

IN THE SUPREME COURT OF FLORIDA

State of Florida
Florida Supreme Court
500 South Duval Street
Tallahassee, Florida 32399

Case No.: _____

Circuit Court In and For Duval County Case No: 16-2016-CA-001540

Joseph W. Mines, Jr., et. al.

Opponent / Relator,

v.

Karen Cole, Adrian Soud, Aaron Bowden, and Charles O. Mitchell, Jr. dba Duval County Judges; Ronnie Fussell, dba Duval County Clerk of Courts; Cameron H.P. White, Plaintiff Attorney, SOUTH MILHAUSEN, P.A.; Edward B. Pritchard, Jennifer M. Scott, Ashley L. Simon, Plaintiff Attorneys, U.S. BANK NATIONAL ASSOCIATION, not in its individual capacity but solely as Trustee for SW REMIC TRUST 2015-1, also U.S. BANK NATIONAL ASSOCIATION, not in its individual capacity but solely as Trustee for SW REMIC SASCT 2007-GEL2, KASS SHULAR, P.A.; Jacqueline Simms-Petredis, Courtney Oakes and Ashley Elmore Drew of BURR & FORMAN LLP as additional counsel for Plaintiff; Karusha Y. Sharpe, GREENBERG TRAUERIG P.A., Defendant Attorney for MORGAN STANLEY MORTGAGE CAPITAL HOLDINGS, LLC; Timothy R. Hapeman, Affiant and dba Vice President and Kelly Marling, Affiant and dba Assistant Vice President, SENECA MORTGAGE SERVICING, LLC, and Attorneys-in-fact for Plaintiff; Mike Williams, dba Duval County Sheriff

Respondent(s),

PETITION FOR WRIT OF MANDAMUS

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JUN 7 2017
CLERK OF SUPREME COURT
TALLAHASSEE, FLORIDA

TABLE OF CONTENTS

TITLE PAGE.....i

TABLE OF CONTENTS.....ii

TABLE OF CITATIONS.....ii

CASES.....ii, iii

STATUTES, CONSTITUTIONAL PROVISIONS,
AND RULES OF COURT.....iv

INTRODUCTION.....1

BASIS FOR JURISDICTION1

FACTS UPON WHICH PETITIONER RELIES.....2

ARGUMENT.....4

CONCLUSION.....11

RELIEF SOUGHT.....12

NOTARY.....13

CERTIFICATE OF COMPLIANCE.....13

CERTIFICATE OF SERVICE.....14

TABLE OF CITATIONS

CASES

Hill Top Developers v. Holiday Pines Service Corp.,
478 So. 2d. 368 (Fla.2nd DCA, 1985).....2

Main v. Thiboutot, 100 S. CT., 2502 (1980).....2

Hagans v Lavine, 415 U. S. 533.....2

Hutchinson v. Plantation Bay Apartments, LLC, 931 So. 2d 957, 959-60
(Fla. 1st DCA 2006) (internal quotations and citation omitted).....4

Cox v. Burke, 706 So. 2d 43, 47 (Fla. 5th DCA 1998).....5

Wells Fargo Bank, N.A. v. Reeves, 92 So. 3d 249, 252 (Fla. 1st DCA 2012).....5

<i>Andrews v. Palmas De Majorca Condo</i> , 898 So. 2d 1066, 1069 (Fla. 5th DCA 2005) (emphasis added).....	5
<i>Savino v. Florida Drive In Theatre Mgmt.</i> , 697 So. 2d 1011, 1012 (Fla. 4th DCA 1997).....	5
<i>Sky Dev., Inc. v. Vistaview Dev., Inc.</i> , 41 So. 3d 918, 920 (Fla. 3d DCA 2010).....	5
<i>Storm v. Allied Universal Corp.</i> , 842 So. 2d 245, 246 (Fla. 3d DCA 2003).....	5
<i>Bitterman v. Bitterman</i> , 714 So. 2d 356, 365 (Fla. 1998).....	5
<i>Sutphin v. Tom Arnold Drilling Contractor, Inc.</i> , (Tex.App. 05/04/2000) [15]. S.W.3d 765, 17 S.W.3d 765 17.....	5
<i>State Farm Fire & Casualty Co. v. Gandy</i> , 880 S.W.2d 129 (Tex. App.--Texarkana 1994, writ granted).....	5
<i>Elbaor v. Smith</i> , 845 S.W.2d 240, 250 (Tex. 1992).....	5
<i>H.S.M. Acquisitions, Inc. v. West</i> , No. 13-93-427-CV (Tex.App. Dist.13 01/18/1996).....	6
<i>Rescue Army v. Municipal Court of Los Angeles</i> , 171 P2d 8; 331 US 549, 91 L. ed. 1666, 67 S.Ct. 1409.....	8
<i>Bell Alt Corp. v. Twombly</i> , 550 U.S. 544, 556 (2007).....	8
<i>Ashcroft v. Iqbal</i> , 556 U.S. 662, 678, (2009).....	8
<i>OLD WAYNE MUT. L. ASSOC. v. McDONOUGH</i> , 204 U.S. 8, 27 S.Ct., 236, (1907).....	9
<i>Brown v. Texas</i> , 443 US 47.....	10
<i>Kolender v. Lawson</i> , 461 U.S. 352.....	10
<i>Babacock and Wilson v. Parsons Corp.</i> : 430 F 2d. 531.....	10

**STATUTES, CONSTITUTIONAL
PROVISIONS, AND RULES OF COURT**

Florida Constitution, Art. V, § 15.....1

Florida SJR 52-D (1971).....1

Florida Statute Title XLVI Chapter 777 § 04(2)(3).....2

Florida Statute Title XLVI Chapter 777 § 011.....2

Florida Statute Title XLVI Chapter 777 § 03(c),.....2

Florida Constitution Art. V, § 5(b).....2,7

Florida Statute Title V § 26.012, (2)(g),.....2

Florida Rule 1.140 (b).....3

Florida Rule 12.1403

Fifth Amendment.....10

Fourteenth Amendment.....10

CJC Canon 3 (c).....10

Florida Rule 9.210 (a)(2).....13

PETITION FOR WRIT OF MANDAMUS TO THE
SUPREME COURT FOR THE STATE OF FLORIDA

INTRODUCTION

The Opponent / Relator, Joseph W. Mines, Jr., petitions the Florida Supreme Court, for the issuance of a writ of mandamus to order John A. Tomasino, Clerk of Court, to recognize the jurisdiction of the Florida Supreme Court to process one or more notices now before him, as specified by this Court, regarding Writ of Mandamus, for Declaratory Judgment and for the disciplinary actions required by Florida State law of Judge Karen Cole, Adrian Soud, Aaron Bowden, and Charles O. Mitchell, Jr., the law firm of SOUTH MILHAUSEN, P.A., Cameron H.P. White, Attorney; Edward B. Pritchard and Jennifer M. Scott, Ashley L. Simon, Plaintiff Attorneys, KASS SHULAR, P.A.; Jacqueline Simms-Petredis, Courtney Oakes and Ashley Elmore Drew of BURR & FORMAN LLP, additional counsel for Plaintiff; Karusha Y. Sharpe, GREENBERG TRAUERIG P.A., Defendant Attorney for MORGAN STANLEY MORTGAGE CAPITAL HOLDINGS, LLC. Specifically, the petitioner shows the Florida Supreme Court the following:

BASIS FOR JURISDICTION

The Florida Supreme Court has exclusive original jurisdiction for writ of mandamus to attorney disciplinary proceedings and the disciplining of judges in this matter pursuant to Florida Constitution Article V, § 15 and Florida SJR 52-D (1971) and other relevant authorities.

THE FACTS UPON WHICH PETITIONER RELIES

1. Joseph W. Mines, Jr., (Relator / Mines), an aggrieved party, makes application to this Court for relief of a void judgment order depriving Joseph W. Mines, Jr. of money and property without due process of law, subjecting Mines to violations of Florida Statute Title XLVI Chapter 777 § 04(2)(3), criminal conspiracy and § 011, and § 03(c), aided and abetted by Karen Cole, Adrian Soud, Aaron Bowden, Charles O. Mitchell, Jr., Cameron H.P. White, Edward B. Pritchard, Jennifer M. Scott, Ashley L. Simon, Jacqueline Simms-Petredis, Courtney Oakes, Ashley Elmore Drew, Karusha Y. Sharpe, Timothy R. Hapeman, Kelly Marling, U.S. BANK NATIONAL ASSOCIATION and SENECA MORTGAGE SERVICING, LLC, (hereinafter Respondents) in the taking of Relator's property.

2. The granting of Relator's application for a writ of mandamus is on the grounds that the trial court lacks subject-matter jurisdiction to hear and/or rule on any property matter. See Florida Constitution Art. V, § 5 (b) and Florida Statute Title V § 26.012 (2)(g). **"Defense of lack of jurisdiction over the subject matter may be raised at any time, even on appeal."** *Hill Top Developers v. Holiday Pines Service Corp.*, 478 So. 2d. 368 (Fla.2nd DCA, 1985).

3. The Florida Supreme Court has actual knowledge that jurisdiction can be challenged at any time and must be proven in the record: and that "The law provides

that once state and federal jurisdiction has been challenged, it must be proven.” See *Main v. Thiboutot*, 100 S. CT., 2502 (1980). See *Hagans v Lavine*, 415 U. S. 533.

4. Lack of Jurisdiction of the subject-matter is one of the defenses that can be raised by motion to abate the action, or in the answer or in the reply.” See Florida Rule 1.140(b) and 12.140.

5. A letter and brochure received from U.S. Bank dated February 10, 2017, in response to a request for assistance from the Consumer Financial Protection Bureau, clearly states “Trustees play no role in initiating or conducting the foreclosure process, have no role in granting or denying a loan modification, and have little or no information relating to mortgage loan activities including foreclosures.” “The Servicer has sole-decision making power and control over foreclosing proceedings.” Timothy R. Hapeman, Affiant and dba Vice President of SENECA MORTGAGE SERVICING, LLC is engaging in debt collection, pretending to be a Master Servicer on wall street, by verifying this foreclosure complaint, through perjury with the aid of Kelly Marling, Affiant and dba Assistant Vice President of SENECA MORTGAGE SERVICING, LLC, and acting as Attorneys-in-fact for Plaintiff, see Exhibit “E”.

6. The Florida Supreme Courts granting of this writ application shall prevent substantial irreparable damage to property rights and monetary loss, as well as

prevent prejudice of Mine's rights and others similarly situated by compelling state officers to perform non-discretionary duties.

ARGUMENT

7. Relator's application for writ of mandamus is spawned by the law firm of SOUTH MILHAUSEN, P.A., Cameron H.P. White; KASS SHULAR, P.A, Edward B. Pritchard, Jennifer M. Scott and Ashley L. Simon; BURR & FORMAN LLP, Jacqueline Simms-Petredis, Courtney Oakes and Ashley Elmore Drew attorneys for the Plaintiff; U.S. BANK NATIONAL ASSOCIATION, not in its individual capacity but solely as Trustee for SW REMIC TRUST 2015-1, and U.S. BANK NATIONAL ASSOCIATION, not in its individual capacity but solely as Trustee for SW REMIC SASCT 2007-GEL2. Both trusts claiming ownership of the Relator's property at the same time, which is an impossibility and obvious fraud, filing a sworn complaint supported by Affiants, Timothy R. Hapeman and Kelly Marling, in the Fourth Circuit Court in and for Duval County. See Exhibit "A" and "A-1".

8. Respondent, attorneys', know or are required to know they lack standing to file suit on any property matter in a court that lacks subject-matter jurisdiction.

9. Respondents have carried out fraud on the court.

The First District has provided the standard for dismissal for fraud on the court: A trial judge has the inherent authority to dismiss actions based on fraud and collusion. The requisite fraud on the court occurs when it can be demonstrated, clearly and convincingly, that a party has sentiently set in motion some unconscionable scheme calculated to interfere with the judicial

system's ability impartially to adjudicate a matter by improperly influencing the trier of fact or unfairly hampering the presentation of the opposing party's claim or defense. *Hutchinson v. Plantation Bay Apartments, LLC*, 931 So. 2d 957, 959-60 (Fla. 1st DCA 2006) (internal quotations and citation omitted).

And the Fifth District, in a case quoted by the Hutchinson court above, also explained: The integrity of the civil litigation process depends on truthful disclosure of facts. A system that depends on an adversary's ability to uncover falsehoods is doomed to failure, which is why this kind of conduct must be discouraged in the strongest possible way. . . . This is an area where the trial court is and should be vested with discretion to fashion the apt remedy. *Cox v. Burke*, 706 So. 2d 43, 47 (Fla. 5th DCA 1998).

“Fraud upon the court is an egregious offense against the integrity of the judicial system and is more than a simple assertion of facts in a pleading which might later fail for lack of proof.” *Wells Fargo Bank, N.A. v. Reeves*, 92 So. 3d 249, 252 (Fla. 1st DCA 2012).

Under the above standard, “[d]ismissal is an available remedy for knowingly submitting forged or altered documents with the intent to deceive the court.” *Andrews v. Palmas De Majorca Condo*, 898 So. 2d 1066, 1069 (Fla. 5th DCA 2005) (emphasis added).

“[W]here a party lies about matters pertinent to his own claim, or a portion of it, and perpetrates a fraud that permeates the entire proceeding, dismissal of the whole case is proper.” *Cox*, 706 So. 2d at 47.

See also *Savino v. Florida Drive In Theatre Mgmt.*, 697 So. 2d 1011, 1012 (Fla. 4th DCA 1997) (“We believe that the trial court has the right and obligation to deter fraudulent claims from proceeding in court.”).

The Court’s inherent authority to sanction a party for misconduct includes not only dismissal with prejudice, but also the award of attorney’s fees. See, e.g., *Sky Dev., Inc. v. Vistaview Dev., Inc.*, 41 So. 3d 918, 920 (Fla. 3d DCA 2010) (holding no abuse of discretion to award attorney’s fees in addition to dismissal with prejudice); *Storm v. Allied Universal Corp.*, 842 So. 2d 245, 246 (Fla. 3d DCA 2003) (affirming assessment of attorney's fees against 9 plaintiff for efforts required of defendants to reveal multiple acts of fraud, perjury, and deception); see also *Bitterman v. Bitterman*, 714 So. 2d 356, 365 (Fla. 1998) (upholding award of attorney’s fees based on inequitable conduct doctrine).

Relator would please the Court to consider the language of:

Sutphin v. Tom Arnold Drilling Contractor, Inc., 17 S.W.3d 765, 17 S.W.3d 765 (Tex.App. 05/04/2000) [15]; **The court concluded that filing a false, sworn statement for the purpose of influencing a decision of the court constitutes a fraud upon the court.**

***In State Farm Fire & Casualty Co. v. Gandy*, 880 S.W.2d 129 (Tex. App.--Texarkana 1994, writ granted), the plaintiff and defendant entered into an agreed judgment which awarded plaintiff damages. However, plaintiff gave defendant a covenant not to execute on the judgment, and defendant in turn assigned to plaintiff all of his rights against a third party. The Gandy court stated: Allowing an assignee of the named judgment debtor in such a case to collect all or part of the judgment amount perpetrates a fraud on the court, because it bases the recovery on an untruth, i.e., that the judgment debtor may have to pay the judgment. Such a result should be against public policy, because it allows, as here, parties to take a "sham judgment" (emphasis Relator's) by agreement, without any trial or evidence concerning the merits, and then collect all or a part of that judgment from a third party. Allowing recovery in such a case encourages fraud and collusion and corrupts the judicial process by basing the recovery on a fiction [T]he courts are being used to perpetrate and fund an untruth *Gandy*, 880 S.W.2d at 138 (citations omitted) (footnote omitted); see also *Elbaor v. Smith*, 845 S.W.2d 240, 250 (Tex. 1992) (supreme court held "Mary Carter agreements" are void as against public policy because they are "partial settlements that promote rather than discourage further litigation," and they "promote unethical collusion among nominal adversaries"). See *H.S.M. Acquisitions, Inc. v. West*, No. 13-93-427-CV (Tex.App. Dist.13 01/18/1996).**

10. Relator's application for writ of mandamus is further spawned by the actions of Karen Cole, Adrian Soud, Aaron Bowden and Charles O. Mitchell, Jr., Duval County Judges, by issuance of a judgment, order or ruling without subject-matter jurisdiction, making the judgment and rulings void.

11. This Court has actual knowledge that a void judgment is a nullity conveying no rights and securing no interests: A void judgment is a vehicle of injustice: Parties taking money or property in respect of a void judgment are trespassers on the law.

12. This Court has actual knowledge: Party seeking review of a void judgment is invoking the ministerial capacity of the court: The party alleging that the judgment is free of incurable jurisdictional defects has the burden of showing, on the *existing record*, wherein no single jurisdictional failing occurs: The reviewing court is deprived of power of judicial review: Where the party alleging a valid judgment cannot overcome recitation on the face of the record of one or more jurisdictional failings, the reviewing court, acting in a purely administrative capacity, has a non-discretionary duty to vacate any and all void judgments interposed in the venue of the administrative court.

13. U.S. BANK NATIONAL ASSOCIATION, not in its individual capacity but solely as Trustee for SW REMIC TRUST 2015-1, and U.S. BANK NATIONAL ASSOCIATION, not in its individual capacity but solely as Trustee for SW REMIC SASCT 2007-GEL2, by and through counsel, sought judicial foreclosure by petition on Relator's property without the essential documents or Jurisdiction necessary to validate jurisdiction to foreclose. See Exhibit "B".

14. Duval County Judge, Karen Cole, without subject-matter jurisdiction authorized the foreclosure case of Mine's property.

15. Relator sought relief in a last-ditch effort to give Respondents` opportunity to amiably correct their error in case of an honest mistake, with Relator's Motion to

Dismiss for lack of Subject-Matter Jurisdiction to challenge jurisdiction to enjoin the foreclosure for just cause. See Exhibit "C".

16. Relator moved the Duval County Court to reconsider and vacate the void judgment and noticed the Respondents of the motion.

17. This Court is noticed: the Duval County Court failed or refused to hear the matter in open court on Mine's objection via the Motion to Dismiss for Lack of Subject-matter Jurisdiction. See Exhibit "C".

18. In receipt of notice and opportunity, neither the plaintiff nor putative counsel answered the jurisdictional challenge.

19. Without Plaintiffs or putative counsel filing of pleading to move the court to deny the motion, Respondent Judges, on self-initiative, rendered a denial of the motion, violating Relator's due process. See Exhibit "D".

20. This Court has actual knowledge that "A court has no jurisdiction to determine its own jurisdiction," *Rescue Army v. Municipal Court of Los Angeles*, 171 P2d 8; 331 US 549, 91 L. ed. 1666, 67 S.Ct. 1409.

21. Attorneys for the Plaintiff know or are required to know that Respondents' lack standing to seek a proceeding upon property in and for DUVAL COUNTY. See Florida. Const. art. V. § 5(b). and Exhibit "A" and "A-1".

22. It is further noticed that Respondents' claim is insufficient in substance and lacks facts: therefore, has failed to state a claim for which relief can be granted. The

Supreme Court has explained that the factual allegations must be enough to raise a right to relief above the speculative level. In *Bell Alt Corp. v. Twombly*, 550 U.S. 544, 556 (2007), the court stated: [The]claims are compulsory and not entitled to the presumption of truth. *Ashcroft v. Iqbal*, 556 U.S. 662, 678, (2009).

23. Judges Karen Cole, Adrian Soud, Aaron Bowden, and Charles O. Mitchell, Jr., know or are required to know that the Duval County, Court is a court of limited jurisdiction: that has no subject-matter jurisdiction to hear any property matter, much less render judgment against Relator's property. **"A court cannot confer jurisdiction where none existed and cannot make a void proceeding valid.** It is clear and well established that a **void order can be challenged in any court.**" *OLD WAYNE MUT. L. ASSOC. v. McDONOUGH*, 204 U.S. 8, 27 SCt., 236, (1907).

24. The Duval County Court lacks subject-matter jurisdiction to hear any matter that exceeds Fifteen Thousand (\$15,000) U.S. Dollars.

25. Relator's property exceeds jurisdictional limits of Duval County Court.

26. The Duval County Court violated the Florida Constitution Article V, § 5(b), assuming jurisdiction where none exists in Case No. 16-2016-CA-001540.

27. Relator noticed the Duval County Court of multiple irregularities that would expose substantive doubts to any reasonable court before taking of property from Joseph W. Mines, Jr. to cause irreparable damage and reduce Mines to a state of peonage.

28. U.S. BANK NATIONAL ASSOCIATION, not in its individual capacity but solely as Trustee for SW REMIC TRUST 2015-1, and U.S. BANK NATIONAL ASSOCIATION, not in its individual capacity but solely as Trustee for SW REMIC SASCT 2007-GEL2, with their putative counsel and agents appears to be acting in concert in a Ponzi scheme to merely desire to “rob” and strip Mines of valuable property without a rational basis in violation of the Takings Clause of the Fifth Amendment and the substantive protections of the Due Process Clause of the Fourteenth Amendment.

29. This Court is noticed: Judges Karen Cole, Adrian Soud, Aaron Bowden, and Charles O. Mitchell, Jr., without subject-matter jurisdiction exhibited contempt for Constitutionally protected due process rights of Joseph W. Mines, Jr., which proceeded to reduce Mines to poverty.

30. Relator has right of protection against a void judgment and the wrongful taking of property, therefore this Court is required to vacate the void judgment with prejudice until such time as Respondents’ prove subject-matter jurisdiction. See *Brown v. Texas*, 443 US 47; *Kolender v. Lawson*, 461 U.S. 352; *Babcock and Wilson v. Parsons Corp.*: 430 F 2d. 531.

31. Duval County Judges Karen Cole, Adrian Soud, Aaron Bowden, and Charles O. Mitchell, Jr., **are in direct breach of duty found at CJC Canon 3(e).**

Conclusion

Whereas the Florida Supreme Court has knowledge of the law, and has knowledge that a jurisdictional challenge is an administrative proceeding, the court in which jurisdiction is challenged lacking judicial discretion; that when jurisdiction is challenged, it is incumbent on the party asserting that the court had jurisdiction to show **on the record** that jurisdiction was perfected; and, where a jurisdictional failing appears on the face of the record, the court has a non-discretionary duty to vacate the void judgment and order reparations. Whereas this Court is noticed: Joseph W. Mines, Jr. clearly and logically challenged the jurisdiction of Duval County Court, in the matter of, U.S. BANK NATIONAL ASSOCIATION, not in its individual capacity but solely as Trustee for SW REMIC TRUST 2015-1, and U.S. BANK NATIONAL ASSOCIATION, not in its individual capacity but solely as Trustee for SW REMIC SASCT 2007-GEL2, Plaintiff, versus Joseph W. Mines, Jr., et. al., Case No: 16-2016-CA-001540 and neither U.S. BANK NATIONAL ASSOCIATION, nor attorneys representing U.S. BANK NATIONAL ASSOCIATION, has shown wherein the record did not have the many jurisdictional defects cited by Joseph W. Mines, Jr., the so-called judgment in Case Number 16-2016-CA-001540 is utterly void, a nullity, grounding no rights and conveying no interest.

Remedy Sought, and Prayer for Relief

The cause of justice and proper administration of law require this Court's supervision of Judge Karen Cole, Adrian Soud, Aaron Bowden, and Charles O. Mitchell, Jr. and Duval County Court Clerk, Ronnie Fussell, including entering an order vacating the void judgment with prejudice in Case Number 16-2016-CA-001540, ordering attorneys representing SENECA MORTGAGE SERVICING, LLC, to cease and desist all collection activity against Joseph W. Mines, Jr., ordering attorneys representing U.S. BANK NATIONAL ASSOCIATION, not in its individual capacity but solely as Trustee for SW REMIC TRUST 2015-1, and U.S. BANK NATIONAL ASSOCIATION, not in its individual capacity but solely as Trustee for SW REMIC SASCT 2007-GEL2, to return all sums taken from Joseph W. Mines, Jr. together with statutory interest from the date of the beginning of the taking, and any other disciplinary requirements and penalty applied to the attorneys allegedly representing U.S. BANK NATIONAL ASSOCIATION, not in its individual capacity but solely as Trustee for SW REMIC TRUST 2015-1, and U.S. BANK NATIONAL ASSOCIATION, not in its individual capacity but solely as Trustee for SW REMIC SASCT 2007-GEL2, which this Court, within its equitable discretion, may find reasonable, lawful, and just.

Whereas this Court shall notice: Joseph W. Mines, Jr., has properly and lawfully petitioned for relief of void judgments interposed in and for Duval County,

Florida; and whereas, this Court shall notice: there is no procedurally proper, final judgment in the matter; and whereas, this Court shall notice: that state officers is in receipt of notice and demand and has breached **non-discretionary administrative duty** to vacate the void judgments, this court has a non-discretionary duty to compel the state officer of Duval County to issue an order forthwith to vacate all void judgments interposed in Duval County and set a hearing for determination of necessary repairs for damages to Joseph W. Mines, Jr. and others similarly situated for the intentional, willful acts in trespass relative to the void judgments.

Prepared and submitted by: Joseph W. Mines, Jr.
Joseph W. Mines, Jr.

THIS LEGAL DOCUMENT IS BEING AUTHENTICATED AND A SUBSTITUTION FOR A NOTARY. THIS IS TO BE CONSIDERED AN OATH GIVEN UNDER PENALTY OF PERJURY. REGULATED BY TITLE 28 U.S. CODE SECTION 1746.

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the foregoing brief is in Times New Roman 14-point font and complies with the font requirements of Rule 9.210(a)(2), Florida Rules of Appellate Procedure.

Joseph W. Mines, Jr.
Joseph W. Mines, Jr.

CERTIFICATE OF SERVICE

I, Joseph W. Mines, Jr., certify that on June 7, 2017, I mailed via U.S. Post Office, Certified Mail/RRR, by an authorized process server or hand delivered a true and correct copy of the above and foregoing petition for a writ of mandamus to the clerk of courts for the Florida Supreme Court. Proper service was upon the following Respondents:

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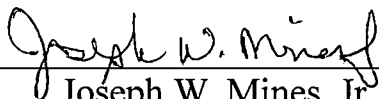
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