term. Id. at 262. A former city commissioner who had previously served in the same seat brought a declaratory judgment action "seeking to declare [the sitting commissioner] ineligible for re-election, alleging it would constitute an impermissible third consecutive term." Id.

The court, reading section 4(c), explained that "[t]he sole issue on appeal [was] a question of statutory interpretation." Id. The court found "no ambiguity in the charter provision," and "interpret[ed] it according to its plain meaning." Id. "The charter," we said, "specifically identifies the qualifications required to run for office. Section 4(c), titled 'Qualifications for mayor and city commission,' states 'candidates for the city commission shall have resided within the district at least one (1) year

before qualifying and be electors in that district, and shall maintain residence in that district during the duration of their term of office.' " Id. at 263 (emphasis in original) (quoting Miami, Fla., Charter, Part I.A. § 4(c)). The Spence–Jones court interpreted the same unambiguous charter provision we have at issue in this case, and read it as the "qualifications required to run for office."

As if to drive the point home, the Spence–Jones court reiterated that "to qualify for election, the office seeker must have resided within the district for one year." Id. And, "[o]nce again," the court concluded, "the term 'qualified' relates to qualification for election." Id. We left no doubt in Spence–Jones that the one-year-residency provision in section 4(c) is a qualification requirement to run for office.

Burns v. Tondreau

Burns, too, dealt with a North Miami election provision almost identical to section 4(c) of the Miami city charter. There, as here, the unsuccessful candidate in a runoff election filed a post-election challenge under section 102.168(3)(b), alleging that the successful candidate failed to file the residency documentation required by North Miami's election code, and she "had not continuously resided in the City for at least one year prior to qualifying." Burns, 139 So.3d at 483. The city election code provided that:

> (b) Any person seeking the office of mayor or councilperson must be a resident of the city and/or the respective district of North Miami for at least one (1) year prior to qualifying for office.
>
> (1) All candidates shall submit a sworn affidavit at the time of qualifying that provides their current address of legal residence and affirms that they have met the residency requirements pursuant to this section. The affidavit shall be on a form provided by the city clerk acting as the supervisor of elections.
>
> (2) In addition to filing the affidavit, candidates shall submit proof of residency which shall include one (1) of the following documents: voter's registration, driver's license, property tax receipt, homestead exemption, utility bill or lease agreement; all of which must have been in effect for at least one (1) year prior to qualifying.

***496** Id. at 483 n.2 (emphasis added) (quoting North Miami, Fla. Code § 6–78(b) (2014)).

This provision, we said, was part of the "qualification requirements necessary to run for office." Id. at 485. Because the unsuccessful candidate's challenge to the winning candidate's qualifications to run for office was post-election, rather than pre-election, we affirmed the trial court's dismissal of the unsuccessful candidate's post-election qualification challenge. "[G]enerally," we agreed, "courts have no inherent power to determine election contests nor do courts have jurisdiction to inquire into a person's qualification to run for office after that person had been duly elected." Id. (emphasis in original) (quoting from the trial court's order).

Here, section 4(c) is almost identical to the North Miami election code at issue in Burns. Section 4(c), like the North Miami election code, required candidates for the city commission to reside in the district at least one year prior to qualifying. Just as Burns read the North Miami election code as a qualification requirement to run for office, so too do we read the similar language in section 4(c) as a qualification to run for office. And just as Burns dismissed a post-election challenge based on the North Miami election code, so too must we affirm the dismissal of a similar challenge in this case. Burns, as the trial court noted in its ruling, compels a dismissal here.

CONCLUSION

Leon responds that if we read the section 4(c) one-year-residency requirement as a qualification to run for office, rather than an eligibility requirement to hold office, there would be no eligibility requirements for city commissioners. We disagree. We read other parts of the city charter to impose eligibility requirements on mayors, city commissioners, and other officeholders. And the Florida Constitution imposes eligibility requirements on all officeholders in the state. See, e.g., Fla. Const. § 4(a) ("No person convicted of a felony, or adjudicated in this or any other state to be mentally incompetent, shall be qualified to vote or hold office until restoration of civil rights or removal of disability.").

But even if there were no eligibility requirements for city commissioners, the voters of Miami, through their

democratically-approved charter, have agreed on the structure of their government, and the rules by which they want their leaders to be elected and serve. Our role is to apply this law as it is written, and not to write-in requirements that are not there or to fix holes that are. See City of Miami Beach v. Berns, 245 So.2d 38, 40 (Fla. 1971) ("Our duty is to interpret this law as it is written and, if possible, do so in a manner to prevent its circumvention."); Fla. Ry. Co. v. Adams, 56 Fla. 294, 47 So. 921, 923 (1908) ("It is our duty to declare the law as it is written. We cannot undertake by a construction of the statute to add to it or to subtract from it. Its language is plain and unambiguous."). Doing so subverts our role in the separation of powers, and the will of the people of Miami in consenting to be governed by its founding document. Surely the people of Miami didn't mean to leave out the eligibility requirements in the city charter, Leon says. Surely they did, as evidenced by the text they voted on and approved, we say.

Reading the text of the section 4(c) one-year-residency requirement, and our decisions in Spence–Jones and Burns, we conclude, as the trial court did, that it is a qualification requirement to run for office. Because "courts have no inherent power to determine election contests nor do courts have jurisdiction to inquire into a person's qualification to run for office after that person has been duly elected," ***497** Burns, 139 So.3d at 485 (emphasis in original), and section 102.168(3)(b) does not allow a post-election challenge to a candidate's failure to meet the qualification requirements necessary to run for office, we affirm the trial court's dismissal.

Affirmed.

All Citations

246 So.3d 490, 43 Fla. L. Weekly D994

Footnotes

1 Because we are not reaching the merits of Leon's claim, we do not address the arguments in the parties' briefs about the sufficiency of the evidence, the statute of limitations, unclean hands, and laches.

2 There are three other grounds for post-election challenges,

> (a) Misconduct, fraud, or corruption on the part of any election official or any member of the canvassing board sufficient to change or place in doubt the result of the election....
>
> (c) Receipt of a number of illegal votes or rejection of a number of legal votes sufficient to change or place in doubt the result of the election.
>
> (d) Proof that any elector, election official, or canvassing board member was given or offered a bribe or reward in money, property, or any other thing of value for the purpose of procuring the successful candidate's nomination or election or determining the result on any question submitted by referendum.

§ 102.168(3)(a), (c)-(d), Fla. Stat. (2017), but Leon has not raised these other grounds and they are not at issue in this appeal.

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