

## MODULE 16: THE COLLAPSE OF JUDGMENT

### *How Courts Drifted from Declaring Law to Managing Procedure*

#### Section 1: Module Summary & History

##### Core Overview

The central theme of this module is the historical and structural transition of the American judiciary from an institution of "judgment" to an institution of "will." Originally designed to possess neither force nor will, the judiciary was restricted to the impartial application of pre-existing law to specific facts. This limitation ensured that the legislative branch remained the sole author of law while the judiciary served as a restraint, measuring governmental actions against constitutional delegations. However, modern institutional practices have increasingly replaced this substantive determination with procedural management and administrative efficiency.

This transition creates a profound structural friction between the constitutional mandate for an independent judiciary and the modern administrative state, where procedure often supersedes the law it was meant to facilitate. This module addresses the critical "Firewall Question": **If the Constitution delegates the judiciary only the power of judgment, who authorized courts to exercise will instead of judgment?** By tracing the decline of the "court of record" and the merger of law and equity, the material identifies how judicial discretion and procedural compliance have become self-ratifying substitutes for a demonstrated chain of authority.

##### The Timeline of Drift (1776 to Present)

| Phase Name                        | Historical Era | Key Developments & Doctrines                                                          | Alteration of Original Sequence                                                                               |
|-----------------------------------|----------------|---------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------|
| <b>Judgment as Restraint</b>      | 1776–1789      | Declaration of Independence; common law principles. Law precedes government.          | Judgment functioned as a check to ensure government acted only within delegated authority.                    |
| <b>Constitutional Measurement</b> | 1789–1865      | Ratification of Article III and VI. Federalist No. 78 (Hamilton's "merely judgment"). | Courts measured claims of authority against the written Constitution; jurisdiction was never presumed.        |
| <b>The Shift Toward Necessity</b> | 1865–1913      | Industrialization; expansion of national commerce and corporations.                   | Courts began considering "institutional necessity" and social conditions alongside constitutional analysis.   |
| <b>Administrative Bending</b>     | 1913–1937      | Federal Reserve (1913); 16th Amendment; growth of regulatory commissions.             | Multi-function agencies combined legislative, executive, and judicial powers; review shifted to agency rules. |

## The Rule of Law: Breakdown, Record and Exposure

|                                      |              |                                                                                  |                                                                                                                  |
|--------------------------------------|--------------|----------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------|
| <b>Judicial Deference</b>            | 1937–1970    | New Deal expansion; retreat from active restraint of federal power.              | Courts began deferring to legislative and administrative expertise rather than independently checking power.     |
| <b>Procedural Dominance</b>          | 1970–2000    | Sophisticated procedural frameworks; threshold obstacles (standing, exhaustion). | Procedure became an end in itself; technical compliance often replaced determinations on the merits.             |
| <b>Self-Ratifying Administration</b> | 2000–Present | Inversion of burden of proof; presumption of authority.                          | Authority is assumed at the outset; the burden shifts to the citizen to disprove the lawfulness of state action. |

### Core Operational Concepts

- **The Burden Shift:** In the original constitutional order, the government bore the affirmative responsibility to demonstrate jurisdiction and authority before exercising power. In modern practice, this burden has shifted to the citizen, who must now navigate procedural barriers to challenge authority only after the government has already acted or enforced its will.
- **The Operational Mechanism:** Administrative systems normalize this drift by prioritizing procedural compliance over substantive legal demonstrations. By focusing on whether an institution followed its own internal rules (process) rather than whether it possessed the original delegated authority (judgment), the system creates a self-ratifying loop where assumed power is validated by the successful execution of its own procedures.

### Glossary of Key Terms

- **Judgment:** The judicial act of discovering and applying existing law to the facts of a controversy.
- **Will:** The act of making or rewriting law according to preference or policy; a power constitutionally reserved to the legislature.
- **Court of Record:** A court whose acts and judicial proceedings are enrolled for a perpetual memorial and testimony, where jurisdiction must be affirmatively established on the record.
- **Equity:** A system of justice designed to provide remedies where the law is inadequate; governed by the maxim "equity follows the law."
- **Rules Enabling Act:** The legislation that authorized the Supreme Court to prescribe procedural rules, provided they do not "abridge, enlarge or modify any substantive right."
- **Federal Rule of Civil Procedure 2:** The 1938 rule that merged law and equity into "one form of action."
- **Affidavit of Default:** A sworn evidentiary record documenting that a notice was served, a response was requested, and the opportunity to respond passed without rebuttal.
- **Chain of Authority:** The unbroken sequence of lawful delegation from the People to the Constitution, to the office, to the officer, and finally to the specific act.

## The Rule of Law: Breakdown, Record and Exposure

### Section 2: Assessment and Review

#### Multiple-Choice Quiz

1. **According to Alexander Hamilton in *Federalist No. 78*, the judiciary possesses:** A. Both force and will. B. Neither force nor will, but merely judgment. C. Force, but not will. D. The power to create law as needed.
2. **What was the primary constitutional limitation of the Rules Enabling Act?** A. It allowed courts to expand substantive rights. B. Procedural rules could not abridge, enlarge, or modify substantive rights. C. It granted the judiciary legislative authority. D. It removed the requirement for a court of record.
3. **In a "Court of Record," what is the primary purpose of the record?** A. To facilitate rapid appeals. B. To serve as permanent evidence that the court proceeded according to law. C. To allow the judge to revise their decisions privately. D. To summarize the judge's personal policy preferences.
4. **Which historical event in 1938 formally merged the procedural distinction between law and equity?** A. The ratification of the Sixteenth Amendment. B. The creation of the Federal Reserve. C. The adoption of Rule 2 of the Federal Rules of Civil Procedure. D. The conclusion of the Civil War.
5. **The maxim "Equity follows the law" implies that:** A. Equity is superior to the law. B. Equity may disregard the law for fairness. C. Equity remains subordinate to and supplements the law. D. Law must be rewritten to match equitable outcomes.
6. **What is the "Firewall Question" presented in this module?** A. When did the Constitution become obsolete? B. Who authorized courts to exercise will instead of judgment? C. How can administrative agencies increase efficiency? D. Why do judges wear robes?
7. **How does the "self-ratifying" model of modern administration function?** A. It requires the legislature to approve every judicial decision. B. It validates institutional assumptions of power through procedural compliance. C. It eliminates the need for any judicial review. D. It forces the government to prove jurisdiction in every case.
8. **The 1865–1913 era of judgment was characterized by:** A. A total rejection of federal power. B. The use of "institutional necessity" to justify expanded government authority. C. The strict adherence to the 1776 procedural baseline. D. The elimination of administrative agencies.
9. **An Affidavit of Default is defined as:** A. A legal argument used to persuade a judge. B. A sworn statement of fact that preserves the un rebutted record. C. A document that creates a new legal right. D. A motion to dismiss a case.
10. **In the original constitutional design, what was the "condition precedent" to the exercise of judicial power?** A. Procedural convenience. B. The passage of time. C. The establishment of jurisdiction on the record. D. A direct order from the Executive branch.

## The Rule of Law: Breakdown, Record and Exposure

### Answer Key and Explanations Table

| Question | Answer | Explanation                                                                                                                |
|----------|--------|----------------------------------------------------------------------------------------------------------------------------|
| 1        | B      | Slide 3 cites Hamilton to emphasize that the judiciary is restricted to applying existing law rather than creating policy. |
| 2        | B      | Slide 7 notes that the Rules Enabling Act explicitly restricted procedure from altering substantive rights.                |
| 3        | B      | Slide 5 defines a court of record as one where the record is the foundation of legitimacy, ensuring transparency.          |
| 4        | C      | Slide 7 identifies Rule 2 of the 1938 FRCP as the turning point that merged law and equity procedures.                     |
| 5        | C      | Slide 6 explains that equity was never meant to replace law but to supplement it within defined boundaries.                |
| 6        | B      | Slide 1 and Slide 11 frame this as the ultimate question for determining the lawfulness of the "drift."                    |
| 7        | B      | Slide 19 describes this as the final stage of drift where the institution's own procedures validate its assumed power.     |
| 8        | B      | Slide 15 explains that during this era, courts began weighing "necessity" against traditional constitutional limits.       |
| 9        | B      | Slide 26 and 28 clarify that the affidavit does not argue; it merely preserves what is already in the record.              |
| 10       | C      | Slide 5 and 14 emphasize that jurisdiction must be established before a court can lawfully proceed.                        |

### Essay Format Questions

1. **Synthesis of the Separation of Powers:** Analyze the distinction between "judgment" and "will" as described in the text. How does the judicial exercise of "will" facilitate the erosion of the separation of powers?
2. **The Decline of the Court of Record:** Discuss the role of the "record" in historical versus modern contexts. How does the shift from the record as a "permanent memorial of lawfulness" to a "collection of filings" impact the protection of liberty?
3. **The Procedural Substitute:** Evaluate the statement: "Procedure, originally intended to safeguard justice, had gradually become the measure by which judgment itself was increasingly defined." Use the historical phases between 1970 and the present to support your analysis.

### Section 3: Exemplars Summary and Relevance

| Exemplar                     | Summary                                                                                                                                                    | Relevance to Material                                                                                                                                |
|------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Florida Eviction Case</b> | A residential eviction filed under Chapter 83 instead of the Mobile Home Act (Chapter 723), featuring a default entered before proof of service was filed. | Illustrates a break in the "Chain of Authority" where procedural errors (service) and jurisdictional errors (wrong statute) invalidate the judgment. |



## The Rule of Law: Breakdown, Record and Exposure

|                                 |                                                                                                                                                                     |                                                                                                                                                                                 |
|---------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Post-Judgment Execution</b>  | A defendant was removed from a residence, denied access to personal effects, and subsequently penalized for violating a no-contact order while seeking necessities. | Demonstrates how subsequent "force" and enforcement actions depend entirely on the validity of the initial underlying judgment.                                                 |
| <b>Florida Bar Dues Inquiry</b> | Public records requests seeking the specific legislative or constitutional authority for mandatory bar dues and their distribution to third parties.                | Models the methodology of testing the source of authority; distinguishes between what a court <i>says</i> about its power and an <i>actual act of delegation</i> by the People. |

### Section 4: Expanded Homework Assignment and Practical Application Exercise

#### Drafting an Affidavit of Default from an Actual Record

##### Purpose

Throughout Module 16, you learned that an Affidavit of Default does not create a default. It preserves an existing record under oath. Your assignment is to review the McGowen exemplars and prepare an Affidavit of Default using the attached template. Your affidavit should faithfully preserve the chronology established by the documents without adding argument, speculation, or conclusions. The objective is not to persuade a court. The objective is to preserve an accurate evidentiary record.

Use the attached **Affidavit of Default** as your drafting template.

##### Case Background

For this exercise, assume you are the record custodian responsible for preserving the history of the McGowen matter.

Review the following documents:

- Motion to Vacate Default, Final Judgment, and Writ of Possession.
- Motion to Dismiss Criminal Information.
- Motion to Disqualify Judge Wells.
- Walton County civil and criminal docket summaries.

##### Assignment

Using only the documentary record, prepare an Affidavit of Default that follows the same structure as the attached template.

Do not rewrite the motions.

Instead, preserve the chronology established by the documents.

## **The Rule of Law: Breakdown, Record and Exposure**

### **Step One**

#### **Identify the Matter**

Begin by identifying:

- the parties
- the court
- the underlying proceeding
- the related criminal proceedings

State these facts exactly as they appear in the record.

### **Step Two**

#### **Preserve the Chronology**

Construct the factual sequence using only the documents.

For example:

- Complaint filed
- Default entered
- Final Judgment entered
- Writ of Possession issued
- Proof(s) of Service filed
- Execution of the Writ
- Arrest
- Criminal Information filed
- Motion to Vacate filed
- Motion to Dismiss filed
- Motion to Disqualify filed

Do not insert opinions.

Simply preserve the sequence.

### **Step Three**

#### **Identify the Authority Claimed**

As you review the record, identify every place governmental authority was exercised.

For each action ask:

- What authority is being exercised?

## **The Rule of Law: Breakdown, Record and Exposure**

- What document authorized that action?
- Is the authority expressly demonstrated in the record?
- What exhibit supports that statement?

### **Step Four**

#### **Preserve the Record**

Your affidavit should record only facts capable of documentary verification.

For example:

Instead of writing:

"The court acted unlawfully."

Preserve the record by stating:

"On May 12, 2026, the Clerk entered default. The first Proof of Service appearing on the docket is dated May 28, 2026."

Allow the record to speak for itself.

### **Step Five**

#### **Attach Exhibits**

Every factual statement contained within the affidavit should correspond to an exhibit.

Your exhibit list should include, at minimum:

#### **Exhibit A**

Motion to Vacate Default, Final Judgment, and Writ of Possession.

#### **Exhibit B**

Walton County Eviction Docket.

#### **Exhibit C**

Motion to Dismiss Criminal Information.

#### **Exhibit D**

Criminal Misdemeanor Docket.

#### **Exhibit E**

Motion to Disqualify Judge Wells.

## **The Rule of Law: Breakdown, Record and Exposure**

### **Exhibit F**

Additional criminal and related docket summaries.

### **Drafting Standards**

Your Affidavit of Default should follow the structure of the attached template.

The affidavit should:

- preserve the chronology;
- identify every governmental act in sequence;
- identify the authority claimed;
- identify the documents supporting each statement;
- preserve unanswered questions without attempting to answer them;
- remain objective from beginning to end.

Remember that an affidavit is not a motion.

It does not argue.

It does not accuse.

It does not determine liability.

It simply transforms an organized documentary record into a sworn evidentiary record.

### **Final Reflection**

After completing your affidavit, compare it to the Chain of Authority introduced throughout the Intermediate Course:

**Source → Law → Delegation → Due Process → Jurisdiction → Judgment → Execution → Accountability**

As you review your work, ask yourself:

**At what point in the documentary record would you begin requesting a demonstration of lawful authority?**

Your answer should be based entirely upon the documents you reviewed, not upon personal opinion or legal argument.



# EXEMPLAR 1 Judgment Depends Upon Every Link Before It

## BACKGROUND

This exemplar examines an eviction proceeding involving a resident who owned his mobile home but leased the lot beneath it. The eviction was filed in county court, followed by a clerk's default, a final judgment for possession, and the issuance of a writ of possession. According to the record provided for this exercise, the defendant later challenged the judgment by alleging that the action proceeded under the wrong statutory framework and that the default, judgment, and writ were entered before proof of service appeared in the court record.

## DOCUMENTS FOR REVIEW

- Motion to Vacate Default, Final Judgment, and Writ of Possession
- Motion to Dismiss Criminal Information
- Walton County eviction docket (screenshot shown at right)

## KEY ALLEGATIONS FROM MOTION TO VACATE

- 1 This action was filed as "Eviction Residential \$0-\$15K" under Chapter 83, Florida Statutes. Defendant owns his mobile home as personal property and rents only the lot. Mobile home park tenancies are governed exclusively by Chapter 723, Florida Statutes.
- 2 Default was entered on May 12, 2026, but the first Proof of Service was not filed until May 28, 2026 — sixteen days later. A default entered before proof of service is filed is void for lack of personal jurisdiction.
- 3 On May 19, 2026, a Writ of Possession was issued and law enforcement removed Defendant from his home. He was jailed for approximately two weeks.
- 4 On June 11, 2026, Plaintiff voluntarily dismissed Count II — the \$90.00 in disputed late charges that gave rise to this entire proceeding — but retained the void possession judgment.



**WALTON**  
COUNTY

**CRYSTAL SCONIERS**  
CLERK OF THE CIRCUIT COURT & COMPTROLLER



**OCRS** ONLINE COURT RECORDS SEARCH

## EVICTON (COUNTY CIVIL DIVISION)

| Date       | Docket Event                                                                      | Doc #    |
|------------|-----------------------------------------------------------------------------------|----------|
| 04/22/2026 | Complaint Filed - Eviction Residential \$0-\$15K                                  | 1        |
| 05/12/2026 | DEFAULT ISSUED ON KIMBERLY L. MCGOWEN<br>DEFAULT ISSUED ON WILLIAM H. MCGOWEN III | 27<br>26 |
| 05/14/2026 | FINAL JUDGMENT FOR POSSESSION AS TO COUNT I - EVICTION                            | 28       |
| 05/19/2026 | WRIT OF POSSESSION ISSUED                                                         | 30       |
| 05/28/2026 | PROOF OF SERVICE TO WILLIAM MCGOWEN, III                                          | 31       |
| 06/02/2026 | PROOF OF SERVICE TO WILLIAM MCGOWEN, III                                          | 33       |
| 06/11/2026 | PLAINTIFF'S NOTICE OF VOLUNTARY DISMISSAL OF COUNT II WITHOUT PREJUDICE           | 34       |

(Screenshot from Walton County Online Court Records Search)

## BUILD THE TIMELINE (From the Record)

| DATE     | EVENT                               | RECORD VERIFIED          |
|----------|-------------------------------------|--------------------------|
| April 22 | Complaint filed                     | <input type="checkbox"/> |
| May 12   | Clerk's Default                     | <input type="checkbox"/> |
| May 14   | Final Judgment                      | <input type="checkbox"/> |
| May 19   | Writ of Possession                  | <input type="checkbox"/> |
| May 28   | First Proof of Service filed        | <input type="checkbox"/> |
| June 2   | Second Proof of Service filed       | <input type="checkbox"/> |
| June 11  | Damages claim voluntarily dismissed | <input type="checkbox"/> |

## APPLY THE CHAIN OF AUTHORITY (FIREWALL REVIEW)

|                       |                                                                         |
|-----------------------|-------------------------------------------------------------------------|
| <b>SOURCE</b>         | What document demonstrates this step?                                   |
| <b>LAW</b>            | What authority is cited?                                                |
| <b>DELEGATION</b>     | Is there documentary support?                                           |
| <b>DUE PROCESS</b>    | Was the required process followed before the next step?                 |
| <b>JURISDICTION</b>   | Did the court have jurisdiction over the person and the subject matter? |
| <b>JUDGMENT</b>       | What is the judgment and on what basis?                                 |
| <b>EXECUTION</b>      | What was executed and by what authority?                                |
| <b>ACCOUNTABILITY</b> | Who is accountable for each act?                                        |

## QUESTIONS FOR ANALYSIS

- What statute was relied upon?
- Does the record identify why that statute applies?
- When was proof of service filed?
- What documents preceded the judgment?
- What documents followed the judgment?
- Which later acts depended upon the judgment remaining valid?

## LESSON

Judgment is never an isolated event. Every judgment depends upon the lawful completion of every condition that comes before it. Our responsibility is to identify the exact document, identify the exact date, preserve the chronology, and allow the record to speak for itself.

# EXEMPLAR 2 When Judgment Becomes the Foundation for Every Later Act

## BACKGROUND

Following execution of the writ of possession, criminal charges were filed for obstruction without violence and trespass. The defendant argues that both criminal charges depend upon the validity of the underlying writ of possession. He also filed a motion seeking disqualification of the judge on the ground that the same judge presided over the civil eviction proceeding and the related criminal matters.

## DOCUMENTS FOR REVIEW

- Motion to Dismiss Criminal Information
- Motion to Disqualify Judge
- Criminal misdemeanor docket (right)
- Criminal traffic docket (far right)
- Domestic injunction docket (below right)

## EXCERPT: MOTION TO DISMISS CRIMINAL INFORMATION

- 1 "The only lawful basis for the arrest, prosecution, and detention of Mr. McGowen was the Writ of Possession issued May 19, 2026."
- 2 "If the Writ is void, everything that flows from it is void. No valid writ. No lawful arrest. No lawful charges."

## EXCERPT: MOTION TO DISQUALIFY JUDGE

- 1 "The same Judge who presided over the eviction and signed the Writ of Possession now presides over the criminal prosecutions."
- 2 "Under Canon 3C(1) of the Code of Judicial Conduct, this creates at least the appearance of partiality."

## CRIMINAL MISDEMEANOR DOCKET (Screenshot)

| Case Type: Misdemeanor 34-D |                                  | Status: CASE OPEN |                  |       |
|-----------------------------|----------------------------------|-------------------|------------------|-------|
| Charge Seq #                | Description                      | Date              | Phase            | Trial |
| 1                           | OBSTRUCT OFFICER WO VIOLENCE     | 06/11/2026        | Prosecutor Filed |       |
| 2                           | TRESPASS STRUCTURE OR CONVEYANCE | 06/11/2026        | Prosecutor Filed |       |

## CRIMINAL TRAFFIC DOCKET (Screenshot)

| Case Type:     | Criminal Traffic 15-D          | Status:    | CASE OPEN      |
|----------------|--------------------------------|------------|----------------|
| Defendant:     | WILLIAM HENRY MCGOWEN III      |            |                |
| Date Of Birth: | 11/18/1970                     | Phone:     | (850) 865-3746 |
| Charge Seq #   | Description                    | Date       | Phase          |
| 1              | FAIL TO REGISTER MOTOR VEHICLE | 06/12/2026 | Charged        |

## DOMESTIC INJUNCTION DOCKET (Screenshot)

| Case Type:   | Domestic Violence Injunction 40-E | Status:     | CLOSED CASE               |
|--------------|-----------------------------------|-------------|---------------------------|
| Petitioner:  | DESTIN EAST MOBILE HOME PARK      | Respondent: | WILLIAM HENRY MCGOWEN III |
| Charge Seq # | Description                       | Date        | Phase                     |
| 1            | OUT OF STATE FLUCTIVE             | 05/09/2026  | Charged                   |

## TRACE THE CHAIN



## FIREWALL QUESTIONS (For Every Step)

- What authority is being exercised?
- What document authorizes that authority?
- What earlier document does it depend upon?
- Can the authority be demonstrated from the record?
- If the earlier document were later vacated, what effect, if any, would that have on the later proceedings?

## CONSTITUTIONAL OBSERVATION

Governmental authority often unfolds as a chain rather than isolated acts. Orders produce writs. Writs produce execution. Execution may produce arrests. Arrests may produce criminal charges. Later proceedings frequently rely upon earlier proceedings. Constitutional record-building requires preserving each step in sequence so that every exercise of authority can be examined against the record that preceded it.



**AFFIDAVIT OF DEFAULT AND PRESERVATION OF UNREBUTTED  
RECORD**

*NOTICE TO AGENT IS NOTICE TO PRINCIPAL; NOTICE TO PRINCIPAL IS NOTICE TO  
AGENT*

**COMMONWEALTH OF MASSACHUSETTS**

I, \_\_\_\_\_, one of the People, as recognized in the constitutions of the several States, republican in form, and sui juris, being first duly sworn, state the following from personal knowledge:

1. I make this Affidavit for the limited purpose of preserving in sworn form the chronology, notices, opportunities to respond, responses received, and matters remaining unrebutted within the record concerning the mandate of the People under 2024 Question 1 and the requested production of financial records to the State Auditor of the Commonwealth.
2. On or about March 27, 2026, I caused to be issued and served a prior written Notice concerning the failure to provide the financial records requested for audit and the requirement that Respondents either comply with the duty identified or provide, by sworn statement, the lawful authority upon which any refusal, limitation, or nonproduction was based.
3. The March 27, 2026 Notice identified the act under review as the continued withholding, nonproduction, or refusal to provide the financial records sought in connection with the People's 2024 Question 1 mandate and the asserted statutory audit obligation.
4. The March 27, 2026 Notice requested a demonstrable Chain of Authority for any continued refusal to comply, including the constitutional, statutory, or other lawful source relied upon; the scope and limits of the authority claimed; the jurisdiction asserted; the process by which the refusal was authorized; and the accountability mechanism available for review of that refusal.
5. The recipients identified in the record include the General Court of Massachusetts, Ronald Mariano in his capacity as Speaker of the House, Karen Spilka in her capacity as President of the Senate, and Andrea Joy Campbell in her capacity as Attorney General.
6. The March 27, 2026 Notice afforded Respondents an opportunity to respond, cure the noncompliance identified, produce the requested records, or provide a sworn demonstration of lawful authority supporting any refusal.
7. As of June 4, 2026, the time afforded for response had elapsed without a cure sufficient to resolve the matters identified in the March 27, 2026 Notice.
8. On June 4, 2026, I issued the NOTICE OF DEFAULT AND FAILURE TO CURE WITH STRUCTURAL CHALLENGE TO AUTHORITY AND PRESERVATION OF RECORD.



9. The June 4, 2026 Notice of Default preserved the following conditions upon the record:
  - a. The requested financial records had not been produced.
  - b. No sworn identification of lawful authority for refusal had been provided.
  - c. No sufficient constitutional demonstration had been supplied establishing the source, scope, and limits of the authority relied upon for continued nonproduction.
  - d. No cure had been made concerning the noncompliance identified in the prior Notice.
10. The Notice of Default did not purport to punish any Respondent, determine liability, or manufacture authority by declaration. It preserved the fact that questions had been presented, an opportunity to respond had been afforded, and the identified matters remained unanswered or uncured upon the record.
11. To the best of my knowledge, information, and belief after review of the correspondence, delivery records, and materials maintained with this matter, no sworn rebuttal, sworn authority demonstration, or complete production sufficient to cure the stated default has been received as of the date of this Affidavit.
12. This Affidavit is not offered to create facts that are absent from the record. It is offered to memorialize the existing sequence: Notice, opportunity to cure, nonresponse or insufficient response, Notice of Default, and the matters remaining unrebutted.
13. The following instruments are incorporated by reference and should be maintained as exhibits to this Affidavit:

Exhibit A: Notice dated March 27, 2026.

Exhibit B: Proof of service or delivery for the March 27, 2026 Notice.

Exhibit C: NOTICE OF DEFAULT AND FAILURE TO CURE WITH STRUCTURAL CHALLENGE TO AUTHORITY AND PRESERVATION OF RECORD, dated June 4, 2026.

Exhibit D: Proof of service or delivery for the June 4, 2026 Notice of Default.

Exhibit E: Any correspondence, response, partial response, or record received from any Respondent.

Exhibit F: A chronology of all material communications, delivery confirmations, and record requests.
14. The facts stated above preserve an unrebutted record for constitutional review. They do not prevent any Respondent from supplying competent records, sworn authority, or a complete lawful response after the date of this Affidavit.
15. I reserve all rights, remedies, objections, and lawful avenues of review. Nothing in this Affidavit shall be construed as a waiver of any right retained by the People or by the Affiant.

I declare under the pains and penalties of perjury that the foregoing statements are true and correct to the best of my knowledge, information, and belief.

Executed this \_\_\_\_ day of \_\_\_\_\_, 2026, at \_\_\_\_\_,  
Massachusetts.

\_\_\_\_\_  
\_\_\_\_\_, Affiant

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**COMMONWEALTH OF MASSACHUSETTS**

Then personally appeared the above-named Paul Carnie and acknowledged the foregoing instrument before me this \_\_\_\_ day of \_\_\_\_\_, 2026.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_



# EXHIBIT A

## IN THE COUNTY COURT OF THE FIRST JUDICIAL CIRCUIT IN AND FOR WALTON COUNTY, FLORIDA

**DESTIN EAST MOBILE HOME PARK,**

Plaintiff,

v.

**WILLIAM HENRY McGOWEN III,**  
KIMBERLY L. McGOWEN, and  
ALL PERSONS IN POSSESSION,

Defendants.

Case No.: 662026CC000309CCAXMX

Division: 6-C

Judge: Kelvin Clyde Wells

DEFENDANT'S MOTION TO VACATE  
DEFAULT, FINAL JUDGMENT, AND  
WRIT OF POSSESSION; AND TO  
DISMISS FOR LACK OF JURISDICTION

**COMES NOW Defendant WILLIAM HENRY McGOWEN III**, pro se, and pursuant to Florida Rule of Civil Procedure 1.540(b)(4) and the Court's inherent authority to correct void judgments, moves this Court to vacate the Default entered May 12, 2026, the Final Judgment for Possession entered May 14, 2026, and the Writ of Possession issued May 19, 2026, and to dismiss this action for lack of jurisdiction, and in support states:

### **I. INTRODUCTION**

This eviction was filed under the wrong statute, defaulted before proof of service was filed, and executed on a man who owns the very home from which he was removed. Every document in this case — the default, the final judgment, and the writ of possession — is void on its face. A void judgment may be attacked at any time, and this Court has both the authority and the obligation to vacate it.

### **II. STATEMENT OF FACTS**

1. Defendant William Henry McGowen III has resided at Destin East Mobile Home Park for several years. He owns his mobile home outright as personal property. He rents only the underlying land from Plaintiff.

2. A dispute arose over \$90.00 in disputed late charges (two charges of \$45.00 each) that Defendant contested as unlawful. When Defendant tendered his regular rent payment without the contested fee, Plaintiff refused to accept the payment. Having refused Defendant's lawful tender, Plaintiff then filed this eviction claiming non-payment.
3. On April 22, 2026, Plaintiff filed this action as "*Eviction Residential \$0–\$15K*" under the County Court civil division — a Chapter 83 residential tenancy proceeding.
4. **On May 12, 2026 — only twenty days after filing — the Clerk entered default against Defendant. (Docket Entry 26.)**
5. On May 14, 2026, a Final Judgment for Possession was entered on the basis of that default. (Docket Entry 28.)
6. On May 19, 2026, a Writ of Possession was issued. (Docket Entry 30.)
7. **The first Proof of Service was not filed until May 28, 2026** — sixteen days after the default was entered. (Docket Entry 31.) A second Proof of Service was filed June 2, 2026. (Docket Entry 33.)
9. On May 28, 2026 — the same date as the first filed Proof of Service — law enforcement arrived at Defendant's home and removed him. Defendant was not permitted to retrieve a shirt or to speak with a judge who was on the telephone at the time of the arrest. Defendant was jailed for approximately two weeks.
10. On June 11, 2026, Plaintiff voluntarily dismissed Count II of this action without prejudice. (Docket Entry 34.) Count II was the only damages claim — the \$90.00 in disputed late charges that gave rise to this entire proceeding. Plaintiff conceded it could not sustain the damages claim but retained the void possession judgment.

### **III. LEGAL STANDARD**

Florida Rule of Civil Procedure **1.540(b)(4)** provides that a court shall relieve a party from a final judgment that is "*void*." A void judgment is one entered without jurisdiction over the subject matter or the person. *DeClaire v. Yohanan*, 453 So.2d 375, 377 (Fla. 1984). Unlike a voidable judgment, a void judgment may be attacked at any time, in any court, without regard to laches or other equitable defenses. *Curbelo v. Ullman*, 571 So.2d 443, 445 (Fla. 1990).

### **IV. ARGUMENT**

#### **A. THE DEFAULT IS VOID BECAUSE IT WAS ENTERED BEFORE PROOF OF SERVICE WAS FILED**

The docket of this case is unambiguous: default was entered on **May 12, 2026**, but the first Proof of Service was not filed until **May 28, 2026** — sixteen days later. A second Proof of Service was not filed until June 2, 2026.

Florida Rule of Civil Procedure **1.500(a)** permits a clerk's default only when a party "*has failed to plead or otherwise defend as provided by these rules or any applicable statute*." Before a defendant can "fail to respond," they must first have been served. Section **48.21, Florida Statutes**, requires that the return of service be filed with the court before any further proceedings may be had against the defendant.

A default entered before proof of service is filed is void for lack of personal jurisdiction. The court has no authority over an unserved defendant. Every act taken on the basis of that default — the Final Judgment entered May 14 and the Writ of Possession issued May 19 — is equally void.

This is not a close question. The docket itself proves the sequence: default before service. No amount of subsequent cure or ratification can rescue a judgment that was void at the moment of entry. *National Enterprises, Inc. v. Foodly, Inc.*, 570 So.2d 1047, 1048 (Fla. 3d DCA 1990).



## **B. THE COURT LACKS SUBJECT MATTER JURISDICTION — WRONG STATUTE**

This action was filed as "*Eviction Residential \$0–\$15K*" under Chapter 83, Florida Statutes. That statute governs standard residential tenancies — cases where a tenant rents a dwelling unit from a landlord.

**Defendant does not rent a dwelling unit. Defendant owns his mobile home as personal property. He rents only the land beneath it.** Mobile home park tenancies in which the resident owns the home and rents the lot are governed exclusively by **Chapter 723, Florida Statutes** — the Florida Mobile Home Act. *See F.S. § 723.004(1)* (Chapter 723 governs "the rental of a mobile home lot where the mobile home is real or personal property of the mobile home owner").

Chapter 723 provides different notice requirements, different grounds for termination, and different procedural protections than Chapter 83. The grounds for eviction under **F.S. § 723.061** are enumerated and exclusive. A dispute over \$90.00 in late charges — which Plaintiff itself conceded by dismissing Count II — does not appear among them.

A court proceeding under the wrong statute lacks subject matter jurisdiction. A judgment entered without subject matter jurisdiction is void. *Cunningham v. Standard Guaranty Insurance Co.*, 630 So.2d 179, 181 (Fla. 1994).

## **C. THE WRIT CANNOT APPLY TO A HOME DEFENDANT OWNS**

A writ of possession transfers possession of *real property*. Defendant's mobile home is his personal property — a chattel he owns outright. The land-eviction proceeding under Chapter 83 (or Chapter 723) can at most affect Defendant's right to occupy the land. It cannot extinguish his ownership of the physical structure.

Moreover, the mobile home constitutes Defendant's primary residence and is protected under **Article X, Section 4** of the Florida Constitution — the homestead provision. Forced removal

from a constitutionally protected homestead through a void judgment entered under the wrong statute and without proper service, is a constitutional violation that cannot stand.

**D. PLAINTIFF'S VOLUNTARY DISMISSAL OF COUNT II CONFIRMS THE  
EVICTON'S IMPROPER BASIS**

On June 11, 2026, Plaintiff voluntarily dismissed Count II — the damages component arising from disputed late charges totaling \$90.00 (two charges of \$45.00 each) — without prejudice. (Docket Entry 34.) This dismissal was filed on the same date the State filed criminal charges against Defendant arising from the writ execution.

The \$90.00 in disputed late charges was the genesis of this entire proceeding. Plaintiff refused Defendant's rent payment because Defendant contested the late fee. Plaintiff then claimed non-payment. Having used the manufactured non-payment claim to obtain a default and writ, Plaintiff dismissed the very claim it could not sustain on the merits. The dismissal without prejudice demonstrates that Plaintiff knew Count II was legally indefensible — which retroactively confirms that the default judgment for possession was built on a foundation that Plaintiff itself has now abandoned.

**V. PRAYER FOR RELIEF**

WHEREFORE, Defendant William Henry McGowen III respectfully requests that this Court:

1. VACATE the Clerk's Default entered May 12, 2026 (Docket Entries 25–27) as void, having been entered before any proof of service was filed with the Court;
2. VACATE the Final Judgment for Possession entered May 14, 2026 (Docket Entry 28) as void, having no valid default as its predicate;
3. VACATE the Writ of Possession issued May 19, 2026 (Docket Entry 30) as void, having no valid judgment as its predicate;

4. DISMISS this action for lack of subject matter jurisdiction, this proceeding having been filed under Chapter 83 when Chapter 723 exclusively governs the tenancy at issue;
5. GRANT such other and further relief as the Court deems just and proper.

Respectfully submitted,

---

**WILLIAM HENRY McGOWEN III**  
Pro Se Defendant

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to **Eric Alexander Krebs, Esq.**, counsel for Plaintiff, by [U.S. Mail / Email / hand delivery] on \_\_\_\_\_, 2026.

---

**WILLIAM HENRY McGOWEN III**  
Pro Se Defendant



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New Search Expand All

| Case Number                              | Filed Date | Case Type        | Status      | Contested | Jury Trial |
|------------------------------------------|------------|------------------|-------------|-----------|------------|
| 662026CC000309CCAXMX<br>[26000309CCAXMX] | 04/22/2026 | County Civil 6-C | CLOSED CASE | NO        | NO         |

| Filing Date | Description                   | Active | Contested | Judgment Date |
|-------------|-------------------------------|--------|-----------|---------------|
| 04/22/2026  | EVICION RESIDENTIAL \$0-\$15K | NO     | NO        | -             |

| Party Name                                                     | Party Type           | Attorney              | Bar ID |
|----------------------------------------------------------------|----------------------|-----------------------|--------|
| WELLS, KELVIN CLYDE                                            | JUDGE                |                       |        |
| WELLS, KELVIN CLYDE                                            | JUDGE AT DISPOSITION |                       |        |
| MCGOWEN, WILLIAM H III <a href="#">Search This Party</a>       | DEFENDANT            |                       |        |
| MCGOWEN, KIMBERLY L <a href="#">Search This Party</a>          | DEFENDANT            |                       |        |
| ALL PERSONS IN POSSESSION <a href="#">Search This Party</a>    | DEFENDANT            |                       |        |
| MCGOWEN, BILLY <a href="#">Search This Party</a>               | ALSO KNOWN AS        |                       |        |
| MCGOWEN, KIMBERLY LEVAUGHN <a href="#">Search This Party</a>   | ALSO KNOWN AS        |                       |        |
| LEVAUGHN, KIMBERLY ANNETTE <a href="#">Search This Party</a>   | ALSO KNOWN AS        |                       |        |
| DESTIN EAST MOBILE HOME PARK <a href="#">Search This Party</a> | PLAINTIFF            | KREBS, ERIC ALEXANDER | 64921  |

**Dockets**

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| Image | Doc # | Action Date | Description                                                             | Pages |
|-------|-------|-------------|-------------------------------------------------------------------------|-------|
|       | 34    | 06/11/2026  | PLAINTIFF'S NOTICE OF VOLUNTARY DISMISSAL OF COUNT II WITHOUT PREJUDICE | 1     |
|       | 33    | 06/02/2026  | PROOF OF SERVICE TO WILLIAM MCGOWEN, III ON 5/26/26                     | 1     |
|       | 32    | 06/02/2026  | NOTICE OF FILING                                                        | 1     |
|       | 31    | 05/28/2026  | PROOF OF SERVICE TO WILLIAM MCGOWEN, III                                | 1     |
|       | 30    | 05/19/2026  | WRIT OF POSSESSION ISSUED                                               | 1     |
|       | 29    | 05/18/2026  | UNSIGNED WRIT OF POSSESSION                                             | 1     |
|       | 28    | 05/14/2026  | FINAL JUDGMENT FOR POSSESSION AS TO COUNT I - EVICTION                  | 2     |
|       | 27    | 05/12/2026  | DEFAULT ISSUED ON KIMBERLY L. MCGOWEN                                   | 1     |
|       | 26    | 05/12/2026  | DEFAULT ISSUED ON WILLIAM H MCGOWEN, III                                | 1     |
|       | 25    | 05/12/2026  | MOTION FOR IMMEDIATE DEFAULT JUDGMENT AS TO COUNT I FOR POSSESSION      | 3     |

**Judge Assignment History**

**Court Events**

**Financial Summary**

**Reopen History**

\*\* Pursuant to Florida Statutes and Florida Rules of Court Procedure, records that have been designated as expunged, sealed or confidential may not be available through this service. For additional information on specific records please contact the Clerk of Court.

# EXHIBIT C

## IN THE COUNTY COURT OF THE FIRST JUDICIAL CIRCUIT IN AND FOR WALTON COUNTY, FLORIDA

**STATE OF FLORIDA,**

Plaintiff,

v.

**WILLIAM HENRY McGOWEN III,**

Defendant.

Case No.: 662026MM000362MMAXMX

Division: 34-D

Judge: Kelvin Clyde Wells

**DEFENDANT'S MOTION TO DISMISS  
CRIMINAL INFORMATION FOR LACK  
OF  
PROBABLE CAUSE AND FAILURE TO  
STATE A CRIME**

**COMES NOW Defendant WILLIAM HENRY McGOWEN III**, pro se, and pursuant to Florida Rule of Criminal Procedure 3.190(c)(4) and the Court's inherent authority, moves this Court to dismiss both counts of the Criminal Information filed June 11, 2026, and in support states:

|                                                                                                                                                                      |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>NOTICE: A Misdemeanor Coastal Plea Day is scheduled for July 15, 2026. Defendant files this Motion immediately and requests a hearing on or before that date.</b> |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|

### **I. INTRODUCTION**

This prosecution rests entirely on a void foundation. The Criminal Information charges Defendant with trespass on property he owns by legal title. Trespass on your own property is legally impossible. The Information itself confirms this: the property owner field in Count 2 is blank — no owner is identified, because no one can truthfully be named as the owner of Defendant's own home. The obstruction charge in Count 1 arises from the same void predicate: Defendant's resistance to officers executing a Writ of Possession that was void before it was issued. Both counts must be dismissed.

## **II. STATEMENT OF FACTS**

1. Defendant William Henry McGowen III is the titled owner of a mobile home located at Destin East Mobile Home Park, Walton County, Florida. The mobile home is titled in Defendant's name as personal property through the Florida Department of Highway Safety and Motor Vehicles (DHSMV), in accordance with Chapter 723, Florida Statutes.
2. In April 2026, Destin East Mobile Home Park filed an eviction action against Defendant in Walton County Case No. 662026CC000309CCAXMX, under Chapter 83, Florida Statutes. This Court may take judicial notice of that case pursuant to *Section 90.202(6), Florida Statutes*.
3. **The eviction docket establishes the following uncontested sequence of events:**
  - (a) April 22, 2026: Eviction complaint filed.
  - (b) May 12, 2026: Clerk's Default entered against Defendant. (Docket Entry 26.)**
  - (c) May 14, 2026: Final Judgment for Possession entered. (Docket Entry 28.)
  - (d) May 19, 2026: Writ of Possession issued. (Docket Entry 30.)
  - (e) May 26, 2026: Actual service on Defendant. (Docket Entry 33.)**
  - (f) May 28, 2026: First Proof of Service filed with the Court — sixteen days after default, fourteen days after Final Judgment, nine days after Writ issued. (Docket Entry 31.)**
  - (g) June 11, 2026: Plaintiff voluntarily dismissed Count II (damages) without prejudice. (Docket Entry 34.)
4. **On May 27, 2026 — one day before the first Proof of Service was filed —** law enforcement, acting pursuant to the Writ of Possession, arrested Defendant. The Criminal Information (Case No. 662026MM000362MMAXMX) charges two counts: (1) Obstruct

Officer Without Violence, Florida Statute § 843.02; and (2) Trespassing Structure or Conveyance, Florida Statutes §§ 810.08(1) and 810.08(2)(a).

5. **The Criminal Information contains a fatal defect on its face: the property owner field in Count 2 is blank.** The Information states, verbatim: *"enter or remain in any structure or conveyance the property of, "* — with no owner named. No individual or entity is identified as the owner of the property on which trespass is alleged.

### **III. LEGAL STANDARD**

Florida Rule of Criminal Procedure **3.190(c)(4)** permits dismissal of an information when "[t]here are no material disputed facts and the undisputed facts do not establish a prima facie case of guilt against the defendant." A motion under Rule 3.190(c)(4) tests whether the undisputed facts, as alleged, constitute a crime. *State v. Pasko*, 815 So.2d 680, 682 (Fla. 2d DCA 2002). Where the facts alleged cannot, as a matter of law, establish the charged offense, the information must be dismissed.

### **IV. ARGUMENT**

#### **A. COUNT 2 (TRESPASS) MUST BE DISMISSED — A TITLED OWNER CANNOT TRESPASS ON HIS OWN PROPERTY**

Florida Statute § 810.08(1) defines trespass as willfully entering or remaining in a structure or conveyance **"without being authorized, licensed, or invited"** by the owner or lessee. The statute requires, as an element, that the defendant lack authorization from the property's owner.

**Defendant is the owner.** A person cannot trespass on property he owns. Authorization flows from ownership; the owner is the source of all authorization. To charge the source of authorization with lacking authorization is a logical and legal impossibility. Florida courts and courts across the country have uniformly recognized this principle. *See Merritt v. State*, 523 So.2d 573 (Fla. 1988) (trespass requires that defendant be on another's property without permission).

The Criminal Information confirms this impossibility on its face. The property owner field — the element identifying whose property was allegedly trespassed upon — is **blank**. The Information does not, because it cannot, name an owner other than Defendant. A charge that omits an essential element is fatally defective and must be dismissed. *State v. Gray*, 435 So.2d 816, 817 (Fla. 1983) ("An information which fails to allege all essential elements of the crime charged is fundamentally defective.").

#### **B. THE PREDICATE WRIT OF POSSESSION WAS VOID AB INITIO AND CANNOT SUPPORT EITHER CHARGE**

Both counts arise from the execution of the Writ of Possession. Count 2 alleges trespass by remaining on property after being "warned by the owner or lessee of the premises, or by a person authorized by the owner or lessee." The only warning issued to Defendant arose from the Writ of Possession and its execution by law enforcement. Count 1 alleges obstruction of officers executing that same writ.

**The Writ of Possession was void from the moment it was issued.** The docket of Case No. 662026CC000309CCAXMX shows without dispute: Default was entered May 12, 2026. Proof of Service was first filed May 28, 2026 — sixteen days after the default. Under **Florida Rule of Civil Procedure 1.500** and **Florida Statute § 48.21**, a default may only be entered after proper service. A default entered before service is void for lack of personal jurisdiction. The Final Judgment and Writ flowing from that void default are equally void. *DeClaire v. Yohanan*, 453 So.2d 375, 377 (Fla. 1984).

A void writ confers no legal authority. Officers executing a void writ do not act under lawful authority. A criminal charge predicated on a void civil order cannot stand. The State cannot use a nullity as the foundation for a criminal prosecution. Both Count 1 and Count 2 must fall with the void writ.



**C. COUNT 1 (OBSTRUCTION) MUST BE DISMISSED — THERE IS NO DUTY TO COMPLY WITH A VOID WRIT**

Florida Statute § 843.02 prohibits resisting an officer in the "lawful execution of any legal duty." The statute requires that the officer be acting in the *lawful* execution of a *legal* duty. Officers executing a void writ are not acting in the lawful execution of a legal duty — they are executing a nullity.

A Writ of Possession issued on a default judgment entered before proof of service is void ab initio — not merely voidable. *Curbelo v. Ullman*, 571 So.2d 443, 445 (Fla. 1990) ("A void judgment . . . is a nullity from the beginning."). Execution of a void instrument is not a "legal duty" within the meaning of § 843.02. Because the predicate "legal duty" did not exist, the obstruction charge fails as a matter of law.

**D. THE EVICTION PROCEEDING WAS FILED UNDER THE WRONG STATUTE — FURTHER VOIDING THE PREDICATE**

The eviction action was filed under Chapter 83, Florida Statutes, which governs standard residential tenancies. Defendant does not rent a dwelling unit; he owns his mobile home and rents only the land beneath it. Such tenancies are governed *exclusively* by **Chapter 723, Florida Statutes** — the Florida Mobile Home Act. *See F.S. § 723.004(1)*. A court proceeding under the wrong statute lacks subject matter jurisdiction, rendering the resulting judgment and writ void for this additional and independent reason. *Cunningham v. Standard Guaranty Insurance Co.*, 630 So.2d 179, 181 (Fla. 1994).

**V. PRAYER FOR RELIEF**

WHEREFORE, Defendant William Henry McGowen III respectfully requests that this Court:

1. TAKE JUDICIAL NOTICE of the docket in Walton County Case No. 662026CC000309CCAXMX, specifically the dates of the default (May 12, 2026), Final

Judgment (May 14, 2026), Writ of Possession (May 19, 2026), and first Proof of Service (May 28, 2026);

2. DISMISS Count 2 (Trespass) of the Criminal Information with prejudice, the undisputed facts establishing that Defendant is the titled owner of the subject property and that the Criminal Information omits the essential element of property ownership;
3. DISMISS Count 1 (Obstruction) of the Criminal Information with prejudice, the undisputed facts establishing that the officers were executing a void writ and therefore not acting in the lawful execution of a legal duty;
4. In the alternative, SCHEDULE a hearing on this Motion on or before July 15, 2026, the date currently set for Misdemeanor Coastal Plea Day;
5. GRANT such other and further relief as the Court deems just and proper.

Respectfully submitted,

---

**WILLIAM HENRY McGOWEN III**  
Pro Se Defendant

Date: \_\_\_\_\_

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to **Joshua D. Knight, Assistant State Attorney**, First Judicial Circuit, 524A US Hwy 90 E, DeFuniak Springs, FL 32435, email: [jdknight@osa1.org](mailto:jdknight@osa1.org), on \_\_\_\_\_, 2026.

---

**WILLIAM HENRY McGOWEN III**



Search

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New Search Expand All

| Case Number                              | Filed Date | Case Type        | Status    | Contested |
|------------------------------------------|------------|------------------|-----------|-----------|
| 662026MM000362MMAXMX<br>[26000362MMAXMX] | 05/28/2026 | Misdemeanor 34-D | CASE OPEN | NO        |

| Charge Seq # | Description                      | Date       | Phase            | Trial |
|--------------|----------------------------------|------------|------------------|-------|
| 1            | OBSTRUCT OFFICER W/O VIOLENCE    | 06/11/2026 | Prosecutor:Filed |       |
| 2            | TRESPASS STRUCTURE OR CONVEYANCE | 06/11/2026 | Prosecutor:Filed |       |

| Party Name                                               | Party Type    | Attorney | Bar ID |
|----------------------------------------------------------|---------------|----------|--------|
| WELLS, KELVIN CLYDE                                      | JUDGE         |          |        |
| MCGOWEN, WM HENRY <a href="#">Search This Party</a>      | ALSO KNOWN AS |          |        |
| MCGOWEN, WILLIAM HENRY <a href="#">Search This Party</a> | DEFENDANT     |          |        |

**Dockets**

| Page : 1 |       |             |                                         |       |
|----------|-------|-------------|-----------------------------------------|-------|
| Image    | Doc # | Action Date | Description                             | Pages |
|          | 17    | 06/11/2026  | INFORMATION                             | 1     |
|          | 16    | 06/10/2026  | DEMAND FOR NOTICE OF ALIBI FILED        | 1     |
|          | 15    | 06/10/2026  | DISCOVERY EXHIBIT                       | 3     |
|          | 14    | 06/10/2026  | NOTICE MAILED TO BONDSMAN.              | 2     |
|          | 13    | 06/10/2026  | BOOKING CARD                            | 2     |
|          | 12    | 06/10/2026  | SURETY BOND FILED.                      | 3     |
|          | 11    | 05/28/2026  | NOTICE MAILED TO DEFENDANT              | 2     |
|          | 10    | 05/28/2026  | NO TRESPASSING LOC OF OFFENSE           |       |
|          | 9     | 05/28/2026  | BOND SET AT:\$2,000 C/P                 |       |
|          | 8     | 05/28/2026  | FIRST APPEARANCE CASE DISPOSITION FILED | 1     |

**Judge Assignment History**

| Assigned Date | Withdraw Date | Judicial Officer | Type |
|---------------|---------------|------------------|------|
| 05/28/2026    | -             | WELLS, KELVIN C. |      |

**Court Events**

| Event Date       | Judge             | Docket Type            | Location                | Prosecutor              | Defendant Attorney |
|------------------|-------------------|------------------------|-------------------------|-------------------------|--------------------|
| 05/28/2026 07:45 | LEWIS, JEFFREY E. | FIRST APPEARANCE       | MAIN 3RD FL             | KNIGHT, JOSHUA<br>DAVID |                    |
| 07/15/2026 08:30 | WELLS, KELVIN C.  | MM COASTAL PLEA<br>DAY | COASTAL ANNEX<br>BOARDR | KNIGHT, JOSHUA<br>DAVID |                    |

**Sentences**

No records found.

**Financial Summary**

| Financial Summary |               |                      |                     |
|-------------------|---------------|----------------------|---------------------|
| Assessment        | Total: \$0.00 | Paid to Date: \$0.00 | Balance Due: \$0.00 |
| Restitution       | Total: \$0.00 | Paid to Date: \$0.00 | Balance Due: \$0.00 |

| Financial Details |                |                            |                 |                          |                   |
|-------------------|----------------|----------------------------|-----------------|--------------------------|-------------------|
| Count             | Assessment Due | Assessment Paid to<br>Date | Restitution Due | Restitution Paid to Date | Last Payment Date |
|                   | \$0.00         | \$0.00                     | \$0.00          | \$0.00                   | -                 |

**Reopen History**

| Reopen Date       | Reopen Close Date | Reopen Reason |
|-------------------|-------------------|---------------|
| No records found. |                   |               |

\*\* Pursuant to Florida Statutes and Florida Rules of Court Procedure, records that have been designated as expunged, sealed or confidential may not be available through this service. For additional information on specific records please contact the Clerk of Court.

# EXHIBIT E

IN THE COUNTY COURT OF THE FIRST JUDICIAL CIRCUIT  
IN AND FOR WALTON COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

v.

WILLIAM HENRY McGOWEN III,

Defendant.

Case No.: 662026CC000309CCAXMX  
(Eviction — Motion to Vacate Pending)

AND

Case No.: 662026CC000309CCAXMX  
(Eviction — Motion to Vacate Pending)

Case No.: 662026MM000362MMAXMX  
(Criminal Misdemeanor)

Case No.: 662026CT000102CTAXMX  
(Criminal Traffic)

Judge: Kelvin Clyde Wells

**DEFENDANT'S VERIFIED MOTION TO  
DISQUALIFY JUDGE KELVIN CLYDE  
WELLS  
FROM ALL THREE PENDING CASES**

COMES NOW Defendant WILLIAM HENRY McGOWEN III, pro se, and pursuant to Florida Rule of Judicial Administration 2.330 and Canon 3E(1) of the Florida Code of Judicial Conduct, moves this Court to disqualify the Honorable Kelvin Clyde Wells from presiding over Case Nos. 662026CC000309CCAXMX, 662026MM000362MMAXMX, and 662026CT000102CTAXMX, and in support states:

**NOTICE: (1) A Motion to Vacate Default, Final Judgment, and Writ of Possession is pending before Judge Wells in Case No. 662026CC000309CCAXMX. (2) Misdemeanor Coastal Plea Day is set for July 15, 2026 in Case No. 662026MM000362MMAXMX. Judge Wells cannot rule on either matter until this disqualification motion is resolved.**

## I. INTRODUCTION

Judge Kelvin Clyde Wells is assigned to three pending matters involving Defendant. He presided over the civil eviction case — Case No. 662026CC000309CCAXMX — and entered the default judgment and Writ of Possession that are now the central disputed issues in all three matters. A Motion to Vacate those very orders is pending before him in the eviction case, while both criminal cases turn on whether those same orders were lawful. Judge Wells cannot impartially rule on the validity of his own prior orders in any of these three cases. Disqualification is required across all three.

## II. STATEMENT OF FACTS

1. In Case No. 662026CC000309CCAXMX (Destin East Mobile Home Park v. McGowen), Judge Kelvin Clyde Wells presided over the eviction of Defendant from his titled mobile home. Judge Wells entered or authorized the following orders:
  - (a) Default entered May 12, 2026 (before any proof of service was filed);
  - (b) Final Judgment for Possession entered May 14, 2026; and
  - (c) Writ of Possession issued May 19, 2026 —all entered **before proof of service was filed on May 28, 2026.**
2. On May 27, 2026, law enforcement executed the Writ of Possession and arrested Defendant. This arrest is the basis for two criminal cases, and the validity of the Writ is the subject of a Motion to Vacate pending before Judge Wells, all three cases now assigned to him:

**Case No. 662026CC000309CCAXMX** — Eviction (CLOSED), in which Defendant's pending Motion to Vacate asks this Court to vacate the default, final judgment, and writ that Judge Wells himself entered;

**Case No. 662026MM000362MMAXMX** — Obstruct Officer Without Violence and Trespass Structure or Conveyance, arising directly from the writ execution; and

**Case No. 662026CT000102CTAXMX** — Fail to Register Motor Vehicle, charged on May 27, 2026, the date of the writ execution and arrest.

3. The validity of the Writ of Possession is the central legal question in the criminal cases. Defendant's defense rests on the proposition that the Writ was void — and therefore that the charges arising from resisting or being present during its execution cannot stand. Judge Wells cannot impartially evaluate the validity of orders he himself entered.
4. **Defendant has a well-grounded, reasonable fear that he cannot receive a fair hearing before Judge Wells** on the lawfulness of the very orders Judge Wells issued. This fear is not speculative: the central legal dispute in both criminal cases is whether Judge Wells's own civil orders were lawful.

### **III. LEGAL STANDARD**

*Florida Rule of Judicial Administration 2.330(d)* provides that a party may seek disqualification of a judge when the party has a reasonable fear that they will not receive a fair trial or hearing. The test is whether the facts alleged would place a **"reasonably prudent person in fear of not receiving a fair and impartial trial."** *MacKenzie v. Super Kids Bargain Store, Inc.*, 565 So.2d 1332, 1334 (Fla. 1990).

Once a motion to disqualify is filed and is legally sufficient on its face, the judge **must immediately enter an order of disqualification** and may not rule on the motion's merits.

*Fischer v. Knuck*, 497 So.2d 240, 241 (Fla. 1986) ("Once the judge finds the motion legally sufficient, he must enter an order of disqualification."). The judge has no discretion to deny a legally sufficient motion.

*Canon 3E(1) of the Florida Code of Judicial Conduct* independently requires disqualification when "the judge's impartiality might reasonably be questioned," including circumstances where the judge has prior knowledge of facts in dispute or has a personal bias concerning the proceeding.

#### **IV. ARGUMENT**

##### **A. JUDGE WELLS CANNOT IMPARTIALLY EVALUATE THE LAWFULNESS OF HIS OWN PRIOR ORDERS**

The central factual and legal issue in both criminal cases is whether the Writ of Possession issued in Case No. 662026CC000309CCAXMX was valid. Defendant's entire defense is that: (1) the default was entered before service; (2) the resulting writ was void; and (3) charges arising from the execution of a void writ cannot stand. If the writ was void, both criminal cases must be dismissed.

Judge Wells **issued** that writ. He presided over the eviction case, entered the default, and authorized the Final Judgment from which the writ flowed. He is therefore a material participant in the very acts whose lawfulness must now be adjudicated. It is fundamentally incompatible with due process for a judge to serve as the fact-finder on the lawfulness of his own prior official acts. *See Tumey v. Ohio*, 273 U.S. 510, 523 (1927) (due process requires that no judge have a direct, personal interest in a case's outcome).

Florida courts have recognized this principle specifically in the context of judges who presided over related proceedings. *See Hayslip v. Douglas*, 400 So.2d 553, 554 (Fla. 4th DCA 1981) (disqualification required where judge had prior involvement in related civil matter that formed the basis of the criminal proceeding). The conflict here is even more direct: Judge Wells is not merely *familiar* with the prior proceedings — he *issued* the contested orders.

## **B. A REASONABLY PRUDENT PERSON WOULD FEAR AN UNFAIR HEARING**

The standard for disqualification does not require proof of actual bias — it requires only that a reasonably prudent person, knowing all the facts, would have a well-grounded fear of not receiving a fair hearing. Here, the facts are stark:

- (1) Judge Wells issued the Writ of Possession that law enforcement executed to arrest Defendant;
- (2) The lawfulness of that writ is the central issue in both criminal cases;
- (3) If Judge Wells rules that the writ was valid, he validates his own prior civil orders;
- (4) If Judge Wells rules that the writ was void, he repudiates his own prior civil orders;
- (5) Either outcome requires Judge Wells to judge himself.

No reasonably prudent person would accept that a judge placed in this position can remain impartial. The appearance of partiality alone is sufficient for disqualification under Canon 3E(1). The reality that Judge Wells's own judicial conduct is the subject of the dispute makes this among the most clear cases for mandatory disqualification.

## **C. THIS MOTION IS TIMELY**

Rule 2.330(b) requires that a motion to disqualify be filed "within a reasonable time not to exceed 30 days after discovery of the facts constituting the grounds for the motion." Defendant discovered the full scope of the conflict — that Judge Wells presides over both the civil predicate case and both criminal cases — upon reviewing the court dockets. This motion is filed immediately upon that discovery, well within the required period. *See Correll v. State*, 698 So.2d 522, 524 (Fla. 1997) (motion timely when filed promptly after discovery of disqualifying facts).



### **V. PRAYER FOR RELIEF**

WHEREFORE, Defendant William Henry McGowen III respectfully requests that this Court:

1. FIND this Motion to be legally sufficient on its face, as required by Fischer v. Knuck, 497 So.2d 240 (Fla. 1986);
2. ENTER an order immediately disqualifying the Honorable Kelvin Clyde Wells from further proceedings in: (a) Case No. 662026CC000309CCAXMX (Eviction — including the pending Motion to Vacate Default, Final Judgment, and Writ of Possession); (b) Case No. 662026MM000362MMAXMX (Criminal Misdemeanor); and (c) Case No. 662026CT000102CTAXMX (Criminal Traffic);
3. TRANSFER all three cases to a different judge with no prior involvement in any of the above matters or any related civil proceeding;
4. STAY all proceedings in all three cases pending reassignment, including the Misdemeanor Coastal Plea Day scheduled for July 15, 2026 in Case No. 662026MM000362MMAXMX, and any ruling on the pending Motion to Vacate in Case No. 662026CC000309CCAXMX;
5. GRANT such other and further relief as the Court deems just and proper.

Respectfully submitted,

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**WILLIAM HENRY McGOWEN III**  
Pro Se Defendant

Date: \_\_\_\_\_

### **VERIFICATION**

I, William Henry McGowen III, being duly sworn, depose and say that I am the Defendant in the above-captioned matters; that I have read the foregoing Motion to Disqualify; and that the facts stated herein are true and correct to the best of my knowledge, information, and belief. I have a well-grounded, reasonable fear that I cannot receive a fair and impartial hearing before Judge Kelvin Clyde Wells because he presided over and issued the civil orders that are the direct predicate and central disputed issue in both of the above-captioned criminal cases.

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**WILLIAM HENRY McGOWEN III**

Sworn to and subscribed before me this \_\_\_\_ day of \_\_\_\_\_, 2026.

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Notary Public

My Commission Expires:

### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to **Joshua D. Knight, Assistant State Attorney**, First Judicial Circuit, 524A US Hwy 90 E, DeFuniak Springs, FL 32435, email: [jdknight@osa1.org](mailto:jdknight@osa1.org), on \_\_\_\_\_, 2026.

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**WILLIAM HENRY McGOWEN III**



**WALTON**  
COUNTY

# EXHIBIT F

**CRYSTAL SCONIERS**  
CLERK OF THE CIRCUIT COURT & COMPTROLLER



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| Case Number                              | Filed Date | Case Type                      | Status    | Contested | Jury Trial |
|------------------------------------------|------------|--------------------------------|-----------|-----------|------------|
| 662026DR000451DRAXMX<br>[26000451DRAXMX] | 06/04/2026 | Domestic Relations/Family 16-E | CASE OPEN | NO        | NO         |

| Filing Date | Description | Active | Contested | Judgment Date |
|-------------|-------------|--------|-----------|---------------|
| 06/04/2026  | DISSOLUTION | YES    | NO        | -             |

| Party Name                                                   | Party Type    | Attorney | Bar ID |
|--------------------------------------------------------------|---------------|----------|--------|
| SCHLECHTER, JONATHAN VINCENT                                 | JUDGE         |          |        |
| MCGOWEN, KIMBERLY L <a href="#">Search This Party</a>        | ALSO KNOWN AS |          |        |
| MCGOWEN, KIMBERLY LEVAUGHN <a href="#">Search This Party</a> | PETITIONER    |          |        |
| MCGOWEN, WILLIAM HENRY III <a href="#">Search This Party</a> | RESPONDENT    |          |        |
| LEVAUGHN, KIMBERLY ANNETTE <a href="#">Search This Party</a> | ALSO KNOWN AS |          |        |

## Dockets

| Doc # | Action Date | Description                                                                           |
|-------|-------------|---------------------------------------------------------------------------------------|
| 7     | 06/04/2026  | FAMILY LAW STANDING PRETRIAL ORDER                                                    |
| 6     | 06/04/2026  | PHOTO IDENTIFICATION FILED                                                            |
| 5     | 06/04/2026  | ACKNOWLEDGMENT OF NOTICE OF LIMITATION OF SERVICES PROVIDED;                          |
| 4     | 06/04/2026  | PARTIES' INFORMATION SHEET;                                                           |
| 3     | 06/04/2026  | PETITION FOR DISSOLUTION OF MARRIAGE WITH PROPERTY BUT NO DEPENDANT OR MINOR CHILDREN |
| 2     | 06/04/2026  | PAYMENT RECEIVED: \$408.00 RECEIPT NUMBER AX 46940                                    |
| 1     | 06/04/2026  | ASSESSMENT 1 ASSESSED AT SUM \$408.00                                                 |

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| Case Number                              | Filed Date | Case Type   | Status      | Contested |
|------------------------------------------|------------|-------------|-------------|-----------|
| 662026CF000489CFAXMX<br>[26000489CFAXMX] | 05/28/2026 | Felony 22-D | CLOSED CASE | NO        |

| Charge Seq # | Description           | Date       | Phase   | Trial |
|--------------|-----------------------|------------|---------|-------|
| 1            | OUT OF STATE FUGITIVE | 05/28/2026 | Charged |       |

| Party Name                                               | Party Type    | Attorney | Bar ID |
|----------------------------------------------------------|---------------|----------|--------|
| LOVE, J. RYAN                                            | JUDGE         |          |        |
| MCGOWEN, WM HENRY <a href="#">Search This Party</a>      | DEFENDANT     |          |        |
| MCGOWEN, WILLIAM HENRY <a href="#">Search This Party</a> | ALSO KNOWN AS |          |        |

**Dockets**

| Image | Doc # | Action Date | Description                                          | Pages |
|-------|-------|-------------|------------------------------------------------------|-------|
|       | 7     | 05/28/2026  | CASE CLOSED                                          |       |
|       | 6     | 05/28/2026  | SPECIAL CONDITIONS: WAIVER SIGNED FOR AL             |       |
|       | 5     | 05/28/2026  | FIRST APPEARANCE CASE DISPOSITION FILED              | 1     |
|       | 4     | 05/28/2026  | NONADVERSARY PROBABLE CAUSE DETERMINATION RULE 3.131 | 1     |
|       | 3     | 05/28/2026  | ARREST REPORT FILED.                                 | 2     |
|       | 2     | 05/28/2026  | AGENCY CASE NUMBER: 2600071206                       |       |
|       | 1     | 05/28/2026  | DEFENDANT CUSTODY LOCATION: NOT IN CUSTODY           |       |

**Judge Assignment History**

| Assigned Date | Withdraw Date | Judicial Officer | Type |
|---------------|---------------|------------------|------|
| 05/28/2026    | -             | LOVE, J RYAN     |      |

**Court Events**

| Event Date       | Judge             | Docket Type      | Location    | Prosecutor | Defendant Attorney |
|------------------|-------------------|------------------|-------------|------------|--------------------|
| 05/28/2026 07:45 | LEWIS, JEFFREY E. | FIRST APPEARANCE | MAIN 3RD FL |            |                    |

**Sentences**

No records found.

**Financial Summary**

**Reopen History**

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| Case Number                              | Filed Date | Case Type                      | Status      | Contested | Jury Trial |
|------------------------------------------|------------|--------------------------------|-------------|-----------|------------|
| 662026DR000429DRAXMX<br>[26000429DRAXMX] | 05/28/2026 | Domestic Relations/Family 46-E | CLOSED CASE | NO        | NO         |

| Filing Date | Description       | Active | Contested | Judgment Date |
|-------------|-------------------|--------|-----------|---------------|
| 05/28/2026  | DOMESTIC VIOLENCE | NO     | NO        | 06/01/2026    |

| Party Name                                                   | Party Type           | Attorney | Bar ID |
|--------------------------------------------------------------|----------------------|----------|--------|
| SCHLECHTER, JONATHAN VINCENT                                 | JUDGE                |          |        |
| SCHLECHTER, JONATHAN VINCENT                                 | JUDGE AT DISPOSITION |          |        |
| MCGOWEN, KIMBERLY L <a href="#">Search This Party</a>        | ALSO KNOWN AS        |          |        |
| MCGOWEN, KIMBERLY LEVAUGHN <a href="#">Search This Party</a> | PETITIONER           |          |        |
| MCGOWEN, WILLIAM HENRY III <a href="#">Search This Party</a> | RESPONDENT           |          |        |
| LEVAUGHN, KIMBERLY ANNETTE <a href="#">Search This Party</a> | ALSO KNOWN AS        |          |        |

**Dockets**

| Page : 1 |             |                                                                                                               | 10 |
|----------|-------------|---------------------------------------------------------------------------------------------------------------|----|
| Doc #    | Action Date | Description                                                                                                   |    |
| 12       | 06/18/2026  | PROOF OF NONSERVICE ON WILLIAM MCGOWEN, III                                                                   |    |
| 10       | 06/10/2026  | FINAL JUDGMENT OF INJUNCTION FOR PROTECTION AGAINST DOMESTIC VIOLENCE WITHOUT MINOR CHILD(REN) (AFTER NOTICE) |    |
| 11       | 06/10/2026  | ORDER SETTING ASIDE ORDER EXTENDING TEMPORARY INJUNCTION FOR PROTECTION AGAINST DOMESTIC VIOLENCE             |    |
| 9        | 06/10/2026  | ORDER EXTENDING TEMPORARY INJUNCTION FOR PROTECTION AGAINST DOMESTIC VIOLENCE                                 |    |
| 8        | 06/01/2026  | PROOF OF SERVICE TO WILLIAM MCGOWEN, III ON 5/28/26                                                           |    |
| 7        | 05/28/2026  | TEMPORARY INJUNCTION FOR PROTECTION AGAINST DOMESTIC VIOLENCE WITHOUT MINOR CHILD(REN)                        |    |
| 6        | 05/28/2026  | SHERIFF INFORMATION SHEET                                                                                     |    |
| 5        | 05/28/2026  | PHOTO IDENTIFICATION FILED                                                                                    |    |
| 4        | 05/28/2026  | RESTRAINING ORDER QUESTIONNAIRE                                                                               |    |
| 3        | 05/28/2026  | NOTICE OF RELATED CASES                                                                                       |    |

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| Case Number                              | Filed Date | Case Type             | Status    | Contested |
|------------------------------------------|------------|-----------------------|-----------|-----------|
| 662026CT000102CTAXMX<br>[26000102CTAXMX] | 02/05/2026 | Criminal Traffic 13-D | CASE OPEN | NO        |

| Charge Seq # | Description                    | Date       | Phase   | Trial |
|--------------|--------------------------------|------------|---------|-------|
| 1            | FAIL TO REGISTER MOTOR VEHICLE | 05/27/2026 | Charged |       |

| Party Name                                               | Party Type    | Attorney | Bar ID |
|----------------------------------------------------------|---------------|----------|--------|
| WELLS, KELVIN CLYDE                                      | JUDGE         |          |        |
| MCGOWEN, WM HENRY <a href="#">Search This Party</a>      | DEFENDANT     |          |        |
| MCGOWEN, WILLIAM HENRY <a href="#">Search This Party</a> | ALSO KNOWN AS |          |        |

**Dockets**

| Page : 1 |       |             |                                                                                       |       |  |
|----------|-------|-------------|---------------------------------------------------------------------------------------|-------|--|
| Image    | Doc # | Action Date | Description                                                                           | Pages |  |
|          | 26    | 06/10/2026  | NOTICE MAILED TO BONDSMAN.                                                            | 2     |  |
|          | 25    | 06/10/2026  | BOOKING CARD                                                                          | 2     |  |
|          | 24    | 06/10/2026  | SURETY BOND FILED.                                                                    | 2     |  |
|          | 23    | 05/28/2026  | NOTICE MAILED TO DEFENDANT                                                            | 2     |  |
|          | 22    | 05/28/2026  | BOND SET AT:\$1,000 C/P FTA                                                           |       |  |
|          | 21    | 05/28/2026  | FIRST APPEARANCE CASE DISPOSITION FILED                                               | 1     |  |
|          | 20    | 05/28/2026  | PROVISIONAL ORDER APPOINTING COUNSEL FILED.                                           | 1     |  |
|          | 19    | 05/28/2026  | APPLICATION FOR INDIGENCY DENIED BASED UPON DEFENDANTS INDICATION OF PRIVATE ATTORNEY |       |  |
|          | 18    | 05/28/2026  | APPLICATION FOR CRIMINAL INDIGENT STATUS FILED                                        | 1     |  |
|          | 17    | 05/28/2026  | NONADVERSARY PROBABLE CAUSE DETERMINATION RULE 3.131                                  | 1     |  |

**Judge Assignment History**

**Court Events**

**Sentences**

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