

Loyalty Oaths in Florida

A Petition for Redress of Grievances Against the Government of Florida

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by

Bob Hurt

<http://bobhurt.com>

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Executive Summary

Florida's elected officials have executed bogus loyalty oaths to the constitutions because their loyalty oath documents do not bear the jurat the law requires. As a consequence every elected Florida official stands guilty of several related crimes.

This essay explores the nature of the problem, reveals associated Florida statutes, explains how to obtain oath documents from public records, suggests a method of using administrative and political process to bring the loyalty oath criminals to reason and/or justice, and proposes legislation to harmonize and correct loyalty oath requirements in both the law and state Constitution, and institute bonding of all public employees so as to guarantee remedy to the People of the state for loyalty oath violations.

In the summer of 2007 the Florida State Department Division of Elections added the jurat back to election related oath forms. But the People of Florida still have criminals at the helm of government, in all branches, for none of them properly qualified as candidates. They can repair that problem only with new elections.

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Chapter I. Introduction

Section 1.01 *Petition for Redress of Grievances Regarding Loyalty Oaths.*

Consider this document a petition for redress of grievances, and an information resource, regarding loyalty oaths. I make it on behalf of all of the People of Florida.

I direct this petition to:

- all elected and appointed officials and all other non-federal employees of government and educational institutions at every level inside Florida,
- all registered voters in and of Florida, and
- all Citizens of Florida.

I present herein information about the laws affecting or related to loyalty oaths inside the state of Florida, and how public employees, particularly elected and appointed officials, scoff at and flout those laws. I also present proposals for solutions. The appendices hereto contain reference information.

1. First, I categorically state that Florida's elected officials and some appointed officials do not have statute-compliant, valid loyalty oaths on record as of this writing. According to US and Florida laws, that makes all of them criminals, their offices vacant, and their official acts nullities. Furthermore, it deprives the Citizens of a duly constituted government and thereby destroys the Republic.
2. Second, I demand a solution that conforms with law and common sense.

I petition now for redress by asking the government and the people from whom government sovereignty flows to implement the solutions I propose so that we might have legitimately-constituted governments in which every public employee not only has sworn a solemn oath to defend the Constitutions for the US and state, and our rights guaranteed thereby, but also provides proof through a notary's or other proper officer's seal and signature applied to a jurat on that oath. Moreover, I ask for government to impose severe penalties upon public employees fail so to swear loyalty oaths, and upon those who violate those sworn oaths.

Section 1.02 *Background*

I do not give the subject of oaths, and its sister topic of bonds, any comprehensive treatment, for that would require me to write a book. I fret enough that anyone will read and heed this paper.

<p>Disclaimer: I am not an attorney. I do not have a license to practice law. I do not practice law or give legal advice. I study law and tell people of my discoveries, evaluations, considerations, and assessments, not as advice to apply to a specific case, but as general information regarding the law, for educational purposes only.</p>

We have the right to expect public servants (government employees) to abide by certain minimum standards of loyalty to principles of government, and to see their most fundamental obligations as we see them.

No American government employee can have any loyalty that causes him to ignore the most fundamental social compact and agreement to protect our rights as expressed in the Constitution for the United States of America. That Constitution guarantees the protection of certain rights and liberties for and to all People. It does that because it obtains all its power, authority, and sovereignty from the People.

How shall we know that our elected, appointed, and hired government officials and employees will abide by their assumed responsibilities to protect our rights? We know only by their bonds of oath to do so. The founders of the USA knew this, and incorporated into the Constitution a requirement for all public officers in all branches of federal and state government to give an oath of loyalty to the Constitution itself. And of course, that Constitution proclaims itself, laws pursuant thereto, and treaties as the supreme law of the land.

The U.S.A. Constitution guarantees to the people of each state that their state shall have a republican form of government, meaning both separation of powers and balance of powers. Accordingly, each state has a written constitution that lays out its form of government as a republic, and the states' legislatures should have incorporated a loyalty oath into their respective constitutions.

In the case of the state of Florida, the constitution and laws contain numerous loyalty oaths. A student can suffer considerable confusion as to which kind of person must take what kind of oath. The following table summarizes the applicability of loyalty oaths.

You might notice the word "office," "officer," or "official". Florida Statutes define an officer as follows:

99.012 Restrictions on individuals qualifying for public office.--

(1) As used in this section: (a) "Officer" means a person, whether elected or appointed, who has the authority to exercise the sovereign power of the state pertaining to an office recognized under the State Constitution or laws of the state. With respect to a municipality, the term "officer" means a person, whether elected or appointed, who has the authority to exercise municipal power as provided by the State Constitution, state laws, or municipal charter.

112.061 Per diem and travel expenses of public officers, employees, and authorized persons.--

(c) **Officer or public officer**--An individual who in the performance of his or her official duties is vested by law with sovereign powers of government and who is either elected by the people, or commissioned by the Governor and has jurisdiction extending throughout the state, or any person lawfully serving instead of either of the foregoing two classes of individuals as initial designee or successor.

(d) **Employee or public employee**--An individual, whether commissioned or not, other than an officer or authorized person as defined herein, who is filling a regular or full-time authorized position and is responsible to an agency head.

Which Non-Federal People Must Take State Loyalty Oaths?

	Candidate Oath	Elector Oath	Public Officer Oath	Public Employee Oath	Bar Member Oath	Commissioner Oath
People	-	-	-	-	-	-
Resident	-	-	-	-	-	-
Citizen	-	-	-	-	-	-
Registered Voter		√	-	-	-	-
Candidate for Public Office	√	√	√	-	-	-
Elected Official	√	√	√	√	-	-
Appointed Official	-	-	√	√	-	-
Other	-					
Government Employee		-	-	√	-	-
Public Works Commissioner	√	-	√	√	-	√
Transportation Commissioner	√					
Disadvantaged Commissioner		√	√	√	-	-
Lawyer	-	-	-	-	√	-
Judge	√	√	√	√	√	-
Magistrate	-	√	√	√	-	-
Notary	-		√		-	-
Campaign Treasurer	-	√	-	-	-	-

At least one law, 105.031 Qualification; filing fee; candidate's oath; items required to be filed.-- requires candidates for elected office to swear an oath that they have sworn an oath. I have trouble understanding that. Perhaps it should include the text of the required previous oath in the new oath, or require attachment of a certified copy of the previous oath.

Obviously, and as a matter of principle, any people in the state must swear, affirm, promise, or give at least one oath of loyalty to the Constitution for the USA and the state Constitution IF they take a position in government, or decide to exercise any say through the polls in matters of government.

Because of the number of separate loyalty oaths one must give, one could suffer prosecution for violating each oath sworn.

For example, let's say a defendant moves the court for effective assistance of counsel, and the judge denies the motion, proceeding to entertain arguments affecting the defendant's liberty. By denying the right to assistance of counsel,

the judge has just violated his oath to support the Constitution for the USA in respect to the 6th Amendment which provides:

Constitution for the USA, 6th Amendment

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to **have the assistance of counsel for his defense.**

The judge has previously sworn the bar oath, elector's oath, the pre-candidate's loyalty oath, the public officer's oath, and the public employee's oath. Accordingly, the judge should suffer discipline or prosecution for each oath violated. Of course, that never happens. But it should. And, it might, if the People only understood and acted with resolve.

I have assembled laws you should review now in the Appendices hereto, ***Laws and Rules Regarding Oaths; Violation Penalties.*** When you have finished, return to this spot and read on for my comments regarding Problems.

Section 1.03 Problems with Loyalty Oaths in Florida

The biggest problem with the loyalty oaths in Florida comes from the fact that elected officials, including justices of the Florida Supreme Court, don't have valid oaths on file as required by statute. The second biggest problem consists of the lack of binding power of oaths on oath givers – no law penalizes people for failing to abide by their oaths. Other problems exist as well.

(a) Overview

I have researched the Florida loyalty oath debacle for over a year and a half (since Spring 2006), and I have concluded our state desperately needs reform in that area. Bear in mind that I would not have started the research project had I not noticed in numerous court hearings and trials that public officers routinely and with impunity deprive litigants, witnesses, juries, and observers of rights guaranteed by the national and state constitutions. I thought perhaps judges, bailiffs, and prosecutors did not need to heed the protections in those documents, or that they did not know *they* had the holy, solemn obligation to enforce the guarantees of our rights against any violators and interlopers.

I thought wrongly. I discovered that elected officials must swear a multiplicity of loyalty oaths. I learned that judges, whom we all must presume know the law intimately, have barely a clue about that particular chain of their title to government office, and that official procedures for authorizing their employment do not include verification that the valid oaths exist. I realized after communicating with attorneys in the Office of State Courts Administrator (OSCA) and Department of State that oath forms don't have jurats required by

statutes and OSCA does not have judge oaths on file prior to collecting their pay, as required by statute pr

I found numerous problems with laws as well.

(b) Consistency

I find the oaths inexplicably and inexcusably inconsistent in wording. The oath-giver might variously declare to support, or to support, protect, and defend the Constitutions.

Also, the Florida Statutes word the loyalty oaths differently from the Florida Constitution. This has caused public employees in various state agencies and offices to make forms of oath in diverse ways that do not comply with law.

But even that does not excuse the various politicians in diverse levels of government for concocting their own wording of oaths which does not jibe with the law, or of excising whole parts of the required oath text from their forms.

We can rightly blame our legislators for botching the job of drafting good oath text, and our dispersed and distracted public officials at the county and municipal level for changing oath text to suit their whim. Either way, the people of Florida have a valid cause to sue people in the government for dereliction of duty.

(c) Loyalty to Whom, the Enemy?

As one example of oath confusion in the law, the Public Officer's oath in Article II Section 5 of the Florida Constitution requires public officers to swear an oath to the constitutions *and* the "Governments" of the USA and Florida.

This constitutes one of our most serious problems because the government and the constitution often find themselves in conflict, and such an oath makes the conflict even worse because it excuses the "good old boys' network" of its criminal efforts to take aggrandize themselves and their cronies at the expense of the People.

The word "government" does not belong in any oath because the oath has the purpose of protecting the People *from* the government as well as to make the government do its job. The government can, and many times in the history of our country and state *has* functioned as the enemy of the people and the states because of the misdeeds of powerful people who run the government or its subdivisions.

Thus, one might as well swear an oath of loyalty to the enemy as to the government. Only a foreign enemy (like the IRS or another country) would fall into a worse category.

I believe the addition of the word *government* to the oath signaled a serious decline of our republic. We should remember that an oath to support the government constitutes an oath to suppress and injure the people when governing officials run amok or start putting the government's interest ahead of the people's interest.

Such an oath also leads to and derives from insanities such as the Florida Supreme Court's 1949 absorption of the Florida Bar (see full documentation at <http://judicialaccountability.org> and <http://constitutionalguardian.org>). The Florida Republic suffered destruction through metamorphosis with that action because about 1/3 of the legislature, all attorneys, and numerous executive branch officers (Attorney General, State Attorneys), and all judges have memberships in the Bar. The Florida Constitution requires Bar membership of judges and certain executive branch officers such as the Attorney General, State Attorneys, and Assistant State Attorneys.

The Florida Bar functions as a government corporation but has a private nature, so it functions as a business, and that constitutes a conflict of interest. Bar members pervade all three branches of government. It denies public access to its meetings. And it officially serves as an "arm" of the Supreme Court. It thereby completely destroys the separation and balance of powers of the government. And as such, it makes the government the enemy of the people because it has commercial interests working in opposition to the public interest, under the "color of law."

(d) Loyalty According to Whom?

An oath has little value if not sworn before some trusted person (to whom I refer as an *oath-taker*) who will attest that the oath-giver actually swore or affirmed it.

Why? If a question of loyalty ever arises in the case of a person who said he swore an oath, but no trusted person attested to it, then the oath-giver could back out and say "I didn't sign that, and I didn't give that oath." In a court of law, a judge might likely rule that, absent a properly executed jurat, the signed oath does not actually constitute a legal and binding oath, particularly because Florida Statute 876.05 (see page 52) requires a jurat.

Prior to the year 2000, Florida loyalty oath-givers signed a form, and a notary or some other trusted justice department official signed a jurat attesting to the swearing. Since that time, however, Florida oaths in the records of the Division of Elections have no jurat on them, and nobody attests to them but the oath-giver. See Appendices: Laws and Rules Regarding Oaths; Violation Penalties and Laws and Rules Regarding Oaths; Violation Penalties

(e) U.S. Constitution

(i) Article IV, Section 4 – The States.

The United States shall guarantee **to every state in this union a republican form of government**, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence.

(ii) Article VI – Legal Status of Constitution

All debts contracted and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

The Senators and Representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

(f) Florida Constitution

(i) Article II General Provisions. SECTION 5. Public officers.—

(b) Each state and county officer, before entering upon the duties of the office, shall give bond as required by law, and shall swear or affirm:

"I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the state; and that I will well and faithfully perform the duties of (title of office) on which I am now about to enter. So help me God.",

and thereafter shall devote personal attention to the duties of the office, and continue in office until a successor qualifies.

History.--Am. H.J.R. 1616, 1988; adopted 1988; Am. proposed by Constitution Revision Commission, Revision No. 13, 1998, filed with the Secretary of State May 5, 1998; adopted 1998.

(ii) Article VI. Suffrage and Elections. SECTION 3. Oath.-

-Each eligible citizen upon registering shall subscribe the following: "I do solemnly swear (or affirm) that I will protect and defend the Constitution of the United States and the Constitution of the State of Florida, and that I am qualified to register as an elector under the Constitution and laws of the State of Florida."

(g) United States Code

(i) 4 USC § 101. Oath by members of legislatures and officers

Every member of a State legislature, and every executive and judicial officer of a State, shall, before he proceeds to execute the duties of his office, take an oath in the following form, to wit: "I, A B, do solemnly swear that I will support the Constitution of the United States."

(ii) 4 USC § 102. Same; by whom administered

Such oath may be administered by any person who, by the law of the State, is authorized to administer the oath of office; and the person so administering such oath shall cause a record or certificate thereof to be made in the same manner, as by the law of the State, he is directed to record or certify the oath of office.

(iii) 5 USC § 3301. Oath of Office

An individual, except the President, elected or appointed to an office of honor or profit in the civil service or uniformed services, shall take the following oath: "I, AB, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God." This section does not affect other oaths required by law.

(h) Florida Statutes

(i) 876.05 Public employees; oath.--

(1) All persons who now or hereafter are employed by or who now or hereafter are on the payroll of the state, or any of its departments and agencies, subdivisions, counties, cities, school boards and districts of the free public school system of the state or counties, or institutions of higher learning, and all candidates for public office, are required to take an oath before any person duly authorized to take acknowledgments of instruments for public record in the state in the following form:

I, _____, a citizen of the State of Florida and of the United States of America, and being employed by or an officer of _____ and a recipient of public funds as such employee or officer, do hereby solemnly swear or affirm that I will support the Constitution of the United States and of the State of Florida.

(2) Said oath shall be filed with the records of the governing official or employing governmental agency prior to the approval of any voucher for the payment of salary, expenses, or other compensation.

History.--s. 1, ch. 25046, 1949; s. 22, ch. 83-214.

(ii) 876.06 Discharge for refusal to execute.

--If any person required by ss. 876.05-876.10 to take the oath herein provided for fails to execute the same, the governing authority under which such person is employed shall cause said person to be immediately discharged, and his or her name removed from the payroll, and such person shall not be permitted to receive any payment as an employee or as an officer where he or she was serving.

History.--s. 2, ch. 25046, 1949; s. 1414, ch. 97-102.

(iii) 876.07 Oath as prerequisite to qualification for public office.

--Any person seeking to qualify for public office who fails or refuses to file the oath required by this act shall be held to have failed to qualify as a candidate for public office, and the name of such person shall not be printed on the ballot as a qualified candidate.

History.--s. 3, ch. 25046, 1949; s. 23, ch. 83-214.

(iv) 876.08 (Oath) Penalty for not discharging.--

Any governing authority or person, under whom any employee is serving or by whom employed who shall knowingly or carelessly permit any such employee to continue in employment after failing to comply with the provisions of ss. 876.05-876.10, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.--s. 4, ch. 25046, 1949; s. 1140, ch. 71-136.

(v) 876.09 (Oath) Scope of law.--

(1) The provisions of ss. 876.05-876.10 shall apply to all employees and elected officers of the state, including the Governor and constitutional officers and all employees and elected officers of all cities, towns, counties, and political subdivisions, including the educational system.

(2) This act shall take precedence over all laws relating to merit, and of civil service law.

History.--ss. 5, 7, ch. 25046, 1949.

(vi) 876.10 False oath; penalty.--

If any person required by the provisions of ss. 876.05-876.10 to execute the oath herein required executes such oath, and it is subsequently proven that at the time of the execution of said oath said individual was guilty of making a false statement in said oath, he or she shall be guilty of perjury.

History.--s. 6, ch. 25046, 1949; s. 1141, ch. 71-136; s. 1415, ch. 97-102.

Note: Chapters 90 and 92 constitute Title VII - Evidence

(vii) 92.50 Oaths, affidavits, and acknowledgments; who may take or administer; requirements.--

(1) IN THIS STATE.--Oaths, affidavits, and acknowledgments required or authorized under the laws of this state (except oaths to jurors and witnesses in court and such other oaths, affidavits and acknowledgments as are required by law to be taken or administered by or before particular officers) may be taken or administered by or before any judge, clerk, or deputy clerk of any court of record within this state, including federal courts, or before any United States commissioner or any notary public within this state. The jurat, or certificate of proof or acknowledgment, shall be authenticated by the signature and official seal of such officer or person taking or administering the same; however, when taken or administered before any judge, clerk, or deputy clerk of a court of record, the seal of such court may be affixed as the seal of such officer or person.

(2) IN OTHER STATES, TERRITORIES, AND DISTRICTS OF THE UNITED STATES.--Oaths, affidavits, and acknowledgments required or authorized under the laws of this state, may be taken or administered in any other state, territory, or district of the United States, before any judge, clerk or deputy clerk of any court of record, within such state, territory, or district, having a seal, or before any notary public or justice of the peace, having a seal, in such state, territory, or district; provided, however, such officer or person is authorized under the laws of such state, territory, or district to take or administer oaths, affidavits and acknowledgments. The jurat, or certificate of proof or acknowledgment, shall be authenticated by the signature and official seal of such officer or person taking or administering the same; provided, however, when taken or administered by or before any judge, clerk, or deputy clerk of a court of record, the seal of such court may be affixed as the seal of such officer or person.

(3) IN FOREIGN COUNTRIES.--Oaths, affidavits, and acknowledgments, required or authorized by the laws of this state, may be taken or administered in any foreign country, by or before any judge or justice of a court of last resort, any notary public of such foreign country, any minister, consul general, charge d'affaires, or consul of the United States resident in such country. The jurat, or certificate of proof or acknowledgment, shall be authenticated by the signature and official seal of the officer or person taking or administering the same; provided, however, when taken or administered by or before any judge or justice of a court of last resort, the seal of such court may be affixed as the seal of such judge or justice.

History.--s. 1, ch. 48, 1845; RS 1299; GS 1730; RGS 2945; CGL 4669; s. 1, ch. 23156, 1945; s. 7, ch. 24337, 1947; s. 15, ch. 73-334; s. 3, ch. 76-237; s. 1, ch. 77-77; s. 22, ch. 78-361; s. 1, ch. 78-379.

Note.--Former s. 90.01.

(viii) 92.51 Oaths, affidavits, and acknowledgments; taken or administered by commissioned officer of United States Armed Forces.--

(1) Oaths, affidavits, and acknowledgments required or authorized by the laws of this state may be taken or administered within or without the United States by or before any commissioned officer in active service of the Armed Forces of the United States with the rank of second lieutenant or higher in the Army, Air Force or Marine Corps or ensign or higher in the Navy or Coast Guard when the person required or authorized to make and execute the oath, affidavit, or acknowledgment is a member of the Armed Forces of the United States, the spouse of such member or a person whose duties require the person's presence with the Armed Forces of the United States.

(2) A certificate endorsed upon the instrument which shows the date of the oath, affidavit, or acknowledgment and which states in substance that the person appearing before the officer acknowledged the instrument as the person's act or made or signed the instrument under oath shall be sufficient for all intents and purposes. The instrument shall not be rendered invalid by the failure to state the place of execution or acknowledgment.

(3) If the signature, rank, and branch of service or subdivision thereof of any commissioned officer appears upon such instrument, document or certificate no further proof of the authority of such officer so to act shall be required and such action by such commissioned officer shall be prima facie evidence that the person making such oath, affidavit or acknowledgment is within the purview of this act.

History.--ss. 1, 2, 3, ch. 61-196; s. 3, ch. 76-237; s. 1, ch. 77-77; s. 22, ch. 78-361; s. 1, ch. 78-379; s. 518, ch. 95-147.

Note.--Former s. 90.011.

(ix) 92.52 Affirmation equivalent to oath.--

Whenever an oath shall be required by any law of this state in any proceeding, an affirmation may be substituted therefor.

History.--RS 1300; GS 1731; RGS 2946; CGL 4670; s. 3, ch. 76-237; s. 1, ch. 77-77; s. 22, ch. 78-361; s. 1, ch. 78-379.

Note.--Former s. 90.02.

(x) 92.525 Verification of documents; perjury by false written declaration, penalty.--

(1) When it is authorized or required by law, by rule of an administrative agency, or by rule or order of court that a document be verified by a person, the verification may be accomplished in the following manner:

(a) Under oath or affirmation taken or administered before an officer authorized under s. 92.50 to administer oaths; or

(b) By the signing of the written declaration prescribed in subsection (2).

(2) A written declaration means the following statement: "Under penalties of perjury, I declare that I have read the foregoing [document] and that the facts stated in it are true," followed by the signature of the person making the declaration, except when a verification on information or belief is permitted by law, in which case the words "to the best of my knowledge and belief" may be added. The written declaration shall be printed or typed at the end of or immediately below the document being verified and above the signature of the person making the declaration.

(3) A person who knowingly makes a false declaration under subsection (2) is guilty of the crime of perjury by false written declaration, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) As used in this section:

(a) The term "administrative agency" means any department or agency of the state or any county, municipality, special district, or other political subdivision.

(b) The term "document" means any writing including, without limitation, any form, application, claim, notice, tax return, inventory, affidavit, pleading, or paper.

(c) The requirement that a document be verified means that the document must be signed or executed by a person and that the person must state under oath or affirm that the facts or matters stated or recited in the document are true, or words of that import or effect.

History.--s. 12, ch. 86-201.

(xi) 97.051 Oath upon registering.—

A person registering to vote must subscribe to the following oath: "I do solemnly swear (or affirm) that I will protect and defend the Constitution of the United States and the Constitution of the State of Florida, that I am qualified to register as an elector under the Constitution and laws of the State of Florida, and that all information provided in this application is true."

History.--s. 7, ch. 3879, 1889; RS 161; s. 8, ch. 4328, 1895; GS 178; RGS 222; CGL 257; s. 4, ch. 25383, 1949; s. 1, ch. 26870, 1951; s. 3, ch. 69-280; ss. 2, 4, ch. 71-108; s. 1, ch. 72-63; s. 2, ch. 77-175; s. 1, ch. 81-304; s. 9, ch. 94-224; s. 3, ch. 2005-277; s. 4, ch. 2005-278.

Note.--Former s. 98.11.

(xii) 97.052 Uniform statewide voter registration application.--

(2) The uniform statewide voter registration application must be designed to elicit the following information from the applicant:

(p) Signature of applicant under penalty for false swearing pursuant to s. 104.011, by which the person subscribes to the oath required by s. 3, Art. VI of the State Constitution and s. 97.051, and swears or affirms that the information contained in the registration application is true.

(q) Whether the application is being used for initial registration, to update a voter registration record, or to request a replacement voter information card.

(r) Whether the applicant is a citizen of the United States by asking the question "Are you a citizen of the United States of America?" and providing boxes for the applicant to check to indicate whether the applicant is or is not a citizen of the United States.

(s) Whether the applicant has been convicted of a felony, and, if convicted, has had his or her civil rights restored by including the statement "I affirm I am not a convicted felon, or, if I am, my rights relating to voting have been restored." and providing a box for the applicant to check to affirm the statement.

(t) Whether the applicant has been adjudicated mentally incapacitated with respect to voting or, if so adjudicated, has had his or her right to vote restored by including the statement "I affirm I have not been adjudicated mentally incapacitated with respect to voting, or, if I have, my competency has been restored." and providing a box for the applicant to check to affirm the statement.

The registration application must be in plain language and designed so that convicted felons whose civil rights have been restored and persons who have been adjudicated mentally incapacitated and have had their voting rights restored are not required to reveal their prior conviction or adjudication.

(3) The uniform statewide voter registration application must also contain:

(a) The oath required by s. 3, Art. VI of the State Constitution and s. 97.051.

(xiii) 350.05 Oath of office [Florida Public Services Commission, part of Legislative Branch].--

Before entering upon the duties of his or her office each commissioner shall subscribe to the following oath: "I do solemnly swear (or affirm) that **I will support, protect and defend the Constitution and Government of the United States and of the State of Florida**; that **I am qualified** to hold office under the constitution of the state, and that I will well and faithfully perform at all times the duties of Florida Public Service Commissioner, on which I am now about to enter

in a professional, independent, objective, and nonpartisan manner; that I do not have any financial, employment, or business interest which is prohibited by chapter 350, Florida Statutes; and that I will abide by the standards of conduct required of me by chapters 112 and 350, Florida Statutes, so help me God." In case any commissioner should in any way become disqualified, he or she shall at once remove such disqualification or resign, and upon his or her failure to do so, he or she shall be suspended from office by the Governor and dealt with as provided by law.

History.--s. 1, ch. 4700, 1899; GS 2886; RGS 4611; CGL 6696; s. 1, ch. 63-279; s. 1, ch. 65-52; s. 2, ch. 65-422; s. 2, ch. 81-318; s. 6, ch. 87-50; s. 6, ch. 90-272; s. 533, ch. 95-148.

(xiv) 99.021 Form of candidate oath.--

(1)(a) Each candidate, whether a party candidate, a candidate with no party affiliation, or a write-in candidate, in order to qualify for nomination or election to any office other than a judicial office as defined in chapter 105, shall take and subscribe to an oath or affirmation in writing. A printed copy of the oath or affirmation shall be furnished to the candidate by the officer before whom such candidate seeks to qualify and **shall be substantially in the following form:**

State of Florida
County of _____

Before me, an officer authorized to administer oaths, personally appeared (please print name as you wish it to appear on the ballot), to me well known, who, being sworn, says that he or she is a candidate for the office of _____; that he or she is a qualified elector of _____ County, Florida; that he or she is qualified under the Constitution and the laws of Florida to hold the office to which he or she desires to be nominated or elected; **that he or she has taken the oath required by ss. 876.05-876.10, Florida Statutes;** that he or she has qualified for no other public office in the state, the term of which office or any part thereof runs concurrent with that of the office he or she seeks; and that he or she has resigned from any office from which he or she is required to resign pursuant to s. 99.012, Florida Statutes.

(Signature of candidate)

(Address)

Sworn to and subscribed before me this _____ day of _____, (year), at _____ County, Florida.

(Signature and title of officer administering oath)

(b) In addition, any person seeking to qualify for nomination as a candidate of any political party shall, at the time of subscribing to the oath or affirmation, state in writing:

1. The party of which the person is a member.
2. That the person is not a registered member of any other political party and has not been a candidate for nomination for any other political party for a period of 6 months preceding the general election for which the person seeks to qualify.
3. That the person has paid the assessment levied against him or her, if any, as a candidate for said office by the executive committee of the party of which he or she is a member.

(c) The officer before whom such person qualifies shall certify the name of such person to the supervisor of elections in each county affected by such candidacy so that the name of such person may be printed on the ballot. Each person seeking election as a write-in candidate shall subscribe to the oath prescribed in this section in order to be entitled to have write-in ballots cast for him or her counted.

(2) The provisions of subsection (1) relating to the oath required of candidates, and the form of oath prescribed, shall apply with equal force and effect to, and shall be the oath required of, a candidate for election to a political party executive committee office, as provided by law. The requirements set forth in this section shall also apply to any person filling a vacancy on a political party executive committee.

History.--ss. 22, 23, ch. 6469, 1913; RGS 326, 327; CGL 383, 384; s. 3, ch. 19663, 1939; s. 3, ch. 26870, 1951; s. 10, ch. 28156, 1953; s. 1, ch. 57-742; s. 1, ch. 61-128; s. 2, ch. 63-269; s. 1, ch. 63-66; s. 1, ch. 65-376; s. 1, ch. 67-149; s. 2, ch. 70-269; s. 19, ch. 71-355; s. 6, ch. 77-175; s. 3, ch. 79-365; s. 27, ch. 79-400; s. 2, ch. 81-105; s. 3, ch. 86-134; s. 535, ch. 95-147; s. 7, ch. 99-6; s. 8, ch. 99-318.

Note.--Former ss. 102.29, 102.30.

(xv) 105.031 Qualification; filing fee; candidate's oath; items required to be filed.--

(4) CANDIDATE'S OATH.--

(a) All candidates for the office of school board member shall subscribe to the oath as prescribed in s. [99.021](#).

(b) All candidates for **judicial office** shall subscribe to an oath or affirmation in writing to be filed with the appropriate qualifying officer upon qualifying. A printed copy of the oath or affirmation shall be furnished to the candidate by the qualifying officer and **shall be in substantially the following form:**

State of Florida
County of _____

Before me, an officer authorized to administer oaths, personally appeared (please print name as you wish it to appear on the ballot), to me well known, who, being sworn, says he or she: is a candidate for the judicial office of _____; that his or her legal residence is _____ County, Florida; that he or she is a qualified elector of the state and of the territorial jurisdiction of the court to which he or she seeks election; that he or she is qualified under the constitution and laws of Florida to hold the judicial office to which he or she desires to be elected or in which he or she desires to be retained; that he or she has taken the oath required by ss. [876.05](#)-876.10, Florida Statutes; that he or she has qualified for no other public office in the state, the term of which office or any part thereof runs concurrent to the office he or she seeks; and that he or she has resigned from any office which he or she is required to resign pursuant to s. [99.012](#), Florida Statutes.

(Signature of candidate)

(Address)

Sworn to and subscribed before me this _____ day of _____, (year), at _____
County, Florida.

(Signature and title of officer administering oath)

(xvi) 99.061 Method of qualifying for nomination or election to federal, state, county, or district office.--

(1) The provisions of any special act to the contrary notwithstanding, each person seeking to qualify for nomination or election to a federal, state, or multicounty district office, other than election to a judicial office as defined in chapter 105 or the office of school board member, shall file his or her qualification papers with, and pay the qualifying fee, which shall consist of the filing fee and election assessment, and party assessment, if any has been levied, to, the Department of State, or qualify by the petition process pursuant to s. 99.095 with the Department of State, at any time after noon of the 1st day for qualifying, which shall be as follows: the 120th day prior to the primary election, but not later than noon of the 116th day prior to the date of the primary election, for persons seeking to qualify for nomination or election to federal office or to the office of the state attorney or the public defender; and noon of the 50th day prior to the primary election, but not later than noon of the 46th day prior to the date of the primary election, for persons seeking to qualify for nomination or election to a state or multicounty district office, other than the office of the state attorney or the public defender.

(2) The provisions of any special act to the contrary notwithstanding, each person seeking to qualify for nomination or election to a county office, or district or special district office not covered by subsection (1), shall file his or her qualification papers with, and pay the qualifying fee, which shall consist of the filing fee and election assessment, and party assessment, if any has been levied, to, the supervisor of elections of the county, or shall qualify by the petition process pursuant to s. 99.095 with the supervisor of elections, at any time after noon of the 1st day for qualifying, which shall be the 50th day prior to the primary election or special district election, but not later than noon of the 46th day prior to the date of the primary election or special district election. However, if a special district election is held at the same time as the general election, qualifying shall be the 50th day prior to the primary election, but not later than noon of the 46th day prior to the date of the primary election. Within 30 days after the closing of qualifying time, the supervisor of elections shall remit to the secretary of the state executive committee of the political party to which the candidate belongs the amount of the filing fee, two-thirds of which shall be used to promote the candidacy of candidates for county offices and the candidacy of members of the Legislature.

(3)(a) Each person seeking to qualify for election to office as a write-in candidate shall file his or her qualification papers with the respective qualifying officer at any time after noon of the 1st day for qualifying, but not later than noon of the last day of the qualifying period for the office sought.

(b) Any person who is seeking election as a write-in candidate shall not be required to pay a filing fee, election assessment, or party assessment. A write-in candidate shall not be entitled to have his or her name printed on any ballot; however, space for the write-in candidate's name to be written in shall be provided on the general election ballot. No person may qualify as a write-in candidate if the person has also otherwise qualified for nomination or election to such office.

(4) At the time of qualifying for office, each candidate for a constitutional office shall file a full and public disclosure of financial interests pursuant to s. 8, Art. II of the State Constitution, and a candidate for any other office, including local elective office, shall file a statement of financial interests pursuant to s. 112.3145.

(5) The Department of State shall certify to the supervisor of elections, within 7 days after the closing date for qualifying, the names of all duly qualified candidates for nomination or election who have qualified with the Department of State.

(6) Notwithstanding the qualifying period prescribed in this section, if a candidate has submitted the necessary petitions by the required deadline in order to qualify by the petition process pursuant to s. 99.095 as a candidate for nomination or election and the candidate is notified after the 5th day prior to the last day for qualifying that the required number of signatures has been obtained, the candidate is entitled to subscribe to the candidate's oath and file the qualifying papers at any time within 5 days from the date the candidate is notified that the necessary number of signatures has been obtained. Any candidate who qualifies within the time prescribed in this subsection is entitled to have his or her name printed on the ballot.

(7)(a) In order for a candidate to be qualified, the following items must be received by the filing officer by the end of the qualifying period:

1. A properly executed check drawn upon the candidate's campaign account in an amount not less than the fee required by s. 99.092 or, in lieu thereof, as applicable, the copy of the notice of obtaining ballot position pursuant to s. 99.095. If a candidate's check is returned by the bank for any reason, the filing officer shall immediately notify the candidate and the candidate shall, the end of qualifying notwithstanding, have 48 hours from the time such notification is received, excluding Saturdays, Sundays, and legal holidays, to pay the fee with a cashier's check purchased from funds of the campaign account. Failure to pay the fee as provided in this subparagraph shall disqualify the candidate.

2. The candidate's oath required by s. 99.021, which must contain the name of the candidate as it is to appear on the ballot; the office sought, including the district or group number if applicable; and the signature of the candidate, duly acknowledged.

3. The loyalty oath required by s. 876.05, signed by the candidate and duly acknowledged.

4. If the office sought is partisan, the written statement of political party affiliation required by s. 99.021(1)(b).

5. The completed form for the appointment of campaign treasurer and designation of campaign depository, as required by s. 106.021.

6. The full and public disclosure or statement of financial interests required by subsection (4). A public officer who has filed the full and public disclosure or statement of financial interests with the Commission on Ethics or the supervisor of elections prior to qualifying for office may file a copy of that disclosure at the time of qualifying.

(b) If the filing officer receives qualifying papers that do not include all items as required by paragraph (a) prior to the last day of qualifying, the filing officer shall make a reasonable effort to notify the candidate of the missing or incomplete items and shall inform the candidate that all required items must be received by the close of qualifying. A candidate's name as it is to appear on the ballot may not be changed after the end of qualifying.

(8) Notwithstanding the qualifying period prescribed in this section, a qualifying office may accept and hold qualifying papers submitted not earlier than 14 days prior to the beginning of the qualifying period, to be processed and filed during the qualifying period.

(9) Notwithstanding the qualifying period prescribed by this section, in each year in which the Legislature apportions the state, the qualifying period for persons seeking to qualify for nomination or election to federal office shall be between noon of the 57th day prior to the primary election, but not later than noon of the 53rd day prior to the primary election.

(10) The Department of State may prescribe by rule requirements for filing papers to qualify as a candidate under this section.

History.--ss. 25, 26, ch. 6469, 1913; RGS 329, 330; CGL 386, 387; ss. 4, 5, ch. 13761, 1929; s. 1, ch. 16990, 1935; CGL 1936 Supp. 386; ss. 1, chs. 19007, 19008, 19009, 1939; CGL 1940 Supp. 4769(3); s. 1, ch. 20619,

1941; s. 1, ch. 21851, 1943; s. 1, ch. 23006, 1945; s. 1, ch. 24163, 1947; s. 3, ch. 26870, 1951; s. 11, ch. 28156, 1953; s. 4, ch. 29936, 1955; s. 10, ch. 57-1; s. 1, ch. 59-84; s. 1, ch. 61-373 and s. 4, ch. 61-530; s. 1, ch. 63-502; s. 7, ch. 65-378; s. 2, ch. 67-531; ss. 10, 35, ch. 69-106; s. 5, ch. 69-281; s. 1, ch. 69-300; s. 1, ch. 70-42; s. 1, ch. 70-93; s. 1, ch. 70-439; s. 6, ch. 77-175; s. 1, ch. 78-188; s. 3, ch. 81-105; s. 2, ch. 83-15; s. 2, ch. 83-25; s. 1, ch. 83-251; s. 29, ch. 84-302; s. 1, ch. 86-7; s. 6, ch. 89-338; s. 8, ch. 90-315; s. 32, ch. 91-107; s. 536, ch. 95-147; s. 1, ch. 95-156; s. 9, ch. 99-318; s. 9, ch. 99-326; s. 3, ch. 2001-75; s. 11, ch. 2005-277; s. 51, ch. 2005-278; s. 7, ch. 2005-286.

Note.--Former ss. 102.32, 102.33, 102.351, 102.36, 102.66, 102.69.

(xvii) 104.011 False swearing; submission of false voter registration information.--

(1) A person who willfully swears or affirms falsely to any oath or affirmation, or willfully procures another person to swear or affirm falsely to an oath or affirmation, in connection with or arising out of voting or elections commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) A person who willfully submits any false voter registration information commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

History.--s. 15, ch. 14715, 1931; CGL 1936 Supp. 8202(6); s. 8, ch. 26870, 1951; s. 19, ch. 71-136; s. 33, ch. 77-175; s. 38, ch. 94-224; s. 31, ch. 97-13.

(xviii) 839.18 Penalty for officer assuming to act before qualification.--

Whoever being elected, or appointed, to any office assumes to perform any of the duties thereof before qualification, according to law, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.--RS 2737; GS 3732; RGS 5757; CGL 7987; s. 1028, ch. 71-136.

(xix) 843.0855 Criminal actions under color of law or through use of simulated legal process.--

(1) As used in this section:

(a) The term "legal process" means a document or order issued by a court or filed or recorded for the purpose of exercising jurisdiction or representing a claim against a person or property, or for the purpose of directing a person to appear before a court or tribunal, or to perform or refrain from performing a specified act. "Legal process" includes, but is not limited to, a summons, lien, complaint, warrant, injunction, writ, notice, pleading, subpoena, or order.

(b) The term "person" means an individual, public or private group incorporated or otherwise, legitimate or illegitimate legal tribunal or entity, informal organization, official or unofficial agency or body, or any assemblage of individuals.

(c) The term "public officer" means a public officer as defined by s. 112.061.

(d) The term "public employee" means a public employee as defined by s. 112.061.

(2) Any person who deliberately impersonates or falsely acts as a public officer or tribunal, public employee or utility employee, including, but not limited to, marshals, judges, prosecutors, sheriffs, deputies, court personnel, or any law enforcement authority in connection with or relating to any legal process affecting persons and property, or otherwise takes any action under color of law against persons or property, commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

(3) Any person who simulates legal process, including, but not limited to, actions affecting title to real estate or personal property, indictments, subpoenas, warrants, injunctions, liens, orders, judgments, or any legal documents or proceedings, knowing or having reason to know the contents of any such documents or proceedings or the basis for any action to be fraudulent, commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

(4) Any person who falsely under color of law attempts in any way to influence, intimidate, or hinder a public officer or law enforcement officer in the discharge of his or her official duties by means of, but not limited to, threats of or actual physical abuse or harassment, or through the use of simulated legal process, commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

(5)(a) Nothing in this section shall make unlawful any act of any law enforcement officer or legal tribunal which is performed under lawful authority.

(b) Nothing in this section shall prohibit individuals from assembling freely to express opinions or designate group affiliation or association.

(c) Nothing in this section shall prohibit or in any way limit a person's lawful and legitimate access to the courts or prevent a person from instituting or responding to legitimate and lawful legal process.

History.--s. 1, ch. 97-203.

(i) The Florida Bar

(i) Rules Regulating The Florida Bar

1) 2 Bylaws Of The Florida Bar 2-2 Membership Bylaw 2-2.1 Attaining Membership –

Persons shall initially become a member of The Florida Bar, in good standing, only upon certification by the Supreme Court of Florida in accordance with the rules governing the Florida Board of Bar Examiners and administration of the required oath. [Updated: 08-01-2006]

2) 3 Rules Of Discipline 3-4 Standards Of Conduct Rule 3-4.7 Oath –

Violation of the oath taken by an attorney to support the constitutions of the United States and the State of Florida is ground for disciplinary action.

Membership in, alliance with, or support of any organization, group, or party advocating or dedicated to the overthrow of the government by violence or by any means in violation of the Constitution of the United States or constitution of this state shall be a violation of the oath. [Updated: 08-01-2006]

(ii) Florida Bar Admission Oath for Attorneys

“I do solemnly swear: **I will support the Constitution of the United States and the Constitution of the State of Florida;** I will maintain the respect due to courts of justice and judicial officers; I will not counsel or maintain any suit or proceedings which shall appear to me to be unjust, nor any defense except such as I believe to be honestly debatable under the law of the land; I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement of fact or law; I will maintain the confidence and preserve inviolate the secrets of my clients, and will accept no compensation in connection with their business except from them or with their knowledge and approval; I will abstain from all offensive personality and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged; I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay anyone’s cause for lucre or malice. So help me God.” (Courtesy of the Florida Bar Examiner) -

(j) Examples of Old and Newer Oaths.

Apparently, some policy-maker, under advice of some bureaucracy attorney, decided to replace the jurat with a “penalty of perjury” statement.

In the summer of 2006 I discovered that the Florida State Department took the official position that the new loyalty oath forms they promulgate with jurats missing do not violate the law. See Appendix 04 Letter to Sharon Larson, Assistant Counsel, Florida Department of State.

That, of course, violates 4 USC 102 and Florida Statute 876.05 Public employees; oath.--, which requires a notary or other justice department official to take the oath (and attest to it).

Finally in May 2007, under new leadership, the State Department began a move to add jurats back to the oath forms. See Appendix 11 Letter from Lynn Hearn to Amy Tuck Recommending Jurats. However, note that Counsel Hearn opined that the de facto public officer doctrine (an officer’s acts have validity once qualified for office, even if the officer loses qualification afterward) makes it unnecessary for elected officials to run out and have their oaths notarized.

Hearn apparently failed to realize that much case law exists to support the reality that lack of a valid loyalty oath disqualifies the public officer candidate *ab initio*, and renders all that imposter’s official acts null and void. Examples of such case law include:

- Crain v. State, 914 So.2d 1015 (Fl, 2005)
- Prieto Bail Bonds v State of Texas, 994 S.W.2d 316 (Tex.App.-El Paso 1999)

To see the depth of intransigent indifference regarding loyalty oaths at the highest levels of government, consider the procedures of the Florida Supreme Court in determining whether a candidate retired judge qualifies for appointment as Senior Judge. The Supreme Court published *The Report and Recommendations from the Committee on the Appointment and Assignment of Senior Judges*, SC 02-593, available at web site http://www.floridasupremecourt.org/pub_info/summaries/briefs/02/02-593/02-593_report.pdf. It does not once mention a loyalty oath as a criterion for qualification, and so the Supreme Court does not require an oath of the candidate, even though Florida Statutes 105.031 and 876.05 command it. The justices thus constructively conspire to defeat the will of the Legislature and the People of Florida.

Apparently disagreeing with Lynn Hearn’s and her Assistant Counsel Gary Holland’s point of view that all elected officials have *de facto* officer status, many state judges began in October and November of 2007 swearing new 876.05 oaths and getting them notarized. While they might think they have now fulfilled their legal requirements, I disagree. Florida Statutes 876.05 and 105.031 require a notarized loyalty oath prior to becoming a candidate. No officials elected in the past 8 years have properly qualified because none of their pre-candidate 876.05 oath forms bear a notary seal and signature. Therefore, all function as imposters,

all lied in their public officer oaths when they claimed to be qualified, and all took office before qualification.

Floridians should start obtaining the more recent oath records, and demanding that the employers fire the alleged oath-givers for violating 876.06 Discharge for refusal to execute. Failing to fire such frauds violates 876.08 (Oath) Penalty for not discharging.-- and constitutes a crime bearing a penalty of \$500 fine and 6 months in jail.

We should take note of the above statutes requiring acknowledgement of the oath before a certifying officer (somebody duly authorized to take acknowledgments for public records – notary, clerk, or judge - I'll use the term “notary” for such a person). A candidate has to sign the 876.05 loyalty oath, get it acknowledged, and then swear the candidate's oath before a notary, attesting to the fact of giving the loyalty oath properly. If the loyalty oath does not bear a notary signature, then the candidate did not swear the loyalty oath properly. Therefore the candidate lies by swearing the candidate's oath which includes the claim that the candidate is qualified and did properly take the loyalty oath.

Prior to performing official duties or collecting a paycheck, both the pre-candidate 876.05 oath and the 876.05 public employee oath must exist in the public employee's records of the employing agency at the human resources department. In the case of elected and appointed officials, a newly sworn oath for each term must exist in the records, for both candidacy and employment.

(k) The Verification Controversy

I and others have written to the counsel for the Florida Secretary of State complaining about the matter of the missing jurat from the loyalty oath forms (see the appendices hereto). They have told us that nobody breaks a law by removing the jurat or failing to get a notary or other authorized signature in the jurat by the person before whom the oath-giver allegedly swore the oath. They point to Florida Statute 92.525 Verification of documents; perjury by false written declaration, penalty.-- (See page 56, part of the evidence rules for court proceedings) which says in part:

*(1) When it is authorized or required by law, by rule of an administrative agency, or by rule or order of court **that a document be verified** by a person, the verification may be accomplished in the following manner:*

Then it goes on to say an oath before an acknowledgement officer or a penalty of perjury statement can serve as verification.

By contrast, 876.05 Public employees; oath.--, page 52, says in part:

*(1) all persons who now or hereafter are employed by or who now or hereafter are on the payroll of the state, or any of its departments and agencies, subdivisions, counties, cities, school boards and districts of the free public school system of the state or counties, or institutions of higher learning, and all candidates for public office, **are required to take an oath***

before any person duly authorized to take acknowledgments of instruments for public record in the state *in the following form*:

The advocates of the above argument certainly realize, but fail to confess, that 92.525(1) refers to a document which someone, presumably a trustworthy person, must verify. The statute does not refer to the administering of a loyalty oath before a person duly authorized to take acknowledgments, as specified in 876.05.

Such advocates ignore the requirements and mandate of the 876.05 statute, and the candidate oath statutes 99.021 and 105.031, which say clearly and without equivocation that candidates and public employees **“are required to take an oath before any person duly authorized... in the following form.”** They also ignore 4 USC 101 and 102 which require the swearing and notarization of the oath.

Such advocates seem all too willing to ignore the sacred trust reposed in the person required to give the oath. How can we entrust faithful performance of official duties to anybody who fails or refuses to do the very first duty: swear the oath as required by the crystal clear language of law?

I say we cannot. Bottom line, we people do not trust *anybody* to govern us unless that person first swears an oath of loyalty to the Constitutions before someone we do trust, and that trusted person signs and seals the oath in its written form. We require that oath of loyalty because and only because it binds the oath giver to protect our God-given rights which those Constitutions guarantee to us.

Remember that the signed and sealed jurat provides the only way we can have a modicum of confidence that the candidate or public employee, and not his or her spouse or trained monkey, swore the oath and signed the oath document. Therefore, no jurat = no oath.

In fact, the Constitutions can guarantee our God-given rights to us only **by** requiring responsible and trusted men and women to acknowledge trustworthiness by swearing to and subscribing the oath in the presence of a trustworthy person who then as an official witness and certifying officer, signs and seals the subscription.

For that reason, we cannot allow the oath giver to swear and subscribe any loyalty oath with any other wording or in any other manner than that prescribed by law: precise words spoken and written before a notary, judge, clerk, or other officer empowered by law to take acknowledgements for public record.

Any other wording and any other manner of oath-giving results in a null, void, bogus, non-existent oath. A non-existent oath renders vacant the office of the would-be oath-giver, renders the would-be oath-giver an imposter, and makes into nullities all the imposter’s official acts.

Advocates for any other view can quote all the case law they like. Such case law constitutes a nullity if it attempts to undo acts of our legislatures or subvert our constitutions. We cannot know positively that any person qualified for public

employment unless we see a written form of the loyalty oath containing the precise words required by law, and a seal and signature of a notary or other person duly authorized to take acknowledgments.

Any attorneys who argue that prospective public employees can and should flout the crystal clear language of 876.05 incites rebellion and wars against the Constitutions. In my opinion they deserve their heads on the pikes of justice.

Meanwhile, an abundance of case law decides the matter in favor of following the precise wording and requirements of loyalty oath statutes:

(l) Verification of Credentials

From what I can tell, neither the Trial Courts Administrators nor the Office of State Courts Administrators have written procedures for verifying credentials of alleged judges. You can see this in the Gary Phillips memo appended hereto, in which OSCA Counsel Laura Rush informed me that they don't have any such written procedures. Such procedures should include a visual verification of and attestation by following proofs by candidate or employed judge (candidate also includes nominee for appointment or election):

- Candidate proved bar membership in good standing for previous 5 or 10 contiguous years
- Candidate has registered to vote and sworn the elector's oath
- Candidate is a Citizen of the USA
- Candidate has no unethical or illegal financial entanglements
- Candidate swore a bar oath
- Candidate graduated from accredited law school
- Candidate lives in the territory intended for service
- Candidate swore an 876.05 candidate loyalty oath before a notary
- Candidate swore a 105.031 candidate oath before a notary
- Candidate received certificate of election or appointment
- Candidate swore Article II Section 5(b) public officer's oath before a notary
- Candidate accepted office
- Candidate swore an 876.05 public employee oath

Only upon proper demonstration that such proofs exist and have validity and authenticity should the State Pay Master issue pay to the judge or the Chief Judge or justice or the court administrator allow the judge to perform duties. Currently, the State of Florida seems to ignore this common sense obligation to verify credentials. The Governor and the Chief Justice appoint judges without verifying the judge's credentials above, which either the constitutions or laws of the US and /or Florida require.

(m)Improvements and Consciousness of Guilt

While officials generally tend to sweep their peccadilloes under the carpet, and that has happened in with respect to the loyalty oath debacle. As I mentioned,

when confronted with hard core evidence of their errors, the State Department restored the jurat to election forms in June 2007.

Then after a lengthy conversation and email exchange with OSCA personnel director Gary Phillips, OSCA Counsel Laura Rush, and Chief Justice R Fred Lewis (Lewis never spoke or wrote to me directly), Gary sent the memo appended hereto to all the chief judges and courts administrators in Florida, at the behest of Lewis, insisting that judges without valid loyalty oaths on file violated the law, and that they had better get their oaths up to date.

In my conversations, I told them that doing such a thing would at least show good faith, but it would not cure the problem that the judges did not have the oaths on file at the beginning of the current term, and therefore they owe all their pay back to the state, and all of their rulings are nullities. However, Phillips did not tell his memo recipients of that reality. Here is where they swept the mess under the carpet. Obviously, had they admitted the truth, then that would bring down the judiciary in a heap. And then would fall the rest of Florida Government.

Accordingly, in October and November 2007 a lot of judges went forth and swore new loyalty oaths to comply with Florida Statute 876.05. They could not do anything about the fact that the public record already shows juratless, unnotarized candidate and public officer oaths. And this move to get oaths sworn did show good faith. But it also revealed consciousness of guilt, and it thereby opened the door to thousands of void judgment lawsuits by litigants angry with unfair rulings by scofflaw judges.

Also note that the mainstream media refused to pick up the story. I only managed to get CEO Alex Newman of the new Liberty Sentinel (<http://libertysentinel.org>) to carry the story. He gave front page coverage to the story I developed for the April and May 2008 issues.

Finally, with Miami Attorney Jack Thompson's exposure of the forgery of Judge Dava Tunis' loyalty oath, the Business Daily Review carried that bit of news here:

http://www.dailybusinessreview.com/Web_Blog_Stories/May/Judges_signatures.html

Now that the mess has started getting media exposure, the lawsuits should start flying hard and heavy.

(n) Enforceability

As I suggested at the beginning of this essay, loyalty oaths suffer most from lack of enforceability.

First of all, the People have no way to make a judge or policeman live up to his oath. The only related Florida law punishes a person who lied when he gave the oath, not when he broke the oath after giving it.

Therefore, oath-breaking appears to fall into the category of an ethics violation rather than the violation of a law.

Maybe this explains why so many elected, appointed, and hired government workers from the President of the USA to a school janitor seem to have no compunction at all about violating oaths.

The lack of bonds makes enforcement profoundly difficult, and government ethics committees only prosecute those officials they want to get rid of anyway because of the embarrassment they cause to others.

In spite of this, laws do exist that punish or provide remedy for specific violations of the oaths, such as

- 18 USC 242 and 241 (civil rights abuse),
- 18 USC 1341 (frauds and swindles),
- 42 USC 1981, 1983 (civil suit for rights violations),
- Florida Statute 760.51 (asking Attorney General to sue someone who violated your Florida Constitutional rights),
- Florida Statute 68.081-089 (Qui Tam recovery of money falsely claimed as compensation, for which the whistle blower gets 15%), and
- Florida Statute 80.01-04 (Quo Warranto challenge of judge's right to hold public office).
- Racketeering laws

We do have some recourse against oath-violators. We can:

1. Form Common Law Grand Juries to investigate and indict them.
2. Demand that the grand jury receive and investigate our complaints about them.
3. Complain to the County Commission.
4. Conduct mass demonstrations against them.
5. Send presumptive letters to oath violators so as to perfect evidence against them (see the Loyalty Oath Project topic on page 42).
6. File commercial liens against them after perfecting evidence and obtaining default judgments
7. Hire investigators to analyze their financial affairs for illegal entanglements (all elected and appointed officials must disclose their finances, so finding their assets should not pose much difficulty)
8. Meet together monthly or more often to discuss these matters and educate ourselves and one another in the law.
9. File lawsuits against them en masse, such as petitions for writ of Quo Warranto to force public officers they have authority to hold office.
10. File criminal complaints with the FBI for violating 4 USC § 101. Oath by members of legislatures and officers.
11. Change the laws to make stiff penalties for violating loyalty oaths, and to clarify the requirements for giving loyalty oaths.

Miami Attorney Jack Thompson, beleaguered for years in disbarment proceedings, filed a federal law suit against the State of Florida for loyalty oath violations that rendered illegal all the court actions against him. I have incorporated it into this document in the appendices.

(o) Florida Supremes Sabotage and Flout the Loyalty Oath Laws

In September 2008 the Florida Supreme Court handed down the ruling in the Florida Bar v. Montgomery Sibley case (SC06-1387, see Chapter V. Appendix 14) in which it declared, among other idiocies, that by complying with the Florida Constitution's Public Officer's Oath in Article II Section 5(b) (see topic (f) (i), page 12), they had complied with the state's loyalty oath law.

I disagree. The Article II oath violates the US Constitution's Article VI oath because it adds the words "and Government" to the oath (as the object of loyalty), making it impossible to support the Constitution in the process. One must choose a master and may not serve two at the same time. Government operates as the adversary of the Constitution, always, and this ruling proves it. It does not address the unconstitutional verbiage in the Article II oath, nor the violation of the bond to the supremacy clause. Here, look at the words from the US Constitution Article VI:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

What could give our Florida Supreme Court justices greater clarity of concept than the above words? Clearly the words "and Government" violate Article VI.

Moreover, the Florida Supremes totally ignored the issue of candidate oaths under Florida Statutes 876.05 and 105.031 for appointed jurists. To my knowledge, the judicial nominating commissions and the Justices do not require appointment nominees, all candidates, to swear those two oaths, without which

it becomes useful for filing a criminal complaint or civil action against criminal public employees. You can seek and hopefully find a competent attorney to help you with legal actions.

Chapter II. Proposed Legislation for Loyalty Oaths and Public Employment

In this topic I propose amendments to the Florida Constitution and Florida laws to correct the loyalty oath debacle. I have included all the bones of contention that I have discovered in my study of the matter, including the basic qualification for service as a public employee.

Our government does not constitute an ordinary employer. It cannot and should not take the risks that other employers take. For example, not only should we require that government employees take a proper oath of loyalty to the Constitutions, but we also should require that public employees have citizenship and fluency in our school-taught American brand of the English language.

Section 1.05 Changes to Florida Constitution:

(a) Old Article II Section 5 (b). Public officers.--

(b) Each state and county officer, before entering upon the duties of the office, shall give bond as required by law, and shall swear or affirm:

"I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the state; and that I will well and faithfully perform the duties of (title of office) on which I am now about to enter. So help me God.",

and thereafter shall devote personal attention to the duties of the office, and continue in office until a successor qualifies.

(b) New Article II Section 5 (b). Public officers and employees

(b) Each state and county officer and each public employee of any branch or level of government or educational system inside the state of Florida, before entering upon the duties of the office, shall give bond from personal funds or insurance secured with personal funds, and shall swear or affirm:

"I, (full legal name of oath giver), intending to have employment by or serve as an officer of (Employing Organization or Elected Position) and receive public funds as such employee or officer, do solemnly swear (or affirm) under penalties of perjury as attested to below by the seal and signature of a person duly authorized to take acknowledgments for the public record in Florida, that I shall support, protect, and defend the Constitutions of the United States of America and of the State of Florida

against all enemies inside and outside of government; that I am a Citizen of Florida state and of the union of states known as the United States of America; that as a prospective public employee, I possess the proper and lawful qualifications to perform the duties of the position of (title of job or office), [for Constitutional officers only- “an office under the Constitution of the state”], which I shall enter; that I shall hold that position during my employment or term of office until lawfully released from that obligation; that I shall well and faithfully perform the duties of that position; and that I shall vigorously protect the constitutional rights of the People in all respects that my position and duties do not specifically and by law prohibit. So help me God.",

and thereafter shall devote personal attention to the duties of the position or office, and continue in that position or office until a successor qualifies.

(c) Old Article VI. Suffrage and Elections. SECTION 3. Oath.-

-Each eligible citizen upon registering shall subscribe the following: "I do solemnly swear (or affirm) that I will protect and defend the Constitution of the United States and the Constitution of the State of Florida, and that I am qualified to register as an elector under the Constitution and laws of the State of Florida."

(d) New Article VI. Suffrage and Elections. SECTION 3. Oath.-

-Each eligible citizen upon registering shall subscribe the following: "I do solemnly swear (or affirm) that I will protect, support, and defend the Constitution for the United States of America and the Constitution of Florida, that no felony conviction currently suspends my civil rights, that I am a Citizen of the union of states known as the United States of America, that I am a Florida Citizen by reason of birth or domicile, that in all respects I possess the qualifications to register as an elector under the Constitution and laws of Florida, and that all information provided in this application is true."

Section 1.06

Proposed Changes to Florida Statutes

(e) Old Elector’s Oath 97.051 Oath upon registering.—

A person registering to vote must subscribe to the following oath: "I do solemnly swear (or affirm) that I will protect and defend the Constitution of the United States and the Constitution of the State of Florida, that I am qualified to register as an elector under the Constitution and laws of the State of Florida, and that all information provided in this application is true."

(f) New Elector's Oath 97.051 Oath upon registering.—

A person registering to vote must subscribe to the following oath: "I do solemnly swear (or affirm) that I will protect, support, and defend the Constitution of the United States and the Constitution of the State of Florida, that no felony conviction currently suspends my civil rights, that I am a Citizen of the union of states known as the united states of America, that I am a Florida Citizen by reason of birth or domicile, that in all other respects I possess the qualifications to register as an elector under the Constitution and laws of the State of Florida, and that all information provided in this application is true."

(g) Old 876.05 Public employees; oath.--

(1) all persons who now or hereafter are employed by or who now or hereafter are on the payroll of the state, or any of its departments and agencies, subdivisions, counties, cities, school boards and districts of the free public school system of the state or counties, or institutions of higher learning, and all candidates for public office, are required to take an oath before any person duly authorized to take acknowledgments of instruments for public record in the state in the following form:

I, _____, a citizen of the State of Florida and of the United States of America, and being employed by or an officer of _____ and a recipient of public funds as such employee or officer, do hereby solemnly swear or affirm that I will support the Constitution of the United States and of the State of Florida.

(2) Said oath shall be filed with the records of the governing official or employing governmental agency prior to the approval of any voucher for the payment of salary, expenses, or other compensation.

(h) New 876.05 Public employees; oath.--

(1) In fulfillment of the mandate of Florida Constitution Article II Section 5(b), All persons who now or hereafter are employed by or who now or hereafter are on the payroll of the state, or any of its departments and agencies, subdivisions, counties, cities, school boards and districts of the free public school system of the state or counties, or institutions of higher learning, and all candidates for public office, are required to recite and give an oath, secured by bond, before any person duly authorized to take acknowledgments of instruments for public record in the state in precisely the following form without deviation:

"I, (full legal name of oath giver), intending to have employment by or serve as an officer of (Employing Organization or Elected Position) with

the position of (Job or Office Title) and to receive public funds as such employee or officer, do solemnly swear (or affirm) under penalties of perjury as attested to below by the seal and signature of a person duly authorized to take acknowledgments for the public record in Florida, that I shall support, protect, and defend the Constitution of the United States and of the State of Florida against all enemies inside and outside of government; that I am a Citizen of Florida state and of the union of states known as the United States of America; that as a prospective public employee, I possess the proper and lawful qualifications to perform the duties of the position, [for Constitutional officers only- "an office under the Constitution of the state"], which I am about to enter; that I shall hold that position; that I shall well and faithfully perform the duties of that position; and that I shall vigorously protect the constitutional rights of the People in all respects that my position and duties do not specifically and by law prohibit. So help me God."

Signature of Oath Giver _____

Printed Name of Oath Giver _____

Jurat:

State of Florida
County of _____

On the ____ day of the month of _____ in the year _____ the above-named man or woman appeared before me, and swore or affirmed the above oath word-for-word, and then subscribed the above oath. I am duly authorized to take acknowledgments for the public record.

Seal _____
Signature of Notary or other Authorized Officer
Printed Name _____

- (2) Said oath shall bear a jurat fully executed with signature and seal of office by a person duly authorized to take acknowledgments for public record; a penalty of perjury statement shall not suffice as a substitute for or replacement of the executed jurat.
- (3) Said oath shall be filed with the personnel records of the oath giver and the governing official or employing governmental agency prior to the approval of any voucher for the payment of salary, expenses, or other compensation.
- (4) The Florida Department of State shall make blank public employee oath forms containing the precise wording in paragraph (1) of this section and bearing a jurat, shall provide said forms on the Department of State web site for distribution and use by government

offices throughout the state, and shall destroy any and all other blank loyalty oath forms for public employees, be they elected, appointed, or hired.

- (5) The oath giver of the oath in paragraph (1) of this section shall carry a wallet-sized, legible, laminated copy of said oath at all times as part of the oath giver's normal credentials, and shall exhibit said oath or laminated copy upon demand for inspection by any inquiring person. Failure to show said oath or laminated copy upon demand shall constitute evidence that no such oath document exists.
- (6) Public officers shall swear no other loyalty oath than that prescribed in paragraph 876.05(1)

(i) New 876.051 Duty of Public Employees to Comply with Public Employee's Oath

- (1) "Constitutional rights" means all of the rights guaranteed to the people by the either and both the Florida Constitution and the Constitution for the United States of America
- (2) The loyalty oath given by public employees constitutes acknowledgement of the sacred duty to fulfill the functions of employment and neither to abuse or tolerate abuse of the Constitutional rights of the people who have entrusted the public employee with the powers which may seem incidental to government employment. This duty has even more importance because people with power so readily tend to abuse it.
- (3) Public employees shall know the Constitutional rights of the people by heart, and demonstrating such knowledge constitutes the primary qualification for public employment, whether by election, appointment, or hiring.
- (4) All public employees and public officers shall aggressively, rigorously comply with the public employee's oaths they have given, and shall thereby actively protect the people's Constitutional rights when within the power and ability of the public employee to protect said rights. Failure to do so shall incur the penalties of Florida Statute 876.105.

(j) New 876.052 Penalty for Failure to Comply with Public Employee's Oath

- (1) The failure of any public employee to comply with the public employee's oath of 876.05 by violating 876.051, as evidenced by disregard for or failure to protect the Constitutional rights guaranteed to the people when within the power and ability of the public employee to protect said rights, constitutes a crime as identified herein.
- (2) Any public officer who violates 876.051 by failing to protect the Constitutional Rights of one of the people commits a felony of the second degree, punishable as provided in s. [775.082](#), s. [775.083](#), or s. [775.084](#).
- (3) Any public employee who is not a public officer and who violates 876.055 by failing to protect the Constitutional Rights of one of the people,

commits a felony of the second degree, punishable as provided in s. [775.082](#), s. [775.083](#), or s. [775.084](#).

- (4) Ignorance of Constitutional rights of the people and mistaken belief about the Constitutional rights of the people do not constitute a defense.
- (5) Injuring one of the people by violating the 876.05 oath defeats any and all presumed immunities, including those of officers of the judicial, executive, and legislative branches of state government. No legislative, judicial, or executive immunity shall operate as a defense.

(k) New 876.053 Public Employee Oath Bonds

- (1) All public employees shall obtain surety bonds to guarantee compliance with their public employee oaths under 876.05.
- (2) Surety bonds shall be provided by private commercial bonding companies that have no government shareholders, and not by any governmental or educational organization or agency.
- (3) Bond amounts shall be stated in ounces of fine silver or fine gold (99.99% pure) based on the value in federal reserve notes at the time of posting the bond.
- (4) Public employees shall pay their own cost of bond insurance premiums, or shall post the bond personally with the Bonding Company.
- (5) Upon receipt of a verified complaint of injury and damage supported by the testimony of at least one witness to the violation of 876.051 by any public employee, the bonding company shall convene a hearing of the plaintiff public employee and the defendant to determine the validity of the complaint and validity of any claim of damage. In the event of an uncontested complaint, the Bonding company shall settle the claim from the bond amount and correspondingly increase the premium of the bonded party. In the event of a contested complaint, the Bonding company shall select a mutually agreeable mediator or arbitrator to settle the facts of the claim and the damage award
- (6) After 3 verified, substantiated complaints resulting in rulings against a public employee, the bonding company shall have the right to terminate the bond for said employee.
- (7) Any person who cannot obtain bond or supply sufficient bond posting shall not have entitlement to service as a public employee, and the employing agency shall discharge said public employee forthwith, whether said employee has been elected, appointed, or hired. The Secretary of State shall discharge unbonded elected state officers and County Commissioners, and the county commission shall discharge unbonded elected county and municipal officers.
- (8) No public employees shall have immunity from such discharge for failure to have bonds.
- (9) Bond Amounts – the following types of public employees shall post the bond amounts shown:
 - a. Senior Public Officers - Governor, Lieutenant Governor, Supreme Court Justices - \$100,000,000.00

- b. Mid-level Public Officers - Governor's Cabinet members, District & Circuit Court Judges, State Attorneys, Public Works Commissioners, heads of legislative committees, Speaker of House, President of Senate - \$50,000,000.00
- c. Low-level Public Officers - Elected County Officials, legislators, deputy clerks, all other attorneys - \$10,000,000
- d. School-board members, police officers, deputy sheriffs, state police, and all other public officers, and managerial employees - \$5,000,000
- e. Supervisory employees - \$1,000,000
- f. All other public employees - \$500,000

(l) New 876.054 – Public Employees Must Have Citizen Status and Fluency in English

- (1) A person shall qualify to serve as a public employee within Florida only if said person has Florida and United States of America Citizenship, speaks, reads, and writes the English language at a minimum of a 7th grade level, and meets other qualifications required by law.

(m) New 876.055 – Human resources departments, Governor, and Chief Justice Must Verify Credentials

- (1) Agency and government branch heads shall in concert with human resource managers, draft and promulgate written policies and procedures that list all qualifications required by the United States or Florida Constitution or laws pursuant thereto for holding office or employment, and that require the personnel file to contain all certified proof documents for each listed qualification prior to allowing the employee or officer to receive pay or perform duties.
- (2) Human resources managers and their seniors to the agency or branch head shall have responsibility for collecting proof documents, inserting them into the personnel file, maintaining an on-line repository for the public to view, and maintaining the file current at the beginning of initial employment and of each term thereafter.
- (3) Failure of any responsible party in any area of government, including the judiciary and the Florida Bar, to maintain the personnel file's credentials current and complete, or to present the credentials for inspection and copying by the public without cost or delay as required by Article I Section 23 and 24 of the Florida Constitution and Chapter 119 of the Florida Statutes, shall constitute a 1st degree misdemeanor.

(n) New 92.525 (5) Verification of documents; perjury by false written declaration, penalty.--

- (5) Verification of loyalty oaths, whether inside or outside an official proceeding, shall suffice to bind the oath giver only if the oath giver swears

or affirms the loyalty oath before a person duly authorized to take acknowledgments for the public record who then signs and seals the loyalty oath in a lawful jurat affixed or attached to the loyalty oath document.

(o) Old 350.05 Oath of office [Florida Public Services Commission, part of Legislative Branch].--

Before entering upon the duties of his or her office each commissioner shall subscribe to the following oath: "I do solemnly swear (or affirm) that I will support, protect and defend the Constitution and Government of the United States and of the State of Florida; that I am qualified to hold office under the constitution of the state, and that I will well and faithfully perform at all times the duties of Florida Public Service Commissioner, on which I am now about to enter in a professional, independent, objective, and nonpartisan manner; that I do not have any financial, employment, or business interest which is prohibited by chapter 350, Florida Statutes; and that I will abide by the standards of conduct required of me by chapters 112 and 350, Florida Statutes, so help me God." In case any commissioner should in any way become disqualified, he or she shall at once remove such disqualification or resign, and upon his or her failure to do so, he or she shall be suspended from office by the Governor and dealt with as provided by law.

(p) New 350.05 Oath of office [Florida Public Services Commission, part of Legislative Branch].--

Before entering upon the duties of his or her office each commissioner shall subscribe to the oath specified by Florida Statutes 876.05 – 876.10, and to the following oath: "I do solemnly swear (or affirm) that I shall well and faithfully perform at all times the duties of Florida Public Service Commissioner, on which I am now about to enter in a professional, independent, objective, and nonpartisan manner; that I do not have any financial, employment, or business interest which is prohibited by chapter 350, Florida Statutes; and that I will abide by the standards of conduct required of me by chapters 112 and 350, Florida Statutes, so help me God." In case any commissioner should in any way become disqualified, he or she shall at once remove such disqualification or resign, and upon his or her failure to do so, he or she shall be suspended from office by the Governor and dealt with as provided by law.

Chapter III. Loyalty Oath Project

Tailored for Hillsborough and Pinellas counties, Florida (Tampa, St Petersburg/Clearwater)

By Bob Hurt, 23 May 2007

Section 1.07 Overview

From research I did in the summer of 2006, I learned that no elected officials in Florida have valid loyalty oaths that comply fully with Florida law.

I determined from a study of the law and circumstance that the oaths required by Florida Statute 876.05 must bear a jurat with a signature of a person duly authorized to take acknowledgments, and that no such oaths for elected officials exist with the jurat, and that the practice of removing the jurats began around the year 2000. State loyalty oath forms related to elected officials contain a penalty of perjury statement, but not a jurat. Florida State Department assistant counsel told me the State Department complies with the law, but failed to show me any authority for removing the jurat from forms provided to candidates and elected officials.

The oaths of many lower level state employees bear proper jurats.

The missing jurat imposes these problems:

1. In a document like a loyalty oath, the penalty of perjury statement does not suffice as a replacement for the jurat because nobody witnessed the oath-taker's signature, and therefore the oath taker can deny its authenticity and get away with it. If anyone challenges the elected official in court for violating the loyalty oath such as by failing to protect our rights, the official can say "What oath?" and deny he signed the oath, no one can prove otherwise.
2. It serves as evidence that elected officials do not comply with the most important law of all.
3. It constitutes a direct attack on our sovereignty by the very government charged with responsibility of guaranteeing our rights.
4. It shows a well-entrenched and recalcitrant conspiracy to do evil by core politicians in our state government.

I have met a brick wall of stubborn opposition in my effort to get the State Department officials to admit any error or wrong doing or to correct the oath forms. In fact, many loyalty oaths in use around the state have incorrect wording, a violation of the law which specifies particular wording.

We must bring the state officials to justice in this matter. I believe the best strategy will give the state officials a proper opportunity to engage in discourse with us in the matter, and to correct their wrongs, and if that fails, to use administrative process as possible to turn up the heat on deserving elected officials.

Section 1.08

Basic Steps - Consult Your Attorney

1. Research loyalty oath-related statutes
2. Enumerate the crimes associated with loyalty oaths
3. Determine where and how to obtain each of the following oaths:
 - a. Annual finance report
 - b. Campaign finance report
 - c. Elector's oath
 - d. Bar oath
 - e. License to Practice Law
 - f. Pre-candidate 876.05 oath
 - g. Candidate oath
 - h. Public officer oath
 - i. Certificate of appointment/election
 - j. Public employee 876.05 oath
4. Determine list of Prospective Targets
 - a. Judge Gaston Fernandes, Hillsborough County
 - b. Chief Judge David A. Demers, 6th Judicial Circuit
 - c. Chief Judge Menendez, 13th Judicial Circuit
 - d. Hillsborough Clerk
 - e. Pinellas Clerk
 - f. Hillsborough Sheriff
 - g. Pinellas Sheriff Jim Coats
 - h. State Attorney Ober, 13th Judicial Circuit
 - i. State Attorney Bernie McCabe, 6th Judicial Circuit
 - j. Hillsborough Supervisor of Elections
 - k. Pinellas Supervisor of Elections
 - l. Secretary of State
5. Write notary instructions on method and book keeping
6. Arrange notaries to execute notarial processes in Hillsborough and Pinellas
7. Select one or more Prospective Targets as actual Targets
8. Write presentment letter #1 demanding all oaths to date, tailored for specific Targets

- iv. Assert financial damages and the incurrence of an associated financial obligation by respondent to initiator.
 - v. Demand remedy through cessation of injurious acts and payment of financial obligation.
 - vi. Assert further financial obligation resulting from initiator's expenditure of time, energy, money, and other resources to obtain remedy.
 - vii. Allow the respondent ample opportunity to comply with demand and cure any fault so as to remain in a state of Honor.
 - viii. Allow initiator to certify formally a respondent's state of dishonor in the event respondent fails to comply with the demand for remedy.
 - ix. Allow initiator to perfect the evidence of having exhausted all avenues of administrative remedy and thereby pass to the courts the jurisdiction for judgment favorable to the initiator.
- b. The N&D process implements the method of obtaining remedy as documented in the Uniform Commercial Code – see the pertinent areas in the UCC relating to presentments and dishonor, and note the use of the term “presentment” in the 5th Amendment to the Constitution for the USA.
 - c. The N&D process consists of several steps, administered by a notary so as to operate as perfected evidence in accordance with federal and state rules of evidence:
 - i. Notice and Demand
 - ii. Notice of Fault with Opportunity to Cure
 - iii. Notice of Default
 - iv. Formal Protest
 - v. Formal Remedy in the Court
 - d. Notice and Demand – demands and gives 21 to 30 days to comply or rebut with proof:
 - i. Includes explanation of fees that will accrue for non-compliance
 - ii. By failing to respond, rebut as specified, or comply, respondent creates estoppel against future protest or objection, admits to and agrees with any accusations, and invokes any lawful penalties.
 - iii. By proper response according to the requirements of the Demand, respondent honors the presentment.

- e. Notice of Fault with Opportunity to Cure – sent if incorrect or no timely response to demand; includes invoice for services to date; gives 5 days to cure fault and pay invoice.
 - f. Notice of Default – Notary sends if respondent dishonors the initial presentment and does not cure in time allowed; includes certified copy of Certificate of Dishonor; includes new invoice for additional service, along with demand for immediate payment of both invoices (within 5 days).
 - g. Certificate of Protest – Notary sends copy to respondent if no payment received in response to invoice
2. The Notary service consists of the following, done in accordance with written instructions, and attested to.
- a. All letters tell the respondent to send responses to the notary within a time frame.
 - b. The initiator hands the notarized letter to the notary along with instructions as to the specific date by which a response should arrive, and to certify receipt on or before that date or non-receipt by that date.
 - c. The Notary completes a certificate of mailing and puts an unsigned copy into the envelope with every letter the notary mails to the respondent.
 - d. The Notary notarizes each other document mailed and records both the notarization and the mailing activity in the Notary’s Official Log Book.
 - e. The Notary logs the receipt of all responses, noting the time the receipt occurred.
 - f. For each letter sent, the notary completes a certificate of receipt or non-receipt within the time allowed for the expected response, as instructed, logs the receipt when it arrives or non-receipt at the expiration of the due date, gives the response to the initiator, and logs the giving, and the time and date .
 - g. After the participants have completed all steps in the Notice and Demand Cycle, the Notary prepares a final certificate of the completion of the notarial process, attaches a copy of the log book pages containing a record of the transactions, and gives the whole package, including certificates of protest and dishonor and copies of associated letters, to the initiator.
3. The initiator now gets the package recorded by the County Clerk
- a. Write and affidavit that summarizes the Notice and Demand Cycle as it occurred.
 - b. Get the affidavit notarized.

- c. Take the package of letters, Certificates of Dishonor and Protest, the Notary final certificate and summary letter, and the affidavit to the courthouse and get it recorded (may be a hefty fee, but they will return the originals to the initiator).
 - d. Buy a certified copy for use in court.
4. The initiator now has perfected evidence of everything including the wrongs of the respondent and any debt. The process has converted crimes into financial obligations. The next steps might work only with serious difficulty because one never knows what the criminals in our courts will do, even with such perfected evidence and no controversy.
- a. The initiator can now seek remedy filing in state court a petition for a Declaratory Judgment of the legal sufficiency of the process and the fact that the respondent does in fact owe the debt.
 - b. The initiator can file a petition for the court to grant a monetary award in the amount of the debt and any additional damages the initiator can prove.
 - c. With the judgment for that amount in hand, the initiator can file a UCC-1 form with the state, claiming a security interest in property of the respondent.
 - d. The initiator can hand the UCC-1 and judgment copy to the Sheriff and ask him to collect the assets of the respondent sufficiently to pay the debt, hand it to a collection agency, or sell the security interest to a foreign or domestic investor.

Chapter IV. Summary and Conclusion

In Florida, loyalty oaths pretty much seem like a sham to me. A variety of forms exist, and the statutory versions differ from the Florida Constitution's versions. The Constitution's version encourages loyalty to the government, often the proven enemy of the People, as in the pre-revolutionary days of America and in our modern courts. And Public Officers don't bother getting them notarized any more. All the elected officials have thereby made themselves into criminals and they have violated the public trust.

No laws exist to punish oath-breakers. Ethics commissions show great lethargy in prosecuting all but the most egregious cases of oath-breaking. And because of the effete laws regarding oaths, public employees of all stripes violate oaths with impunity.

Florida Statutes require bonds of very few public servants, and I see no way to hold a person to an oath outside of a private bond that will impose a heavy financial burden on the bonding company and the oath giver for violations. The People should have the ability to foreclose on the bond upon presentation to a

grand jury of testimony by a few witnesses as to the violation of the oath by the oath giver. The grand jury should have to act upon the complaint within 3 days, and the punitive action should include revocation of the bond and filing of formal criminal charges against the oath giver.

I consider the presumptive letter presentment as the tool of choice to perfect evidence against miscreants in public office, including those who flout the oath statutes wittingly or not. I think people should start suing the criminals in our government for violation of constitutionally guaranteed rights, and for common law fraud, extortion, and even racketeering. And I think people should take witnesses with them to observe court hearings, and to other public functions, record crimes on affidavits, then use them as the basis for criminal complaints against public officers, particularly bailiffs, judges, the Clerk, and the Sheriff.

Why such a tough stance? Only well-bound oaths and built-in enforcement power protect the People from tyranny. The People have virtually no reasonable means to invoke penalties for the failure of public servants to obey their oaths. Let our governors never forget Article I Section I of our Florida Constitution:

“All political power is inherent in the people. The enunciation herein of certain rights shall not be construed to deny or impair others retained by the people.” Article I Section 1, Florida Constitution

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Chapter V. Appendices

Appendix 01 Laws and Rules Regarding Oaths; Violation Penalties

(a) U.S. Constitution

(i) Article IV, Section 4 – The States.

The United States shall guarantee **to every state in this union a republican form of government**, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence.

(ii) Article VI – Legal Status of Constitution

All debts contracted and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

The Senators and Representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

(b) Florida Constitution

(i) Article II General Provisions. SECTION 5. Public officers.—

(b) Each state and county officer, before entering upon the duties of the office, shall give bond as required by law, and shall swear or affirm:

"I do solemnly swear (or affirm) that **I will support, protect, and defend the Constitution and Government of the United States and of the State of Florida**; that I am duly qualified to hold office under the Constitution of the state; and that I will well and faithfully perform the duties of (title of office) on which I am now about to enter. So help me God.",

and thereafter shall devote personal attention to the duties of the office, and continue in office until a successor qualifies.

History.--Am. H.J.R. 1616, 1988; adopted 1988; Am. proposed by Constitution Revision Commission, Revision No. 13, 1998, filed with the Secretary of State May 5, 1998; adopted 1998.

(ii) Article VI. Suffrage and Elections. SECTION 3. Oath.-

-Each eligible citizen upon registering shall subscribe the following: "I do solemnly swear (or affirm) that I will protect and defend the Constitution of the United States and the Constitution of the State of Florida, and that I am qualified to register as an elector under the Constitution and laws of the State of Florida."

(c) United States Code

(i) 4 USC § 101. Oath by members of legislatures and officers

Every member of a State legislature, and every executive and judicial officer of a State, shall, before he proceeds to execute the duties of his office, take an oath in the following form, to wit: "I, A B, do solemnly swear that I will support the Constitution of the United States."

(ii) 4 USC § 102. Same; by whom administered

Such oath may be administered by any person who, by the law of the State, is authorized to administer the oath of office; and the person so administering such oath shall cause a record or certificate thereof to be made in the same manner, as by the law of the State, he is directed to record or certify the oath of office.

(iii) 5 USC § 3301. Oath of Office

An individual, except the President, elected or appointed to an office of honor or profit in the civil service or uniformed services, shall take the following oath: "I, AB, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God." This section does not affect other oaths required by law.

(d) Florida Statutes

(i) 876.05 Public employees; oath.--

(1) All persons who now or hereafter are employed by or who now or hereafter are on the payroll of the state, or any of its departments and agencies, subdivisions, counties, cities, school boards and districts of the free public school system of the state or counties, or institutions of higher learning, and all candidates for public office, are required to take an oath before any person duly authorized to take acknowledgments of instruments for public record in the state in the following form:

I, _____, a citizen of the State of Florida and of the United States of America, and being employed by or an officer of _____ and a recipient of public funds as such employee or officer, do hereby solemnly swear or affirm that **I will support the Constitution of the United States and of the State of Florida.**

(2) Said oath shall be filed with the records of the governing official or employing governmental agency prior to the approval of any voucher for the payment of salary, expenses, or other compensation.

History.--s. 1, ch. 25046, 1949; s. 22, ch. 83-214.

(ii) 876.06 Discharge for refusal to execute.

--If any person required by ss. 876.05-876.10 to take the oath herein provided for fails to execute the same, the governing authority under which such person is employed shall cause said person to be immediately discharged, and his or her name removed from the payroll, and such person shall not be permitted to receive any payment as an employee or as an officer where he or she was serving.

History.--s. 2, ch. 25046, 1949; s. 1414, ch. 97-102.

(iii) 876.07 Oath as prerequisite to qualification for public office.

--Any person seeking to qualify for public office who fails or refuses to file the oath required by this act shall be held to have failed to qualify as a candidate for public office, and the name of such person shall not be printed on the ballot as a qualified candidate.

History.--s. 3, ch. 25046, 1949; s. 23, ch. 83-214.

(iv) 876.08 (Oath) Penalty for not discharging.--

Any governing authority or person, under whom any employee is serving or by whom employed who shall knowingly or carelessly permit any such employee to continue in employment after failing to comply with the provisions of ss. 876.05-876.10, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.--s. 4, ch. 25046, 1949; s. 1140, ch. 71-136.

(v) 876.09 (Oath) Scope of law.--

(1) The provisions of ss. 876.05-876.10 shall apply to all employees and elected officers of the state, including the Governor and constitutional officers and all employees and elected officers of all cities, towns, counties, and political subdivisions, including the educational system.

(2) This act shall take precedence over all laws relating to merit, and of civil service law.

History.--ss. 5, 7, ch. 25046, 1949.

(vi) 876.10 False oath; penalty.--

If any person required by the provisions of ss. 876.05-876.10 to execute the oath herein required executes such oath, and it is subsequently proven that at the time of the execution of said oath said individual was guilty of making a false statement in said oath, he or she shall be guilty of perjury.

History.--s. 6, ch. 25046, 1949; s. 1141, ch. 71-136; s. 1415, ch. 97-102.

Note: Chapters 90 and 92 constitute Title VII - Evidence

(vii) 92.50 Oaths, affidavits, and acknowledgments; who may take or administer; requirements.--

(1) IN THIS STATE.--Oaths, affidavits, and acknowledgments required or authorized under the laws of this state (except oaths to jurors and witnesses in court and such other oaths, affidavits and acknowledgments as are required by law to be taken or administered by or before particular officers) may be taken or administered by or before any judge, clerk, or deputy clerk of any court of record within this state, including federal courts, or before any United States commissioner or any notary public within this state. The jurat, or certificate of proof or acknowledgment, shall be authenticated by the signature and official seal of such officer or person taking or administering the same; however, when taken or administered before any judge, clerk, or deputy clerk of a court of record, the seal of such court may be affixed as the seal of such officer or person.

(2) IN OTHER STATES, TERRITORIES, AND DISTRICTS OF THE UNITED STATES.--Oaths, affidavits, and acknowledgments required or authorized under the laws of this state, may be taken or administered in any other state, territory, or district of the United States, before any judge, clerk or deputy clerk of any court of record, within such state, territory, or district, having a seal, or before any notary public or justice of the peace, having a seal, in such state, territory, or district; provided, however, such officer or person is authorized under the laws of such state, territory, or district to take or administer oaths, affidavits and acknowledgments. The jurat, or certificate of proof or acknowledgment, shall be authenticated by the signature and official seal of such officer or person taking or administering the same; provided, however, when taken or administered by or before any judge, clerk, or deputy clerk of a court of record, the seal of such court may be affixed as the seal of such officer or person.

(3) IN FOREIGN COUNTRIES.--Oaths, affidavits, and acknowledgments, required or authorized by the laws of this state, may be taken or administered in

any foreign country, by or before any judge or justice of a court of last resort, any notary public of such foreign country, any minister, consul general, charge d'affaires, or consul of the United States resident in such country. The jurat, or certificate of proof or acknowledgment, shall be authenticated by the signature and official seal of the officer or person taking or administering the same; provided, however, when taken or administered by or before any judge or justice of a court of last resort, the seal of such court may be affixed as the seal of such judge or justice.

History.--s. 1, ch. 48, 1845; RS 1299; GS 1730; RGS 2945; CGL 4669; s. 1, ch. 23156, 1945; s. 7, ch. 24337, 1947; s. 15, ch. 73-334; s. 3, ch. 76-237; s. 1, ch. 77-77; s. 22, ch. 78-361; s. 1, ch. 78-379.

Note.--Former s. 90.01.

(viii) 92.51 Oaths, affidavits, and acknowledgments; taken or administered by commissioned officer of United States Armed Forces.--

(1) Oaths, affidavits, and acknowledgments required or authorized by the laws of this state may be taken or administered within or without the United States by or before any commissioned officer in active service of the Armed Forces of the United States with the rank of second lieutenant or higher in the Army, Air Force or Marine Corps or ensign or higher in the Navy or Coast Guard when the person required or authorized to make and execute the oath, affidavit, or acknowledgment is a member of the Armed Forces of the United States, the spouse of such member or a person whose duties require the person's presence with the Armed Forces of the United States.

(2) A certificate endorsed upon the instrument which shows the date of the oath, affidavit, or acknowledgment and which states in substance that the person appearing before the officer acknowledged the instrument as the person's act or made or signed the instrument under oath shall be sufficient for all intents and purposes. The instrument shall not be rendered invalid by the failure to state the place of execution or acknowledgment.

(3) If the signature, rank, and branch of service or subdivision thereof of any commissioned officer appears upon such instrument, document or certificate no further proof of the authority of such officer so to act shall be required and such action by such commissioned officer shall be prima facie evidence that the person making such oath, affidavit or acknowledgment is within the purview of this act.

History.--ss. 1, 2, 3, ch. 61-196; s. 3, ch. 76-237; s. 1, ch. 77-77; s. 22, ch. 78-361; s. 1, ch. 78-379; s. 518, ch. 95-147.

Note.--Former s. 90.011.

(ix) 92.52 Affirmation equivalent to oath.--

Whenever an oath shall be required by any law of this state in any proceeding, an affirmation may be substituted therefor.

History.--RS 1300; GS 1731; RGS 2946; CGL 4670; s. 3, ch. 76-237; s. 1, ch. 77-77; s. 22, ch. 78-361; s. 1, ch. 78-379.

Note.--Former s. 90.02.

(x) 92.525 Verification of documents; perjury by false written declaration, penalty.--

(1) When it is authorized or required by law, by rule of an administrative agency, or by rule or order of court that a document be verified by a person, the verification may be accomplished in the following manner:

(a) Under oath or affirmation taken or administered before an officer authorized under s. 92.50 to administer oaths; or

(b) By the signing of the written declaration prescribed in subsection (2).

(2) A written declaration means the following statement: "Under penalties of perjury, I declare that I have read the foregoing [document] and that the facts stated in it are true," followed by the signature of the person making the declaration, except when a verification on information or belief is permitted by law, in which case the words "to the best of my knowledge and belief" may be added. The written declaration shall be printed or typed at the end of or immediately below the document being verified and above the signature of the person making the declaration.

(3) A person who knowingly makes a false declaration under subsection (2) is guilty of the crime of perjury by false written declaration, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) As used in this section:

(a) The term "administrative agency" means any department or agency of the state or any county, municipality, special district, or other political subdivision.

(b) The term "document" means any writing including, without limitation, any form, application, claim, notice, tax return, inventory, affidavit, pleading, or paper.

(c) The requirement that a document be verified means that the document must be signed or executed by a person and that the person must state under oath or

affirm that the facts or matters stated or recited in the document are true, or words of that import or effect.

History.--s. 12, ch. 86-201.

(xi) 97.051 Oath upon registering.—

A person registering to vote must subscribe to the following oath: "I do solemnly swear (or affirm) that **I will protect and defend the Constitution of the United States and the Constitution of the State of Florida**, that I am qualified to register as an elector under the Constitution and laws of the State of Florida, and that all information provided in this application is true."

History.--s. 7, ch. 3879, 1889; RS 161; s. 8, ch. 4328, 1895; GS 178; RGS 222; CGL 257; s. 4, ch. 25383, 1949; s. 1, ch. 26870, 1951; s. 3, ch. 69-280; ss. 2, 4, ch. 71-108; s. 1, ch. 72-63; s. 2, ch. 77-175; s. 1, ch. 81-304; s. 9, ch. 94-224; s. 3, ch. 2005-277; s. 4, ch. 2005-278.

Note.--Former s. 98.11.

(xii) 97.052 Uniform statewide voter registration application.--

(2) The uniform statewide voter registration application must be designed to elicit the following information from the applicant:

(p) Signature of applicant under penalty for false swearing pursuant to s. [104.011](#), by which the person subscribes to the oath required by s. 3, Art. VI of the State Constitution and s. [97.051](#), and swears or affirms that the information contained in the registration application is true.

(q) Whether the application is being used for initial registration, to update a voter registration record, or to request a replacement voter information card.

(r) Whether the applicant is a citizen of the United States by asking the question "Are you a citizen of the United States of America?" and providing boxes for the applicant to check to indicate whether the applicant is or is not a citizen of the United States.

(s) Whether the applicant has been convicted of a felony, and, if convicted, has had his or her civil rights restored by including the statement "I affirm I am not a convicted felon, or, if I am, my rights relating to voting have been restored." and providing a box for the applicant to check to affirm the statement.

(t) Whether the applicant has been adjudicated mentally incapacitated with respect to voting or, if so adjudicated, has had his or her right to vote restored by including the statement "I affirm I have not been adjudicated mentally incapacitated with respect to voting, or, if I have, my competency has been restored." and providing a box for the applicant to check to affirm the statement.

The registration application must be in plain language and designed so that convicted felons whose civil rights have been restored and persons who have been adjudicated mentally incapacitated and have had their voting rights restored are not required to reveal their prior conviction or adjudication.

(3) The uniform statewide voter registration application must also contain:

(a) The oath required by s. 3, Art. VI of the State Constitution and s. [97.051](#).

(xiii) 350.05 Oath of office [Florida Public Services Commission, part of Legislative Branch].--

Before entering upon the duties of his or her office each commissioner shall subscribe to the following oath: "I do solemnly swear (or affirm) that I will support, protect and defend the Constitution and Government of the United States and of the State of Florida; that I am qualified to hold office under the constitution of the state, and that I will well and faithfully perform at all times the duties of Florida Public Service Commissioner, on which I am now about to enter in a professional, independent, objective, and nonpartisan manner; that I do not have any financial, employment, or business interest which is prohibited by chapter 350, Florida Statutes; and that I will abide by the standards of conduct required of me by chapters 112 and 350, Florida Statutes, so help me God." In case any commissioner should in any way become disqualified, he or she shall at once remove such disqualification or resign, and upon his or her failure to do so, he or she shall be suspended from office by the Governor and dealt with as provided by law.

History.--s. 1, ch. 4700, 1899; GS 2886; RGS 4611; CGL 6696; s. 1, ch. 63-279; s. 1, ch. 65-52; s. 2, ch. 65-422; s. 2, ch. 81-318; s. 6, ch. 87-50; s. 6, ch. 90-272; s. 533, ch. 95-148.

(xiv) 99.021 Form of candidate oath.--

(1)(a) Each candidate, whether a party candidate, a candidate with no party affiliation, or a write-in candidate, in order to qualify for nomination or election to any office other than a judicial office as defined in chapter 105, shall take and subscribe to an oath or affirmation in writing. A printed copy of the oath or affirmation shall be furnished to the candidate by the officer before whom such candidate seeks to qualify and shall be substantially in the following form:

State of Florida
County of _____

Before me, an officer authorized to administer oaths, personally appeared (please print name as you wish it to appear on the ballot), to me well known, who, being sworn, says that he or she is a candidate for the office of _____; that he or she is a qualified elector of _____ County, Florida; that he or she is qualified under the

Constitution and the laws of Florida to hold the office to which he or she desires to be nominated or elected; that he or she has taken the oath required by ss. 876.05-876.10, Florida Statutes; that he or she has qualified for no other public office in the state, the term of which office or any part thereof runs concurrent with that of the office he or she seeks; and that he or she has resigned from any office from which he or she is required to resign pursuant to s. 99.012, Florida Statutes.

(Signature of candidate)

(Address)

Sworn to and subscribed before me this _____ day of _____, (year), at _____ County, Florida.

(Signature and title of officer administering oath)

(b) In addition, any person seeking to qualify for nomination as a candidate of any political party shall, at the time of subscribing to the oath or affirmation, state in writing:

1. The party of which the person is a member.
2. That the person is not a registered member of any other political party and has not been a candidate for nomination for any other political party for a period of 6 months preceding the general election for which the person seeks to qualify.
3. That the person has paid the assessment levied against him or her, if any, as a candidate for said office by the executive committee of the party of which he or she is a member.

(c) The officer before whom such person qualifies shall certify the name of such person to the supervisor of elections in each county affected by such candidacy so that the name of such person may be printed on the ballot. Each person seeking election as a write-in candidate shall subscribe to the oath prescribed in this section in order to be entitled to have write-in ballots cast for him or her counted.

(2) The provisions of subsection (1) relating to the oath required of candidates, and the form of oath prescribed, shall apply with equal force and effect to, and

shall be the oath required of, a candidate for election to a political party executive committee office, as provided by law. The requirements set forth in this section shall also apply to any person filling a vacancy on a political party executive committee.

History.--ss. 22, 23, ch. 6469, 1913; RGS 326, 327; CGL 383, 384; s. 3, ch. 19663, 1939; s. 3, ch. 26870, 1951; s. 10, ch. 28156, 1953; s. 1, ch. 57-742; s. 1, ch. 61-128; s. 2, ch. 63-269; s. 1, ch. 63-66; s. 1, ch. 65-376; s. 1, ch. 67-149; s. 2, ch. 70-269; s. 19, ch. 71-355; s. 6, ch. 77-175; s. 3, ch. 79-365; s. 27, ch. 79-400; s. 2, ch. 81-105; s. 3, ch. 86-134; s. 535, ch. 95-147; s. 7, ch. 99-6; s. 8, ch. 99-318.

Note.--Former ss. 102.29, 102.30.

(xv) 105.031 Qualification; filing fee; candidate's oath; items required to be filed.--

(4) CANDIDATE'S OATH.--

(a) All candidates for the office of school board member shall subscribe to the oath as prescribed in s. [99.021](#).

(b) All candidates for **judicial office** shall subscribe to an oath or affirmation in writing to be filed with the appropriate qualifying officer upon qualifying. A printed copy of the oath or affirmation shall be furnished to the candidate by the qualifying officer and **shall be in substantially the following form:**

State of Florida
County of _____

Before me, an officer authorized to administer oaths, personally appeared (please print name as you wish it to appear on the ballot), to me well known, who, being sworn, says he or she: is a candidate for the judicial office of _____; that his or her legal residence is _____ County, Florida; that he or she is a qualified elector of the state and of the territorial jurisdiction of the court to which he or she seeks election; that he or she is qualified under the constitution and laws of Florida to hold the judicial office to which he or she desires to be elected or in which he or she desires to be retained; that he or she has taken the oath required by ss. [876.05](#)-876.10, Florida Statutes; that he or she has qualified for no other public office in the state, the term of which office or any part thereof runs concurrent to the office he or she seeks; and that he or she has resigned from any office which he or she is required to resign pursuant to s. [99.012](#), Florida Statutes.

(Signature of candidate)

(Address)

Sworn to and subscribed before me this _____ day of _____, (year), at _____
County, Florida.

(Signature and title of officer administering oath)

(xvi) 99.061 Method of qualifying for nomination or election to federal, state, county, or district office.--

(1) The provisions of any special act to the contrary notwithstanding, each person seeking to qualify for nomination or election to a federal, state, or multicounty district office, other than election to a judicial office as defined in chapter 105 or the office of school board member, shall file his or her qualification papers with, and pay the qualifying fee, which shall consist of the filing fee and election assessment, and party assessment, if any has been levied, to, the Department of State, or qualify by the petition process pursuant to s. [99.095](#) with the Department of State, at any time after noon of the 1st day for qualifying, which shall be as follows: the 120th day prior to the primary election, but not later than noon of the 116th day prior to the date of the primary election, for persons seeking to qualify for nomination or election to federal office or to the office of the state attorney or the public defender; and noon of the 50th day prior to the primary election, but not later than noon of the 46th day prior to the date of the primary election, for persons seeking to qualify for nomination or election to a state or multicounty district office, other than the office of the state attorney or the public defender.

(2) The provisions of any special act to the contrary notwithstanding, each person seeking to qualify for nomination or election to a county office, or district or special district office not covered by subsection (1), shall file his or her qualification papers with, and pay the qualifying fee, which shall consist of the filing fee and election assessment, and party assessment, if any has been levied, to, the supervisor of elections of the county, or shall qualify by the petition process pursuant to s. [99.095](#) with the supervisor of elections, at any time after noon of the 1st day for qualifying, which shall be the 50th day prior to the primary election or special district election, but not later than noon of the 46th day prior to the date of the primary election or special district election. However, if a special district election is held at the same time as the general election, qualifying shall be the 50th day prior to the primary election, but not later than noon of the 46th day prior to the date of the primary election. Within 30 days after the closing of qualifying time, the supervisor of elections shall remit to the secretary of the state executive committee of the political party to which the candidate belongs the amount of the filing fee, two-thirds of which shall be used to promote the candidacy of candidates for county offices and the candidacy of members of the Legislature.

(3)(a) Each person seeking to qualify for election to office as a write-in candidate shall file his or her qualification papers with the respective qualifying officer at any time after noon of the 1st day for qualifying, but not later than noon of the last day of the qualifying period for the office sought.

(b) Any person who is seeking election as a write-in candidate shall not be required to pay a filing fee, election assessment, or party assessment. A write-in candidate shall not be entitled to have his or her name printed on any ballot; however, space for the write-in candidate's name to be written in shall be provided on the general election ballot. No person may qualify as a write-in candidate if the person has also otherwise qualified for nomination or election to such office.

(4) At the time of qualifying for office, each candidate for a constitutional office shall file a full and public disclosure of financial interests pursuant to s. 8, Art. II of the

State Constitution, and a candidate for any other office, including local elective office, shall file a statement of financial interests pursuant to s. [112.3145](#).

(5) The Department of State shall certify to the supervisor of elections, within 7 days after the closing date for qualifying, the names of all duly qualified candidates for nomination or election who have qualified with the Department of State.

(6) Notwithstanding the qualifying period prescribed in this section, if a candidate has submitted the necessary petitions by the required deadline in order to qualify by the petition process pursuant to s. [99.095](#) as a candidate for nomination or election and the candidate is notified after the 5th day prior to the last day for qualifying that the required number of signatures has been obtained, the candidate is entitled to subscribe to the candidate's oath and file the qualifying papers at any time within 5 days from the date the candidate is notified that the necessary number of signatures has been obtained. Any candidate who qualifies within the time prescribed in this subsection is entitled to have his or her name printed on the ballot.

(7)(a) In order for a candidate to be qualified, the following items must be received by the filing officer by the end of the qualifying period:

1. A properly executed check drawn upon the candidate's campaign account in an amount not less than the fee required by s. [99.092](#) or, in lieu thereof, as applicable, the copy of the notice of obtaining ballot position pursuant to s. [99.095](#). If a candidate's check is returned by the bank for any reason, the filing officer shall immediately notify the candidate and the candidate shall, the end of qualifying notwithstanding, have 48 hours from the time such notification is received, excluding Saturdays, Sundays, and legal holidays, to pay the fee with a cashier's check purchased from funds of the campaign account. Failure to pay the fee as provided in this subparagraph shall disqualify the candidate.

2. The candidate's oath required by s. [99.021](#), which must contain the name of the candidate as it is to appear on the ballot; the office sought, including the district or group number if applicable; and the signature of the candidate, duly acknowledged.

3. The loyalty oath required by s. [876.05](#), signed by the candidate and duly acknowledged.

4. If the office sought is partisan, the written statement of political party affiliation required by s. [99.021](#)(1)(b).

5. The completed form for the appointment of campaign treasurer and designation of campaign depository, as required by s. [106.021](#).

6. The full and public disclosure or statement of financial interests required by subsection (4). A public officer who has filed the full and public disclosure or statement of financial interests with the Commission on Ethics or the supervisor of elections prior to qualifying for office may file a copy of that disclosure at the time of qualifying.

(b) If the filing officer receives qualifying papers that do not include all items as required by paragraph (a) prior to the last day of qualifying, the filing officer shall

make a reasonable effort to notify the candidate of the missing or incomplete items and shall inform the candidate that all required items must be received by the close of qualifying. A candidate's name as it is to appear on the ballot may not be changed after the end of qualifying.

(8) Notwithstanding the qualifying period prescribed in this section, a qualifying office may accept and hold qualifying papers submitted not earlier than 14 days prior to the beginning of the qualifying period, to be processed and filed during the qualifying period.

(9) Notwithstanding the qualifying period prescribed by this section, in each year in which the Legislature apportions the state, the qualifying period for persons seeking to qualify for nomination or election to federal office shall be between noon of the 57th day prior to the primary election, but not later than noon of the 53rd day prior to the primary election.

(10) The Department of State may prescribe by rule requirements for filing papers to qualify as a candidate under this section.

History.--ss. 25, 26, ch. 6469, 1913; RGS 329, 330; CGL 386, 387; ss. 4, 5, ch. 13761, 1929; s. 1, ch. 16990, 1935; CGL 1936 Supp. 386; ss. 1, chs. 19007, 19008, 19009, 1939; CGL 1940 Supp. 4769(3); s. 1, ch. 20619, 1941; s. 1, ch. 21851, 1943; s. 1, ch. 23006, 1945; s. 1, ch. 24163, 1947; s. 3, ch. 26870, 1951; s. 11, ch. 28156, 1953; s. 4, ch. 29936, 1955; s. 10, ch. 57-1; s. 1, ch. 59-84; s. 1, ch. 61-373 and s. 4, ch. 61-530; s. 1, ch. 63-502; s. 7, ch. 65-378; s. 2, ch. 67-531; ss. 10, 35, ch. 69-106; s. 5, ch. 69-281; s. 1, ch. 69-300; s. 1, ch. 70-42; s. 1, ch. 70-93; s. 1, ch. 70-439; s. 6, ch. 77-175; s. 1, ch. 78-188; s. 3, ch. 81-105; s. 2, ch. 83-15; s. 2, ch. 83-25; s. 1, ch. 83-251; s. 29, ch. 84-302; s. 1, ch. 86-7; s. 6, ch. 89-338; s. 8, ch. 90-315; s. 32, ch. 91-107; s. 536, ch. 95-147; s. 1, ch. 95-156; s. 9, ch. 99-318; s. 9, ch. 99-326; s. 3, ch. 2001-75; s. 11, ch. 2005-277; s. 51, ch. 2005-278; s. 7, ch. 2005-286.

Note.--Former ss. 102.32, 102.33, 102.351, 102.36, 102.66, 102.69.

(xvii) 104.011 False swearing; submission of false voter registration information.--

(1) A person who willfully swears or affirms falsely to any oath or affirmation, or willfully procures another person to swear or affirm falsely to an oath or affirmation, in connection with or arising out of voting or elections commits a felony of the third degree, punishable as provided in s. [775.082](#), s. [775.083](#), or s. [775.084](#).

(2) A person who willfully submits any false voter registration information commits a felony of the third degree, punishable as provided in s. [775.082](#) or s. [775.083](#).

History.--s. 15, ch. 14715, 1931; CGL 1936 Supp. 8202(6); s. 8, ch. 26870, 1951; s. 19, ch. 71-136; s. 33, ch. 77-175; s. 38, ch. 94-224; s. 31, ch. 97-13.

(xviii) 839.18 Penalty for officer assuming to act before qualification.--

Whoever being elected, or appointed, to any office assumes to perform any of the duties thereof before qualification, according to law, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. [775.082](#) or s. [775.083](#).

(xix) 843.0855 Criminal actions under color of law or through use of simulated legal process.--

(1) As used in this section:

(a) The term "legal process" means a document or order issued by a court or filed or recorded for the purpose of exercising jurisdiction or representing a claim against a person or property, or for the purpose of directing a person to appear before a court or tribunal, or to perform or refrain from performing a specified act. "Legal process" includes, but is not limited to, a summons, lien, complaint, warrant, injunction, writ, notice, pleading, subpoena, or order.

(b) The term "person" means an individual, public or private group incorporated or otherwise, legitimate or illegitimate legal tribunal or entity, informal organization, official or unofficial agency or body, or any assemblage of individuals.

(c) The term "public officer" means a public officer as defined by s. [112.061](#).

(d) The term "public employee" means a public employee as defined by s. [112.061](#).

(2) Any person who deliberately impersonates or falsely acts as a public officer or tribunal, public employee or utility employee, including, but not limited to, marshals, judges, prosecutors, sheriffs, deputies, court personnel, or any law enforcement authority in connection with or relating to any legal process affecting persons and property, or otherwise takes any action under color of law against persons or property, commits a felony of the third degree, punishable as provided in s. [775.082](#) or s. [775.083](#).

(3) Any person who simulates legal process, including, but not limited to, actions affecting title to real estate or personal property, indictments, subpoenas, warrants, injunctions, liens, orders, judgments, or any legal documents or proceedings, knowing or having reason to know the contents of any such documents or proceedings or the basis for any action to be fraudulent, commits a felony of the third degree, punishable as provided in s. [775.082](#) or s. [775.083](#).

(4) Any person who falsely under color of law attempts in any way to influence, intimidate, or hinder a public officer or law enforcement officer in the discharge of his or her official duties by means of, but not limited to, threats of or actual physical abuse or harassment, or through the use of simulated legal process, commits a felony of the third degree, punishable as provided in s. [775.082](#) or s. [775.083](#).

(5)(a) Nothing in this section shall make unlawful any act of any law enforcement officer or legal tribunal which is performed under lawful authority.

(b) Nothing in this section shall prohibit individuals from assembling freely to express opinions or designate group affiliation or association.

(c) Nothing in this section shall prohibit or in any way limit a person's lawful and legitimate access to the courts or prevent a person from instituting or responding to legitimate and lawful legal process.

History.--s. 1, ch. 97-203.

(e) The Florida Bar

(i) Rules Regulating The Florida Bar

1) 2 Bylaws Of The Florida Bar 2-2 Membership Bylaw 2-2.1 Attaining Membership –

Persons shall initially become a member of The Florida Bar, in good standing, only upon certification by the Supreme Court of Florida in accordance with the rules governing the Florida Board of Bar Examiners and administration of the required oath. [Updated: 08-01-2006]

2) 3 Rules Of Discipline 3-4 Standards Of Conduct Rule 3-4.7 Oath –

Violation of the oath taken by an attorney to support the constitutions of the United States and the State of Florida is ground for disciplinary action.

Membership in, alliance with, or support of any organization, group, or party advocating or dedicated to the overthrow of the government by violence or by any means in violation of the Constitution of the United States or constitution of this state shall be a violation of the oath. [Updated: 08-01-2006]

(ii) Florida Bar Admission Oath for Attorneys

“I do solemnly swear: **I will support the Constitution of the United States and the Constitution of the State of Florida;** I will maintain the respect due to courts of justice and judicial officers; I will not counsel or maintain any suit or proceedings which shall appear to me to be unjust, nor any defense except such as I believe to be honestly debatable under the law of the land; I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement of fact or law; I will maintain the confidence and preserve inviolate the secrets of my clients, and will accept no compensation in connection with their business except from them or with their knowledge and approval; I will abstain from all offensive personality and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged; I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay anyone’s cause for lucre or malice. So help me God.” (Courtesy of the Florida Bar Examiner) -

Appendix 02 Examples of Old and Newer Oaths, and Oath Forms

(a) Oath #1 – Senior Judge David Seth Walker, With Jurat – qualified to hold office.

9602228

22252
1526

**OATH OF OFFICE
STATE OF FLORIDA**

COUNTY OF PINELLAS

I DO SOLEMNLY SWEAR that I will support, protect and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the State, and that I will well and faithfully perform the duties of

CIRCUIT JUDGE - SIXTH JUDICIAL CIRCUIT

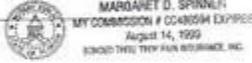
on which I am now about to enter, so help me God.

Sworn to and subscribed before me this 12th
day of September, 19 96

(1) David Seth Walker
(Sign as you desire commission issued)

(2) Margaret D. Spinner
(Signature of Officer Administering Oath or of Notary Public — State of Florida)

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

 MARGARET D. SPINNER
MY COMMISSION # 00485044 EXPIRES
August 14, 1999
SIGNED THE TOP PAN INSURANCE, INC.

Personally Known OR Produced Identification

Type of Identification Produced _____

ACCEPTANCE

SECRETARY OF STATE
THE CAPITOL, TALLAHASSEE, FLORIDA 32399-0250

I accept the office of CIRCUIT JUDGE - SIXTH JUDICIAL CIRCUIT

_____ The above is the oath of office taken by me.

In addition to the above office I also hold the office of NONE
(Name office or None)

My mailing address is

(4) 300 Park Street South
Street or Post Office Box
St. Petersburg, FL 3707
City, State, Zip Code

(5) David Seth Walker
(Sign as you desire commission issued)

NOTE: Please print or type name as signed above DAVID SETH WALKER

Person taking oath sign on line (1) above. Sign acceptance on line numbered (5) after giving address on line (4). Line (2) is for

(b) Oath #2 – Judge Crockett Farnell, No Jurat – NOT qualified to hold office.

OATH OF OFFICE
STATE OF FLORIDA

3136
1801-3

COUNTY OF PINELLAS

I, DO SOLEMNLY SWEAR (OR AFFIRM) that I will support, protect and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the State, and that I will well and faithfully perform the duties of

CIRCUIT JUDGE

of which I am now about to enter, so help me God.

UNDER PENALTIES OF PERJURY, I DECLARE THAT I HAVE READ THE FOREGOING OATH AND THAT THE FACTS STATED IN IT ARE TRUE .

(1) Crockett Farnell 9-13-2000
Signature Date Signed

ACCEPTANCE

SECRETARY OF STATE
THE CAPITOL
TALLAHASSEE, FLORIDA 32399-0250

I accept the office of Circuit Judge. The above is the oath of office taken by me.

In addition to the above office I also hold the office of NONE.

My mailing address is: home office

(2) 315 Court Street, Room 421

Street or Post Office Box
Clearwater, FL 33756
City, State, Zip Code

(3) Crockett Farnell
Sign as you desire commission issued

CROCKETT FARNELL
Print or type name as signed above

Person taking oath sign on line (1) above. Sign acceptance on line numbered (3) after giving address on line (2).
DS-DE 56 (rev. 9/99)

RECEIVED
DEPARTMENT OF STATE
SEP 15 AM 9:58
TALLAHASSEE, FLORIDA

**Appendix 03 Example of Oath Form in Florida Courts
Administrator's Office**

**ADMINISTRATIVE OFFICE OF THE COURTS
TWENTIETH JUDICIAL CIRCUIT**

OATH OF LOYALTY

STATE OF FLORIDA
COUNTY OF LEE

I, _____, a citizen of the State of Florida and of the United States of America, and being employed by the Administrative Office of the Courts, Twentieth Judicial Circuit, and a recipient of public funds as such employee, do hereby solemnly swear or affirm that I will support the Constitution of the United States and of the State of Florida.

EMPLOYEE SIGNATURE

ACKNOWLEDGMENT OF EMPLOYMENT AT-WILL STATUS

I hereby acknowledge that my employment with the Administrative Office of the Courts, Twentieth Judicial Circuit, creates no property interest in the position, does not create any definite term of employment for any period of time, and that my employment is at the pleasure and will of the Court Administrator.

On this ____ day of _____, 200____, I hereby attest that I have read and fully understand the foregoing.

EMPLOYEE SIGNATURE

Typed/Printed Name

STATE OF FLORIDA
COUNTY OF _____

Sworn to and subscribed before me this ____ day of _____, 200__ by _____ who is personally known to me or who has produced _____ as identification.

Signature - Notary Public

(Type, Print or stamp name of Notary Public)

**Appendix 04 Letter to Sharon Larson, Assistant Counsel,
Florida Department of State**

From: Bob Hurt [bob@bobhurt.com]

Sent: Friday, September 29, 2006 12:03 PM

To: Sharon Larson (slarson@dos.state.fl.us)

Cc: Lauren Van Lierop (ljvanlierop@dos.state.fl.us)

Subject: Loyalty Oaths - Who Decided to Remove the Jurat?

Attachments: Comments and Questions about loyalth oaths.doc; Loyalty Oaths in Florida.doc; LOYALTY OATH SEARCH RESULT.doc

Florida Department of State Officials:

To: Sharon Larson, Deputy Counsel

CC: Lauren Van Lierop, Public Information Officer

Dear Sharon:

I write to thank you for your gracious response to my phone call the other day on the subject of loyalty oaths. I also write to follow up on the phone call. I encourage you to read the attached documents and hand them to your associates for review and comment. I also write to request some specific responses from you. I have attached:

Comments and Questions about loyalty oaths.doc – a letter I sent to my local County Clerk and Counsel

1. Loyalty Oaths in Florida.doc – A background research document about oaths
2. Loyalty Oath Search Results.doc – a new form I propose for use throughout the state.

Background

In the attached “Comments and Questions” document, a letter I sent to Pinellas County Clerk Ken Burke and Pinellas County Assistant Senior Counsel Betsy Steg, I discussed the issues surrounding the employee loyalty oath law:

1. Florida Statute (F.S.) 876.05,
2. Your assertion that F.S. 90.525 somehow overrides the requirement for a notary or other acknowledgment of each such oath,
3. The fact that 90.50, not 90.525, governs oaths because 876.05 does not require “verified” oaths, but it does require “acknowledged” oaths,

4. The fact that no oath forms since 2000 in any branch or level of government bear a jurat,
5. The fact that no one subject to FS 876.05 actually swears the oath before someone authorized to take acknowledgments, and
6. The fact that every such person therefore has insufficient qualification for employee status, and all of their acts and rulings have no legal force or effect because they constitute a grand array of imposters.

You can see the problem here. F.S. 90.525 has no effect on the 876.05 requirement for an notary or similar acknowledgement of the oath of each employee before that employee can draw the first paycheck. Had I standing in any case before a judge sworn to an oath without a jurat, I would have the power of law to pronounce his rulings of no effect, and the power to demand that the Division of Elections toss the judge out of office. The press could have a field day with this information.

It appears that some anonymous bureaucrat has, by approving the unlawful replacement of the valid *acknowledgement* oath form with the invalid *verified* oath form, single-handedly converted the bulk of the employees and elected officials within our state into imposters, and made our governments into organized crime families operating under color of law. If you doubt this, check out (as I have) the oaths of the Florida Godfather Jeb and his Consigliere Charlie – neither have executed oaths acknowledged by one duly authorized to take acknowledgements as required by 876.05.

I ask that you take the necessary action to fix this problem, and ride herd on it till it does not exist any more:

1. Start the move to investigate how this insanity came about.
2. Tell me who masterminded and who effected the oath form change, and on what authority.
3. Find and bring the above perpetrator to justice, for that was a serious crime of treason and war against the Constitution. A head on a pike might discourage further acts of sabotage of the oath system.
4. Show me your employment oath.
5. Show me your new oath after you re-swear it before a judicial officer and attach a properly executed jurat to it.
6. See to it that everyone in your office re-swears the oath before a judicial officer.
7. Mandate correction of all the oath forms the DOS hands out or puts on its web site.
8. Get the Secretary of State to order the division of elections to issue notices immediately to all elected officials for whom they have invalid oaths, and require them to get the oaths re-sworn and filed in place of the invalid oaths.
9. Get Secretary of State to get the Governor to mandate a new policy that makes branch heads, department heads, and Sheriffs responsible for

eliminating all bootleg oath forms and maintaining only oath forms with the acknowledgement jurat.

10. Mastermind and implement a plan to inform all city, county, and legislative Clerks (as I did the Pinellas Clerk and Counsel) and tell them to use the proper oath form with a proper jurat, and to have all government employees and public officials re-swear the oath on a new form.
11. Promulgate policies that make it clear: an oath document must have perfected status or the people may treat it as though it does not exist. It must have the following, and any item missing causes the document to have no legal effect:
 - The precise wording given in the law 876.05 for ALL government employees, included elected and appointed employees.
 - The printed or typewritten name of the employee.
 - The name of the agency for which the employee works.
 - The signature of the employee under penalty of perjury beneath the oath.
 - The acknowledgment jurat.
 - The signature of the duly authorized acknowledgment taker.

I have created a new form to help inquiring public locate the loyalty oath for government employees. See attached "Loyalty Oath Search Result.doc" form. I encourage you to make a form similar to it available on the DOS web site, and to encourage the People to use it for requesting oaths from a Human Resource manager or employee.

Any person should be able to submit this form to the employee and expect a timely response including a copy of the oath. If the employee does not have it, then the employee can give the form to the boss and let the boss give the form to Human Resources, who will then mail the oath to the requesting party. If the requester does not receive the oath within a week, the requester should presume it does not exist and proceed accordingly.

Let us remember that the Bureau of Election Records does not constitute the lawful repository of oaths for elected officials because it does not constitute the "governing official" or "employing agency." 876.05 requires the "governing official" or "employing agency" to keep oaths. The law sees each *elected* official as the *governing* official.

We People should not have to run all over the place to get government employee oaths. An oath should function like a driver's license, particularly for elected officials. An elected official IS the governing official. People should keep the oath on their person, as they do a driver's license, and show it upon demand to whoever inquires. Elected Officials should keep a copy in their offices. The local Clerk of Court should have the oaths for all judges, prosecutors and other

employees who work in association with that court. Also, since the Bureau of Elections now keeps oaths, then it should keep them on line so people don't have to write and ask for them.

Bottom line, I see oaths of loyalty as a really serious business. Even people in your own office do not recall ever having signed an oath (ask around as I have, and you'll see). Government employees should know that We People expect them to have and honor their oaths. I see them as a sacred and binding contract with The People, and so did the founders of the governments of the USA and Florida. That explains why they required the loyalty oath before handing out a single paycheck. It constitutes part of the employment contract, and any employee who violates that oath should expect a speedy discharge from office. That includes judges, prosecutors, and governors, of course. Even they MUST live up to their promise in that oath.

You can help make them more aware of that, beginning with enforcing the law in your own office. You can start by conducting classes on reading the Constitutions of the USA and Florida, just so people will know what they say. You can point out the important guarantees of rights, such as due process, in both documents, and make it obvious that most government employees, if they err, do so by not playing their proper role in guaranteeing due process of law to We People, for when they fail to do so, We People wrongly lose our lives, liberty, or property. Then, you can show them 876.05 and ask for them to obtain a copy of their oaths using the form I have attached, and show them to you. Then ask them to study the document and study the law and look for any way the document violates the law. Then have them do their oaths the correct way. You can accomplish all of that in two afternoons after work, not a big expenditure of your time.

Please let me know how you see the above issues and what action or course of inaction you intend to take.

Thanks for your time and attention to this.

Bob Hurt - Without Prejudice

Appendix 05 E-Mail Interchange between S.V. and Florida Department of State Assistant Counsel

From: SV (name withheld for privacy)
Sent: Wednesday, May 09, 2007 10:02 AM
To: Holland, Gary J.
Subject: RE: Request for Information

Hi Gary:

Thanks for asking. I've been a little busy since your first email to me.

On the subject in question, I thought my questions to Joel were pretty clearly stated:

I need to know WHO is accountable for the Oaths of Office and their strict compliance with the Constitutions of the united States of America, The Florida Constitution and the Florida Statutes as well as the bonds REQUIRED for any state and county officer to take office.

I've enclosed some excerpts from the Constitution for the State of Florida and the State Statutes so you can see what I am talking about. You can plainly see that the dsde56 form DOES NOT comply with ANY Constitution or state statute and is therefore bogus.

Since the dsde56 form is not compliant (i.e. not word for word and not signed in the presence of a notary) with any Constitution or state statute, then it is a bogus oath of office and is therefore void. This would mean that any one who has taken it is holding office illegally and acting as an imposter in that office, which carries penalties by the state statutes and the US CODE. It also means that any "orders" and/or legislation signed off by these folks is void.

From: Holland, Gary J. [mailto:GJHolland@dos.state.fl.us]
Sent: Thursday, May 10, 2007 3:49 PM
To: SV
Subject: RE: Request for Information

Dear Mr. V:

This email responds to your inquiry regarding the oaths of office.

The responsible entity or official for the required constitutional or statutory oaths will depend upon the particular oath in question. If the oath concerns a candidate and it is required for the person to qualify as a candidate (s. 99.021, F.S.), then it is the responsibility of the candidate to ensure that he or she takes the oath, and it then becomes the responsibility of the appropriate filing officer (typically, the Supervisor of Elections in a local election) to ensure that the oath is properly received and filed. Also, the oath requirement for public employees found in s. 876.05, F.S., indicates that it "shall be filed with the records of the

governing official or employing governmental agency” Section 876.08, F.S., makes it a misdemeanor for any person to knowingly or carelessly permit an employee to continue employment after failing to comply with the oath requirements. The local state attorney has responsibility for the enforcement of criminal statutes.

As you mention in your email, the Florida Constitution states that each state and county officer, “before entering upon the duties of the office, shall give the bond as required by law” Therefore, if the law does not require the officer to post a bond, then the person need not provide a bond. If your question pertains to obtaining a list of all offices that require a bond, the Department of State does not possess such a list; nor does it require any of its officers or employees to post a bond. Section 20.05(4), F.S., gives each agency head the discretion whether to require a bond for any of his or her officers or employees.

As you are aware, Section 876.05, F.S., requires that all employees of the state, counties, cities, school districts, *etc.* take an oath promising to support the Florida and U.S. Constitutions before a person who is duly authorized to take acknowledgments of instruments. Candidates seeking to qualify for public office must also take this oath (s. 876.07, F.S.). However, a candidate would be making a false oath if the candidate swore, as listed in the s. 876.05 oath, that he/she was “employed by or an officer of _____ and a recipient of public funds as such employee or officer” before the candidate was elected to the office. To prevent a false oath from occurring and to prevent a conflict between ss. 99.021 (which requires the oath in 876.05, F.S., to be made before qualifying) and 876.10, F.S., (which makes it a crime for making a false oath), that particular portion of the oath is not contained in candidate oath forms.

Once the person assumes the office, the employing agency has the responsibility to have the officer execute the full oath in compliance with s. 876.05, F.S. Section 99.021, F.S., also requires candidates to take another distinct oath before “an officer authorized to administer oaths” stating that the candidate is qualified to hold the office which he or she seeks and, if applicable, that the candidate is a member of the political party for which he or she claims affiliation.

As you indicate, these “oath” forms are not executed before a notary public. Instead, they require the public employee or candidate to declare, “[u]nder penalties of perjury . . . that I have read the foregoing oath and that the facts stated in it are true.” Section 92.525, F.S., permits this “penalties of perjury” language to be used when Florida law requires a document, including an affidavit, to be verified. Compliance with s. 92.525, F.S., is a proper substitute for a notarized oath. *See State v. Shearer*, 628 So. 2d 1102 (Fla. 1993).

The form that you mention, DS-DE 56, uses the “penalties of perjury” language of s. 92.525, F.S., and the body of the oath is identical to that contained in the Florida Constitution, Article II, Section 5. If you note under the Division of Elections’ website, the DS-DE 56 form is under a heading of “Commission

Issuance Forms.” This is a form that the Department of State makes available for officials upon being elected (*i.e.*, when they receive their “commission” to serve) to fulfill the mandate to take the oath required by the Constitution. The DS-DE 56 form is not to be confused with any document containing the oath required by s. 876.05, F.S. Again, the employing agency is responsible to generate the s. 876.05 oath before the person receives public funds in the newly appointed or elected position.

You also mention that an officeholder who has taken a “bogus oath” would make the office holder an imposter and his/her actions void. It would typically require a legal challenge to contest the person’s right to hold office. It would then be the courts (or as it pertains to a legislative office, usually the Legislature) that ultimately would decide if a candidate is properly qualified to hold office. I note that the law recognizes a “de facto officer” doctrine, which provides that acts taken under color of official title are valid. *E.g.*, *Nguyen v. United States*, 539 U.S. 69, 77 (2003) (acts performed by person under color of official title are valid even if technical defects in statutory authority are later discovered) (citing *McDowell v. United States*, 159 U.S. 596 (1895), in which the Court rejected a claim that an order designating a district judge was defective); *see also State ex rel. Siegendorf*, 266 So. 2d 345, (Fla. 1972) (rejecting assertion that oath of candidacy was defective because it failed to include full name of office sought; holding “literal and total compliance” with technical statutory language is not required to meet statutory requirements of qualification for public office).

I hope this information is responsive to your request.

Sincerely,

Gary J. Holland
Assistant General Counsel
Florida Department of State
R.A. Gray Building, 500 S. Bronough Street
Tallahassee, FL 32399-0250
Phone: 850-245-6207
Fax: 850-245-6127

Note: This response is provided for reference only does not constitute a formal legal opinion or representation from the Department of State or the Division of Elections. As applied to a particular set of facts or circumstances, interested parties should refer to the Florida Statutes and applicable case law, and/or consult an attorney to represent their interests before drawing any legal conclusions or relying upon the information provided.

Also, Florida has a very broad public records law. Written communications to or from state officials regarding state business constitute public records and are available to the public and media upon request unless the information is subject to a specific statutory exemption. Therefore, this email and any that you sent that generated this response may be subject to public disclosure.

Appendix 06 Florida Attorney General Opinion Letter on Loyalty Oaths.

Number: AGO 96-41

Date: June 5, 1996

Subject: Loyalty oaths, requirement for elected official

Mr. Mitchell S. Kraft
Tamarac City Attorney
7525 Northwest 88th Avenue
Tamarac, Florida 33321-2401

RE: LOYALTY OATH--ELECTED OFFICIALS--MUNICIPALITIES--requirement that elected official take loyalty oath. s. 876.05, Fla. Stat.

Dear Mr. Kraft:

You have asked for my opinion on substantially the following questions:

1. May a person elected to the Charter Board of the City of Tamarac assume that office without taking the statutorily prescribed oath set out in section 876.05, Florida Statutes?
2. May the language of the oath prescribed in section 876.05, Florida Statutes, be modified by individual officeholders or employees?

In sum:

1. All elected officers of the City of Tamarac are required by law to take the oath set forth in section 876.05, Florida Statutes.
2. The form of the oath prescribed in section 876.05(1), Florida Statutes, is mandatory and may not be altered. However, an exception has been recognized by the courts for those persons who are required to take the oath but who are not citizens.

Question One

According to your letter, the individual in question was elected to the position of Charter Board Member in the City of Tamarac in March 1996. When he was subsequently asked to take an oath of office pursuant to section 876.05, Florida Statutes, he declined for religious reasons. He has not been sworn into office and has offered to execute an alternative statement that would include some of the language of the statutory oath and other language that is not reflected in the statute. In order to resolve this matter, you have asked for this office's opinion.

Section 876.05, Florida Statutes, prescribes an oath that must be taken as a

minimum requirement for elected public service. The statute originally was adopted in 1949[1] and was revised by the 1983 Legislature to delete those portions of the oath that had been judicially invalidated and eliminated by the state and federal courts.[2]

The statute currently prescribes the following language for the oath:

"I, _____, a citizen of the State of Florida and of the United States of America, and being employed by or an officer of _____ and a recipient of public funds as such employee or officer, do hereby solemnly swear or affirm that I will support the Constitution of the United States and of the State of Florida."

The language of the oath clearly provides an option to those for whom swearing is not acceptable: those individuals may affirm that they will support the Florida and United States Constitutions.[3]

The provisions of the statute apply to all employees and elected officers of the state, including the Governor and constitutional officers and all employees and elected officers of all cities, towns, counties, and political subdivisions, including the school system.[4] In addition, the oath is a prerequisite to qualification for public office.[5] Any candidate who fails or refuses to file the oath will have failed to qualify as a candidate for public office and his or her name may not be printed on the ballot as a qualified candidate.[6] The oath must be taken before a person authorized to take acknowledgments of instruments for public record and must be filed with the records of the governing official or employing governmental agency.[7]

Pursuant to section 876.09, Florida Statutes, "[t]he provisions of ss. 876.05-876.10 shall apply to all employees and elected officers of the state, including the Governor and constitutional officers and all employees and elected officers of all cities, towns, counties, and political subdivisions, including the educational system." Thus, the provisions of the statute are mandatory and binding on all public employees and elected state and local officers.[8]

Therefore, it is my opinion that all elected officers of the City of Tamarac, including a person elected to the Charter Board, are required by law to take the loyalty oath set forth in section 876.05, Florida Statutes.

Question Two

This office has considered and approved the modification of the loyalty oath set forth in section 876.05, Florida Statutes, in circumstances where the affiant was not a citizen of the United States but was a resident alien. Such a change was necessary in response to a United State Supreme Court decision in which the Court struck down a state statute denying aliens the right to hold positions in the state's competitive service system as violative of the equal protection guarantees

of the Fourteenth Amendment.[9] In Attorney General Opinion 84-66 it was concluded that such a modification was necessary under those circumstances in order to avoid a constitutional challenge to the statute.

However, such modifications have been made in response to judicial decisions and I cannot say that revisions and alterations may be made to the language of the oath under other circumstances. Rather, it is the general rule that, when the Legislature states how a thing is to be done, it may not be accomplished in some other manner.[10] The language of the statute itself is directory rather than discretionary: "All persons . . . are required to take an oath . . . in the following form[.]"[11] It would appear that one purpose of any statute that creates a form is to provide uniformity and this purpose would be defeated by allowing individual officers and employees to craft their own versions of a loyalty oath.

Therefore, it is my opinion that the language of the oath set forth in section 876.05(1), Florida Statutes, is mandatory and must be followed with the exceptions noted above.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tgh

[1] See, s. 1, Ch. 25046, Laws of Fla. (1949).

[2] Cf., Op. Att'y Gen. Fla. 82-64 (1982); *Connell v. Higginbotham*, 403 U.S. 207 (1971); *Cramp v. Board of Public Instruction of Orange County*, 137 So. 2d 828 (Fla. 1962).

[3] See generally, 1 Fla. Jur. 2d Acknowledgments s. 31 ("An oath in its broadest sense, is any form of attestation by which a person signifies that he is bound in conscience to perform an act faithfully and truthfully[.] An affirmation is a solemn statement or declaration made as a substitute for a sworn statement by a person whose conscience will not permit him to swear.")

[4] Sections 876.05(1), and 876.09(1), Fla. Stat. (1995).

[5] Section 876.07, Fla. Stat. (1995).

[6] And see, s. 99.021(1)(a), Fla. Stat. (1995), which requires that a candidate swear "that he or she has taken the oath required by ss. 876.05-876.10, Florida

Statutes[.]"

[7] Section 876.05(1) and (2), Fla. Stat. (1995). *Cf.*, s. 92.50, Fla. Stat. (1995), providing who may take or administer oaths and acknowledgments required or authorized under the laws of Florida.

[8] *And see*, s. 876.06, Fla. Stat. (1995), which provides for the discharge of any person who refuses to execute the oath; s. 876.07, Fla. Stat. (1995), which requires that a person who seeks to qualify for public office but who fails or refuses to execute the oath may not have his or her name printed on the ballot as a qualified candidate; and s. 876.08, Fla. Stat. (1995), which makes the governing authority or person who continues to employ a person who fails to execute the oath guilty of a second degree misdemeanor.

[9] *See, Sugarman v. Dougall*, 413 U.S. 634 (1973). *And see*, Op. Att'y Gen. Fla. 76-238 (1976) and cases cited therein.

[10] *See, e.g., Alsop v. Pierce*, 19 So. 2d 799, 805-806 (Fla. 1944); *Dobbs v. Sea Isle Hotel*, 56 So. 2d 341, 342 (Fla. 1952); *Thayer v. State*, 335 So. 2d 815, 817 (Fla. 1976).

[11] *Compare*, s. 99.021(1)(a), Fla. Stat. (1995), which provides a form for a candidate oath and states that the oath or affirmation "shall be *substantially* in the following form[.]" (e.s.)

Appendix 07 Crain v. State, 914 So.2d 1015 (Fl, 2005)

914 So.2d 1015

Brian CRAIN, Petitioner,

v.

STATE of Florida, Respondent.

No. 5D05-778.

District Court of Appeal of Florida, Fifth District.

November 18, 2005.

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Robert Wesley, Public Defender and Nicole K.H. Maldonado, Assistant Public Defender, Orlando, for Petitioner.

Charles J. Crist, Jr., Attorney General, Tallahassee and Bonnie Jean Parrish, Assistant Attorney General, Daytona Beach, for Respondent.

EN BANC

SAWAYA, J.

The issue we address in this case is whether an arrest affidavit to secure a warrant for violation of probation is valid if it is verified under section 92.525, Florida Statutes (2003), but not sworn to before a person authorized to administer oaths. In *Jackson v. State*, 881 So.2d 666 (Fla. 5th DCA 2004), we held that an affidavit to secure a warrant for violation of probation pursuant to section 948.06(1), Florida Statutes (2002), must be sworn to before a person authorized to administer oaths and that verification under section 92.525 is not appropriate. We consider this case en banc to provide additional reasoning for our decision in *Jackson* and to clarify that our holding in that case does not prohibit application of the **good faith** exception to the exclusionary rule to warrants obtained with affidavits verified under section 92.525. We will briefly discuss the factual and procedural background of this case, followed by a discussion of the oath requirement for arrest affidavits and the good faith exception.

Factual And Procedural Background

After pleading guilty, Brian Crain was placed on probation as part of his sentence. When he failed to comply with certain conditions of his probation, an affidavit alleging the violations was filed. The affidavit was verified pursuant to section 92.525, Florida Statutes (2003), but not sworn to before a person authorized to administer oaths. Crain filed a Petition for Prohibition claiming that the affidavit was defective because it was not properly sworn to and, therefore, the warrant that was issued pursuant thereto was also defective. Both the affidavit and warrant were secured prior to the expiration of Crain's probationary period. In the petition, which was filed after the probationary period expired, Crain asserts that since the affidavit and warrant are defective and his probationary period has expired, the trial court does not have jurisdiction to proceed with the violation hearing and he may not be held accountable for his violations.

We adhere to the view adopted in *Jackson* and, therefore, agree with Crain that the affidavit is defective because it was not sworn to before a person

authorized to administer oaths. However, we are also of the view that the defective affidavit does not vitiate the warrant based on the good faith exception to the exclusionary rule. We believe that Crain's petition should be denied because it is the issuance of the warrant prior to the expiration of the probationary period that vests the trial court with jurisdiction, not the filing of the affidavit. To explain our views, we begin with a discussion of the oath requirement of the affidavit under Florida and federal law.

An Arrest Affidavit Must Be Sworn To Before A Person Authorized To Administer Oaths

A. Florida Law

Section 948.06(1), Florida Statutes

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(2003),¹ governs violation of probation proceedings and provides that "[a]ny committing magistrate may issue a warrant, upon the facts being made known to him or her by affidavit of one having knowledge of such facts ... [and] ... [u]pon the filing of an affidavit alleging a violation of probation or community control and following issuance of a warrant under s. 901.02, the probationary period is tolled until the court enters a ruling on the violation." § 948.06(1), Fla. Stat.

(2003) (emphasis added). Because section 901.02, Florida Statutes, specifically governs the issuance of arrest warrants, section 948.06(1) requires an affidavit to establish probable cause for the issuance of an arrest warrant for the probation violator. The date an arrest warrant is issued, which is the date it is signed by a judge, is significant because that is the trigger that tolls the running of the probationary period.² Therefore, if the arrest warrant in the instant case is valid, Crain must be held accountable for his violations because it is not disputed that the warrant was issued prior to the expiration of the probationary period.

We held in *Jackson* that section 92.525 does not apply to an affidavit to secure an arrest warrant. That statute applies "[w]hen it is authorized or required by law, by rule of an administrative agency, or by rule or order of court that a document be verified by a person...." § 92.525(1), Fla. Stat. (2003). Verification means that the individual executes the required document with an oath or affirmation that the information contained therein is true—it does not require that the document be sworn to before an individual authorized to administer oaths. § 92.525(4)(c), Fla. Stat. (2003); *Mieles v. South Miami Hosp.*, 659 So.2d 1265 (Fla. 3d DCA 1995); *State, Dep't of Highway*

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Safety & Motor Vehicles v. Padilla, 629 So.2d 180 (Fla. 3d DCA 1993), review denied, 639 So.2d 980 (Fla.1994). Section 948.06(1), on the other hand, does not provide for verification; it specifically requires an affidavit. "An affidavit is by definition a statement in writing under an oath administered by a duly authorized person...." *Youngker v. State*, 215 So.2d 318, 321 (Fla. 4th DCA 1968) (citing *Black's Law Dictionary*, (4th ed.)). "An oath is an unequivocal act, before an officer authorized to administer oaths, by which the person knowingly attests to the truth of a statement and assumes the obligations of an oath." *State v. Johnston*, 553 So.2d 730, 733 (Fla. 2d DCA 1989) (citations omitted); see also *Youngker*, 215 So.2d at 321 ("An oath may be undertaken by any unequivocal act in the presence of an officer authorized to administer oaths by which the

declarant knowingly attests the truth of a statement and assumes the obligation of an oath.") (citation omitted). Section 92.50, Florida Statutes, also indicates that an affidavit must be sworn to before a person authorized to administer oaths. It provides in pertinent part that

[o]aths, affidavits, and acknowledgments required or authorized under the laws of this state (except oaths to jurors and witnesses in court and such other oaths, affidavits and acknowledgments as are required by law to be taken or administered by or before particular officers) may be taken or administered by or before any judge, clerk, or deputy clerk of any court of record within this state, including federal courts, or before any United States commissioner or any notary public within this state.

§ 92.50(1), Fla. Stat. (2003).

Hence, in order to secure an arrest warrant under section 948.06(1), the affidavit must be sworn to before a person authorized to administer oaths. In addition to the statutory provisions and case law discussed above, the federal and Florida constitutions and pertinent rules of court compel this conclusion. For example, the Fourth Amendment to the United States Constitution provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Article I, section 12, of the Florida Constitution, relating to search and seizure, states that "[n]o warrant shall be issued except upon probable cause, supported by affidavit, particularly describing the place or places to be searched, the person or persons, thing or things to be seized, the communication to be intercepted, and the nature of evidence to be obtained." This constitutional requirement has been codified in Florida Rule of Criminal Procedure 3.120, which provides in pertinent part:

Each state and county judge is a committing judge and may issue a summons to, or a warrant for the arrest of, a person against whom a complaint is made in writing and sworn to before a person authorized to administer oaths, when the complaint states facts that show that such person violated a criminal law of this state within the jurisdiction of the judge to whom the complaint is presented. The judge may take testimony under oath to determine if there is reasonable ground to believe the complaint is true.

(Emphasis added). The committee notes appended to this rule state that in 1972 the rule was "[a]ltered to incorporate the provision for testimony under oath formerly contained in rule 3.121(a), and authorize

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the execution of the affidavit before a notary or other person authorized to administer oaths." In *Kephart v. Regier*, 30 Fla. L. Weekly S182, ___ So.2d ___, 2005 WL 673681 (Fla. Mar. 24, 2005), the court reiterated that the requirements of Rule 3.120, which requires the oath be administered by a person authorized to administer oaths, conforms to the constitutional dictates previously mentioned:

In order to obtain a warrant for an arrest, a law enforcement officer must present a written affidavit or sworn complaint to the committing magistrate

demonstrating probable cause to believe that the accused has violated the criminal law of the State. See *Gerstein v. Pugh*, 420 U.S. 103, 95 S.Ct. 854, 43 L.Ed.2d 54 (1975); Fla. R.Crim. P. 3.120. Rule 3.120 conforms to the Fourth Amendment requirement that probable cause be supported by "oath or affirmation" and to the procedural requirements discussed in *Gerstein v. Pugh*. See art. I, § 12, Fla. Const.

(Emphasis added) (footnote omitted).³

To allow verification under section 92.525 without an oath administered by an individual authorized to administer oaths would essentially vitiate the provisions of Rule 3.120. "It is almost axiomatic that statutes and rules authorizing searches and seizures are strictly construed and affidavits and warrants issued pursuant to such authority must meticulously conform to statutory and constitutional provisions." *State v. Tolmie*, 421 So.2d 1087, 1088 (Fla. 4th DCA 1982) (citations omitted). The courts have consistently adhered to this rule of strict compliance for quite some time.⁴ Accordingly, absent a valid exception to the provisions of Rule 3.120, the

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specific requirement that the affidavit be sworn to before an individual authorized to administer oaths must be strictly complied with.

We are aware of the decision in *State v. Shearer*, 628 So.2d 1102 (Fla.1993), wherein the court held that verification under section 92.525 was sufficient to comply with the oath requirement under Florida Rule of Criminal Procedure 3.850. However, as we have previously stated, rules governing search and seizure must be strictly complied with because of the liberty interests implicated by the seizure of a person pursuant to an arrest warrant. We also note that the district courts have not extended the scope and application of *Shearer* beyond postconviction motions.

Federal law is in accord with Florida law, as we will explain next.

B. Federal Law

The federal courts and their rules of criminal procedure similarly require that a complaint or affidavit utilized to secure an arrest warrant be sworn to before a person authorized to administer oaths. Rule 3, Federal Rules of Criminal Procedure, specifically provides:

The complaint is a written statement of the essential facts constituting the offense charged. It must be made under oath before a magistrate judge or, if none is reasonably available, before a state or local judicial officer.

This rule implements the requirements of the Fourth Amendment. Here is what the Court has said about Rule 3:

Criminal Rules 3 and 4 provide that an arrest warrant shall be issued only upon a written and sworn complaint (1) setting forth 'the essential facts constituting the offense charged,' and (2) showing 'that there is probable cause to believe that (such) an offense has been committed and that the defendant has committed it * * *.' The provisions of these Rules must be read in light of the constitutional requirements they implement. The language of the Fourth Amendment, that ' * * * no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing * * * the persons or things to be seized * * *,' of course applies to arrest as well as search warrants.

Giordenello v. United States, 357 U.S. 480, 485-86, 78 S.Ct. 1245, 2 L.Ed.2d 1503 (1958) (footnote omitted) (citations omitted). Hence, Rule 3 was adopted to fulfill the oath requirement of the Fourth Amendment.

Just as the Florida courts require strict compliance with Rule 3.120, which requires that an arrest affidavit be sworn to before a person authorized to administer oaths, the federal courts require strict compliance with the requirement of Rule 3. See Giordenello; Brown v. Duggan, 329 F.Supp. 207 (W.D.Pa.1971). Specifically, the courts have been very strict about the requirement that the complaint or arrest affidavit be sworn to before a magistrate judge. See United States v. Asdrubal-Herrera, 470 F.Supp. 939, 941-42 (N.D.Ill.1979) ("Apparently, the Government and its agents do not fully appreciate or care to comply with Rule 3 of the Federal Rules of Criminal Procedure, and its requirement that complaints be made under oath before a magistrate. Indeed there is such importance and significance attached to the oath requirement that a complaint not so sworn to is subject to dismissal.") (citations omitted); United States v. Blierley, 331 F.Supp. 1182, 1183 (W.D.Pa.1971) ("The complaint is insufficient to issue warrants of arrest. The complaint is not sworn to before a commissioner or other officer empowered to commit persons charged with offenses against the United States. Rule

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3, Federal Rules of Criminal Procedure, 28 U.S.C.A. This omission is sufficient ground to refuse to issue warrants.") (citations omitted); Pugach v. Klein, 193 F.Supp. 630, 638-39 (S.D.N.Y.1961) ("Turning now to the merits of the `complaint,' it is apparent of its face that it fails to comply with the requirements of Rule 3, Federal Rules of Criminal Procedure, 18 U.S.C.A., in that it was not `made upon oath before a commissioner or other officer empowered to commit persons charged with offenses against the United States.' Rather, it was made before a notary public of Bronx County. That defect alone would be sufficient to refuse to issue the warrants.") (citation omitted); United States ex rel. Spader v. Wilentz, 25 F.R.D. 492, 494 (D.N.J.1960) ("It is essential that the criminal complaint be made on oath before a judicial officer `empowered to commit persons charged with offenses,' because it is he who `must judge for himself the persuasiveness of the facts relied upon by' the complaint `to show probable cause ...") (quoting Giordenello, 357 U.S. at 486, 78 S.Ct. 1245), affirmed, 280 F.2d 422 (3d Cir.), and cert. denied, 364 U.S. 875, 81 S.Ct. 120, 5 L.Ed.2d 97 (1960).

The importance of the requirement that the arrest affidavit or complaint be sworn to before the magistrate judge was explained by the court in Brown:

The interpretation to be given Criminal Rules 3 and 4 was set out by the Supreme Court in Giordenello v. United States, 357 U.S. 480, 485-486, 78 S.Ct. 1245, 2 L.Ed.2d 1503 (1958). There the Court pointed out that Rules 3 and 4 were to be read so as to afford Fourth Amendment protection. Bearing this in mind, we hold that the requirements of Rules 3 and 4 must be strictly complied with so as to preclude the mischief which would result if arrest warrants were issued upon less than substantial grounds. Casual accusations cannot be the basis for a person's being deprived of his liberty. The criminal process of the courts shall be invoked only if the complaining party goes before an officer having power to order persons committed for offenses against the United States. Before such an

officer the complainant shall swear to the allegations of his complaint. The importance of personal appearance is apparent both from the Fourth Amendment and Rule 4. The officer receiving the complaint must make a determination of probable cause, and in the event he finds probable cause he is required under Rule 4 to issue criminal process, i.e., to order the person of the accused seized. Prior to his exercising this power, the issuing officer is required to personally examine the complainant with regard to both the information contained in the complaint and the source of that information.

Brown, 329 F.Supp. at 209-10 (footnotes omitted); see also Gaither v. United States, 413 F.2d 1061, 1076 (D.C.Cir.1969) ("Because pre-arrest complaints are thus designed to play an important role in the protection of Fourth Amendment rights, they must be sworn before a judicial officer.") (footnote omitted).

Accordingly, we believe the issue here is whether the failure of the affiant to take an appropriate oath necessarily renders the arrest warrant invalid. The answer to this question lies in the good faith exception to the exclusionary rule. The Good Faith Exception

Article I, section 12, of the Florida Constitution, as amended in 1982, requires that we follow precedent established by the United States Supreme Court relating to search and seizure. The commentary to the 1982 amendment states that the amendment was necessary to modify the exclusionary rule and to allow adherence

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by the Florida courts to the good faith exception adopted by the federal courts. See State v. Butler, 655 So.2d 1123, 1125 (Fla.1995) ("This Court is bound, on search and seizure issues, to follow the opinions of the United States Supreme Court regardless of whether the claim of an illegal arrest or search is predicated upon the provisions of the Florida or United States Constitutions.") (citations omitted); Bernie v. State, 524 So.2d 988, 992 (Fla.1988) ("[W]e hold ... the 1982 amendment to article I, section 12, of the Florida Constitution brings this state's search and seizure laws into conformity with all decisions of the United States Supreme Court rendered before and subsequent to the adoption of that amendment....").

In United States v. Leon, 468 U.S. 897, 104 S.Ct. 3405, 82 L.Ed.2d 677 (1984), the United States Supreme Court decided that where police officers act in good faith upon a warrant that they have no reason to believe is defective or invalid, the exclusionary rule of the Fourth Amendment to the United States Constitution would not prevent admission of evidence recovered pursuant to that warrant. In Johnson v. State, 660 So.2d 648 (Fla.1995), cert. denied, 517 U.S. 1159, 116 S.Ct. 1550, 134 L.Ed.2d 653 (1996), the Florida Supreme Court applied the good faith exception enunciated in Leon to an arrest warrant secured by an arrest affidavit that did not have an appropriate oath. When the officer appeared before the judge to secure the warrant, an oath was administered that the information in the affidavit was true "to [the officer's] best knowledge and belief" or "to the best of [the officer's] knowledge." Id. at 653. Addressing the fact that the affidavit did not contain an oath and the defendant's assertion that the oath administered was not a valid oath to secure an arrest warrant, the court in

Johnson held that the affidavit and warrant met the good faith exception adopted in Leon, explaining:

Turning to the true issue, we find that it must be governed by the good-faith exception announced in *United States v. Leon*, 468 U.S. 897, 104 S.Ct. 3405, 82 L.Ed.2d 677 (1984), which is binding upon us under article I, section 12 of the Florida Constitution. *Perez v. State*, 620 So.2d 1256 (Fla.1993). The pertinent holding of Leon was stated in the following terms:

It is the magistrate's responsibility to determine whether the officer's allegations establish probable cause and, if so, to issue a warrant comporting in form with the requirements of the Fourth Amendment. In the ordinary case, an officer cannot be expected to question the magistrate's probable-cause determination or his judgment that the form of the warrant is technically sufficient.... Penalizing the officer for the magistrate's error, rather than his own, cannot logically contribute to the deterrence of Fourth Amendment violations.

Leon, 468 U.S. at 921, 104 S.Ct. at 3419. This conclusion rests on the principle that the exclusionary rule is meant to deter abuses by law enforcement, not to use law enforcement as the whipping boy for the magistrate's error. Officers are not expected to possess a lawyer's understanding of the nuances of Fourth Amendment law. Nor are they permitted to second guess the validity of a facially sufficient warrant.

Any errors here clearly were technical and were committed solely by the magistrate, not by the officers. We hold that the officers acted in good faith and fall within the good-faith exception of Leon.

Johnson, 660 So.2d at 654.

The underlying reason for the good faith exception is that the purpose for the exclusionary

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rule, which is deterrence of police misconduct, will not be furthered when the police act in good faith in securing the warrant. See *Leon*, 468 U.S. at 918-19, 104 S.Ct. 3405. Hence, although statutes and rules governing search and seizure must be strictly complied with, as we have previously noted, the good faith exception alleviates the harsh consequences of noncompliance when the police act in good faith in securing the warrant by a defective affidavit.

"The test for good faith is whether a reasonably trained officer would have known that the search was illegal despite the magistrate's authorization." *Johnson v. State*, 872 So.2d 961, 964 (Fla. 4th DCA 2004) (quoting *Leon*, 468 U.S. at 923 n.23, 104 S.Ct. 3405). For example, the courts will refuse to apply the good faith exception in instances where false or misleading information is included in the affidavit, see *Leon*; where information that would prevent a finding of probable cause is omitted, see *State v. Van Pieteron*, 550 So.2d 1162 (Fla. 1st DCA 1989); or where "a warrant may be so facially deficient — i.e., in failing to particularize the place to be searched or the things to be seized — that the executing officers cannot reasonably presume it to be valid." *Leon*, 468 U.S. at 923, 104 S.Ct. 3405. The instant case does not involve false and misleading information that was included in the affidavit and there is absolutely nothing in the record to suggest that relevant information that would negate the existence of probable cause was excluded. Moreover, *Crain* does not suggest that the

substantive allegations in the affidavit failed to establish probable cause for his arrest. In fact, there is absolutely nothing in the record before this court that would remotely suggest police misconduct or that the police in any way acted in bad faith in securing the warrant for Crain's arrest.

Here, the police erroneously relied on the provisions of section 92.525 to validate the verification contained in the affidavit. If the verification was improper, the judge should not have signed the warrant. Moreover, this court has consistently applied the good faith exception when, as in the instant case, the warrant is "regular on its face and the affidavit upon which it was based was not so lacking in indicia of probable cause that the officer executing the warrant could not with reasonable objectivity rely in good faith on the magistrate's probable cause determination and on the technical sufficiency of the warrant." *State v. Harris*, 629 So.2d 983, 984 (Fla. 5th DCA 1993); see also *State v. Wildes*, 468 So.2d 550, 551 (Fla. 5th DCA 1985). Based on the facts and circumstances present in the record before us, a reasonably trained officer would not have known that the affidavit was improper despite the judge's signature on the warrant. We conclude, therefore, that the good faith exception clearly applies and that the trial court erred in dismissing the warrant.

Conclusion

The arrest affidavit in the instant case was defective because it was not properly sworn to before a person authorized to administer oaths. Nevertheless, the good faith exception clearly applies and the trial judge should not have dismissed the warrant. While we agree with the decision in *Jackson* that section 92.525 should not apply to affidavits executed to secure an arrest warrant pursuant to section 948.06, the remedy of dismissal applied in *Jackson* is inappropriate in instances where the good faith exception applies. Because the instant case is one of those instances, we conclude that the trial court has jurisdiction to proceed with the violation of probation proceedings, and Crain should be held to answer for his alleged violations. Accordingly,

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the petition for writ of prohibition is denied.

PETITION DENIED.

SHARP, W., PETERSON, THOMPSON and PALMER, JJ., concur.

GRIFFIN, J., concurs and concurs specially, with opinion, in which SAWAYA and PALMER, JJ., concur.

TORPY, J., concurs in result only, with opinion, in which PLEUS, C.J., ORFINGER and MONACO, JJ., concur.

Notes:

1. Citation is made to the 2003 version of section 948.06, Florida Statutes, because at the time the warrant was signed in early 2004, the changes to section 948.06 appearing in the 2004 bound volume of Florida Statutes had not yet taken effect. See Ch. 2004-11, § 50, Laws of Fla. (effective October 1, 2004); Ch. 2004-373, §§ 27, 28, 41, Laws of Fla. (effective July 1, 2004).

2. It is the execution of the arrest warrant that is the operative event that sets the revocation process in motion to toll the running of the probationary period, not the filing of the affidavit. *State v. Boyd*, 717 So.2d 524 (Fla.1998); *Shropshire v.*

State, 775 So.2d 349, 350 (Fla. 2d DCA 2000) ("The mere filing of an affidavit of probation is insufficient to ensure retention of jurisdiction by the trial court over a defendant to revoke his probation. Instead, the arrest warrant that ensues from the affidavit of violation of probation must be delivered for execution before the probationary period expires—even when the affidavit of violation of probation itself is filed within the probationary period.") (citations omitted); Tatum v. State, 736 So.2d 1214, 1215 (Fla. 1st DCA 1999) ("As the supreme court's answer to the question posed by this court in Boyd clearly establishes, when the affidavit alleging a violation of probation or community control is filed is legally irrelevant; the determinative event for purposes of commencing the revocation process is delivery of the arrest warrant to the sheriff for execution."); Paulk v. State, 733 So.2d 1096, 1097 (Fla. 3d DCA) ("Therefore, even though the Affidavits of Violation of Probation were filed within the probationary period, the `probation revocation process' as defined in Boyd was not set in motion within that period, and the county court did not have jurisdiction over these revocation proceedings."), review denied, 744 So.2d 457 (Fla.1999). In response to the decision in Boyd, the Legislature amended section 901.02(1), Florida Statutes, to make clear that the arrest warrant is issued when signed by the judge. See Morgan v. State, 757 So.2d 618, 620 n. 1 (Fla. 2d DCA 2000). Nevertheless, the amendment to section 901.02(1) did not change the holding in Boyd that the triggering event is issuance of the warrant, not the affidavit. See Baroulette v. McCray, 904 So.2d 575 (Fla. 3d DCA 2005); Stambaugh v. State, 891 So.2d 1136, 1139 (Fla. 4th DCA 2005); Howard v. State, 883 So.2d 879, 880 (Fla. 4th DCA 2004).

3. The reference to "affidavit or sworn complaint" in Kephart v. Regier, 30 Fla. L. Weekly S182, ____ So.2d ____, 2005 WL 673681 (Fla. Mar. 24, 2005), is not significant to the issue before us. Adverting once again to the committee notes for Rule 3.120, the reader will see that the rule identifies "the initiating instrument as a `complaint,' thus adopting the federal terminology which is more meaningful and modern." Rule 3, Federal Rules of Criminal Procedure, which is the counterpart to Rule 3.120, also refers to "complaint," and the federal decisions applying Rule 3 clearly state that "[t]he purpose of the complaint ... is to enable the appropriate magistrate ... to determine whether the `probable cause' required to support a warrant exists." Giordenello v. United States, 357 U.S. 480, 486, 78 S.Ct. 1245, 2 L.Ed.2d 1503 (1958); Gaither v. United States, 413 F.2d 1061, 1076 (D.C.Cir.1969) ("The principal function of a complaint `is as a basis for an application for an arrest warrant.' The sworn complaint enables the magistrate to determine whether or not probable cause exists to issue a warrant of arrest."). This is the very purpose of an arrest affidavit, and it is therefore evident that the complaint and affidavit are one in the same under both rules. Moreover, it would make little sense to say that a complaint must be sworn to before a person authorized to administer oaths, but an affidavit, which fulfills the same purpose, does not.

4. See also State ex rel. Wilson v. Quigg, 154 Fla. 348, 17 So.2d 697, 701 (1944) ("[S]tatutes authorizing searches and seizures must be strictly construed, and affidavits made and search warrants issued thereunder must strictly conform to the constitutional and statutory provisions authorizing their making and

issuance.") (citations omitted); *Gildrie v. State*, 94 Fla. 134, 113 So. 704, 705 (1927) ("` When searches and seizures are made pursuant to the command of a search warrant[,] both the search warrant and the prerequisite oath or affirmation required for it must conform strictly to the constitutional and statutory provisions authorizing their issue.") (quoting *Jackson v. State*, 87 Fla. 262, 99 So. 548, 549 (1924)); *Hesselrode v. State*, 369 So.2d 348, 350 (Fla. 2d DCA 1979) ("It has been long well-settled law that statutes authorizing searches and seizures must be strictly construed and affidavits and search warrants issued thereunder must strictly conform to the constitutional and statutory provisions authorizing their making and issuance.") (citations omitted), cert. denied, 381 So.2d 766 (Fla.1980).

GRIFFIN, J., concurring and concurring specially.

Everyone agrees that section 948.06(1), Florida Statutes, requires an "affidavit" to obtain an arrest warrant for a violation of probation. An "affidavit," as that word is commonly understood, is a declaration of facts under oath that is executed before an officer authorized to administer oaths. *Black's Law Dictionary* 54 (5th ed.1979). The question is what satisfies that requirement? Judge Torpy, in his concurring opinion, contends that section 92.525 allows any requirement of an "affidavit" in Florida Statutes to be satisfied by verifying the document in the manner set forth in section 92.525(2). I do not dispute that the legislature has the power to alter the meaning of the word "affidavit" by statute if it chooses, or even to alter beyond recognition how an affidavit may be executed. As far as I can tell, however, it has not so chosen. In my view, section 92.525 says nothing about how a statutory requirement of an affidavit may be met.

Section 92.50, Florida Statutes, entitled: "Oaths, affidavits and acknowledgements, who may take or administer: requirements." provides:

(1) IN THIS STATE.—Oaths, affidavits and acknowledgements required or authorized under the laws of this State ... may be taken or administered by or before any judge, clerk, or deputy clerk of any court of record within this state, including federal courts, or before any United States Commissioner or any notary public within this state. The jurat, or certificate of proof or acknowledgement, shall be authenticated by the signature and official seal of such officer or person taking or administering the same; however, when taken or administered before any judge, clerk, or deputy clerk of a court of record, the seal of such court may be affixed as the seal of such officer or person.

Section 92.525, on the other hand, deals with the verification of documents. Section 92.525 tells us plainly what it covers:

(1) When it is authorized or required by law, by rule of an administrative agency, or by rule or order of court that a document be verified by a person, the verification may be accomplished in the following manner:

(a) Under oath or affirmation taken or administered before an officer authorized under s. 92.50 to administer oaths; or

(b) By the signing of the written declaration prescribed in subsection (2).

Section 92.525 describes only what to do when a statute, rule or order requires or authorizes a document to be verified. The statute does not say how a statutory requirement for an affidavit may be satisfied. The essential premise of

Judge Torpy's concurring opinion is that whenever an affidavit is required, section 92.525 allows the substitution of a verification. This is a misreading of the statute.

Section 92.525(4)(c) explains what is meant by "the requirement that a document be verified." It has to be signed or executed and it must state under oath that the facts recited are true. There is no reference to an "affidavit" nor is there any

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reference to the requirement of an officer authorized to administer oaths. The legislature's concept of a "verified document" does not include the requirement of execution before an authorized person. This is a pretty good clue that when the legislature is explaining in section 92.525 the ways to verify a document, it is not talking about affidavits.

The only reference in the entire statute to the word "affidavit" is in section (4)(b), the definition of the word "document." Recall that in subsection (1) of this statute, the word "document" appears:

When it is authorized or required by law, by rule of an administrative agency, or by rule or order of court that a document be verified by a person, the verification may be accomplished in the following manner....

Subsection (4)(b) defines the word "document" to mean:

[A]ny writing including, without limitation, any form, application, claim, notice, tax return, inventory, affidavit, pleading or paper.

To me, this definition signals that any writing is equivalent to the word "document" and forms, applications, claims, notices, tax returns, inventories, affidavits, pleadings or papers are illustrative of the documents embraced by the term "any writing." These words should, therefore, be interchangeable, as in "whenever it is authorized by law, administrative agency or by rule or order of court that [any writing] [any form] [any application] [any claim] [any notice] [any tax return] [any inventory] [any affidavit] [any pleading] or [any paper] be verified," the verification can be accomplished in either of the two ways discussed above. How this statutory provision has morphed into the interpretation that any statutory or rule requirement for an affidavit can be satisfied by either an oath or a declaration under penalty of perjury simply eludes me. It is not what the statute says.

This alternative interpretation of section 92.525 is apparently based in part on the notion that if the word "affidavit" is substituted for "document" or "any writing", the statute becomes absurd as there could never be a statutory or rule requirement for a "verified affidavit." But, in fact, there is at least one reference in Florida Statutes to a "verified affidavit," in section 932.703, Florida Statutes (2004), the statute dealing with forfeitures. Oddly, there are other statutes, such as section 409.256(2)(a)(5), Florida Statutes, (Paternity) that allow alternatively either (1) an affidavit or (2) "a written declaration as provided in section 92.525(2)." Why would the legislature need to authorize a section 92.525(2) declaration as an alternative to an affidavit if, by the terms of 92.525 itself, the declaration in 92.525(2) already always satisfies the affidavit requirement? The answer, I suggest, is because 92.525 does not satisfy the "affidavit" requirement; it only specifies how a "verification" requirement can be met.

If section 92.525 allows a verification to be substituted for the requirement that an affidavit be executed before an officer authorized to administer oaths, **it may be the most indirect, casual and recondite means of effectuating such a significant change in Florida law the Florida legislature has ever employed.** There can be no doubt that section 92.525 is a statute of general application. If Judge Torpy's interpretation is correct, it applies not only to affidavits for arrest for probation violation, it applies universally to all affidavits.

Although I have not personally examined them all, my Westlaw search turned up over 1,100 references to "affidavits" in Florida Statutes that do not have an associated express requirement that a document be "executed" "before a person authorized

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to administer oaths." If Judge Torpy is correct, these "affidavits" can be replaced by verification.

Judge Torpy relies primarily on two cases, *State v. Shearer*, 628 So.2d 1102 (Fla.1993), and *Goines v. State*, 691 So.2d 593 (Fla. 1st DCA 1997), neither of which was cited by the State in *Jackson*. Although we identified them both in our own research and considered them both in deciding *Jackson*, we referred only to *Goines* in the *Jackson* opinion. We said that the stated rationale for the *Goines* decision was not clear enough to warrant a declaration of conflict. The *Goines* opinion recited that the defendant's issue on appeal was that the affidavit had not been made under oath. The court found that because it was verified, there was no merit to her argument. This is a correct statement of the law. A verified document is made "under oath" but because it is not executed before a person authorized to administer oaths, it is not an affidavit. The *Goines* court went on to say that:

Pursuant to section 92.525, Florida Statutes (1995), such a statement constitutes "verification" of any document "authorized or required by law, by rule of an administrative agency, or by rule or order of court" to be "verified," including "affidavits."

Id. That sentence (even though circular) is also true, but it tells us nothing about how to satisfy the statutory requirement of an affidavit and it certainly does not say that where an affidavit is required a verification will do.

As for *Shearer*, that case was concerned with the 1993 version of Florida Rule of Criminal Procedure 3.850(c), which required a motion for post-conviction relief to be made "under oath," and the form contained in Florida Rule of Criminal Procedure 3.987, which specified that the motion had to be sworn to before a notary public or other official authorized to administer an oath. *Shearer* has nothing to do with "affidavits." **The point of *Shearer* was whether the verification procedure set out in rule 92.525 adequately satisfied the court's goal in requiring a sworn 3.850 motion, which was to expose the convicted individual to a prosecution for perjury if statements made in the motion were false.** *Shearer* is confusing because the execution requirements under the two rules were not symmetrical. One merely required an oath; the other specified a notary. I concede that the court did say that section 92.525, Florida Statutes authorizes the penalty of perjury declaration in the verification statute to substitute for a "notarized oath." In fact, however, section 92.525 only authorizes the substitution of a penalty of perjury declaration where there is a requirement of an "oath," not a

"notarized oath." This is true because the element of execution before a notary is not included in the statutory definition of a verification and because a notarized oath must satisfy the requirements of section 92.50, not 92.525. What was important to the Shearer court, however, was not the notarized versus not-notarized distinction, but whether the penalty of perjury declaration contained in section 92.525 solved the concerns they expressed in *Gorham v. State*, 494 So.2d 211 (Fla.1986), and *Scott v. State*, 464 So.2d 1171 (Fla.1985). Concluding that the statutory declaration in the verification was sufficient to accomplish their purpose, they amended the Rule 3.987 form.

Finally, in Judge Torpy's concurring opinion, there is extensive discussion of federal fourth amendment jurisprudence applying 28 U.S.C., section 1746. Judge Torpy says the federal statute is "similar" to section 92.525, but they, in fact, are dissimilar in one critical respect, and it is

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that difference that illustrates my point. The federal statute says:

Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated....

The federal statute says that a verification can substitute when a federal statute calls for an affidavit. The Florida statute does not.

SAWAYA and PALMER, JJ., concur.

TORPY, J., concurring in result only.

I agree that we should not grant the writ of prohibition, but I do not agree with the conclusion that the "affidavit" was defective. I think our decision in *Jackson v. State*, 881 So.2d 666 (Fla. 5th DCA 2004) was wrong. It conflicts with *State v. Shearer*, 628 So.2d 1102 (Fla.1993), and *Goines v. State*, 691 So.2d 593 (Fla. 1st DCA 1997), wherein the first district correctly settled this issue many years ago. I also disagree with the conclusion that a notarized arrest affidavit is required by the seizure clauses of the federal and state constitutions and rules of criminal procedure. Finally, assuming the majority is correct that the affidavit was defective, I disagree that the "good faith exception" to the exclusionary rule applies here.

The distinction between this case and *Jackson* is that, in *Jackson*, our court permitted the state to cure the purportedly defective affidavit by filing an amended affidavit after remand. Thus, the prosecution was delayed but not thwarted. *Jackson* did not expressly address the situation presented here. In this case, after Petitioner challenged the affidavit below, the state filed an amended, notarized affidavit. The amended affidavit was filed after Petitioner's probation term had expired. The lower court ruled that the original affidavit was defective and dismissed the warrant, citing *Jackson*. However, again in reliance upon

Jackson, it determined that it had jurisdiction to proceed under the amended affidavit, even though it was filed after Petitioner's probation had expired. The issue as framed by Petitioner here, therefore, is whether the lower court has jurisdiction to proceed on the amended affidavit. The majority implicitly concludes that, because the amended affidavit was filed too late to invoke the statutory tolling provisions of section 948.06(1) (2005), Florida Statutes, the amended affidavit was of no effect. I agree with this conclusion.

Section 948.04(2), Florida Statutes (2005), provides that a probationer is entitled to be released from probation upon expiration of his or her term. This period may be extended under the tolling provision of section 948.06(1), "upon the filing of an affidavit alleging a violation of probation ... and following issuance of a warrant." (Emphasis added). To invoke the tolling provision, however, the affidavit must be filed and warrant issued before the term of probation expires. *Stambaugh v. State*, 891 So.2d 1136, 1139 (Fla. 4th DCA 2005). Therefore, the amended affidavit filed after Petitioner's probation term expired was ineffective to confer jurisdiction

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on the lower court, and the lower court erred by concluding otherwise.⁵

The foregoing notwithstanding, pursuant to the "tipsy coachman" rule, we should consider whether the lower court was correct in its determination that it may proceed, albeit not for the reason given by the trial judge, but because the original affidavit and warrant were legally sufficient. To answer this question it is necessary to determine whether a verified document, in affidavit form, given under penalty of perjury, is a statutorily authorized equivalent of an "affidavit" under section 948.06(1). This is purely an issue of statutory construction and the first point at which I take a divergent path from the majority. See *Gearhart v. State*, 885 So.2d 415, 417 (Fla. 5th DCA 2004) (probation is creature of statute).

Although by most legal definitions, an affidavit is a statement made under oath before a notary or other authorized official, section 92.525(1)(b), Florida Statutes (2005), "provides that a signed declaration can substitute for a notarized oath." *Shearer*, 628 So.2d at 1102. Section 92.525 states in pertinent part as follows:

(1) When it is . . . required by law . . . , or by rule or order of court that a document be verified by a person, the verification may be accomplished in the following manner:

(a) Under oath or affirmation taken or administered before an officer authorized under s. 92.50 to administer oaths; or

(b) By the signing of the written declaration prescribed in subsection (2).

(2) A written declaration means the following statement: "Under penalties of perjury, I declare that I have read the foregoing [document] and that the facts stated in it are true," followed by the signature of the person making the declaration, except when a verification on information or belief is permitted by law, in which case the words "to the best of my knowledge and belief" may be added. The written declaration shall be printed or typed at the end of or immediately below the document being verified and above the signature of the person making the declaration.

....

(4) As used in this section:

....

(b) The term "document" means any writing including, without limitation, any form, application, claim, notice, tax return, inventory, affidavit, pleading, or paper.

(c) The requirement that a document be verified means that the document must be signed or executed by a person and that the person must state under oath or affirm that the facts or matters stated or recited in the document are true, or words of that import or effect.

§ 92.525, Fla. Stat. (2005) (emphasis supplied).

Thus, the statute provides that, whenever "verification" (defined as the sworn, written confirmation of facts as true) of a "document," (which by definition includes "affidavits") is required by law or rule, it may be accomplished either by execution before a notary or by signing the statutorily specified declaration. Because section 948.06 requires an "affidavit," which is a "verified document," the alternative verification procedure authorized by section

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92.525(1)(b), is a permitted substitute for execution before a notary.

A central premise of my conclusion is that affidavits are, by definition, "verified documents." This is because section 92.525(4)(c) defines the "requirement" of "verifi[cation]" as including three elements: that the document be signed; that the signatory attest to the truth of the facts; and that the signatory give an oath or affirmation, each of which is also an essential element of an "affidavit." See also, Black's Law Dictionary (8th ed.2004) ("verify" means to confirm by oath or affidavit; "verification" means a formal declaration before a notary or, in some jurisdictions, without the need for a notary).⁶

Here, the requisite declaration was included in the "affidavit;" therefore, the lack of notarization had no affect on its validity. Accord *Goines* (applying section 92.525 to section 948.06); see also *Shearer* (Rule 3.987 form of oath requiring notary satisfied by section 92.525 verification); *State Dep't of Highway Safety & Motor Vehicles v. Padilla*, 629 So.2d 180 (Fla. 3d DCA 1993) (section 92.525 "verified" document satisfied affidavit requirement of section 322.2615(2), Florida Statutes).

Although not argued in the bare-bones petition filed here, and left unresolved in *Jackson*, the majority bulwarks its opinion by further concluding that, the statutory-construction issue notwithstanding, the Fourth Amendment mandates that an affidavit for arrest warrant — including one seeking the arrest of a probationer for a probation violation — be sworn before a person authorized to administer oaths. I disagree with this conclusion for two reasons.

First, because Petitioner is a probationer who was arrested for a probation violation, he is not protected here by the Fourth Amendment. *Griffin v. Wisconsin*, 483 U.S. 868, 107 S.Ct. 3164, 97 L.Ed.2d 709 (1987); *Grubbs v. State*, 373 So.2d 905 (Fla.1979). From a constitutional perspective, a warrant was not required to arrest petitioner. *Grubbs*, 373 So.2d at 908 (acknowledging constitutional propriety of section 948.06, which authorizes warrantless arrest of probationers for probation violations). See also, *U.S. v. Cardona*, 903 F.2d 60 (1st Cir.1990) (warrant not required by Fourth Amendment to arrest probationer in

his home for probation violation, even absent exigent circumstances). Therefore, Petitioner should not be heard to complain about defects in a constitutional procedure to which he has no entitlement.

Second, because the "affidavit" here was given under penalty of perjury, it comported with the "oath or affirmation" requirement of the Fourth Amendment. *United States v. Bueno-Vargas*, 383 F.3d 1104 (9th Cir.2004). In *Bueno-Vargas*, the court addressed the sufficiency of a non-notarized, faxed verification — given pursuant to a federal statute similar to section 92.525 — under the Fourth Amendment's

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Oath or Affirmation Clause.⁷ It concluded that "signing a statement under penalty of perjury satisfies the [Fourth Amendment] standard for an oath or affirmation." *Id.* at 1111. In reaching this conclusion, the court reasoned that the underlying purpose for the Fourth Amendment's Oath or Affirmation Clause is to protect the target of the warrant from "impermissible state action by creating liability for perjury . . . for those who abuse the warrant process." *Id.* (quoting *State v. Tye*, 248 Wis.2d 530, 636 N.W.2d 473, 478 (2001)). Thus, held the court, the "true test" under the Fourth Amendment is whether the statement is given under penalty of perjury. *Id.* at 1110. Although *Bueno-Vargas* involved the federal procedure for detention after a warrantless arrest, rather than an application for an arrest warrant, this factual distinction has no legal significance because, as the *Bueno-Vargas* court noted, the constitutional standard for both procedures is the same. *Id.* at 1109.

I agree with the *Bueno-Vargas* court's analysis. It is the potential prosecution for perjury, if anything, that will dissuade an otherwise deceitful affiant from giving a false declaration to obtain a warrant. The largely ritualistic appearance before a notary public is not likely to further the constitutional goal of protecting the warrant's target from impermissible and unjustifiable intrusion by the state. See *United States v. Turner*, 558 F.2d 46 (2d

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*Cir.*1977) (common law ritual of personal appearance before judge not mandated by constitution; oral, telephonic application for warrant, although less solemn, is constitutionally permissible). Because a section 92.525 declaration is made under penalty of perjury, its use in this manner does not violate the Fourth Amendment.

Although the Florida Constitution, Article 1, section 12, also relied upon by the majority, is worded differently than the Fourth Amendment, my conclusion under this provision is the same because the courts are required to construe it in consonance with the Fourth Amendment. *Grose v. Firestone*, 422 So.2d 303 (Fla.1982). Likewise, Florida Rule of Criminal Procedure 3.120 does not necessitate a contrary conclusion because that rule simply "conforms to the Fourth Amendment requirement that probable cause be supported by `oath or affirmation.'" *Kephart v. Regier*, 30 Fla. L. Weekly S182, 183, ___ So.2d ___, ___, 2005 WL 673681 (Fla. Mar. 24, 2005). Moreover, the clear import of *Shearer* is that section 92.525 applies to rules of criminal procedure that specify a particular type of oath. As is evidenced by the dissent in *Shearer*, the court rejected the argument that the form of an oath is a matter of pure procedure

within the exclusive rulemaking authority of the supreme court. Although, as the majority notes, the district courts have not extended Shearer to rules of criminal procedure that do not relate to postconviction relief, none have declined an invitation to apply its unambiguous holding in other contexts. In this case, where the application of section 92.525 to rule 3.120 is entirely consistent with the Fourth Amendment and Florida Constitution, I see no basis upon which to distinguish Shearer.

Because the original affidavit used here was a statutorily sanctioned substitute for a notarized affidavit, a procedure that does not contravene the seizure clauses of the federal and state constitutions or implementing rule, I concur in the result reached by the majority in denying the petition. Despite the scholarly case Judge Sawaya makes for the majority, however, I do not agree that the "good faith exception" fits the circumstances of this case.

The exclusionary rule of evidence mandates the suppression of tangible and intangible evidence obtained in violation of the Constitution. The "good faith exception," when applicable, simply avoids the consequence of the exclusionary rule. Had evidence, such as physical evidence or a confession, been obtained incident to the arrest of Petitioner, the exclusionary rule and exception might come into play. Here, however, Petitioner does not seek to exclude evidence under the exclusionary rule; therefore, the exception has no place.

The issue in this case is simply whether the state properly invoked the tolling provision contained within section 948.06(1), Florida Statutes (2005), by filing an "affidavit." See *Stambaugh*, 891 So.2d at 1139 (for tolling provisions to apply, state must both file an affidavit and obtain a warrant). If the majority is correct on this technical point, the state never filed an "affidavit" because the document, however labelled, was, by definition, not an affidavit. Therefore, if I were to agree with the majority that the affidavit was defective, I would have no choice but to conclude that, because Petitioner's probation expired before an amended affidavit was filed, the lower court lost jurisdiction to proceed. *Id.*

PLEUS, C.J., ORFINGER and MONACO, JJ., concur.

Notes:

5. In defense of the trial judge, Jackson, by permitting the amendment after remand, was confusing.
6. In her concurring opinion, Judge Griffin necessarily acknowledges that section 92.525 is intended to apply to some affidavits, because the statutory definition of "document" includes affidavits. She argues, however, that only something called a "verified affidavit" is intended to fall within the ambit of section 92.525, and she cites an isolated reference wherein the legislature has used this phrase in another statute. Perhaps the use of the word "verified" as a modifier to the word "affidavit," due to its redundancy, is simply the product of imprecise writing by a legislative scrivener. Nevertheless, the fact remains that section 92.525, when given its plain meaning from the unambiguous, broadly-worded text, leads inescapably to the conclusion that the statute is intended to provide an alternative to the notarized form of oath.
7. 28 U.S.C. § 1746 provides:

Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form:

.....
(2) If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date).

(Signature)".

Numerous decisions have concluded that a "verification" under this statute is the equivalent of an "affidavit." See, e.g., *Burgess v. Moore*, 39 F.3d 216, 218 (8th Cir.1994) (documents signed under penalty of perjury satisfy affidavit requirements in federal proceedings); *Goldman, Antonetti, Ferraiuoli, Axtmayer & Hertell v. Medfit Int'l, Inc.*, 982 F.2d 686 (1st Cir.1993) (non-notarized document substitute for affidavit in summary judgment proceeding); *Trammell Real Estate v. Trammell*, 748 F.2d 1516 (11th Cir.1984) (verified bill of costs authorized substitute for affidavit required by rule); *Williams v. Browman*, 981 F.2d 901 (6th Cir.1992) (non-notarized verification same as affidavit for summary judgment proceeding); *Carter v. Clark*, 616 F.2d 228 (5th Cir.1980) (non-notarized document substitute for affidavit in federal proceedings notwithstanding contrary local rule); *Uncle Henry's Inc. v. Plaut Consulting Inc.*, 240 F.Supp.2d 63 (D.Me.2003) (affidavits need not be notarized to be cognizable for summary judgment so long as they are made under penalties of perjury pursuant to 28 U.S.C. § 1746); *Hameed v. Pundt*, 964 F.Supp. 836 (S.D.N.Y.1997) (non-notarized declarations admissible in support of summary judgment motion); *Kersting v. U.S.*, 865 F.Supp. 669 (D.Hawai'i 1994) (verification acceptable substitute for affidavit in support of motion for new trial); see also *People v. Sullivan*, 56 N.Y.2d 378, 452 N.Y.S.2d 373, 437 N.E.2d 1130, 1133 (N.Y.1982) (where court observed that statements expressly made under penalty of perjury possibly provided greater assurance against misstatement than routine of swearing before a notary); *Galvin v. Town Clerk of Winchester*, 369 Mass. 175, 338 N.E.2d 834, 836 (1975) (statement containing written declaration made under penalty of perjury, under state statute, satisfies requirement of an "affidavit").

Appendix 08 Loyalty Oath Search Result

Pursuant to Florida Statutes [Chapter 119](#) the below Requester asked Oath Searcher (me) to provide a certified copy of the loyalty oath the below Employee of my agency gave pursuant to Florida Statute [876.05](#) ("I, ____, a citizen of the State of Florida and of the United States of America, and being employed by or an officer of _____ and a recipient of public funds as such employee or officer, do hereby solemnly swear or affirm that I will support the Constitution of the United States and of the State of Florida.)"

Employee Name _____ ID # _____
(Target of oath search – person for whom Requester seeks oath)

Employee Job Title _____

Employing Agency _____

Statement of Oath Searcher – Under [penalties of perjury](#) I hereby certify that:

- I located the requested oath or a similitude thereof and attached a copy hereto.
- I could not locate the requested oath document or a similitude thereof, and...
- I do not know whether it exists. I believe it exists in the following location:

Oath Searcher Name _____ ID# _____

Signature _____ Date _____

Statement of Two Witnesses: I witnessed the above Oath Searcher:

- Sign this document truthfully as requested
- Refuse or fail to sign this document truthfully as requested

Witness 1 Name _____

Witness 1 Address _____

Witness 1 Signature _____ Date _____

Witness 2 Name _____

Witness 2 Address _____

Witness 2 Signature _____ Date _____

REQUESTER - Person Requesting to Receive Copy of Oath Document:

(Note: Return this fully executed form with requested document to Requester by hand or mail)

Requester Name _____

Requester Address _____

City _____ State _____ Zip _____

Appendix 09 Instant Affidavit, Narrative Form.

STATE OF _____

COUNTY OF _____

AFFIDAVIT of WITNESS TO PROCEEDINGS

Before me this day personally appeared Affiant _____,
residing at _____,
who, being duly sworn, deposes and says:

I, as Witness to Proceedings, and a Lawful Man or Woman over the age of majority, and having first hand knowledge of the facts herein, hereby timely say that I witnessed on the below date the following behaviors and activities in the room and location, and related to the Public Officer and Case number below, and I hereby certify the non-misleading fact, truth, accuracy, and material completeness of my statements to the best of my knowledge and belief, with no intent of improper purpose such as to harass, cause unnecessary delay, or increase litigation cost:

Date: _____ Room: _____ Location: _____

Presiding Officer, Magistrate, or Judge: _____ Case # _____

Behaviors and Activities Witnessed:

Further, Affiant says naught.

[Signature of Affiant and Witness to Proceedings]

On ____ (day) _____ (month) _____ (year), Affiant, personally known, or produced identification of type _____, appeared before me, swore to (or affirmed) and subscribed the above affidavit before me.

(Seal)

Notary Signature _____

Notary Name _____

Appendix 10 Communiation with Florida State Courts Administrator

From: Laura Rush [mailto:RushL@flcourts.org]
Sent: Thursday, June 07, 2007 9:57 AM
To: bob@bobhurt.com
Subject: Loyalty Oaths

Mr. Hurt – Your May 27 e-mail to Steven Hall in the Office of the State Courts Administrator was forwarded to me for review. My staff is researching the issues raised in your e-mail. I will contact you as soon as we have completed our research and analysis.

Sincerely,
Laura Rush
General Counsel
Office of the State Courts Administrator
500 South Duval Street
Tallahassee, FL 32399-1900
850.488.1824

Thank you, Laura. I appreciate your speedy response. I shall assist you in any way I can. I have attached my latest version of my research article *Loyalty Oaths in Florida*, revised 11 June 2007, for your review.

Loyalty Oath Problems and Why They Have Such A Serious Nature

We do have serious problems with loyalty oaths in Florida. At the top of the heap: attitudes by high level officials and legal counsel in the government of Florida, beginning with the Governor and Department of State. Someone there decided to remove the jurat from the loyalty oaths. That causes two problems:

1. We do not know whether the oath-giver actually signed the oath, and cannot prove it in court.
2. Removal of the jurat flouts the law by conspiring in the violation of Florida Statute 876.05.

We have numerous associated problems as well:

1. I have found plenty of Public Officer's oaths (Article II Section 5(b), Florida Constitution) on file, but they do not constitute compliance with 876.05. I have not found any 876.05 oaths on file with state courts administrators.
2. All paymasters, whether State Courts Administrators or Comptrollers, violate the array of statutes in 876.05-876.10 by failing to have the 876.05 oath on hand before paying the judges.
3. Your administrators around the state should not hand out paychecks to judges who do not have on file a precisely worded, notarized 876.05 oath, and the Comptroller should not make direct deposits of pay into judges' bank accounts without having that oath on file.

4. Statute 876.06 requires that the government discharge employees who fail to execute the 876.05 oath, and any employing official who fails to discharge such an employee thereby commits a second degree misdemeanor under 876.08.
 - a. Your administrators should effectively fire every judge who does not have a valid 876.05 oath.
 - b. Because of your control over paychecks, you have both the power and the responsibility to take that action.
 - c. If you cannot yourselves take the action, then you should insist that the appropriate party do it. I want to know the job title of such parties.
 - d. Other than appointed Senior Judges, we elect judges, so I do not presume that they work for the Supreme Court. Thus, the Supremes cannot fire them.
 - e. Maybe the Supervisors of Elections have the authority to declare them un-elected for want of executing and having notarized their 876.05 oaths. I believe the Supervisors have that authority because the election process has not run its course till the judge qualifies lawfully to take his first paycheck PRIOR to performing any duties of the office.
 - f. Therefore, the State Courts Administrators must inform the Election Supervisors of the fault for any judge who fails to execute and have notarized his or her 876.05 oath.
 1. In the event the State Courts Administrator incurs the penalty of 876.08 by failing to inform the Election Supervisor of the judge's failure to have a valid 876.05 oath on file, but
 2. the Election Supervisor incurs the penalty by failing to declare the judge Not Elected if so informed by the State Courts Administrator.
5. The law clearly requires that an executed oath bear the signature of the employee and the signature and seal of the person duly authorized to take oaths for acknowledgement. Without both, the oath does not have legal sufficiency.
6. The Judge MUST take these loyalty Oaths, and you should demand that the State Courts Administrators and the judges themselves have them available for instant public access:
 - a. 97.051 Elector's oath
 - b. Bar oath (see Bar Examiner rules – the public cannot access these, but Attorneys can buy a certified copy for \$30)
 - c. 876.05 oath, pre-candidate (most recent election or appointment)
 - d. 105.031 Candidate's oath (most recent election or appointment)
 - e. A2S5b Public Officer's oath (most recent election or appointment)
 - f. 876.05 oath, pre-paycheck (most recent election or appointment)
7. Note that the law requires all of these oaths in sequence because at any time, a person can "unswear" his oath or "change his mind," and so a previously sworn oath does not suffice. Thus a judge must swear loyalty before becoming a candidate (876.05), upon getting elected (A2S5b), and again prior to first performing the duties of the office (876.05). While the judge might consider this just too, too tedious, so what? The people and our legislator feel scared out of our wits by the idea of an insufferably arrogant, corrupt judge of the kind that mostly populate our courts these days. We wouldn't trust our mothers to govern us wisely without the pressure of a loyalty oath guaranteeing to honor and protect our Constitutionally guaranteed rights. Judges provide the consummate vehicle for enforcing that guarantee, so we DEMAND that someone trustworthy like a notary public take the oath-giver's oral and written oath and witness the oath-

- giver's signature upon the oath document, then sign and seal the witness' attestation. Nothing less can possibly suffice to give us peace of mind.
8. Attorneys in the Florida State Department have speciously claimed that Florida Statute 92.525 allows the public officer to substitute a penalty of perjury statement for a jurat.
 - a. Let us first remember that 92.525 deals with oaths of witnesses in official (court) proceedings, and not with the general practice of administering loyalty oaths for public office, which typically do not happen in "official" proceedings (although I believe all judges should so swear at the beginning of every judicial proceeding.
 - b. Second let us attend to the fact that the statute text "*(1) When it is authorized or required by law, by rule of an administrative agency, or by rule or order of court that a document be verified by a person, the verification may be accomplished in the following manner:*" specifically **refers to a document, not to the oral swearing of an oath**, of loyalty, which the notary, clerk, or judge hears orally admitted by the oath giver. The oral swearing of the oath, *not the verification of the oath document*, constitutes the primary act witnessed. 876.05 says the oath giver is "*required to take an oath before any person duly authorized to take acknowledgments of instruments for public record.*" It does not say the oath giver must verify a document.
 - c. The attorneys who advocate the fraudulent 92.525 argument suffer under a corrupting influence, perhaps one that threatens their job and bar membership if they don't advocate. Otherwise, how can they possibly explain that for many years prior to 2000, all oaths bore jurats? Had everyone prior to that time lost his mind? Or did Jeb Bush, in a fit of pique over the jurat, demand that his minions remove it from oath forms? I believe he did. I obtained a copy of his 1998 and 2002 oaths. The 1998 oath bore a jurat all right, but Jeb signed the document where he should have AND where the notary should have. The 2002 oath document did not bear a jurat. Go ahead and call Joel Mynard at the Bureau of Records and have him send you a copy of each. Then you might get some inkling as to why the jurat disappeared.
 9. As a consequence of failing to have the 876.05 oaths notarized, every judge elected since 2000 has committed serious crimes regarding loyalty oaths:
 - a. Misdemeanor perjury violation of 105.031 (by failing to have a valid 876.05 oath with jurat prior to swearing candidate oath required by 105.031(5)(a)(3).)
 - b. Misdemeanor violation of 876.07, taking office without qualification, under 839.18 Penalty for officer assuming to act before qualification.
 - c. Felony violation of 843.0855 Obstruction of Justice by impersonating a public officer
 10. In spite of these blatant crimes, not a single Sheriff's deputy, Sheriff, State Attorney, State Trooper, or Florida Department of Law Enforcement Official has lifted a finger or a pen to bring these perpetrators to justice... to their everlasting shame.
 11. Florida's judges have gone out of control and made crime rampant in our courts, from the highest to the lowest.
 - a. I have sat in many hearings and watched judges stomp mercilessly and with impunity on litigants' and observers rights, using bailiffs like a pack of rabid lap dogs to wield and enforce their unmerciful and unjust edicts.

- b. Judges routinely conspire to alter the official record by directing court reporters to omit important discourse or commentary from it, and that has grown so egregious that many Circuit Chief Judges deny the public access to the CourtSmart recordings, lest the public discover their criminal and conspiratorial chicanery.
- c. I believe bribery by law firms commonly corrupts judges in every judicial circuit, and pro se litigants have no hope of obtaining justice.
- d. I know for a fact that the clerk of the Supreme Court routinely and ALWAYS dismisses the cases of pro se litigants who faced opponents represented by attorneys in the District Courts of Appeal, and the DCAs routinely rule against pro se litigants who faced opponents represented by attorneys.
- e. Such collusion to defeat justice amounts to an utter desecration of honor, and all of the judges likewise turn a blind eye to this loyalty oath mess.
- f. I have all but lost complete and total respect for our judiciary.

You do have an opportunity to start the process of straightening out these renegades. Will you do your job and push the process to start firing judges? Or will you become part and parcel of the corruption that has destroyed the Florida Republic?

A Case Against Florida's Biggest Racketeering Industry

Note this: I have almost finished planning a racketeering lawsuit against the entire judiciary in Florida, including the judges, clerks, and every bar member. Why?

1. The US Constitution guarantees that the states will have Republic governments. Article IV Section 4. **The United States shall guarantee to every state in this union a republican form of government**, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence.
2. A republic has balance and separation of powers so that the same laws bind both the rulers and the ruled.
3. Our loyalty oaths constitute the only guarantee that public officers will protect our rights, and not stomp on them.
4. In 1949, the Supreme Court absorbed the Florida Bar. Thus all bar members (attorneys and judges) belong to the Judicial Branch of Florida's government.
5. The Florida Bar is a private corporation that holds secret meetings the public cannot attend. See State Dept filing - **FLORIDA BAR, Document Number X00629, Status ACTIVE, Filed Date 04/06/1989** (no other data available). http://www.sunbiz.org/scripts/cordet.exe?action=DETFIL&inq_doc_number=X00629&inq_came_from=NAMFWD&cor_web_names_seq_number=0000&names_name_ind=N&names_cor_number=&names_name_seq=&names_name_ind=&names_comp_name=FLORIDABAR&names_filing_type=
6. Compare this with "The Florida Bar Association, Inc" of Bradenton, probably a poke in the eye of the Florida Bar. http://www.sunbiz.org/scripts/cordet.exe?action=DETFIL&inq_doc_number=N05000009115&inq_came_from=NAMFWD&cor_web_names_seq_number=0000&names_name_ind=N&names_cor_number=&names_name_seq=&names_name_ind=&names_comp_name=FLORIDABAR&names_filing_type=,
7. The Executive Branch contains numerous bar members, some Constitutional officers, like the Attorney General, State Attorneys, Assistant State Attorneys, and staff counsel like you.

8. The Legislative Branch contains numerous bar members, including many legislators and a bunch of staff members and legislative aids and staff counsel like you.
9. Thus, all three branches contain bar members who belong to the Judicial Branch.
10. Florida Constitution Article II **SECTION 3. Branches of government.**-- The powers of the state government shall be divided into legislative, executive and judicial branches. **No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.**
11. Thus, the Florida Constitution is criminal on its face - it violates the US Constitution by destroying the Republic's republican nature through requiring Constitutional officers to belong to the Bar, a private corporation, and it commits governmental insanity by allowing Bar members to participate in government at all. No wonder judges and law firms collude to destroy the very fair and impartial justice they promised under "loyalty oaths" that they would deliver.
12. The whole scheme of Bar infiltration of every nook and cranny of every level and branch of government amounts to an enormous racketeering scam intended to defraud the people and extort millions of dollars annually from them through bogus trials in which all attorneys (yes, even defense attorneys) have their first loyalty to the court, not to the Constitution (and clients become wards of the court - see CJS V7 on Attorney-Client Relationship).

Don't you agree that I can make a good case for racketeering? Never mind. Consider that question rhetorical.

I hope you will correspond openly and honestly with me, and not pretend that 92.525 excuses the judges from the obligation to give their proper 876.05 oaths, including having the oaths signed and sealed by a proper notary or other appropriate officer.

Please, let me see some fast and decisive action in forcing all public employees properly to execute oaths to which a notary or other appropriate officer signs and seals a jurat.

Sincerely and without prejudice (UCC 1-308),
Bob Hurt

Appendix 11 Letter from Lynn Hearn to Amy Tuck Recommending Jurats



FLORIDA DEPARTMENT OF STATE

CHARLIE CRIST
Governor

KURT S. BROWNING
Secretary of State

May 1, 2007

To: Amy Tuck, Director, Division of Elections

From: Lynn C. Hearn, General Counsel

Re. Candidate and Employee Oaths

For the reasons set forth below, I recommend that that the Division of Elections modify the forms containing the Loyalty Oath For Candidates For Public Office and the Oath of Office for public employees (collectively, "Oath Forms") to require that these forms be notarized.

Section 876.05, Florida Statutes (2006), requires that all employees of the state, counties, cities, school districts, etc. "take an oath" promising to support the Florida and U.S. Constitutions "before any person duly authorized to take acknowledgments of instruments for public record in the state." This oath is also required by candidates seeking to qualify for public office, § 876.07, Fla. Stat. (2006). An additional oath is required by candidates pursuant to Section 99.021, Florida Statutes (2006); this section requires candidates to take an oath before "an officer authorized to administer oaths" stating that the candidate is qualified to hold the office which he or she seeks and, if applicable, that the candidate is a member of the political party for which he or she claims affiliation. Notarization of each of these oaths would clearly satisfy the respective statutory requirements, as a notary public is authorized to take acknowledgement of instruments of writing for public record in this state and is authorized to administer oaths within the state_ See §§ 92.50(1), 117.04, Fla. Stat. (2006).

However, our current Oath Forms do not contain a notarization requirement. Instead, they require the public employee / candidate to declare, "[u]nder penalties of perjury . . . that I have read the foregoing oath and that the facts stated in it are true." It may technically be permissible to substitute this language for notarization language pursuant to Section 92.525, Florida Statutes (2006), which permits the "penalties of perjury" language to be used when Florida law requires a document, including an affidavit, to be "verified." Nevertheless, some uncertainty exists in case law regarding the appropriate applicability of Section 92.525. *Compare State v. Shearer*, 628 So. 2d 1102 (Fla. 1993) (holding "notarized oath" required by rule of criminal procedure was satisfied by use of language in Section 92.525) *with Crain v. State*, 914 So. 2d 1015, 1020 (Fla. 5th DCA 2005) (statute requiring "affidavit" was not satisfied by unsworn statement containing language in Section 92.525) (en banc), *rev. denied*, 914 So. 2d 1015 (Fla. 2005). In light of the courts' inconsistent views with respect to Section 92.525, I believe the better course is to require each of the Oath Forms to be notarized.

Amy Tuck, Director, Division of Elections
Re: Candidate and Employee Oaths May 1, 2007
Page 2

There is no need to go back and have all previously filed Oath Forms notarized, and there is no concern that public officers and employees whose oaths were not notarized lack authority to carry out their official responsibilities. Even in the extremely unlikely event the oath forms are deemed technically deficient because they were not notarized, the well-settled "de facto officer" doctrine provides that acts taken under color of official title are valid even if technical defects in statutory authority are later discovered (citing *McDowell v. United States*, 159 U.S. 596 (1895), in which the Court rejected a claim that an order designating a district judge was defective); *State ex rel. Hawthorne v. Wiseheart*, 28 So. 2d 589, 593 (applying de facto officer doctrine to reject challenge to circuit judge's authority, stating "the de facto doctrine was engrafted on the law for public policy and necessity, in order that the interest of the public and others dealing with the officer might be protected"); *see also State ex rel. Siegenorf*, 266 So. 2d 345, (Fla. 1972) (rejecting assertion that oath of candidacy was defective because it failed to include full name of office sought; holding "literal and total compliance" with technical statutory language is not required to meet statutory requirements of qualification for public office). Of course, in the event there is a challenge to the lack of notarization of any public officer's oath, the alleged deficiency can be easily remedied by having the oath notarized.

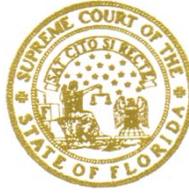
I appreciate your attention to this matter. Please let me know if you have any questions.

Copies to: Kurt S. Browning, Secretary of State
Dawn K. Roberts, Assistant Secretary of State
Jennifer Kennedy, Deputy Secretary of State
Gary Holland, Assistant General Counsel

R. A. Gray Building • 500 South Bronough Street • Tallahassee, Florida 32399-0250
Telephone: (850) 245-6500 • Facsimile: (850) 245-6125
www.dos.state.fl.us

Appendix 12 Gary Phillips 9 October 2007 Memo to Chief Judges

R. Fred Lewis
Chief Justice



Elisabeth H. Goodner
State Courts Administrator

Office of the State Courts Administrator

Laura Rush
General Counsel
850.488.1824 / 850.410-5301 Fax / rushl@flcourts.org

April 14, 2008

Mr. Bob Hurt
2460 Persian Drive #70
Clearwater, FL 33763

Dear Mr. Hurt:

This letter responds to your March 19 public records request, as clarified by your April 10 e-mail, for: (1) orders from the Office of the State Courts Administrator (OSCA) or the Florida Supreme Court that caused judges to execute new oaths in the fall of 2007; and (2) procedures within OSCA and the circuit court administration offices for verifying credentials of new judges and for issuing pay requisitions for new judges.

Copies of records relating to your first request are enclosed. A Court staff e-mail address made confidential by rule 2.420(c)(2), Florida Rules of Judicial Administration, has been redacted.

OSCA has no written procedures relating to the verification of credentials for new judges or for issuing pay requisitions for new judges. Individual circuit and appellate court administration offices may have written procedures for their court. You may wish to check with these courts as to whether written procedures exist.

Sincerely,


Laura Rush

Laura Rush

From: Gary Phillips
Sent: Tuesday, October 09, 2007 2:13 PM
To: DCA Chief Judges; Trial Court Chief Judges; DCA Marshals; Trial Court Administrators
Cc: Justice R. Fred Lewis; Lisa Goodner; DCA Personnel Reps; Circuit Personnel Reps
Subject: oath of loyalty memo 10 9 07
Attachments: Oath of Loyalty form for Judges.doc; Employee Oath of Loyalty - At-Will Acknowledgement form.doc

If you have any questions feel free to call me at (850) 617-4028.

Phone: (850) 617-4028 Fax: (850) 488-3744

MEMOR ANDUM

TO: Chief Judges of the District Court of Appeals
Chief Judges of the Circuit Courts
DCA Marshals
Trial Court Administrators

FROM: Gary R. Phillips, Chief of Personnel Services

DATE: October 9, 2007

SUBJECT: Oath of Loyalty for Judges and Employees

It has come to my attention that there are no signed and notarized oaths of loyalty forms on file for some of our judges. Chief Justice Lewis has asked that DCA Marshals and Trial Court Administrators review all judges' personnel files to ensure that each judge has a signed and notarized oath of loyalty form on file.

Section 876.05, Florida Statutes, requires that the oaths of loyalty for employees and officers be filed with the records of the governing official or employing governmental agency prior to approval of any voucher for the payment of salary, expenses, or other compensation. Florida law imposes criminal penalties upon any employer or governing authority for knowingly permitting an employee to continue employment after failing to execute an oath of loyalty. The law also requires discharge of employees in addition to prohibiting payment to employees and officers who refuse or fail to execute the oath.

After reviewing our current oath of loyalty form I have found it to be confusing as it was intended to be a combination oath of loyalty for judges and employees, and an acknowledgment of at will employment for employees. These forms have been separated and revised, and are attached to this memorandum. While conducting your review, please note that all existing signed and notarized forms are valid. Please only use the new forms in instances when a valid form is not on file.

Oath of Loyalty for
Judges October 9,
2007
Page 2

Please complete this review and obtain any missing signed and notarized forms for judges as soon as possible prior to the next warrant date of October 31, 2007, in order to be compliant with the law. Upon executing forms as necessary, please have your Marshal or Trial Court Administrator verify to me, via e-mail to phillipsg@flcourts.org, that all of your judges have signed and notarized oaths of loyalty on file.

After completing this review for your judges, it is strongly advised that you have your employees' files reviewed, as well. This will ensure that they also have signed and notarized oath of loyalty and acknowledgment of at will employment forms on file.

GRP/

cc: Chief Justice Lewis
Lisa Goodner
Personnel Representatives

Appendix 13 Jack Thompson's 23 May 2008 Federal Lawsuit

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 08-21493

JUDGE WILLIAM HOEVELER/MAGISTRATE GARBER

JOHN B. THOMPSON,

Plaintiff,

v.

STATE OF FLORIDA,

Defendant.

COMPLAINT FOR DECLARATORY JUDGMENT

COMES NOW plaintiff, John B. Thompson (Thompson), sues the State of Florida for declaratory and injunctive relief, stating:

THE PARTIES

1. Thompson is a citizen of the United States, a resident of Miami-Dade County, Florida, a lawyer in continuous good standing with The Florida Bar since he became a lawyer in 1977, and more than eighteen years of age.

2. The State of Florida (Florida) is not only one of the fifty states of the United States but is referred to herein and named as a defendant as the government of this state.

JURISDICTION AND DEMAND FOR JURY TRIAL

3. "The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States," per 28 USC 1331.

4. Thompson seeks a declaratory judgment as to this civil action arising under the Constitution and laws of the United States pursuant to 28 USC 2201 and Rule 57, Federal Rules of Civil Procedure.

VENUE

5. This U.S. District Court in the Southern District of Florida is the appropriate venue, given the domicile of the plaintiff and the fact that many of the illegal acts complained of herein, which violate the U.S. Constitution and federal laws have occurred and are occurring in this venue.

THE FACTS

6. Article VI of the United States Constitution mandates:
"The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and ***all executive and judicial Officers, both of the United States and of the several States***, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States. [emphasis added]

7. The significance of oaths and their indispensability was recognized upon the creation of the United States. The Continental Congress, which existed from 1774 to 1779 and which

authored the Declaration of Independence by which it created this nation, mandated loyalty oaths.

8. The United States Congress, in furtherance of Article VI, cited above, enacted Title 4, Chapter 4, Section 101:

“Every member of a State legislature, and every executive and judicial officer of a State, shall, before he proceeds to execute the duties of his office, take an oath in the following form, to wit: ‘I, A B, do solemnly swear that I will support the Constitution of the United States.’”

9. This federal requirement that state executive and judicial officers “take an oath” of loyalty to the national Constitution was the first federal mandate passed by Congress. It is an important mandate for many reasons, not the least of which is the fact that our entire Anglo-American system of jurisprudence hangs on the efficacy and enforceability of oaths. For example, a witness who is not compelled to take an oath or affirmation cannot be compelled to tell the truth and cannot be punished for his failure to do so. This is elemental. So, too, the Founders obviously considered it elemental that unless state executive and judicial officers could be mandated to swear loyalty and allegiance to at least the U.S. Constitution, then failure to be loyal could not be punished. An oath not taken is an oath that can be ignored.

10. The State of Florida embodies in both its Constitution and its statutory law compliance with this federal mandate. Article II, Section 5(b) of the Florida Constitution mandates that each and every state official must take the loyalty oath.

11. The Florida legislature has gone even further and mandates that not only all officers but also all employees at the state, county, and local levels must take a loyalty oath separate and apart from the oath found in the state Constitution. That oath is found, along with its enforcement provisions, at Florida Statute 876.05, *et sequitur*. Failure to timely comply with this statutory oath requires removal from office. Failure also voids all acts by a noncompliant officer or employee, as this individual is literally without governmental authority to act. So serious is a breach of this state fulfillment of the federal oath mandate that the statute provides that the official responsible for overseeing compliance with the oath by any and all officials and employees and who fails to discharge the noncompliant person is guilty of a crime. See Florida Statute 876.08.

12. The ignorance of the law in this nation and in this state as to the importance of oaths of office and the consequences for failure to comply therewith is legion. Indeed, plaintiff asserts, as a matter of fact, that violation of these laws is widespread and the Founders would consider, rightly, this widespread disregard of the law and the U.S. Constitution to be grave in its consequence.

13. Plaintiff hereat relates a consequence that has befallen him that provides him standing, in every sense, to raise the State of Florida’s widespread flouting of this federal mandate, to-wit: During the course of Thompson’s four-year ordeal through which the State of Florida has sought to use state bar “discipline” as a means to punish him for First Amendment-protected and faith-based speech, he discovered that The Florida Bar Referee chosen to preside over these “disciplinary” proceedings, Miami-Dade Circuit Court Judge Dava J. Tunis, had never executed the mandatory state loyalty oath.

14. When Thompson served a Public Records Law Request upon Miami-Dade Circuit Chief Judge Joseph P. Farina, Jr., Thompson found, by way of truncated narrative, that Tunis’ first loyalty oath was forged by the notary and that her next two oaths were neither sworn to before a notary, as required by state law, nor were they compliant as to the mandatory language required by state statute.

15. A criminal investigation was commenced as to the forgery, and on May 16, 2008, the Miami-Dade State Attorney’s Office issued a formal Memorandum finding that not only was Tunis’ oath forged but so too were the oaths of two other judges. The aforementioned Chief Judge, despite repeated written requests, had refused to provide the oaths of Miami-Dade Circuit Court Judges, in open defiance of the state’s Public Records Law. Farina still refuses to produce those oaths, but the “cat was let out of the bag” by the State Attorney.

16. The consequence of this for Thompson is stunning. Tunis cannot continue to serve on the bench either in his matter or in any other matter. Nor can the other two judges. The gravity and truth of this lapse is proven, really irrefutably, by the fact that these three judges, apparently in a panicked attempt to close the barn door after the horse had exited, executed, *post facto*, on February 4, 2008, what they hoped would be ameliorative state loyalty oaths. This is an admission that they did not have valid loyalty oaths prior to that date. Unfortunately, the law is clear that a valid loyalty oath must be executed *before* an office is entered into by the official, judicial or otherwise. The Florida Supreme Court has ruled, as already alluded to, that failure to timely execute an oath disqualifies the office holder from holding the office. The Court has also made it clear that the reasons for failure to comply with the mandated oath requirements are immaterial.

17. However, it is clear, and truly irrefutable, that all acts at least prior to the execution of the panicked “after the fact” oaths are null and void. Why would a judge execute an oath if his/her prior oaths were valid? Answer: He would not. The attempt at fixing the unfixable is a useful, powerful admission that at least prior to February 4, 2008, there was a serious problem arising from noncompliance with the oath.

18. The Attorney General of the State of Florida has repeatedly officially opined, in serial formal Opinions that our state’s loyalty oath must be complied with strictly and cannot be circumvented. Not a single word in the mandated statutory oath may be altered. See AGO-96-41.

19. Further, the United States Supreme Court in *Connell v. Higginbotham*, 403 U.S. 207 (1971) established that Florida’s statutory loyalty oath was unconstitutional as to its requirement of officers and employees that they disavow Communism but fully constitutional as to a pledge of loyalty that is found in the current mandatory statute. In doing so, the nation’s highest court established that this is a *federal question* and that Florida must comply with federal laws and the Constitution when it comes to loyalty oaths.

20. Returning from the general the specific, as it impacts plaintiff, it turns out, as revealed in the aforementioned State Attorney’s Memo, that one of the three judges whose loyalty oaths are forged is Miami-Dade Circuit Court Judge Orlando Prescott. “Judge” Prescott was the Bar Referee hand-picked to preside over *The Florida Bar v. Montgomery Blair Sibley*. Who is Mr. Sibley? Mr. Sibley is the one lawyer in Florida whom The Florida Bar may want to destroy as much as plaintiff Thompson. So keen is The Florida Bar and the Florida Supreme Court in this regard that Sibley’s Bar prosecutor Barnaby Lee Min, who coincidentally was Thompson’s lead prosecutor as well, took to the pages of the *Washington Post* to explain why Mr. Sibley must not be allowed to practice law. Mr. Sibley’s Bar Referee then, like Thompson’s, had and has no authority to sit on the bench and thus no authority to serve as a Referee. All of his actions within *Bar v. Sibley* are void, as are all of Tunis’ in *Bar v. Thompson*.

21. Finally, Thompson raised the failure of his Bar Referee to comply with the federally-mandated state loyalty oath law to the Florida Supreme Court. For nearly four years the Florida Supreme Court ignored Thompson and allowed him to file his allegedly “meritless” and “frivolous” pleadings. However, when Thompson raised the loyalty oath problem and its grave consequences for the legitimacy of the disciplinary process, the Florida Supreme Court decided to move against Thompson. Thompson had actually had the temerity to point out to the Florida Supreme Court that not only had Tunis failed to execute valid state loyalty oaths but so had six of the seven Florida Supreme Court Justices failed to comply with that same law, as Thompson’s Public Records Law request for the Justices’ oaths proved. In retaliation for bringing to the Florida Supreme Court’s attention the widespread failure to comply with the law in these regards, the Florida Supreme Court immediately entered an order depriving him of his Sixth Amendment right to represent himself.

22. The Florida Supreme Court’s own docket proves the nexus between Thompson’s raising the loyalty oath problem and that same Court’s retribution against Thompson for doing

so. The Florida Supreme Court by its own panicked retributive convulsion has inadvertently proven just how serious and consequential its and other Florida judges' breach of this law is.

23. Finally, it is alleged that the failure of state, county, and local officials and employees to comply with the loyalty oath laws is not only widespread but brazen. Thompson asked The Florida Bar, through a Public Records Law Request, to produce to him copies of all state loyalty oaths executed by all employees of The Florida Bar. This court is apprised that The Florida Bar has secured federal abstention from relief sought by Thompson against The Florida Bar. Abstention is not an issue and cannot even be raised in this instant action. However, in those other actions The Florida Bar has solemnly assured U.S. District Judges Huck and Jordan that The Florida Bar is a state agency acting under color of state law.

However, The Bar's response to Thompson's Public Records Law Request for this state agency's employees loyalty oaths is to have its Executive Director John Harkness write Thompson and tell him that such executed oaths do not exist because Bar employees are not state employees even though FS 876.05 mandates that the employees of any "agency" of the state government must execute valid loyalty oaths. This is important, which is why the plaintiff repeats it: The Florida Bar claims it is *not* a state agency and thus does not even have to bother with executing state loyalty oaths. Is The Florida Bar a state "agency?" The United States Eleventh and Tenth Circuit Courts of Appeals say so! It says so in *O'Connor v. The Florida Bar*, Case No. 06-2062 and available on-line at <http://ca10.washburnlaw.edu/cases/2006/09/06-2062.htm>:

Mr. O'Connor argues that the Florida Bar is a private entity and so is not entitled to Eleventh Amendment immunity. However, the Eleventh Circuit, which encompasses Florida, has held to the contrary. See *Kaimowitz v. Fla. Bar*, 996 F.2d 1151, 1155 (11th Cir. 1993) (per curiam) ("*Plaintiff's only response to the Defendants' argument is his unsupported assertion that the Florida Bar is **not a state agency** for Eleventh Amendment purposes. Plaintiff's assertion is contradicted by the preamble of the Rules Regulating the Florida Bar, whereby the Supreme Court of Florida established the bar as 'an official arm of the Court.'"). Further, the Florida Supreme Court, **who ought to know**, has also characterized the Florida Bar as "'an official arm of the Court.'" *Fla. Bar v. Committee*, 916 So.2d 741, 745 (Fla. 2005) (quoting R. Regulating Fla. Bar, Introduction), *cert. denied*, 126 S. Ct. 1890 (2006)."*

Thus, as seen immediately above, two separate federal Circuit Courts of Appeal hold that The Florida Bar is a "state agency." The employees of Florida state "agencies" are bound to comply with Florida Statute 876.05, et sequitur, which fulfills the federal mandate for state loyalty oaths.

With all respect for the language that is expected of lawyers before tribunals, the above-proven brazen disregard by The Florida Bar *itself* for the laws and constitutions of our nation and state, even to the point of proclaiming with hauteur, in writing, that it is above the law when it comes to loyalty oaths, claiming in one setting it is a state agency and claiming in others that it is not a state agency, summons forth the words and warnings of U. S. Supreme Court Justice Brandeis in *Olmstead v. U.S.*, 277 U.S. 438 (1928):

"Decency, security, and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizen. In a government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously. Our government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy."

The Florida Bar's failure to comply with the state loyalty oaths law voids the actions of all of its employees, as they are literally stripped by this noncompliance of any authority whatsoever to act upon behalf of the State of Florida and any of its "agencies." Lawbreaking must have a consequence; this is the consequence.

RELIEF SOUGHT

WHEREFORE, plaintiff John B. Thompson seeks a declaratory judgment that the defendant State of Florida has not been in compliance with the United States Constitution, federal law, and state laws and the State Constitution pertaining to loyalty oaths for all executive and judicial officers and all employees, including Florida Bar employees.

Further, plaintiff seeks a declaratory judgment that the State of Florida must comply henceforth with the aforesaid laws and constitutions.

Further, plaintiff seeks a declaratory judgment that to the extent that the State of Florida and its various officers and employees have not complied with the applicable mandatory loyalty oath laws that said officers and employees are without authority to discharge governmental duties.

Plaintiff seeks any other order, including permanent injunctive relief, which may or must necessarily flow from such declaratory judgment and relief in order to give full force and effect to such a declaratory judgment and relief as this court deems appropriate, necessary, and proper.

JOHN B. THOMPSON, Plaintiff
Attorney, Florida Bar #231665
5721 Riviera Drive
Coral Gables, Florida 33146
Phone: 305-666-4366
amendmentone@comcast.net

Appendix 14 SC 06-1397- Bar v Sibley Ruling
Supreme Court of Florida

No. SC06-1387

THE FLORIDA BAR,
Complainant,

vs.

MONTGOMERY BLAIR SIBLEY,
Respondent.

[September 25, 2008]

PER CURIAM.

We have for review post-discipline motions filed by Montgomery Blair Sibley. The motions challenge the authority and power of some Supreme Court justices to act as constitutional judicial officers. Sibley is not entitled to relief, and we write to resolve this matter with finality. We have jurisdiction. See art. V, § 15, Fla. Const.

Sibley argues that the referee who presided in his Bar discipline case and all but one of the justices of this Court are without authority to act because they have allegedly failed to properly execute loyalty oaths to serve as constitutional judicial officers with their respective courts. Sibley relies on section 876.05, Florida Statutes.¹

Sibley's arguments and positions are both inaccurate and legally insufficient. Each of the justices of this Court has taken the oath of office prescribed by the Constitution in a well-attended public ceremony. Further, all of the justices of this Court have executed judicial office loyalty oaths and oaths of office at the time of appointment and for each retention election since appointment to this Court, which oaths are maintained by the Secretary of State or the Division of Elections. All of the justices appointed to the Court in 1998 or earlier executed written, notarized oaths of office in full compliance with the dictates of section 876.05. Justices Cantero and Bell, appointed to this Court in 2002, executed the written oath being utilized by the Secretary of State at that time, which oath did not require the signature or seal of a notary, but was nevertheless signed under oath. Justice Bell, who served as a judicial officer in a different court prior to appointment to this Court, executed a written, sworn, and notarized oath prior to assuming his previous judicial office in 1990.²

1. On August 11, 2008, the United States District Court for the Northern District of Florida, Tallahassee Division, in Sibley v. Florida Bar, Case No. 4:08cv219-RH/WCS, rejected Sibley's contention that 4 U.S.C. sections 101 and 102 imposed a duty upon the justices of this Court or the referee which was not fulfilled. That court held section 101 did not require the prescribed oath to be executed in written form and that section 102 imposed a duty on the person administering the oath and not the person taking it. Further, it held that the oral investiture or "swearing-in" ceremony conducted when a Florida Supreme Court justice or judge serving on the bench in Florida takes office complied with the requirements of Article VI of the United States Constitution and 4 U.S.C. sections 101 and 102. We concur with and adopt the federal court's reasoning and analysis on this issue.

2. Significantly, section 876.05 requires any person “who now or hereafter [is] employed by or who now or hereafter [is] on the payroll of the state” or any of its subdivisions to execute the prescribed loyalty oath. The section does not expressly require the person to execute a new and separate oath for each new position or office.

The Honorable Orlando Prescott, a circuit judge in the Eleventh Judicial Circuit in and for Dade County and the referee who presided in Sibley’s case, likewise complied with the constitutional requisites prior to assuming the duties of his office. Further, as an elected judicial officer, Judge Prescott was required to submit a sworn, notarized Oath of Candidate form, which fully satisfies section 876.05, Florida Statutes, as a prerequisite to qualifying as a candidate for the position he now holds.

Further, every member of The Florida Bar, which includes all judicial officers in this state, takes the Oath of Admission to The Florida Bar. That oath includes an oath to “support the Constitution of the United States and the Constitution of the State of Florida.” The oath is either administered in a public induction ceremony or before “any resident Circuit Judge or other official authorized to administer oaths, such as a notary public.” Fla. Bar Admiss. R. 5-12-5-13. An executed copy of the oath is then filed with the Florida Board of Bar Examiners. Fla. Bar Admiss. R. 5-14.

Finally, although not legally required, the justices who had not done so before executed new, notarized loyalty oaths by October 2007, months before the March 7, 2008, order suspending Sibley from the practice of law.

Thus, even if Sibley were correct in arguing that the failure of a judicial officer to have a written, executed, and notarized loyalty oath on file pursuant to section 876.05 would deprive such officer of the authority to act, a majority of the Court fulfilled the statute’s requirements long before Sibley’s present case arose, and all of them had by the time of Sibley’s suspension.

These factual inaccuracies notwithstanding, Sibley also misperceives the function of the statute in question. Section 876.05 does not relate to the jurisdiction or authority of judicial officers. At most, it is a limitation on the authority of those in charge of issuing vouchers to pay state employees or officers who have not executed a loyalty oath.

Sibley’s asserted interpretation of section 876.05, that judicial officers who fail to properly execute the prescribed oath and have it duly notarized lack authority to act, would bring the statute into direct conflict with the Florida Constitution. Judicial officers, including all those who considered or decided issues relevant to this case, take and properly execute the oath required by article II, section 5 of the Florida Constitution prior to assuming judicial office. Article II, section 5(b) of the Florida Constitution provides:

(b) Each state and county officer, before entering upon the duties of the office, shall give bond as required by law, and shall swear or affirm:

“I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the state; and that I will well and faithfully perform the duties of (title of office) on which I am now about to enter. So help me God.”,

and thereafter shall devote personal attention to the duties of the office, and continue in office until a successor qualifies.

This oath incorporates the less specific oath required by section 876.05, which provides:

(1) All persons who now or hereafter are employed by or who now or hereafter are on the payroll of the state, or any of its departments and agencies, subdivisions, counties, cities, school board and districts of the free public school system of the state or counties, or institutions of higher learning, and all candidates for public office, except candidates for federal office, are required to take an oath before any person duly authorized to take acknowledgments of instruments for public record in the state in the following form:

I, _____, a citizen of the State of Florida and of the United States of America, and being employed by or an officer of _____ and a recipient of public funds as such employee or officer, do hereby solemnly swear or affirm that I will support the Constitution of the United States and of the State of Florida.

(2) Said oath shall be filed with the records of the governing official or employing governmental agency prior to the approval of any voucher for the payment of salary, expenses, or other compensation.

It is well established in the law that where the Constitution prescribes the manner in which something may be accomplished, the means are exclusive. State v. Andrews, 113 So. 2d 701, 702 (Fla. 1959). Further, express or implied provisions of the Constitution cannot be altered, contracted, or enlarged by legislative enactment. Sparkman v. State ex rel. Scott, 58 So. 2d 431, 432 (Fla. 1952).

In this instance, the Florida Constitution establishes the requisite oath of office for judicial officers in this State. Upon taking the prescribed oath, such officers are obligated to devote their personal attention to the duties of their respective offices. If we were to interpret section 876.05 in the manner urged by Sibley, the statute would be in direct conflict with the Constitution and we would be constrained to declare the statute unconstitutional.

To the extent possible, courts have a duty to construe a statute in such a way as to avoid conflict with the Constitution. State v. Gale Distrib., 349 So. 2d 150, 153 (Fla. 1977). Additionally, in determining the constitutionality of a statute, courts should be guided by the statute's substance and manner of operation, rather than by its form. Ex parte White, 178 So. 876, 880 (Fla. 1938). Indeed, the purpose and intention of a legislative act should be construed to fairly and liberally accomplish the beneficial purpose for which it was adopted and all intendments favored toward its validity, rather than applying a rule of strictness which would defeat and make the fundamentals of legislative power meaningless. Hanson v. State, 56 So. 2d 129 (Fla. 1952). For these reasons, we examine the origins and purposes of section 876.05.

Section 876.05 was first enacted in 1949. See ch. 25046, § 1, at 104, Laws of Fla. (1949). The express purpose of the act was to "protect [the State's] government, its citizens and its schools from the infiltration of . . . conspiratorial fanatics whose first allegiance this Legislature finds to be not to the good of this State but rather to its forceful destruction." Since that time, various parts of the prescribed oath have been held unconstitutional and, consequently, deleted from the statute, leaving only that which remains today. See, e.g., ch. 83-214, § 22, at 851, Laws of Fla. (deleting provisions from the oath pertaining to membership in the Communist Party or any organization advocating the overthrow of the government); see also Cramp v. Bd. of Pub. Instruction of Orange County, 368 U.S. 278 (1961) (holding unconstitutionally vague that part of the oath deleted in chapter 83-214).

A comparison of the language of the oath of office provided in article II, section 5(b) and as enrolled in section 876.05 reveals they are more similar than dissimilar. Indeed, the constitutional oath is more sweeping, as it requires the oath-taker to "support, protect, and defend" the federal and state Constitutions as opposed to merely supporting them, as is

required by the statute. The only requirement of the statute that is not also required by the constitutional oath of office is that a written, notarized copy of the oath be preserved to memorialize the fact that the oath was taken. To the extent this portion of the statute is interpreted to enlarge the requirements of the oath of office set forth in the Constitution for the investiture of constitutional officers, it is unconstitutional and unenforceable. We need not and do not go so far. Rather, we hold that the dictates of section 876.05 are satisfied when a judicial officer duly takes the oath of office as set forth in the Constitution and limit our holding to only those judicial officers who take the oath of office as set forth in the Constitution. We do not address the validity or the requisites of the statute in any other context than the one extant here.

Further, even if the referee or any of the justices inadvertently failed to comply with the technical requirements of section 876.05 by executing a loyalty oath in writing, and if we also had interpreted the effect of that failure to be that suggested by Sibley, the de facto officer doctrine, which has been long established in Florida, would nevertheless cure any defect. A de facto officer is “[o]ne who, while in actual possession of the office, is not holding such in a manner prescribed by law.” Black’s Law Dictionary 375 (5th ed. 1979). De facto officers exercise the functions of office under color of title, in full view of the public, and in such manner and under circumstances of reputation or acquiescence that would suggest no ineligibility. See State ex rel. Hawthorne v. Wiseheart, 28 So. 2d 589, 593 (1946). A de facto officer exercising the functions of office in consequence of a known and valid appointment or election may serve if the only defect in title is a failure to comply with some requirement or condition such as executing an oath or doing so in accordance with a prescribed form. See Gregory v. Woodbery, 43 So. 504, 507 (Fla. 1907) (holding the failure to file the oath of office did not invalidate the official’s public acts); State ex rel. Bisbee v. Bd. of County Canvassers, 17 Fla. 9, 16 (1878) (holding official’s return of the oath bearing an unsigned jurat did not invalidate the official’s public acts).

The de facto officer doctrine was “engrafted on the law for [reasons of] public policy and necessity, in order that the interest of the public and others dealing with the officer might be protected.” Hawthorne, 28 So. 2d at 593; see also Sawyer v. State, 113 So. 736, 744 (Fla. 1927). As a practical matter, the public is entitled to rely upon the official acts of a person who is exercising the duties of an office and should not be required to inquire regarding an officer’s qualifications. Consequently, “[t]he law validates the acts of de facto officers as to the public and third persons on the ground that, though not officers de jure, they are in fact officers whose acts public policy requires should be considered valid.” Sawyer, 113 So. at 744. In other words, “[a] de facto officer’s acts are as valid and binding upon the public or upon third persons as those of an officer de jure.” Kane v. Robbins, 556 So. 2d 1381, 1385 (Fla. 1989) (on rehearing).

Accordingly, “Respondent’s Motion to Vacate Order of March 7, 2008 as Void,” “Respondent’s Second Emergency Motion to Vacate Order of March 7, 2008 as Void as Referee Never Took the Loyalty Oath,” “Respondent’s Third Emergency Motion to Vacate Order of March 7, 2008 as Void as Five Justices of This Court Failed to Execute Proper Candidate’s Oaths Prior to Retention Elections,” “Respondent’s Fourth Emergency Motion to Vacate Order of March 7, 2008 as Void as Six Justices of this Court Failed to Execute Proper Loyalty Oaths,” “Respondent’s Fourth Motion and Affidavit for Disqualification of All the Justices of the Florida Supreme Court,” and “Respondent’s Motion to Expedite Determination of his Pending Motions” are hereby denied on their merits.

It is so ordered.

QUINCE, C.J., and WELLS, ANSTEAD, PARIENTE, LEWIS, and BELL, JJ., concur.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION, AND IF FILED,
DETERMINED.

Original Proceeding – The Florida Bar

Kenneth Lawrence Marvin, Director of Lawyer Regulation, The Florida Bar, Tallahassee,
Florida, and Arlene Kalish Sankel, Bar Counsel, The Florida Bar, Miami, Florida,

for Complainant

Montgomery Blair Sibley, pro se, Washington, D.C.,

for Respondent