

**APPLICATION FOR NOMINATION TO THE FOURTH APPELLATE DISTRICT COURT**

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

**DATE:** November 16, 2012 Florida Bar No.: 860778

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

1. Name Elizabeth A. Metzger E-mail: metzgere@circuit19.org

Date Admitted to Practice in Florida: September 21, 1990

Date Admitted to Practice in other States: \_\_\_\_\_

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

State of Florida, Circuit Judge, 19<sup>th</sup> Judicial Circuit

3. Business address: 312 Northwest 3<sup>rd</sup> Street, Room 348

City Okeechobee County Okeechobee State FL ZIP 34972

Telephone (863) 763-1240 FAX (863) 763-1242

4. Residential address: [REDACTED]

Since July 1, 1994 Telephone [REDACTED]

5. Place of birth: Miami, FL

Date of birth: [REDACTED] Age: 50

6a. Length of residence in State of Florida: 1962 to 1980 and 1987 to present

6b. Are you a registered voter?  Yes  No

If so, in what county are you registered? Martin

7. Marital status: Married

If married: Spouse's name [REDACTED]

Date of marriage [REDACTED]

Spouse's occupation [REDACTED]

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.

Previous marriage to Robert Confoy, currently living in Charlotte, North Carolina; divorced in July 1990 in Palm Beach County, Florida.

8. Children

*Name(s)*                      *Age(s)*                      *Occupation(s)*                      *Residential address(es)*



9. Military Service (including Reserves)

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

Rank at time of discharge \_\_\_\_\_ Type of discharge \_\_\_\_\_

Awards or citations \_\_\_\_\_

**HEALTH:**

10.



11a.

11b.

12a.

12b.

13.

14.

15.

16.

17.

**EDUCATION:**

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

<i>Schools</i>	<i>Class Standing</i>	<i>Dates of Attendance</i>	<i>Degree</i>
Cardinal Newman High School	top 1/3rd	8/1976-5/1980	
Villanova University	top 1/3rd	8/1980-5/1984	B.A.
Nova Southeastern University Center for the Study of Law	5 <sup>th</sup> (top female student)	8/1987-5/1990	J.D. (Magna Cum Laude)

18b. List and describe academic scholarships earned, honor societies or other awards. Dean's list (Villanova University and Nova Southeastern University); Recipient of Dean's Award for Academic Excellence for Class of 1990; Goodwin Research Fellowship for Dean Roger Abrams (law school), Law Review 1989-1990; Florida Bar Trial Lawyers Section Award for Excellence in Trial Competitions (1990).

**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>
-------------	-----------------	-----------------	----------------

6/1984- 7/1987	Claims Trainee/Regional Claims Examiner	Chubb Group of Insurance Companies	P.O.Box 1615, Warren, NJ and 100 William Street, New York, NY
-------------------	---	--	---

**PROFESSIONAL ADMISSIONS:**

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

<i>Court or Administrative Body</i>	<i>Date of Admission</i>
The Florida Bar	9/21/1990

**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>
Law Clerk	Metzger, Sonneborn & Rutter	1545 Centerpark Drive, West Palm Beach, FL	1988
Summer Associate	Mershon, Sawyer, et al.(n/k/a Akerman, Senterfitt)	777 South Flagler Drive, West Palm Beach, FL	1989
Associate	Mershon, Sawyer, et al.	777 South Flagler Drive, West Palm Beach, FL	1990-1991
Associate (see attached)	Metzger, Sonneborn & Rutter	1545 Centerpark Drive, West Palm Beach, FL	1991-1995

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.

While I was in private practice, the general nature of my practice was civil litigation. Such primarily consisted of personal injury, insurance and professional liability defense. My previous clients typically sought my services after receiving notice of future/pending litigation in the areas noted above.

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

Court		Area of Practice	
Federal Appellate	_____ %	Civil	_____ %
Federal Trial	_____ %	Criminal	_____ %
Federal Other	_____ %	Family	_____ %
State Appellate	_____ 1 %	Probate	_____ %
State Trial	_____ 98 %	Other	_____ %
State Administrative	_____ 1 %		
State Other	_____ %		
	_____ %		
TOTAL	_____ 100 %	TOTAL	_____ 100 %

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

Jury? 10 Non-jury? 2  
 Arbitration? \_\_\_\_\_ Administrative Bodies? 2

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

No

26. In the last ten years, have you failed to meet any deadline imposed by court order or received notice that you have not complied with substantive requirements of any business or contractual arrangement? If so, please explain in full.

No

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

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

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

- 27c. During the last five years, how frequently have you appeared at administrative hearings?  
 \_\_\_\_\_ average times per month
- 27d. During the last five years, how frequently have you appeared in Court?  
 \_\_\_\_\_ average times per month
- 27e. During the last five years, if your practice was substantially personal injury, what percentage of your work was in representation of plaintiffs? \_\_\_\_\_%  
 Defendants? \_\_\_\_\_%
28. If during any prior period you have appeared in court with greater frequency than during the last five years, indicate the period during which this was so and give for such prior periods a succinct statement of the part you played in the litigation, numbers of cases and whether jury or non-jury.
29. For the cases you have tried to award in arbitration, during each of the past five years, indicate whether you were sole, associate or chief counsel. Give citations of any reported cases.
30. List and describe the six most significant cases which you personally litigated giving case style, number and citation to reported decisions, if any. Identify your client and describe the nature of your participation in the case and the reason you believe it to be significant. Give the name of the court and judge, the date tried and names of other attorneys involved.
31. Attach at least one example of legal writing which you personally wrote. If you have not personally written any legal documents recently, you may attach writing for which you had substantial responsibility. Please describe your degree of involvement in preparing the writing you attached.

Please see attached examples.

**PRIOR JUDICIAL EXPERIENCE OR PUBLIC OFFICE:**

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

I have held the office of Circuit Court Judge in the 19<sup>th</sup> Judicial Circuit from May 2006 to date. I was also a candidate for Martin County Judge in 2005.

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

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

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.

James Bowdish, (888) 899-8161, 759 South Federal Highway, Suite 106, Stuart, FL 34994

Jack Sobel, (877) 694-6079, 7111 Fairway Drive, Suite 105, Palm Beach Gardens, FL 33418

Alexander Clem, (877) 667-4265, 20 North Orange Avenue, Suite 1600, Orlando, FL 32801

Scott Konopka, (772) 221-7757, 1000 SE Monterey Commons Blvd., Suite 306, Stuart, FL 34996

David Earle, (772) 287-1745, 789 Southwest Federal Highway, Stuart, FL 34994

Alex Barker, (561) 478-4500, 1555 Palm Beach Lakes Boulevard, 16<sup>th</sup> Floor, West Palm Beach, FL 33401

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

Over the past 6 1/2 years while serving as a Circuit Court Judge, I have presided over thousands of cases in the civil, family and juvenile divisions. I have not kept a running count of the number of cases I have handled as a Circuit Judge as my focus has been on efficiently and competently resolving the cases in my division. I have conducted, at minimum, 40 civil jury trials to verdict.

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

Board of Trustees v. Lake Park Firefighters' Pension Plan, 966 So. 2d 448 (Fla. 4<sup>th</sup> DCA 2007); BNP Paribas v. Wynne, III, 963 So. 2d 944 (Fla. 4<sup>th</sup> DCA 2007); Marcellus v. Cronan, 963 So. 2d 364 (Fla. 4<sup>th</sup> DCA 2007).

(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.

1. Premier Lab Supply, Inc., v. Chemplex Industries, 94 So. 3d 640 (Fla. 4<sup>th</sup> DCA 2012). In this action, a manufacturer sued a competitor alleging misappropriation of trade secrets relating to a film spooling machine. I believe this case was significant



inasmuch as it involved unique issues pertaining to trade secret damages. This case was tried before a jury in 2010. The attorneys involved were William Davis of Foley & Lardner, LLP, Miami, FL and Joseph Beckman, Palm City, FL.

2. Hanrahan v. Hometown America, LLC, 90 So. 3d 915 (Fla. 4<sup>th</sup> DCA 2012). The issue presented in this action was whether the landlord owed a duty to its tenants to guard against fire ants. I believe this case was significant inasmuch as prior to the Fourth District Court's opinion, an appellate opinion had not been issued in Florida which directly addressed liability of a landlord/property owner based upon a fire ant attack. Final Summary Judgment was granted to the defendant in December 2010 and the Fourth District Court affirmed on June 20, 2012. The attorneys involved were Jeff Vastola, Stuart, FL and Elana Goodman, Weston, FL.
  3. Lopez v. United Capital Fund, LLC, 88 So. 3d 421 (Fla. 4<sup>th</sup> DCA 2012). The order which resulted in the foregoing appellate decision concerned the enforceability of a forum selection clause. This case I believe was significant because, prior to the issuance of the Fourth District's opinion in May 2012, an appellate opinion had not been published in Florida addressing the type of contractual forum selection clause at issue. An order denying the defendants' motions to dismiss or transfer case was issued in 2011 and the Fourth District Court affirmed on May 16, 2012. The attorneys involved were Louis Lozeau, Stuart, FL and Raul Valles, Jr., Tampa, FL.
  4. Guy Bennett Rubin, P.A. v. Guettler, 73 So. 3d 809 (Fla. 4<sup>th</sup> DCA 2011). The issue presented in this action concerned a discharge clause within an attorney's contingency fee agreement and whether such clause rendered the contingency fee agreement unenforceable as a matter of law. I believe this case was significant because it resulted in a lengthy Fourth District opinion on October 5, 2011 which brought clarity to issue of discharge clauses in contingency fee agreements. An order granting final summary judgment to the defendants was issued in 2009. The attorney's involved were Robert Gorman, Ft. Pierce, FL and Laurence Huttman, Stuart, FL.
  5. Guardian Ad Litem Program v. Department of Children and Families, T.K and D.K., 972 So. 2d 871 (Fla. 4<sup>th</sup> DCA 2007). The issue presented in this case concerned the Department of Children and Families' request to modify a child's placement from the foster family home to a prospective adoptive home. I believe that the decision made at the trial court level was significant inasmuch as it explored, in depth, the extent of the Department of Children and Families' discretion concerning adoptive placements. An extensive order on modification of placement/appropriateness of child's adoptive placement was issued at the trial court level in December 2006, which was affirmed by the Fourth District Court of Appeal on July 25, 2007. The attorneys involved were William Hess, Stuart, FL and counsel for the Guardian Ad Litem Program as well as for the Department of Children and Families.
- (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, not that I am aware of.

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

No

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

N/A

**BUSINESS INVOLVEMENT:**

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

N/A

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

No

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

No

**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.

I have recused myself from cases in my division wherein a party was a previous client. I have also recused myself from cases involving courthouse staff with whom I have a close working relationship. I believe I recused myself less than 5 times over the past 6 1/2 years..

**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.

George Manning v. Estate of Trial Judge David Harper, The Hon. Barbara Bronis, The Hon. Elizabeth Metzger, The Hon. Kathleen Roberts, The Hon. Larry Schack and The Hon. Dan Vaughn. Plaintiff filed a Complaint for damages against the foregoing Defendants in the U.S. District Court for the Southern District of Florida alleging he was deprived of a fair trial in Martin County Court and the Appellate Circuit Court. The Defendants' Motion to Dismiss was granted and judgment was entered in favor of the Defendants. George Manning filed a Notice of Appeal in the United States Court of Appeals for the Eleventh Circuit. The United States Court of Appeal ruled in the Defendants' favor.

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.

"Funding for Aids Treatment and Support Services Part II", Journal of Patient Account Management, April 1991; "Medical Malpractice Statute of Limitations", Florida Bar Journal, June, 1992.

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

Dean's list (undergraduate and law school); Overall Dean's Award for Academic Excellence, Class of 1990 (law school); Goodwin Research Fellowship for Dean Roger Abrams (law school 1989-1990); Four Year Swimming Scholarship, Villanova University (1980-1984); Inducted into the Villanova Athletic Hall of Fame for swimming accomplishments (1999).

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

Prior to becoming a Circuit Court Judge, I was a lecturer at multiple seminars, primarily held for physicians and medical professionals. After becoming a Circuit Judge, I have spoken on multiple occasions to members of the bar regarding dependency, family and civil issues.

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

**PROFESSIONAL AND OTHER ACTIVITIES:**

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

Florida Bar Association; Martin County Bar Association; The Justice Major B. Harding American Inns of Court.

- 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.

Member of the Florida Supreme Court Commission on Trial Court Performance and Accountability, 2010-date.

Chair, Trial Court Management Integrated Management Solution Project, Civil Workgroup, 2011-2012.

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

My hobbies and vocational interests include running, swimming, biking, volunteering at St. Joseph Catholic Church and School and watching my sons compete in basketball games/tournaments.

- 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.

Prior to becoming a Judge, I acted as a Guardian Ad Litem in Palm Beach County in the early 1990s.

**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 substantive areas of civil, family, dependency and delinquency.

- 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, prior to becoming a Judge, I lectured in the medical/legal area. After becoming a Judge, I have participated in forums conducted for members of the Indian River, St. Lucie and Martin County Bar Associations in the areas of family law and civil matters.

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

As a Circuit Judge, I have served in all four counties in the 19<sup>th</sup> Judicial Circuit. I have presided over cases in all divisions. I believe this unique and diverse experience will undoubtedly assist me to efficiently and effectively analyze and rule on cases at the appellate level. I have also served as the Appellate Administrative Judge and Civil Administrative Judge in the Nineteenth Judicial Circuit. Lastly, I have been appointed to act as a mentor for new judges in the Nineteenth Judicial Circuit.

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

I am a proven, dedicated hard worker. I am patient and professional even in difficult circumstances. I believe that my legal research/analysis and writing skills, as well as my experience in private practice, on the bench and in life, will serve as a positive contribution to the Fourth District Court of Appeal.

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.

Nineteenth Judicial Circuit Nominating Commission, January 2006 (Circuit Court position) and September 2005 (County Court position).

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

As I expressed when I submitted my application for nomination to the Circuit bench, from early on in my legal career, I aspired to become a member of the judiciary. I did not submit my application for nomination to the trial bench until I firmly believed that I had the requisite knowledge and experience both as a lawyer and as an individual to become a member of the judiciary. After having the privilege of serving 6 1/2 years as a Circuit Court Judge in Martin, St. Lucie, Indian River and Okeechobee Counties in numerous divisions, I believe that I have gained the high level of knowledge and experience necessary to honorably serve as a Fourth District Court of Appeal Judge.

#### 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.

The Honorable Steve Levin, [REDACTED]

The Honorable Paul Kanerek [REDACTED]

The Honorable Mark Klingensmith,

The Honorable William Roby,

The Honorable Burton Conner

John Metzger, Esq.,

Dennis Vandenberg, Esq.,

Edwin "Ted" Mortell, III,

Philip Sprinkle, Esq.,

Nita Denton, Esq.

