

**APPLICATION FOR NOMINATION TO THE COUNTY COURT**

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

**DATE:** August 8, 2019 Florida Bar No.: 0392715

**GENERAL:** Social Security No.: REDACTED

1. Name Sebrina L. Slack E-mail: sslack@surfcoastlaw.com

Date Admitted to Practice in Florida: October 2, 2000

Date Admitted to Practice in other States: Not Applicable

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

Wright & Casey, PA - Attorney

3. Business address: 340 North Causeway

City New Smyrna Beach County Volusia State FL ZIP 32169

Telephone (386) 428-3311 FAX (386) 427-9516

4. Residential address: REDACTED

City REDACTED County Volusia State FL ZIP 32130

Since 02/2006 Telephone ( ) REDACTED-

5. Place of birth: Daytona Beach, Volusia County, Florida

Date of birth: REDACTED Age: 48

6a. Length of residence in State of Florida: 43 years (Resident of Virginia 1995-2000)

6b. Are you a registered voter?  Yes  No

If so, in what county are you registered? Volusia County, Florida

7. Marital status: Married

If married: Spouse's name Donald E. Slack, Jr.

Date of marriage 11/21/2009

Spouse's occupation Retired

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)*

Not Applicable

9. Military Service (including Reserves)

*Service*                      *Branch*                      *Highest Rank*                      *Dates*

Not Applicable

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.

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.

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.

<i>Schools</i>	<i>Class Standing</i>	<i>Dates of Attendance</i>	<i>Degree</i>
George Mason Univ. School of Law	GPA = 3.00 (Top 50%)	08/1997 - 05/2000	Juris Doctorate
St. Thomas Univ. Graduate Business	NA	08/1993 - 05/1995	NA
University of Miami College of Arts	GPA = 2.927	08/1988 - 05/1992	Bachelor of Arts
Mainland Senior High School	GPA = 3.9	08/1985 - 06/1988	Diploma

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

George Mason University - School of Law

- Phillip C. Jessup International Law Moot Court Team - Best Regional Brief (1998)
- International Law Society - Secretary
- Corporate and Securities Track Specialization Certificate

University of Miami

- Bowman Ashe Scholarship (Academic)
- Member of the President's 100
- Tau Beta Sigma Honorary Sorority
- University of Miami Marching and Pep Bands

**NON-LEGAL EMPLOYMENT:**

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

<i>Date</i>	<i>Position</i>	<i>Employer</i>	<i>Address</i>
08/1992 - 07/1995	Assistant Librarian	St. Thomas Univ. School of Law	16401 NW 37 <sup>th</sup> Ave. Miami Gardens, FL
09/1995 - 08/1996	Assistant Librarian	Univ. of Virginia School of Medicine	PO Box 800793 Charlottesville, VA
09/1996 - 08/1997	Assistant Librarian	State Library of Virginia	800 E. Broad St. Richmond, VA

**PROFESSIONAL ADMISSIONS:**

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

<i>Court or Administrative Body</i>	<i>Date of Admission</i>
Florida Bar	October 2, 2000
United States General District Court Middle District of Florida	June 1, 2006

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

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

<i>Position</i>	<i>Name of Firm</i>	<i>Address</i>	<i>Dates</i>
Attorney	State Attorney's Office - 7 <sup>th</sup> Circuit	251 N. Ridgewood Daytona Beach, FL	10/2000 - 12/2002
Attorney	Florida Dept. of Revenue - Sales Tax	PO Box 7443 Tallahassee, FL	01/2003 - 10/2004
Attorney	Smith Hood Perkins Loucks Stout Bigman Lane & Brock PA	444 Seabreeze Blvd. Suite 900 Daytona Beach, FL	10/2004 - 04/2008
Attorney	Landis Graham French PA	145 E. Rich Ave. DeLand, FL	04/2008 - 03/2019
Attorney	Wright & Casey PA	340 N. Causeway  New Smyrna Beach	04/2019 - Present

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

I am currently an attorney with the law firm of Wright & Casey, PA. I primarily practice in the areas of general civil litigation and family law. In my civil practice, my typical clients include businesses or individuals with various legal issues including, landlord / tenant matters, contract disputes, homeowner association issues, employment issues, and some tort issues. In my family law practice, my typical clients are persons petitioning for dissolutions of their marriage and modifications or enforcement of existing court orders. As the former managing attorney, I was responsible for the business operations of the firm including, staff issues, budgets, and general office management.

At my prior firm of Landis Graham French, PA, I had a similar practice handling the same types of cases. Previously, while an associate with the law firm of Smith Hood Perkins, I practiced primarily in the area of general civil litigation, but also handled some family law and criminal defense matters. As an attorney for the Florida Department of Revenue, I represented the State in statutory appeals of sales tax assessments and prepared legal opinions on matters related to levies of sales tax and communications services tax. As an Assistant State Attorney, I prosecuted criminal cases for the State in the Juvenile Division, Misdemeanor Division, and Felony - Sex Crimes Division.

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	<u>0</u> %	Civil	<u>60</u> %
Federal Trial	<u>1</u> %	Criminal	<u>.5</u> %
Federal Other	<u>0</u> %	Family	<u>35</u> %
State Appellate	<u>0</u> %	Probate	<u>1</u> %
State Trial	<u>98</u> %	Other	<u>3.5</u> %
State Administrative	<u>1</u> %		
State Other	<u>        </u> %		
	<u>        </u> %		
TOTAL	<u>100</u> %	TOTAL	<u>100</u> %

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

Jury?	<u>6</u>	Non-jury?	<u>111</u>
Arbitration?	<u>2</u>	Administrative Bodies?	<u>5</u>

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

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).

05/01/2019 - Non-Jury

Inna Honaker vs. Angel Fernandez

2007-21020 FMNS - Judge Karen Foxman - 386-626-6590

Attorney for the Petitioner - Sebrina L. Slack, Esquire - 386-428-3311

Attorney for the Respondent - Heather Caeners, Esquire - 386-738-4708

02/26/2016 - Non-Jury

Darman Baysinger vs. Michelle Baysinger

2014-12860 FMDL - Judge Elizabeth Blackburn - 386-736-5948

Attorney for the Petitioner - Danny Philpott - 386-873-2884

Attorney for the Respondent - Sebrina L. Slack - 386-428-3311

06/08/2015 - Non-Jury

Unifirst Corporation vs. Colon Haire and 1560 JEG, Inc.

2013 33251 COCI - Judge Dawn P. Fields 386-257-6070

Attorney for the Plaintiff - John W. Gardner, Esquire - 813-651-0055

Attorney for the Defendant - Sebrina L. Slack, Esquire - 386-428-3311

05/27/2015 - Non-Jury

Kaiser Buick GMC Truck, Inc. vs. James Broome and Debra Broome

2013 22185 CONS - Judge Christopher Kelly - 386-822-5008

Attorney for the Plaintiff - Sebrina L. Slack, Esquire - 386-428-3311

Attorney for the Defendant - James C. Peterson, Esquire - 386-428-2464



08/19/2014 - 08/20/2014 - Non-Jury

Patricia Gibson vs. Comer Roofing Company, Inc.

2011 11764 CODL - Judge Robert A. Sanders, Jr. - 386-736-5947

Attorney for the Plaintiff - Heather Caeners, Esquire - 386-738-4708

Attorney for the Defendant - Sebrina L. Slack, Esquire - 386-428-3311

10/02/2013 - 10/04/2013 - Non-Jury

S.P. O.A. vs. Volusia County School Board

2013 - 000352E - Administrative Law Judge J. Peterson - 850-488-9675

Attorney for the Petitioner - Marla Rawnsley, Esquire - 386-882-1917

Douglas Rawnsley, Esquire - 386-212-6442

Attorney for the Respondent - Sebrina L. Slack, Esquire - 386-428-3311

- 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).

08/05/2019

Barbara Wells Scott vs Alvin Scott

2018 - 12275 FMDL - Judge Karen Foxman

Post-Judgment Enforcement - Dissolution of Marriage

Attorney for Petitioner - Sebrina Slack, Esquire - 386-428-3311

Attorney for Respondent - William F. Hathaway, Esquire - 386-423-5504

05/15/2019

Kathleen Yarbrough et al vs Michael Berger et al

2016 - 11018 CIDL - Judge Randell Rowe III

Declaratory Judgment Action

Attorney for Plaintiff - Sebrina Slack, Esquire - 386-428-3311

Attorney for Defendant - Thomas Collier, Esquire - 386-740-1887

04/18/2019

Christopher Craddock vs Sharon Craddock

2019 10536 FMDL - Judge Elizabeth Blackburn

Dissolution of Marriage

Attorney for Petitioner - Sebrina Slack, Esquire - 386-428-3311

Attorney for Respondent - Garrick Fox, Esquire - 386-248-2083

11/06/2018

\*\* vs. Volusia County School District

2018-5760 E (DOAH) - ALJ Jessica E. Varn

Educational Procedural Due Process Request

Qualified Representative for Petitioner - Jamison Jessup - 386-628-0295

Attorney for Respondent - Sebrina Slack, Esquire - 386-734-3451

07/30/2018

Roger Van Leuven vs. Kevin Eastham doing business as Tree Works

18-007168WRH (DOAH - Court of Compensation Claims)

Worker's Compensation Claim

Attorney for the Petitioner - John Russell, Esquire - 386-671-0911

Attorney for the Defendant - Sebrina Slack, Esquire - 386-734-3451

07/24/2018

Leesa Keeler vs Carini of Central Florida, Inc.

2018 -12635 CODL - Judge A. Christian Miller

Wage and Hour

Attorney for the Plaintiff - C. Ryan Morgan, Esquire - 407-420-1414

Attorney for the Defendant - Sebrina Slack, Esquire - 386-734-3451

- 27c. During the last five years, how frequently have you appeared at administrative hearings?  
.25 average times per month
- 27d. During the last five years, how frequently have you appeared in Court?  
8 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? 0% Defendants?  
0%
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.

From October 2000 through December 2002, I appeared in court on practically a daily basis as a prosecutor with the Office of the State Attorney for the Seventh Judicial Circuit. As a prosecutor, I was responsible for representing the State of Florida in criminal prosecutions which included court appearances for arraignments, pre-trials, trials, sentencing, and various other hearings. During my first year as a prosecutor, I was assigned to the juvenile division where I was responsible for as many as 300 open felony and misdemeanor cases before Judge John Watson III. My next assignment was in the misdemeanor division in New Smyrna Beach where I was the only misdemeanor prosecutor assigned to handle the docket before Judge Mary Jane Henderson. My last assignment as a prosecutor was in the Felony Sex Crimes Unit in Daytona Beach before Judge Shawn Briese. As a prosecutor, I tried seventy (70) non-jury juvenile cases, four (4) jury misdemeanor cases, thirteen (13) non-jury misdemeanor cases, and two (2) felony jury cases.

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.

I have not tried an arbitration case to award in the last five (5) years.

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

State of Florida vs. EC (Circuit Court -Juvenile Division - Judge John Watson III)

This case is personally significant to me not only because it was my first trial, but because it taught me one of the most important lessons a litigator can learn - the cardinal rule - prepare your case, but prepare your opponent's case better than he or she does. The ink was barely dry on my bar license when I was assigned a trial docket in the Juvenile Division with cases already set for trial. E.C., the juvenile defendant, was charged with Possession of a Controlled Substance. E.C. had several previous convictions for possession and was a suspected drug dealer. On December 11, 2000, I arrived at court prepared with a trial plan to prove the elements of the charged crime. I had my witnesses - the police and the FDLE analyst. During my case in chief through direct examination, I proved the substances were in fact controlled substances over repeated objections by the public defender, Mitch Wrenn and successfully moved them into evidence. Through the testimony of the police, I proved the juvenile was the driver of the vehicle and the controlled substances were recovered from the center console right under the defendant's elbow. Unfortunately, I did not overcome the defense's argument of constructive possession which created sufficient reasonable doubt that the controlled substances could have equally belonged to the unknown passenger who fled the scene. NOT GUILTY. Though it is a simple lesson, it is one of the most valuable - to be a successful trial attorney, you must know the elements to prove your case and more importantly you must know the elements necessary to defeat any defenses that threaten your case.

State of Florida vs. Curtis Mangran (2001 - 31879 CFAES - Judge Shawn Briese)

This case is likewise personally significant to me as I learned another invaluable lesson of a trial attorney - no matter how rock solid your case is when the law is applied to the facts, never underestimate the human element of the jury. This was one of my last cases as a prosecutor. I was second chair with Colleen Taylor, ASA, who was the more senior prosecutor in the Sex Crimes Unit. In the trial, I was responsible for the FDLE analysts and the similar fact witnesses. Curtis Mangran was a serial rapist who had previously served twenty (20) years for a rape conviction. Mr. Mangran had been charged with sexual assault in three cases. All of the cases had occurred in the same area of Daytona Beach on the beach side. Two of the victims were known prostitutes, but the third victim was an elderly woman who was checking turtle nests in the middle of the night. We decided to try the third victim's case first. The trial began on September 11, 2002 and was set for two days. The victim testified about the assault and her injuries. She positively identified the defendant. The FDLE analyst testified to the DNA evidence linking the defendant to the crime. The similar fact witnesses testified to their assaults and positively identified the defendant. The defense attorney, Clyde Shoemake, Esquire, presented testimony from the defendant that the defendant and the victim were engaged in a consensual relationship despite the forty (40) year difference in their ages. We placed our victim back on the stand to rebut the consensual relationship. We instructed the jury and sent them out to deliberate. We were confident a guilty verdict would be rendered within the hour. After an eternity of deliberations, the jury returned a verdict of NOT GUILTY of sexual assault, but GUILTY of aggravated battery on an elderly person. One of the jurors told us that only one person on the jury had held out on

convicting the defendant of sexual assault because he did not believe that DNA was reliable or that FDLE was trustworthy. The juror said the hold out had convinced everyone else to compromise on the lesser included charge. Fortunately, the defendant was eligible to be sentenced as a prison release re-offender and was sentenced to forty (40) years on the conviction. During jury selection, we had been very thorough in voir diring the jurors about DNA evidence and FDLE because there had been recent negative press regarding FDLE and faking results for certifications. Consequently, I learned from this case no matter how thorough your voir dire or evidence at trial, one hold out juror with a personal agenda can sway the entire jury to his or her view.

Sherry Gove et al vs Candace James, et al (2006 32066 FMCI - Judge Patrick Kennedy)

This case is significant to me because it was the first time I was able to assist my clients in a way that directly benefited the children involved. Without going into the personal details of this family situation, Mrs. Gove's daughter, Candace James, had a drug dependency problem and five children by various fathers. Mr. Gove and Mrs. Gove were caring for two of the children after removing the children from a questionable home where Ms. James was residing. When Ms. James absconded from Volusia County to avoid a felony warrant from drug court, Ms. James attempted to have the fathers of the children come to Florida and bring the children to Ms. James while she evaded the felony warrant. Through a series of emergency hearings, injunctions and a trial on a petition for temporary custody by extended family, I was able to keep the children with their grandparents and establish a reasonable court order for visitation by the fathers of the children. I know as an attorney I was able to remove these children from a difficult situation and place them with family members who can give them a better chance at succeeding in school and life.

Virginia Tizzano vs. Judith Tsitso (2008 13451 CIDL - Judge John Doyle)

This case is significant to me as I was able to truly help my client, Mrs. Tizzano, who relied on me to help her overcome a very personal trauma. Mrs. Tizzano was an elderly disabled woman who relied on others for daily assistance. Mrs. Tizzano hired Judith Tsitso to assist her in her home as a caregiver. After gaining Mrs. Tizzano's trust, Ms. Tsitso exploited Mrs. Tizzano by convincing Mrs. Tizzano to loan her monies and to allow her to use credit cards. Ms. Tsitso never repaid any monies and abandoned Mrs. Tizzano when she discovered the exploitation and demanded repayment. After making a demand for the return of all monies taken from Mrs. Tizzano, I was able to recover a civil judgment against Ms. Tsitso for treble the amount of monies taken. While the civil judgment proved to be uncollectible, it was instrumental in dealing with Mrs. Tizzano's creditors and collection agencies who contacted her for several months after we obtained the final judgment. As an attorney, there is no greater reward than being truly appreciated by your client and knowing that you were able to lessen the stress and strain a legal problem had caused them.

In re William St. Aubin (2010 21834 FMNS); In re Madelyn Rosima Trembley (2010 21833 FMNS); In re Dorothy Ann Karuch (2010 20251 FMNS); and In re Yudis Lee Mekalovsky (2010 10149 FMDL)

Each of these cases were significant to me because of the assistance I was able to quickly and efficiently provide my clients in dealing with the "system." In each of these cases, my clients were in their seventies or older. As a result of the Patriot's Act and various other post 9-11 legislation, they were unable to obtain passports, drivers' licenses, or social security benefits because the name on their birth certificate did not exactly match the name on their other forms of identification or documentation. In some cases, what was seemingly a minor issue such as, a misspelling on the birth certificate or a middle name added after baptism, prevented my client from providing required documents related to identity. In other cases, the issues were more significant such as the parents failing to tell the child that his or her name had been "Americanized" or that a different name and father was provided on the birth certificate. In all of these cases, my clients were frustrated and at a loss of what to do as government offices and employees had no answers for them. In each case, I obtained information regarding their personal history, documentation relevant to their identities, prepared a name change petition, helped them through the background check process, and obtained them a name change judgment which was accepted by authorities as proof of their identities. These cases are significant to me because each one illustrates the important role I can play as an attorney in the lives of individuals who have no idea how to navigate the system themselves, especially when faced with a bizarre circumstance of being told they have been using the wrong name their entire lives.

REDACTED

In this case, I was appointed by Judge Matthew Foxman to act as the guardian ad litem for the child who was the subject of a Supplemental Petition to Modify Time Sharing. Without going into the confidential details of the matter, this case was significant to me because through my efforts and experience I was able to prepare a thorough report and recommendation for the Court. As a result, a change was made that will be truly beneficial to the child, his family and his future.

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 drafted the Appellee Brief which is attached.

**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. I was a candidate for Circuit Judge in the Seventh Judicial Circuit, Group 4 from March 2016 - August 2016. I was a candidate for Circuit Judge in the Seventh Judicial Circuit, Group 15 from August 2017 - August 2018.

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

<i>Dates</i>	<i>Name of Agency</i>	<i>Position Held</i>
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.

Not Applicable

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

Not Applicable



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

Not Applicable

(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.

Not Applicable

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

No

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

Not Applicable

(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.

My husband and I own a tree farm in De Leon Springs, Florida, which we manage and operate as a sole proprietorship. We are equal partners in this business. We cultivate pine and natural hardwoods. My duties include handling the business books, maintaining the inventory of trees, maintaining the trees, and legal compliance. I do not intend to resign my position with this business, unless necessary after being appointed to the judiciary.

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.

In addition to practicing law, I have engaged in the business of cultivating trees.

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.

None.

**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 types or classifications of cases for which I would find it difficult to preside over as a judge.

**MISCELLANEOUS:**

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

Yes \_\_\_\_\_ No  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  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  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.
- No
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.  
Florida Department of Revenue - TAA 033662 - Communications Services Tax - Financial Information Services (09/20/2004)  
Florida Department of Revenue - TAA 04A008 - Sales and Use Tax - Lease or License for the Use of Real Property (02/03/2004)  
Florida Department of Revenue - TAA 03A044 - Sales and Use Tax - Capital Assessments (09/03/2003)  
Florida Department of Revenue - TAA 03A027 - Sales and Use Tax - Taxable Portion of Hotel Lease (05/26/2003)  
Florida Department of Revenue - TAA 03A022 - Sales and Use Tax - Capital Assessments (05/05/2003)
45. List any honors, prizes or awards you have received. Give dates.  
None
46. List and describe any speeches or lectures you have given.  
None
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.  
Volusia County Bar Association - President 2012-2013, Vice President 2011-2012, Treasurer 2010-2011, Secretary 2009-2010, Director 2007-2009

Volusia Flagler Association for Women Lawyers - Member

Blount Dunn Inn of Court - Member

- 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.

Volusia County Human Services Advisory Board (2011-2013)

Florida Bar Seventh Judicial Circuit Grievance Committee (2015-2018)

Tiger Bay Club of Volusia County, Florida (2016-Present)

Rotary Club of DeLand (Breakfast) (2018-Present)

- 48c. List your hobbies or other vocational interests.

Hunting, fishing, gardening, running for judge, and reading

- 48d. Do you now or have you ever belonged to any club or organization that in practice or policy restricts (or restricted during the time of your membership) its membership on the basis of race, religion, national origin or sex? If so, detail the name and nature of the club(s) or organization(s), relevant policies and practices and whether you intend to continue as a member if you are selected to serve on the bench.

No

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

I volunteer as a court appointed guardian ad litem for the family law division. I have served as the GAL in at least one (1) case per year for the last six (6) years. I am currently acting as a GAL for a case in which Judge Blackburn appointed me in late 2018. As a GAL, I meet with the children, family members, teachers, counselors and others in order to prepare a recommendation to the Court.

**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 legal education programs in the following substantive areas: Kaaa Statutory fix, probate, trust accounting, family law, domestic violence injunctions, practice before DOAH, law firm management, asset protection, and e-filing.

- 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?

Yes. I co-taught a Lunch and Learn for the St. John's Bar Association on the subject matter of cross examination. I co-taught a CLE program on collecting judgments for the Volusia County Bar Association.

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

During law school, I clerked for Judge Heneberg, Judge Clark and Judge Thomas of the General District Court for Arlington County, Virginia. As a clerk, I was involved in the judicial process by researching and briefing legal issues before the Court. Additionally, I was able to observe the judicial decision making process in the face of the substantial case load a judge must process each day at the trial court level. However, my greatest contribution as a clerk was the preparation of a formal request to the Judicial Budget Committee demonstrating the need for an additional judgeship for the General District Court, which contributed to the creation of a new judicial seat.

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

Considering my broad range of knowledge and balanced experience in civil, criminal and administrative legal matters in both public and private practice, I am capable of contributing to the circuit court bench as a judge by using my experience to efficiently manage my docket while focusing on the people I am serving and insuring their case is justly handled. As an attorney, I believe it is my personal and professional responsibility to expeditiously and efficiently apply the law and my efforts to resolve my client's legal issues. Even though I may delight in exploring every nuance of a legal topic, I understand that my clients are less enthusiastic about the details of the legal system and only want a resolution to their legal problem which allows them to return to their life or business. As a circuit court judge, I will preside over cases using my broad legal experience and no nonsense approach to efficiently and effectively manage my docket. I will strive to serve my community by aspiring to provide each litigant with an effective forum in which to resolve their legal issues without undue delay so that they may resume their lives and business.

52. If you have previously submitted a questionnaire or application to this or any other judicial nominating commission, please give the name of the commission and the approximate date of submission.

I have previously submitted applications to this judicial nominating commission for two vacancies to the county court bench in 2011; for three vacancies on the circuit court bench in 2014; for two vacancies on the circuit court bench in 2015, for two vacancies on the circuit court bench in 2016; one vacancy on the circuit court bench in 2017; and two vacancies to the county court bench in 2017. I submitted one application in 2018 for an opening to the circuit court bench.

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

On paper, I am a well-qualified candidate to serve our community as a county court judge. I have a broad range of experience practicing law in both the government sector and private sector. I have demonstrated competence in several areas of the law, including, criminal, civil, family, and probate. I have demonstrated my commitment to serving my profession and community through my active participation with and leadership in bar organizations, community groups, and by serving as a guardian ad litem. Nevertheless, it is my qualities which cannot be conveyed through a paper application which truly distinguish me as a qualified candidate for county court judge. I possess a level headed temperament and devotion to professionalism, which has enabled me to resolve cases throughout my career effectively and efficiently without the undue waste or delay caused by unnecessary strife or "showmanship." I possess an intellectual passion for the law and our justice system, which has empowered me to thoroughly prepare and argue my cases with skill and competence. Additionally, I understand that my role as an attorney is not only to be competent in my area of law, but to be practical and pragmatic in assisting my client to resolve their case, while communicating with him or her regarding the progress and resolution of his or her case to insure they understand the process and the result. When combined with my work ethic, the qualities that have made me a successful attorney will likewise make me an effective judge is capable and will faithfully and impartially uphold the law.

#### **REFERENCES:**

54. List the names, addresses and telephone numbers of ten persons who are in a position to comment on your qualifications for judicial position and of whom inquiry may be made by the Commission.

1) Honorable Kathryn D. Weston - 386-743-7060

Volusia County Courthouse 101 North Alabama Avenue, DeLand, Florida 32724

- 2) Honorable Dennis Craig - 386-239-7792  
Foxman Justice Center, 251 N. Ridgewood Avenue, Daytona Beach, Florida 32114
  
- 3) Honorable Dawn D. Nichols - 386-822-5744  
Volusia County Courthouse, 101 N. Alabama Avenue, DeLand, Florida 32724
  
- 4) Honorable Leah R. Case - 386-257-6071  
Courthouse Annex - 125 East Orange Avenue Daytona Beach, Florida 32118
  
- 5) Honorable Dawn P. Fields - 386-257 070  
Courthouse Annex - 125 E. Orange Avenue Daytoan Beach, Florida 32114
  
- 6) David Disney, Esquire, 386-734-3451  
Landis Graham French, PA PO Box 48, DeLand, Florida 32724
  
- 7) K. Judith Lane, Esquire 386-253-1560  
Upchurch Watson White & Max, 1400 Hand Avenue, Ormond Beach, Florida 32174
  
- 8) Honorable A Kathleen McNeilly - 386-257-6072  
Courthouse Annex, 125 E. Orange Avenue, Daytona Beach, Florida 32118
  
- 9) Horace Smith, Jr., Esquire, 386-254-6875  
444 Seabreeze Boulevard, Suite 900, Daytona Beach, Florida 32118
  
- 10) Douglas Kneller, Esquire, 386-257-4699  
PO Box 15228, Daytona Beach, Florida 32115



**CERTIFICATE**

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

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

Dated this 8<sup>th</sup> day of August, 2019.

Sebrina L. Slack  
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	\$35,000.00		
List Last 3 years	\$70,000.00	\$60,000.00	\$54,000.00

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

Current year to date	\$35,000.00		
List Last 3 years	\$70,000.00	\$60,000.00	\$54,000.00

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

Current year to date	~\$0.00		
List Last 3 years	~\$13,000.00	~\$15,000.00	~\$17,600.00

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	~\$0.00		
List Last 3 years	~\$13,000.00	~\$15,000.00	~\$17,600.00

**FORM 6  
FULL AND PUBLIC  
DISCLOSURE OF  
FINANCIAL INTEREST**

**PART A – NET WORTH**

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

My net worth as of August 8, 2019 was \$~294,100.00.

**PART B - ASSETS**

**HOUSEHOLD GOODS AND PERSONAL EFFECTS:**

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

The aggregate value of my household goods and personal effects (described above) is \$ 25,000.00

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

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

**VALUE OF ASSET**

DESCRIPTION OF ASSET (specific description is required – see instructions p. 3)	VALUE OF ASSET
2014 Ford Explorer	\$35,000.00
2005 Crestview Boat and Trailer	\$7,500.00
2004 Kubota Tractor and implements	\$15,000.00
2012 Kubota RTV	\$12,500.00
2002 Jayco Travel Trailer	\$7,000.00
Tree Farm Equipment	\$6,500.00
75 acres of land with 65 acres of uncut timber and hardwood	\$340,500.00

**PART C - LIABILITIES**

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

NAME AND ADDRESS OF CREDITOR

AMOUNT OF LIABILITY

NAME AND ADDRESS OF CREDITOR	AMOUNT OF LIABILITY
PNC Bank Auto Loan	\$6,900.00
Farm Credit Loan	\$115,000.00
SCCU Auto Loan	\$28,000.00
Direct Student Loan	\$5,000.00

**JOINT AND SEVERAL LIABILITIES NOT REPORTED ABOVE:**

NAME AND ADDRESS OF CREDITOR

AMOUNT OF LIABILITY

NAME AND ADDRESS OF CREDITOR	AMOUNT OF LIABILITY

**PART D - INCOME**

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

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

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

NAME OF SOURCE OF INCOME EXCEEDING \$1,000	ADDRESS OF SOURCE OF INCOME	AMOUNT
Wright & Casey, PA	340 North Causeway New Smyrna Beach, FL	\$5,000 (monthly)

**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

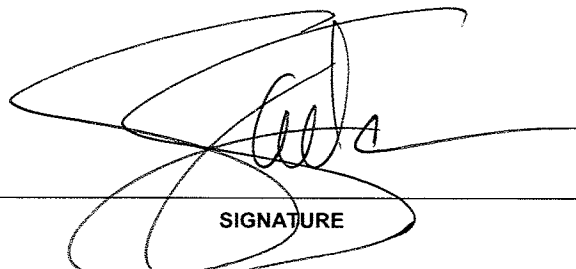
**PART E – INTERESTS IN SPECIFIC BUSINESS [Instructions on page 7]**

	BUSINESS ENTITY #1	BUSINESS ENTITY #2	BUSINESS ENTITY #3
NAME OF BUSINESS ENTITY	Outback Tree Farm		
ADDRESS OF BUSINESS ENTITY	3125 Lafayette Landing Dr. DeLeon Springs, FL 32130		
PRINCIPAL BUSINESS ACTIVITY	Timber / hardwoods		
POSITION HELD WITH ENTITY	Sole Proprietorship		
I OWN MORE THAN A 5% INTEREST IN THE BUSINESS	Yes		
NATURE OF MY OWNERSHIP INTEREST	50% owner		

**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 Volusia**

Sworn to (or affirmed) and subscribed before me this 8<sup>th</sup> day of **August 8, 2019** by Sebrina L. Slack.

(Signature of Notary Public—State of Florida)

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

Personally Known  OR Produced Identification

Type of Identification Produced \_\_\_\_\_



## INSTRUCTIONS FOR COMPLETING FORM 6:

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

### PART A – NET WORTH

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

To total the value of your assets, add:

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

To total the amount of your liabilities, add:

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

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

#### HOUSEHOLD GOODS AND PERSONAL EFFECTS:

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

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

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

#### How to Identify or Describe the Asset:

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

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

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

#### **How to Value Assets:**

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

## **PART C—LIABILITIES**

### **LIABILITIES IN EXCESS OF \$1,000:**

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

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

#### **How to Determine the Amount of a Liability:**

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

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

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

**Examples:**

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

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

**JOINT AND SEVERAL LIABILITIES NOT REPORTED ABOVE:**

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

**PART D – INCOME**

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

**PRIMARY SOURCES OF INCOME:**

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

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

Examples:

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

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

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

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

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

**SECONDARY SOURCE OF INCOME:**

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

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

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

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

Examples:

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

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



## **PART E – INTERESTS IN SPECIFIED BUSINESS**

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

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

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

### 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: August 8, 2019

JNC Submitting To: Seventh Judicial Circuit

Name (please print): Sebrina L. Slack

Current Occupation: Attorney

Telephone Number: REDACTED Attorney No.: 392715

Gender (check one):  Male  Female

Male

Female

Ethnic Origin (check one):  White, non Hispanic

Hispanic

Black

American Indian/Alaskan Native

Asian/Pacific Islander

County of  
Residence:

Volusia

*FLORIDA DEPARTMENT OF LAW ENFORCEMENT*

DISCLOSURE PURSUANT TO THE  
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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.

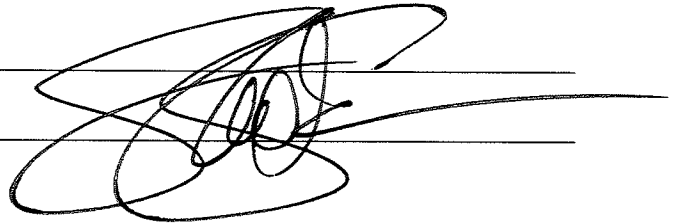
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Printed Name of  
Applicant:

Sebrina L. Slack

Signature of Applicant:



Date: August 8, 2019



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

Case Number: 5D17-1811  
LT Case Number: 2016 – 10279 - CIDL

DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE FOR  
MORGAN STANLEY ABS CAPITAL 1, INC. TRUST 2006-HE3,

Appellant,

vs.

MARY E. FORESTER,

Appellee.

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**APPELLEE'S ANSWER BRIEF  
(Amended Certificate of Service)**

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ON APPEAL FROM THE CIRCUIT COURT  
OF THE SEVENTH JUDICIAL CIRCUIT  
VOLUSIA COUNTY, FLORIDA

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**ATTORNEYS FOR THE APPELLEE**

## TABLE OF CONTENTS

Table of Contents .....	<i>i - iii</i>
Table of Authorities .....	<i>iv - v</i>
Preliminary Statement .....	1
Statement of the Case and Facts .....	2
Summary of Argument .....	8
Standard of Review .....	11
Argument	
<b>I.    DEUTSCHE BANK’S COMPLAINT IS BARRED BY THE           DOCTRINE OF RES JUDICATA .....</b>	<b>11</b>
<b>A.    2007 DISMISSAL IS RES JUDICATA .....</b>	<b>11</b>
<b>B.    DEUTSCHE BANK’S RES JUDICATA LEGAL AUTHORITY               IS INAPPLICABLE TO FACTS OF CASE .....</b>	<b>18</b>
<b>II.   DEUTSCHE BANK IS BARRED BY THE STATUTE OF           LIMITATIONS FROM ENFORCING THE MEDIATION           SETTLEMENT AGREEMENT .....</b>	<b>23</b>
<b>A.    STATUTE OF LIMITATIONS HAS EXPIRED TO ENFORCE               MEDIATION AGREEMENT .....</b>	<b>23</b>
<b>B.    DEUTSCHE BANK’S STATUTE OF LIMITATIONS LEGAL               AUTHORITY IS INAPPLICABLE TO THE FACTS OF THIS               CASE .....</b>	<b>25</b>
<b>III.  DEUTSCHE BANK FAILED TO TIMELY APPEAL ANY ISSUE AS           TO THE ENFORCEABILITY OF THE MEDIATION SETTLEMENT           AGREEMENT .....</b>	<b>28</b>

**A. DEUTSCHE BANK’S ARGUMENT THAT THE MEDIATION AGREEMENT IS NOT ENFORCEABLE IS AN UNTIMELY APPEAL ..... 28**

**B. EVEN IF THE COURT CONSIDERS DEUTSCHE BANK’S ARGUMENT, THE MEDIATION AGREEMENT IS AN ENFORCEABLE AGREEMENT ..... 30**

Conclusion ..... 34

Certificate of Compliance ..... 36

## TABLE OF AUTHORITIES

<i>AMEC Civil, LLC, vs. PTG Construction Services Company</i> 106 So. 3d 455 (Fla. 1 <sup>st</sup> DCA 2012) .....	13
<i>Barse vs. Whaley</i> , 102 Fla. 404, 407 135 So. 879 (Fla. 1931) .....	12
<i>Bartram vs. US Bank, National Assn.</i> 211 So. 3d 1009 (Fla. 2016) .....	19, 22, 23, 27
<i>Bolletieri Resort Villas Condo. Association, Inc. vs. Bank of New York Mellon Corp. as Trustee, etc.</i> 198 So. 3d 1140 (Fla. 2 <sup>nd</sup> DCA 2016) .....	27
<i>Boyd vs. Goff</i> 828 So. 2d 468 (Fla. 5 <sup>th</sup> DCA 2002) .....	29
<i>Deutsche Bank Trust Company Americas vs. Beauvais</i> 188 So. 3d 938 (Fla. 3 <sup>rd</sup> DCA 2016) .....	26
<i>DeWitt vs. Miami Transit Company</i> 95 So. 2d 898 (Fla. 1957) .....	13
<i>Forero vs. Green Tree Servicing</i> 223 So. 3d. 440 (Fla. 1 <sup>st</sup> DCA 2017) .....	19
<i>J. Allen, Inc. vs. Castle Floor Covering, Inc.</i> 543 So. 2d 249 (Fla. 2 <sup>nd</sup> DCA 1989) .....	14
<i>Krol vs. City of Orlando</i> 778 So. 2d 490 (Fla. 5 <sup>th</sup> DCA 2001) .....	11
<i>M&amp;C Associates vs. State of Florida – Department of Transportation</i> 682 So. 2d 640 (Fla. 2 <sup>nd</sup> DCA 1996) .....	14
<i>McQuaig vs. Wal-Mart Stores, Inc.</i> 789 So. 2d 1215 (Fla. 1 <sup>st</sup> DCA 2001) .....	29



<i>Nationstar Mortgage, LLC vs. Brown</i> 175 So. 3d 833 (Fla. 1 <sup>st</sup> DCA 2015) .....	26
<i>O'Steen vs. Wells Fargo Bank, NA</i> 2017 U.S. District LEXIS 156234 (M.D. Fla. September 25, 2017) .....	33
<i>Olympia Mortgage Corp. vs. Pugh</i> 774 So. 2d 863 (Fla. 4 <sup>th</sup> DCA 2000) .....	19
<i>Senter vs. J.P. Morgan Chase Bank, NA</i> 810 F. Supp. 2d 1339 (S.D. Fla. 2011) .....	33
<i>Singleton vs. Greymar Associates</i> 882 So. 2d 1004, (Fla. 2004) .....	19, 23
<i>The Bank of New York Mellon as Trustee, etc., vs. Anton</i> 2017 Fla. App. LEXIS 12415 (Fla. 3 <sup>rd</sup> DCA August 30, 2017) .....	27
<i>Town of Boca Raton vs. Moore</i> 122 Fla. 350; 165 So. 279 (Fla. 1936) .....	12
<i>Volusia County vs. Aberdeen at Ormond Beach, LP</i> 760 So. 2d 126 (Fla. 2000) .....	11
<i>Wells Fargo Bank, NA vs. Richards</i> 226 So. 3d 920 (Fla. 4 <sup>th</sup> DCA 2017) .....	20, 21
<i>Wells Fargo Bank, NA, as Trustee, etc., vs. BH-NV Investments I, Inc.</i> 2017 Fla. App. LEXIS 11716 (Fla. 3 <sup>rd</sup> DCA August 16, 2017) .....	27
<i>Wildflower, LLC vs. St. Johns Water Management District</i> 179 So. 3d 369 (Fla. 5 <sup>th</sup> DCA 2015) .....	13
<i>Rule 1.510(c), Florida Rules of Civil Procedure</i> .....	11
<i>Rule 9.110(b), Florida Rules of Appellate Procedure</i> .....	29
<i>Section 95.11, Florida Statutes</i> .....	24
<i>Section 687.0304, Florida Statutes</i> .....	34

## **PRELIMINARY STATEMENT**

This is an appeal from the trial Court's May 23, 2017 order entering Final Summary Judgment in favor of the Defendant, Mary Forester (hereinafter, Appellee or Forester) and against the Plaintiff, Deutsche Bank National Trust Company, as Trustee for Morgan Stanley ABS Capital 1, Inc., Trust 2006 HE3 (hereinafter, Appellant or Deutsche Bank). Contrary to the arguments made by the Appellant, this is not a case about the foreclosure exception to the doctrine of res judicata or the statute of limitations as it applies to the enforcement of a note and mortgage. This case is about res judicata and the statute of limitations as those concepts apply to the enforcement of a binding settlement agreement and the consequences of failing to perform promises made to compromise a case. This case is about the well settled law of how res judicata applies to an adjudication on the merits and the law of settlement agreements and contracts.

## STATEMENT OF CASE AND FACTS

### A. STATEMENT OF THE CASE

This appeal arises from the third dismissal with prejudice of a residential foreclosure action pursuant to the same note and mortgage by Deutsche Bank against Mary Forester. In each of the three dismissals with prejudice, the trial court has found that Deutsche Bank failed to perform under an enforceable mediation settlement agreement (R. 279-280; 286-287; and 288-290). On July 9, 2007, the first foreclosure action was filed in the case styled: *Deutsche Bank National Trust Company, as Trustee for Morgan Stanley ABS Capital I Inc. Trust 2006 HE3, Plaintiff versus Mary E. Forester, et al.*, with Case Number 2007 20354 CINS. (hereafter “2007 Foreclosure Case”). On December 30, 2010, the trial Court entered an Order Dismissing Cause with Prejudice finding that a Settlement Agreement was signed by the parties and the Plaintiff was ordered on two separate occasions to comply with the Settlement Agreement. (R. 279). This dismissal was an adjudication on the merits of the 2007 Foreclosure Case. (R. 280). Deutsche Bank did not appeal the December 30, 2010 final order. (R. 254).

On September 6, 2012, a second foreclosure action was filed seeking to foreclose the same note and mortgage as previously asserted in the 2007 Foreclosure Case in the case styled *Deutsche Bank National Trust Company, as Trustee for Morgan Stanley ABS Capital I Inc. Trust 2006 HE3, Plaintiff versus Mary E.*

*Forester, et al.*, with Case Number 2012 20738 CINS. (hereafter “2012 Foreclosure Case”). On February 8, 2013, the trial Court entered an Order Dismissing Action with Prejudice finding that the dismissal of the 2007 Foreclosure Case was a final adjudication on the merits and the case was barred by that adjudication. (R. 286-287). Deutsche Bank did not appeal this final order. (R. 254)

On February 23, 2016, a third foreclosure action was filed seeking to foreclose the same note and mortgage as previously asserted in the 2007 Foreclosure Case and the 2012 Foreclosure Case in the case styled *Deutsche Bank National Trust Company, as Trustee for Morgan Stanley ABS Capital I Inc. Trust 2006 HE3, Plaintiff versus Mary E. Forester, et al.*, with Case Number 2016 10279 CIDL. (hereafter “2016 Foreclosure Case”). On May 23, 2017, the trial Court entered a Final Summary Judgment for Defendant dismissing with prejudice the underlying case and finding that the dismissal of the 2007 Foreclosure Case and the 2012 Foreclosure Case were final adjudications on the merits thereby applying the doctrine of res judicata to bar the case. (R. 288-290). Additionally, the trial Court granted the Motion for Summary Judgment as to any subsequent dates of default by holding that the applicable statute of limitations in this specific case was a five year statute of limitations based on the enforceable settlement agreement of the 2007 Foreclosure Case, which had expired. (R. 290).

## **B. FACTS OF THE CASE**

In the Mediation Settlement Agreement, Deutsche Bank and Forester agreed to a loan modification on specifically enumerated terms, including, a term of 317 months; a maturity date of December 1, 2035; a fixed interest rate of 4.75%; a first payment date of August 1, 2009; a payment amount of \$1,346.03; and a principal amount of \$242,848.78. (R. 256-258). After the Mediation Settlement Agreement, all Deutsche Bank had to do to perform was insert the agreed upon terms into its standard form for notes and mortgages and present the documents to Forester for her signature, but Deutsche Bank failed and refused to perform this simple ministerial task. (R. 253).

At all times relevant, Mary Forester was ready, willing, and able to comply with the Mediation Settlement Agreement and took affirmative steps through her attorneys to comply with the Mediation Settlement Agreement. (R. 253). Additionally, Forester took affirmative actions to enforce the settlement agreement in the 2007 Foreclosure Case. On July 20, 2009, Forester filed a Motion to Enforce the Mediation Settlement Agreement. (R. 253). After a hearing, the trial Court granted the Motion to Enforce the Settlement Agreement on November 3, 2009 and Deutsche Bank was given thirty (30) days to comply with the Mediation Settlement Agreement. (R. 253). Deutsche Bank failed to comply with the Court's November 3, 2009 Order. (R. 253).

On December 14, 2009, Forester filed a Motion to Dismiss the 2007 Foreclosure Case for failure to comply with the Court's Order dated November 3, 2009, or in the alternative, to comply with the Settlement Agreement. (R. 253). On April 30, 2010, the trial Court denied her Motion to Dismiss, but granted her alternative Second Motion to Enforce the Settlement Agreement. (R. 253) In its April 30, 2010 Order, the Court gave Deutsche Bank an additional thirty (30) days to comply with the Settlement Agreement and ordered Deutsche Bank to pay Forester's attorney \$300.00 for having to file the motion to enforce. (R. 253). Deutsche Bank failed to comply with the April 30, 2010 Order. (R. 253-254).

On August 26, 2010, Forester filed a second Motion to Dismiss as a result of Deutsche Bank's failure to comply with the trial Court's Order dated April 30, 2010, which was the second order compelling Deutsche Bank to comply with the Settlement Agreement. (R. 254). On December 30, 2010, after a third hearing, the Court granted Forester's Motion to Dismiss and entered an Order dismissing the 2007 Foreclosure Case with prejudice. (R. 279-280). Furthermore, the trial Court's dismissal clearly states that the dismissal is with prejudice on the merits of the case, in that the dismissal specifically provides "... the Court hereby dismisses this cause with Prejudice, with the Plaintiff taking nothing from this action, and the Defendant being allowed to go hence without day." (R. 280). Deutsche Bank failed to take any action to appeal the dismissal with prejudice of the 2007 Foreclosure Case. (R. 254).

On September 9, 2012, Deutsche Bank filed a second foreclosure action against Forester on the same note and mortgage. (R. 254). The trial Court dismissed the 2012 Foreclosure Action with prejudice finding that the parties had previously entered into a binding settlement, which Deutsche Bank had failed to comply with resulting in dismissal with prejudice in the 2007 Foreclosure Case. (R. 286-287). The 2012 Foreclosure Case was not appealed by Deutsche Bank. (R. 254).

On February 23, 2016, Deutsche Bank filed a third foreclosure action on the note and mortgage. (R. 255). The Final Summary Judgment in the 2016 Foreclosure Case, like the 2012 Foreclosure Case dismissal, found that Deutsche Bank's foreclosure action was barred by the doctrine of res judicata because the dismissal of the 2007 Foreclosure Case was an adjudication on the merits enforcing the Mediation Settlement Agreement. (R. 289-290).

Contrary to Deutsche Bank's insistence that this appeal is a typical residential foreclosure case where the dismissal of a prior action restored the parties to their prior positions under a note and mortgage, this case is factually distinct because the parties entered into a binding mediated settlement agreement which cannot be conveniently ignored by Deutsche Bank. The parties entered into a definite and enforceable agreement. In the 2007 Foreclosure Case, Forester sought to enforce the Mediation Settlement Agreement, which was granted by the trial Court in two separate court orders. (R. 253). After Deutsche Bank failed to comply with two

court orders enforcing the Mediation Settlement Agreement, the 2007 Foreclosure Action was dismissed with prejudice. (R. 254). For failing to perform the simple ministerial task of generating the note and mortgage required by the Mediation Settlement Agreement, Deutsche Bank suffered the ultimate sanction of a dismissal with prejudice that operated as an adjudication on the merits of its legal rights in the 2007 Foreclosure Case.

After hearing the Motion for Summary Judgment by the Appellee and considering the summary judgment evidence before the trial Court, Judge Sandra Upchurch found that the December 30, 2010 order dismissing the 2007 Foreclosure Case between the same parties was an adjudication on the merits and the doctrine of res judicata barred the 2016 Foreclosure Case. Additionally, the trial Court found that the applicable five year statute of limitations had expired as to any date of default pursuant to the Mediation Settlement Agreement executed on May 21, 2009 by Deutsche Bank and Forester. In her ruling, the trial Court rightly pointed out on the record that to rule in favor of Deutsche Bank would render any mediation in a foreclosure case meaningless because the lender would not have to honor any agreement. (R. 27-28).



## SUMMARY OF ARGUMENT

The trial Court properly found that the doctrine of res judicata bars the recovery sought by Deutsche Bank in the underlying action because the dismissals with prejudice in the 2007 Foreclosure Case and 2012 Foreclosure Case acted as a final adjudication on the merits as to the legal rights between the parties. The summary judgment evidence before the Court demonstrated that the parties had entered into a Mediation Settlement Agreement which was enforced by the trial Court in the 2007 Foreclosure Case and the 2012 Foreclosure Case. Because this is a case where the parties merged their rights under a note and mortgage into a binding settlement agreement which was enforced by a prior court, the case law cited by Deutsche Bank describing an exception to res judicata in foreclosure cases does not apply to the facts of this case. Specifically, all of the cases cited to by Deutsche Bank involve cases where the dismissal of the foreclosure action restored the parties to their previous contractual positions under a note and mortgage because none of the cited cases consider the effect of a written settlement agreement enforced by the court on the parties contractual obligations. Presented with the unique facts of this case, the trial Court correctly granted the Motion for Summary Judgment because to grant Deutsche Bank's request that the Court expand the exception to res judicata for mortgage foreclosures to not only include cases where prior dismissals for non-substantive reasons returned the parties to their prior positions under the note and

mortgage, but to also include dismissals where the plaintiff substantively changed its legal rights in a mediation agreement and failed to honor the agreement to the prejudice of the defendant, would make a nullity of all mediations in foreclosure cases.

The trial Court properly found in favor of Forester based on the expiration of the applicable five year statute of limitations which applies to a written settlement agreement. After the parties entered into the Mediation Settlement Agreement, all actions based on the note and mortgage merged in the written agreement which was subject to the applicable five year statute of limitations. Since the dismissals in the 2007 Foreclosure Case and the 2012 Foreclosure Case clearly evidence that the settlement agreement was enforced and that Deutsche Bank breached the Mediation Settlement Agreement, the filing of the any action after December 30, 2015 is clearly in excess of five years from any breach of the Mediation Settlement Agreement which was enforced for the final time on December 30, 2010 in the 2007 Foreclosure Case.

Deutsche Bank argues that the applicable statute of limitations is five years from the last possible date of default under the note and mortgage, which in this case would be November 30, 2040. In support of its argument, Deutsche Bank states “if a mortgagee’s initial foreclosure action is dismissed **for any reason**, even an involuntary dismissal, the mortgage is not barred from bringing a new foreclosure

action premised on [a] new default subsequent to the dismissal.” By requesting that this Court completely ignore the statute of limitations applicable to written contracts and the enforcement of settlement agreements, Deutsche Bank is asking the Court to find that the applicable statute of limitations in every foreclosure action is five years after the last possible default under the note and mortgage and is reset in every subsequent action on a mortgage and note regardless of the reason for a prior dismissal. If a foreclosure action is dismissed for any reason whatsoever, be it a mistake, lack of prosecution, or entry into settlement agreement the plaintiff does not want to honor, the plaintiff can dismiss the action and file another foreclosure action with a new date of default and have a statute of limitations which is five years longer than the term of the note. To agree with Deutsche Bank’s position on the applicable statute of limitations would encourage lenders to abuse Florida law and defendants by not holding them accountable for their actions or their agreements in a timely manner.

As to Deutsche Bank’s final argument that the Mediation Settlement Agreement is merely an “agreement to agree.” This argument constitutes an untimely appeal of the ruling in the 2007 Foreclosure Case and the ruling in the 2012 Foreclosure Case for which the appellate Court lacks jurisdiction to consider. Even if the appellate Court was to consider this untimely argument, the summary judgment evidence in the 2016 Foreclosure Case demonstrates that the Mediation

Settlement Agreement was an enforceable agreement and was expressly enforced by the trial Courts in the 2007 Foreclosure Case and the 2012 Foreclosure Case.

### **STANDARD OF REVIEW**

The applicable standard of review governing the ruling of a trial court on a motion for summary judgment posing a pure question of law is de novo. *Volusia County vs. Aberdeen at Ormond Beach, LP*, 760 So. 2d 126 (Fla. 2000). At the trial level in ruling on a motion for summary judgment, the trial court is tasked with determining whether there is any genuine issue of material fact and whether the moving party is entitled to judgment as a matter of law. *Rule 1.510(c)*, Florida Rules of Civil Procedure. On appeal, a reviewing Court should consider the evidence contained in the record, including supporting affidavits, in the light most favorable to the non-moving party. *Krol vs. City of Orlando*, 778 So. 2d 490 (Fla. 5<sup>th</sup> DCA 2001).

### **ARGUMENT**

#### **I. DEUTSCHE BANK'S COMPLAINT IS BARRED BY THE DOCTRINE OF RES JUDICATA**

##### **A. 2007 DISMISSAL IS RES JUDICATA**

As found by the trial Court below, the residential foreclosure complaint filed by Deutsche Bank is wholly barred by the doctrine of res judicata because Deutsche Bank seeks relief on the same grounds which were the basis for two prior dismissals with prejudice. Specifically, the 2007 Foreclosure Case is res judicata as to any

subsequent actions between the parties because Deutsche Bank entered into a settlement agreement in the 2007 Foreclosure Case and failed to perform thereunder resulting in a dismissal with prejudice of their case. The dismissal of the 2007 Foreclosure Case clearly finds that the settlement agreement was enforced between the parties and the dismissal is with prejudice as to the parties' rights pursuant to the Mediation Settlement Agreement.

The foundation principle upon which the doctrine of res judicata rests is that parties ought not be permitted to litigate the same issue more than once, that when a right or fact has been judicially tried and determined by a court of competent jurisdiction or an opportunity for such trial has been given, the judgment of the court, so long as it remains unreserved, should be conclusive upon the parties, and those in privity with them in the law or estate. *Barse vs. Whaley*, 102 Fla. 404, 407; 135 So. 879 (Fla. 1931). A judgment on the merits is an absolute bar to a subsequent action on the same claim and concludes as to the parties and their privies, not only as to every matter which was offered and received to sustain or defeat the claim, but also as to any other admissible matter that might have been offered for either purpose. *Town of Boca Raton vs. Moore*, 122 Fla. 350; 165 So. 279 (Fla. 1936). In order for a matter to be barred by res judicata, there are four conditions which must be met: (1) identity of the thing sued for; (2) identity of the cause of action; (3) identity of the parties; and (4) identity of the quality in the person for or against whom the claim

is made. *Wildflower, LLC vs. St. Johns Water Management District*, 179 So. 3d 369 (Fla. 5<sup>th</sup> DCA 2015), *citing*, *AMEC Civil, LLC, vs. PTG Construction Services Company*, 106 So. 3d 455 (Fla. 1<sup>st</sup> DCA 2012).

In the instant case, the four identities required to invoke the doctrine of res judicata are clearly satisfied by Forester in her Motion for Summary Judgment. First, the identity of the thing being sued for is the same note and mortgage previously compromised by the Mediation Settlement Agreement and dismissed with prejudice in the 2007 Foreclosure Case and the 2012 Foreclosure Case. Second, the identity of the cause of action is the same residential foreclosure action on the same note and mortgage as Deutsche Bank previously compromised by the Mediation Settlement Agreement and was the subject of the dismissals with prejudice in the 2007 Foreclosure Case and the 2012 Foreclosure Case. Third, the identity of the parties are identical in the 2016 Foreclosure Case, the 2012 Foreclosure Case, and the 2007 Foreclosure Case. Fourth, the identity of the quality in the person for or against whom the claim is made is identical in the 2016 Foreclosure Case; the 2012 Foreclosure Case; and the 2007 Foreclosure Case. Thus, in her Motion for Summary Judgment, Forester satisfied the four identities necessary to assert the bar of the doctrine of res judicata.

It is well settled in Florida law that the law favors the finality of settlements. *DeWitt vs. Miami Transit Company*, 95 So. 2d 898 (Fla. 1957). Any rights and duties

the parties had at the moment a settlement agreement is entered into are merged into that agreement, unless stated otherwise. *J. Allen, Inc. vs. Castle Floor Covering, Inc.*, 543 So. 2d 249 (Fla. 2<sup>nd</sup> DCA 1989). Furthermore, the provisions of a settlement agreement as to the rights of the parties thereafter become binding on the parties and the Court. *M&C Associates vs. State of Florida – Department of Transportation*, 682 So. 2d 640 (Fla. 2<sup>nd</sup> DCA 1996).

On May 21, 2009, Deutsche Bank and Forester entered into the Mediation Settlement Agreement wherein the parties agreed to compromise and settle their claims in the 2007 Foreclosure Case. (R. 253). In the Mediation Settlement Agreement, Deutsche Bank and Forester agreed to a loan modification on specifically enumerated terms, including, a term of 317 months; a maturity date of December 1, 2035; a fixed interest rate of 4.75%; a first payment date of August 1, 2009; a payment amount of \$1,346.03; and a principal amount of \$242,848.78. (R. 256-258). The Mediation Settlement Agreement provided additionally, that Forester had to clear any liens against the property and pay within thirty days and reinstatement amount that would not exceed \$7,500.00. (R. 256). Thus, the Mediation Settlement Agreement clearly stated all material terms necessary to modify the note and mortgage.

After the Mediation Settlement Agreement, Forester was ready willing and able to comply with the Agreement and sought through her attorneys to comply with

the Agreement, but Deutsche Bank failed to comply with the agreement (R. 253). Forester filed two separate motions to enforce the Mediation Settlement Agreement in the 2007 Foreclosure Case. (R. 253). Both motions were granted, but Deutsche Bank failed to perform the Mediation Settlement Agreement or comply with the Court's orders enforcing the agreement. (R. 253). Faced with Deutsche Bank's continuing refusal to perform under the Settlement Agreement, Forester filed a Motion to Dismiss the 2007 Foreclosure Action, which was granted. (R. 254).

In the Order dismissing the 2007 Foreclosure Case, the trial Court found that “[t]he Settlement Agreement at issue was signed by the parties on May 21, 2009. Since that time, two hearings have been held on Motions to Enforce the Settlement Agreement, resulting in two Orders requiring that the Plaintiff comply with the Settlement Agreement. . . . Based upon the foregoing, the Court hereby dismisses this cause with Prejudice, with the Plaintiff taking nothing from this action, and Defendant being allowed to go hence without day.” (R. 279-280). Deutsche Bank did not appeal this dismissal with prejudice. (R. 254). Thus, the trial Court in the 2007 Foreclosure Case found the Mediation Settlement Agreement binding upon the parties and predicated its dismissal with prejudice on the enforcement of the Mediation Settlement Agreements into which the parties had legally merged their rights related to the note and mortgage.



In the 2012 Foreclosure Case, Deutsche Bank filed a Verified Complaint to Foreclose Mortgage based on the same note and mortgage as the 2007 Foreclosure Case, but with a subsequent date of default. (R. 281-284). Forester filed a Motion to Dismiss the 2012 Foreclosure Case based on the Court's previous dismissal with prejudice on the merits of the 2007 Foreclosure Case. (R. 254). In the Order dismissing the 2012 Foreclosure Case, the trial Court found "... the parties previously entered into a binding Mediated Settlement Agreement on May 21, 2009, related to the Note and Mortgage upon which the [2012 Foreclosure Case] is based. [T]he Court dismissed the 2007 Foreclosure action with prejudice because [Deutsche Bank] failed to comply with the Mediated Settlement Agreement and the Court's orders related thereto, which included failing to enter into a new Note and Mortgage with [Forester]." (R. 286-287). Deutsche Bank did not appeal this dismissal with prejudice of the 2012 Foreclosure Case. (R. 254). Thus, the trial Court in the 2012 Foreclosure Case held that Deutsche Bank was barred by res judicata from pursuing a residential foreclosure action against Forester after the dismissal with prejudice on the merits of the 2007 Foreclosure Case.

In the 2016 Foreclosure Case, Deutsche Bank filed a Verified Complaint to Foreclose Mortgage based on the same note and mortgage as the 2007 Foreclosure Case and the 2012 Foreclosure Case, but with a subsequent date of default. (R. 51-92). Forester filed a Motion for Summary Judgment based on the Court's previous

dismissal with prejudice on the merits of the 2007 Foreclosure Case and the 2012 Foreclosure Case. (R. 215-261). In the Final Judgment dismissing the 2016 Foreclosure Case, the trial Court held "... the December 30, 2010 Order dismissing the 2007 Foreclosure Case was an adjudication on the merits and for that reason the [2016 Foreclosure Case] is bared by the doctrine of res judicata (R. 289-290). Thus, the trial Court in the 2016 Foreclosure Case held that Deutsche Bank was barred by res judicata from pursuing a residential foreclosure action after the dismissals with prejudice on the merits of the 2007 Foreclosure Case and the 2012 Foreclosure Case.

The undisputed facts in this case are that the parties entered into a note and mortgage; a foreclosure action was filed in 2007; the parties entered into a written Mediation Settlement Agreement compromising their dispute; the Court enforced the Mediation Settlement Agreement twice; the Court dismissed the foreclosure action with prejudice when Deutsche Bank failed to perform under the agreement; the dismissal of the 2007 Foreclosure Case was with prejudice and an adjudication on the merits; a second foreclosure case was filed in 2012 and dismissed with prejudice because of the res judicata effect of the 2007 dismissal; and neither the 2007 Foreclosure Case or the 2012 Foreclosure Case were timely appealed. In the 2016 Foreclosure Case, the Court again found that the parties had entered into a binding Settlement Agreement and the dismissal of the 2007 Foreclosure Case was an adjudication on the merits which barred any subsequent actions on the note and

mortgage. Based on these undisputed facts, Forester was entitled to the entry of summary judgment in her favor as a matter of law because the law favors the enforcement of settlement agreements and the four identities of res judicata had been met. Accordingly, the trial Court's granting of the Motion for Summary Judgment is well supported in the facts and law.

**B. DEUTSCHE BANK'S RES JUDICATA LEGAL AUTHORITY IS INAPPLICABLE TO FACTS OF CASE**

Deutsche Bank's reliance on the so called exception to res judicata in foreclosure cases is wholly inapplicable to the facts and law of this case. Deutsche Bank's entire appeal is predicated on the argument that regardless of the reason for a dismissal in a residential foreclosure action, the mortgage and note are unaffected by the dismissal because the plaintiff can always allege a subsequent date of default. What Deutsche Bank fails to acknowledge in this case is the fact that their legal rights under the note and mortgage were merged into the Mediation Settlement Agreement, that settlement agreements are enforceable under the law, and the prior dismissals were predicated on the failure to comply with the Mediation Settlement Agreement. Every case upon which Deutsche Bank relies is wholly distinguishable on the facts and law because none of the cases address the implications of a dismissal based on the enforcement of a binding settlement agreement.

The exception to res judicata in cases of mortgage foreclosures arises from various court holdings which state that multiple actions for the foreclosure of a note

and mortgage may be sought so long as the alleged default involves a separate period of default from the default alleged in any prior action. In all of the cases cited by Appellant, when the foreclosure action is dismissed, the mortgagor and the mortgagee are simply placed back in the same contractual relationship with the same continuing obligations. See, *Bartram vs. US Bank, National Assn.*, 211 So. 3d 1009 (Fla. 2016) and *Singleton vs. Greymar Associates*, 882 So. 2d 1004, (Fla. 2004). However, none of the cases cited by Deutsche Bank involve a prior dismissal based on the enforcement of a settlement agreement. In fact, all of Deutsche Bank's authority against the application of res judicata in this matter involves cases where the prior dismissal was a result of either the failure on the part of the plaintiff or a voluntary dismissal by the plaintiff. See, *Olympia Mortgage Corp. vs. Pugh*, 774 So. 2d 863 (Fla. 4<sup>th</sup> DCA 2000) (two prior foreclosure actions dismissed voluntarily by plaintiff); *Singleton vs Greymar Associates*, 882 So. 2d 1004 (Fla. 2004) (prior foreclosure action dismissed for failure to attend case management conference); *Bartram vs. U.S. National Bank*, 211 So. 3d 1009 (Fla. 2016) (prior foreclosure action dismissed for failure to attend case management conference); and *Forero vs. Green Tree Servicing*, 223 So. 3d. 440 (Fla. 1<sup>st</sup> DCA 2017) (prior foreclosure actions voluntarily dismissed by plaintiff). Thus, Deutsche Bank has failed to provide any authority whatsoever as to how the parties would be placed back in the same position under the note and mortgage after the parties entered into a binding Mediation

Settlement Agreement that was enforced by the Court and was the basis of a dismissal with prejudice resulting in an adjudication on the merits.

In the instant case, the parties entered into a mediated settlement agreement merging their rights pursuant under the note and mortgage into that agreement. Contrary to the arguments of Deutsche Bank, the dismissal of the 2007 Foreclosure Case did not reinstate the note and mortgage or restore the parties to their prior status or mortgagee and mortgagor. As expressly stated in the Order, when Deutsche Bank failed to perform under the Mediation Settlement Agreement, the Court imposed the ultimate sanction against them – dismissal with prejudice on the merits. (R. 279-280).

Deutsche Bank attempts to argue that the “parties never effectively modified the terms of the note and mortgage.” This argument is supported by an inaccurate summation of the facts which fails to acknowledge the specific terms enumerated in Exhibit A of the Mediation Settlement Agreement. Additionally, this argument is contrary to the facts and erroneously predicated on the proposition that the dismissals of the 2007 Foreclosure Case and 2012 Foreclosure Case, both of which explicitly enforced the Mediation Settlement Agreement, had no effect on the rights of the parties pursuant to the note and mortgage. In support of its argument, Deutsche Bank cites the case of *Wells Fargo Bank, NA vs. Richards*, 226 So. 3d 920 (Fla. 4<sup>th</sup> DCA 2017). According to Deutsche Bank, the *Richards* case holds that the Court

“refus[ed] to enforce a mediated settlement agreement because the parties did not execute a signed mortgage modification to satisfy Florida’s banking statute of frauds.”

However, this is a misrepresentation of the actual holding of this case and omits the relevant facts which make this case distinguishable. In *Richards*, the defendants unsuccessfully brought several motions to enforce an oral settlement agreement that did not incorporate any specific terms and which the plaintiff contested. The *Richards* court held that an oral settlement agreement had not been proven, and even if it had, an oral agreement to modify a note and mortgage violated the Statute of Frauds. In the instant case, the Mediation Settlement Agreement was in writing, executed by the parties, and stated all of the specific terms necessary to modify a note and mortgage in compliance with the banking statute of frauds.

Considering the exception to res judicata in foreclosure cases is predicated upon the parties being returned to their same positions under the note mortgage after a dismissal, the case on appeal is wholly distinguishable from this line of authority. The 2007 Foreclosure Case did not end with the parties being restored to their pre-suit contractual relationship. In the course of the 2007 Foreclosure Case, the parties entered into a Mediation Settlement Agreement, wherein they agreed to modify the note and mortgage on specific terms. The dismissal of the 2007 Foreclosure Action resulted in an adjudication on the merits wherein the Court upheld the Mediation

Settlement Agreement and dismissed the action with prejudice because of Deutsche Bank's failure to perform its obligations under the Mediation Settlement Agreement. The 2012 Foreclosure Case was dismissed with prejudice based on the res judicata effect of the dismissal of the 2007 Foreclosure Case. Accordingly, based on the facts of this case, the doctrine of res judicata was properly applied by the trial Court in granting the Motion for Summary Judgment.

Furthermore, to grant Deutsche Bank's request that the Court expand the exception to res judicata for mortgage foreclosures to not only include cases where prior dismissals for non-substantive reasons returned the parties to their prior positions under the note and mortgage, but to also include dismissals where the plaintiff substantively changed its legal rights in a mediation agreement and failed to honor the agreement to the prejudice of the defendant, would make a nullity of all mediations in foreclosure cases. In his concurrence in the *Bartram* case, Justice Lewis in his concurrence expressed his concern for such potential abuse by plaintiff's in foreclosure actions who would rely on the *Bartram* case to potentially excuse any mistake in a case involving successive foreclosure actions. Specifically, Justice Lewis stated:

“in light of the narrow holding of *Singleton*, I fear that its expansion [in *Bartram*] to a case involving a previous dismissal (presumably) without prejudice and no clear reinstatement of the mortgage terms in either the note or the facts of the limited record will lead to inequitable results. Just as the courts should not encourage mortgage delinquency, so too should they avoid encouraging lenders from abusing Florida law and Floridians by

“retroactively reinstating” mortgages after many of those lenders initially slept on their own rights to seek foreclosures.”

By requesting that this Court completely ignore the law of contract and enforcement of settlement agreements, Deutsche Bank is seeking to expand the holding of *Singletary* and *Bartram* to its most extreme point that res judicata can never preclude a subsequent action on a mortgage and note regardless of the reason for a prior dismissal. Under Deutsche Bank’s logic, the plaintiff can file a foreclosure action for every possible date of default which would be three hundred sixty times under a thirty year note and mortgage. If a foreclosure action is dismissed for any reason whatsoever, be it a mistake, lack of prosecution, or entry into settlement agreement the plaintiff does not want to honor, the plaintiff can dismiss the action and file another foreclosure action with a new date of default and have under a thirty year note and mortgage three hundred fifty nine more chances to sue the defendant. To agree with Deutsche Bank would encourage lenders to abuse Florida law and defendants by not holding them accountable for their actions or their agreements.

## **II. DEUTSCHE BANK IS BARRED BY THE STATUTE OF LIMITATIONS FROM ENFORCING THE MEDIATION SETTLEMENT AGREEMENT**

### **A. STATUTE OF LIMITATIONS HAS EXPIRED TO ENFORCE MEDIATION AGREEMENT**

The trial Court did not err in granting the Motion for Summary Judgment in favor of Forester based on the expiration of the applicable five year statute of



limitations which applies to a written settlement agreement. After the parties entered into the Mediation Settlement Agreement, all actions based on the note and mortgage merged in the written agreement which was subject to the applicable five year statute of limitations. Since the dismissals in the 2007 Foreclosure Case and the 2012 Foreclosure Case clearly evidence that the settlement agreement was enforced and that Deutsche Bank breached the Mediation Settlement Agreement, the filing of the underlying action on February 23, 2016 is clearly in excess of five years from any breach of the Mediation Settlement Agreement which was enforced in the December 30, 2010 dismissal of the 2007 Foreclosure Case.

*Section 95.11, Florida Statutes*, provides, in pertinent part, that actions other than for the recovery of real property shall be commenced within five years on a legal or equitable action on a contract, obligation, or liability founded on a written instrument. In the instant case, the parties executed the Mediation Settlement Agreement on May 21, 2009, which required Deutsche Bank to provide Forester with a modified note and mortgage on specific terms. (R. 252-258). On December 30, 2010, the Court dismissed the 2007 Foreclosure Case based on the failure of Deutsche Bank to comply with the Mediation Settlement Agreement and its two prior Court orders enforcing the Mediation Settlement Agreement. (R. 279-280).

If the December 30, 2010 dismissal is considered the last possible date upon which Deutsche Bank could have been considered to have breached the Mediation

Settlement Agreement, then the applicable statute of limitation expired at the latest on December 31, 2015. Any claim by Deutsche Bank to enforce the note and mortgage after its rights were merged into the Mediation Settlement Agreement would be subject to the five year statute of limitations to enforce written agreements which expired on December 31, 2015. Accordingly, any claim by Deutsche Bank to enforce its rights under the Mediation Settlement Agreement or the note and mortgage is barred by the applicable five year statute of limitations.

**B. DEUTSCHE BANK'S STATUTE OF LIMITATIONS LEGAL AUTHORITY IS INAPPLICABLE TO THE FACTS OF THIS CASE**

Deutsche Bank's reliance on the statute of limitations applicable to a note and mortgage and in foreclosure cases where the note and mortgage is reinstated after a dismissal is wholly inapplicable to the facts and law of this case. Deutsche Bank's entire appeal is predicated on the argument that regardless of the reason for a dismissal in a residential foreclosure action, the mortgage and note are unaffected by the dismissal because the note and mortgage are automatically reinstated by any and all dismissals regardless of the reason. What Deutsche Bank fails to acknowledge in this case is the fact that their legal rights under the note and mortgage were merged into the Mediation Settlement Agreement and the applicable statute of limitations for a written agreement is five years.

Deutsche Bank argues that the applicable statute of limitations is five years from the last possible date of default under the note and mortgage, which in this case

would be November 30, 2040. In support of its argument, Deutsche Bank states “if a mortgagee’s initial foreclosure action is dismissed **for any reason**, even an involuntary dismissal, the mortgage is not barred from bringing a new foreclosure action premised on [a] new default subsequent to the dismissal.” Thus, Deutsche Bank is clearly requesting that the Court find that mediation agreements are not binding in foreclosure actions and cannot alter the parties’ legal rights or the applicable statute of limitations.

However, not one case upon which Deutsche Bank relies in support of its position that the only statute of limitations applicable to a note and mortgage is five years from the date of the last default regardless of any prior dismissals. In fact, each case cited by Deutsche Bank is wholly distinguishable on the facts and law because none of the cases address the implications of a dismissal based on the enforcement of a binding settlement agreement. Instead, every case cited by Deutsche Bank in support of its argument that the applicable statute of limitations has not expired is factually distinguishable because all of these cases are factual situations in which a dismissal did in fact reinstate the note and mortgage. See, *Nationstar Mortgage, LLC vs. Brown*, 175 So. 3d 833 (Fla. 1<sup>st</sup> DCA 2015) (Note and mortgage reinstated after foreclosure case dismissed for plaintiff’s failure to attend case management conference); *Deutsche Bank Trust Company Americas vs. Beauvais*, 188 So. 3d 938 (Fla. 3<sup>rd</sup> DCA 2016) (Note and mortgage reinstated after

foreclosure case dismissed for plaintiff's failure to attend case management conference); *Bolletieri Resort Villas Condo. Association, Inc. vs. Bank of New York Mellon Corp. as Trustee, etc.*, 198 So. 3d 1140 (Fla. 2<sup>nd</sup> DCA 2016) (Note and mortgage reinstated after plaintiff voluntarily dismissed foreclosure action voluntarily.); *The Bank of New York Mellon as Trustee, etc., vs. Anton*, 2017 Fla. App. LEXIS 12415 (Fla. 3<sup>rd</sup> DCA August 30, 2017) (Note and mortgage reinstated after foreclosure action dismissed for lack of prosecution.); and *Wells Fargo Bank, NA, as Trustee, etc., vs. BH-NV Investments I, Inc.*, 2017 Fla. App. LEXIS 11716 (Fla. 3<sup>rd</sup> DCA August 16, 2017) (Note and mortgage reinstated after foreclosure action dismissed for lack of prosecution.). Deutsche Bank has not cited a single case in which the parties entered into a mediation settlement agreement which was enforced by the Court and was subject to a five year statute of limitations.

By requesting that this Court completely ignore the statute of limitations applicable to written contracts and the enforcement of settlement agreements, Deutsche Bank is seeking to expand the holding of *Bartram* to its most extreme point that the statute of limitations is always five years after the last possible default under the note and mortgage and is reset in every subsequent action on a mortgage and note regardless of the reason for a prior dismissal. Under Deutsche Bank's logic, the plaintiff can file a foreclosure action for every possible date of default which would be three hundred sixty times under a thirty year note and mortgage. If a

foreclosure action is dismissed for any reason whatsoever, be it a mistake, lack of prosecution, or entry into settlement agreement the plaintiff does not want to honor, the plaintiff can dismiss the action and file another foreclosure action with a new date of default and have, under a thirty year note and mortgage a statute of limitations which is thirty five years long. To agree with Deutsche Bank would encourage lenders to abuse Florida law and defendants by not holding them accountable for their actions or their agreements in a timely manner.

**III. DEUTSCHE BANK FAILED TO TIMELY APPEAL ANY ISSUE AS TO THE ENFORCEABILITY OF THE MEDIATION SETTLEMENT AGREEMENT**

**A. DEUTSCHE BANK'S ARGUMENT THAT THE MEDIATION AGREEMENT IS NOT ENFORCEABLE IS AN UNTIMELY APPEAL**

In its final argument, Deutsche Bank attempts to challenge the validity of the Mediation Settlement Agreement as an enforceable agreement by raising for the first time on appeal that it was merely an agreement to agree and not a contract. However, this argument is a thinly disguised untimely appeal and barred by Deutsche Bank's failure to timely appeal the dismissal of the 2007 Foreclosure Case. Additionally, this argument is barred by Deutsche Bank's second failure to timely appeal the dismissal of the 2012 Foreclosure Case, which also found the Mediation Settlement Agreement to be an enforceable contract.

Essentially, Deutsche bank is attempting to boot strap into this appeal an untimely appeal of the December 30, 2010 Order of Dismissal and the February 8,

2013 Order of Dismissal by asserting the underlying Mediation Settlement Agreement was merely an “agreement to agree” which could not have affected the rights of the parties under the note and mortgage. This argument is contrary to the evidence in the record which demonstrates that the Mediation Settlement Agreement was enforced in both dismissals and was not timely appealed by Deutsche Bank.

A notice of appeal must be filed within thirty days of the rendition of an order to be reviewed; otherwise, the appellate court lacks jurisdiction to entertain the appeal. *Rule 9.110(b), Florida Rules of Appellate Procedure*. Where the language of an order is self-executing, unequivocal language, such as ‘Plaintiff shall take nothing by this action and that defendant shall go hence without day,’ the order is sufficient to constitute a final order for the purposes of appeal. *McQuaig vs. Wal-Mart Stores, Inc.*, 789 So. 2d 1215 (Fla. 1<sup>st</sup> DCA 2001). If a notice of appeal is not timely filed, the appellate court lacks jurisdiction to hear the appeal. *Boyd vs. Goff*, 828 So. 2d 468 (Fla. 5<sup>th</sup> DCA 2002).

In support of her Motion for Summary Judgment, Forester filed an Affidavit which verifies that the parties entered into a Mediation Settlement Agreement and the specific terms thereof. (R. 252-260). Forester’s Affidavit authenticates the terms of the Mediation Settlement Agreement which is attached to the affidavit. (R. 256-258). Additionally, Forester’s Affidavit details the actions she took to enforce the Mediation Settlement Agreement, including the filing of two motions in the 2007

Foreclosure Case to compel Deutsche Bank to comply with the agreement. (R. 254). Finally, Forester's Affidavit describes the two dismissals of the prior foreclosure actions and the failure of Deutsche Bank to appeal those dismissals. (R. 254). Furthermore, the record includes the December 30, 2010 Order of Dismissal (R. 279-280) and the February 8, 2013 Order of Dismissal (R. 286-287), both of which expressly find the Mediation Settlement Agreement enforceable and the failure to comply with it the basis on the dismissal. Thus, the record establishes that Forester obtained two final orders enforcing the Mediation Settlement Agreement against Deutsche Bank, which were not appealed.

Considering Deutsche Bank failed to timely appeal the December 30, 2010 final order or the February 8, 2013 final order, both of which enforced the Mediation Settlement Agreement against it, Deutsche Bank cannot now for the first time appeal the validity of the Mediation Settlement Agreement. Such an appeal is untimely made and the court lacks jurisdiction to entertain this subject matter. Accordingly, there is no subject matter jurisdiction pertaining to matters which were not timely brought before this Court.

**B. EVEN IF THE COURT CONSIDERS DEUTSCHE BANK'S ARGUMENT, THE MEDIATION AGREEMENT IS AN ENFORCEABLE AGREEMENT**

Even if the Court considers Deutsche Bank's argument that the parties did not enter into an enforceable settlement agreement as timely, the Mediation Settlement

Agreement would be found to be enforceable. Contrary to the representations of Deutsche Bank, the Mediation Settlement Agreement, on its face, incorporates of all of the terms necessary to modify the note and mortgage and left only ministerial actions to be performed by Deutsche Bank.

In its argument, Deutsche Bank misleads the Court by providing an incomplete and inaccurate rendition of the record. Deutsche Bank claims that the only agreed upon terms in the Mediation Settlement Agreement was the interest rate of 4.75% and that the principal amount was not agreed. (Initial Brief, 19). Additionally, Deutsche Bank attempts to mislead the Court by quoting “certain contingencies” of the Mediation Settlement Agreement, which in reality is merely language either taken out of context or not fully quoted.

To the contrary, the record demonstrates that on May 21, 2009, Deutsche Bank and Forester entered into the Mediation Settlement Agreement wherein the parties agreed to specific terms to compromise and settle their claims in the 2007 Foreclosure Case. (R. 253). Specifically, Deutsche Bank and Forester agreed to a loan modification on the following enumerated terms: a term of 317 months; a maturity date of December 1, 2035; a fixed interest rate of 4.75%; a first payment date of August 1, 2009; a payment amount of \$1,346.03; and a principal amount of \$242,848.78. (R. 256-258). The Mediation Settlement Agreement provided additionally, that Forester had to clear liens, if any, against the property and pay



within thirty days and reinstatement amount that would not exceed \$7,500.00. (R. 256). Thus, Deutsche Bank misrepresents the terms as expressly set forth in the Mediation Settlement Agreement.

Furthermore, Deutsche Bank argues that Forester should have attempted to “enforce the agreement rather than evade her note and mortgage obligations.” (Initial Brief 19). This argument is also contrary to the record. Forester was ready willing and able to comply with the Agreement and sought through her attorneys to comply with the Agreement, but Deutsche Bank failed to comply with the agreement (R. 253). Forester filed two separate motions to enforce the Mediation Settlement Agreement in the 2007 Foreclosure Case. (R. 253). Both motions were granted, but Deutsche Bank failed to perform the Mediation Settlement Agreement or comply with the Court’s orders enforcing the agreement. (R. 253). Faced with Deutsche Bank’s continuing refusal to perform under the Settlement Agreement, Forester filed a Motion to Dismiss the 2007 Foreclosure Action, which was granted. (R. 254). Accordingly, Forester did take affirmative actions to enforce the Mediation Settlement Agreement and successfully enforced the Mediation Settlement Agreement against Deutsche Bank.

Even the case authority which Deutsche Bank cites in support of its argument that the Mediation Settlement Agreement was merely an “agreement to agree” are not applicable to this case. First, Deutsche Bank cites to a series of cases in which

the parties had merely attempted to modify a note and mortgage through trial programs. See, *O'Steen vs. Wells Fargo Bank, NA*, 2017 U.S. District LEXIS 156234 (M.D. Fla. September 25, 2017) (Borrowers and bank attempted a trial modification that clearly provided borrower might not be eligible for a loan modification.) and *Senter vs. J.P. Morgan Chase Bank, NA*, 810 F. Supp. 2d 1339 (S.D. Fla. 2011) (Borrowers and bank attempted a HAMP modification which specifically provided the agreement was a conditional application process.). In the instant case, the provisions as set forth in the Mediation Settlement Agreement establish that the parties agreed upon all of the essential terms to modify the note and mortgage. The agreement is clear in the obligations of the parties with respect to the conditions of the contract and the actions to be taken by the parties. The only actions necessary on the part of Deutsche Bank was to generate the new note and mortgage incorporating the agreed upon terms.

As to the argument that the Mediation Settlement Agreement fails to overcome the Banking Statute of Frauds, which is required to compromise a note and mortgage, Deutsche Bank again misstates the record in support of its argument. Specifically, Deutsche Bank states "Forester contends that the Mediated Settlement Agreement is essentially a modification of her loan. However, she admittedly never executed a loan modification agreement. " (Initial Brief 21). To the contrary,

Forester executed the Mediation Settlement Agreement which provides all of the terms necessary to satisfy the Banking Statute of Frauds. (R. 252-258).

Specifically, *Section 687.0304, Florida Statutes*, provides, in pertinent part, that the agreement must be in writing, express consideration, set forth the relevant terms, and conditions and is signed by both the creditor and the debtor. The Mediation Settlement Agreement satisfies all of these conditions on its face. (R. 256-258). The fact that Deutsche Bank failed to comply with the Mediation Settlement Agreement and provide Forester with a modified note and mortgage that incorporated the agreed upon terms does not defeat the fact that there is a written agreement between the parties.

### **CONCLUSION**

The trial Court was correct in granting Forester's Motion for Summary Judgment. The undisputed facts demonstrated that the parties entered into a Mediation Settlement Agreement, which was enforced by the Court in the 2007 Foreclosure Case and the dismissal of the 2007 Foreclosure Case was an adjudication on the merits as to the parties' legal rights. As a matter of law, the trial Court correctly held that the doctrine of res judicata barred any subsequent foreclosure action where the parties had previously entered into a settlement agreement and the prior action was dismissed with prejudice when the plaintiff failed to perform under that settlement agreement. Additionally, since the Mediation

Settlement Agreement was enforced between the parties in the 2007 Foreclosure Case, the trial Court correctly ruled that the applicable statute of limitations in this case was a five year statute of limitations which began running when Deutsche Bank breached the Mediation Settlement Agreement. Finally, the Court is without jurisdiction to consider Deutsche Bank's final argument that the Mediation Settlement Agreement is merely "an agreement to agree" because this argument is an attempt to untimely appeal matters that should have been appealed thirty days after either the dismissal of the 2007 Foreclosure Case or the 2012 Foreclosure Case. Accordingly, the Court should affirm the trial Court's granting of Forester's Motion for Summary Judgment.

**AMENDED CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I have on this day December 19, 2017, filed the foregoing ANSWER BRIEF by using the Court's Electronic Filing System. A true and correct copy was also served on December 18, 2017 on Appellees, counsel and other parties of record by email (where email address is known, as shown below) and by US Mail (where no email address is known, as shown below) as follows:

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**LANDIS GRAHAM FRENCH, PA**

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**CERTIFICATION OF TYPE STYLE**

I HEREBY CERTIFY that the foregoing document has been formatted using Times New Roman 14 point font and is in compliance with the font and formatting requirements as set forth in Florida Rule of Appellate Procedure 9.210.

**LANDIS GRAHAM FRENCH, PA**

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