

THE MITIGATION SPECIALIST

An Indispensible Part of the Defense Team for Juveniles Who Are Facing a Life Sentence

by
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Beginning with *Roper v. Simmons*, which struck down the juvenile death penalty, the United States Supreme Court has issued a series of decisions confirming that children are constitutionally and developmentally different from adults.¹ In *Graham v. Florida*, the Court found that none of the legitimate goals of penal sanctions such as retribution, deterrence, incapacitation, and rehabilitation, provided an adequate justification for imposing life without parole on a juvenile for a non-homicide offense.² Two years later, in *Miller v. Alabama*, the Court held that children may not be subjected to a mandatory life sentence without parole for homicide offenses finding that “imposition of a State’s most severe penalties on juvenile offenders cannot proceed as though they were not children.”³ The Florida legislature responded to *Miller* in 2014 by passing new laws which provide individualized sentencing hearings for juveniles who are convicted of a capital, life, or first-degree felony.⁴ The legislation further provides for judicial review

in most cases after a certain number of years depending on the length of the original sentence.⁵ The Florida Supreme Court subsequently held that *Miller* is retroactive and that the 2014 sentencing scheme should apply.⁶

Prosecutors have nearly unbridled discretion in deciding whether to direct file; consequently, Florida transfers more juveniles to adult court than any other state.⁷ If you practice criminal defense, it is likely that you will be asked to represent a child who is already serving or facing adult sanctions, including life in prison. At that point, you will need to deal with much more than the substantive criminal law and possible defenses to the crime. You will also be expected to understand adolescent development and the many ways that adolescents are different from adults for the purpose of mitigating the offense. The representation of a child charged with a capital or life felony entails an enormous responsibility—one that you should not take on alone. Both the FACDL and the Florida Public Defender Association have endorsed the 2015 *Trial Defense Guidelines: Representing a Child Client Facing a Possible Life Sentence* published by the Campaign for the Fair Sentencing of Youth (“CFSY”).⁸ The *CFSY Guidelines*

recommend a team approach which includes, at a minimum, two attorneys, an investigator, and a mitigation specialist.

It would be impossible within the scope of one article to review everything you should consider when representing a child in adult court. I will endeavor to provide only an overview regarding the role of a mitigation specialist, how to get one on board in your case, and why such a professional is an indispensable member of the defense team.

WHAT IS A MITIGATION SPECIALIST?

Unless you have experience in capital cases, it is likely that you haven’t worked with a mitigation specialist. Justice Pariente recently noted in her concurring opinion in *Middleton v. State* that a “mitigation specialist is ‘an indispensable member of the defense team throughout all capital proceedings[,]...possess[ing] clinical and information-gathering skills and training that most lawyers simply do not have.’”⁹ A mitigation specialist is a member of the defense team who assists the criminal defense lawyer by collecting and reviewing records, conducting collateral interviews, identifying signs of mental illness, addiction and/or cognitive deficits, preparing a culturally relevant social history (using genealogical tools and chronological charts), and making expert recommendations. There is no particular degree or special license required but a degree in psychology or social work is helpful. The most important requirements are that they are “trained in uncovering family trauma and screening for often subtle mental and psychological disorders,” and...“experienced in interpersonal communication so they know how to develop trust and rapport with even the most difficult or distrustful of individuals.”¹⁰

In the context of the representation of children who are charged as adults, the mitigation specialist should have knowledge of adolescent development as well as experience in working with children who have experienced trauma.

A mitigation specialist can help the team address development issues that may impact the defense such as allegations that the teenaged client does not express remorse. The specialist should also be able to “synthesize investigative information for the defense team, including, but not limited to, ...studies of the cultural, socioeconomic, environmental, political, historical, and racial influences on the child client.”¹¹ In other words, the mitigation specialist will help the defense team tell the client’s story in a rich and powerful way.

WHY DO YOU NEED A MITIGATION SPECIALIST?

You have to first believe that you need a mitigation specialist before you can make a convincing case for one whether you are seeking funding from the Justice Administration Commission (“JAC”) or through a state-funded office. U.S. Supreme Court precedents “make clear that a judge or jury must have the opportunity to consider mitigating circumstances before imposing the harshest possible penalty for juveniles.”¹² Florida law provides that any juvenile convicted of a capital, life, or first-degree felony is entitled to a hearing before a judge who must consider:

- ▶ The nature and circumstances of the offense committed by the defendant;
- ▶ The effect of the crime on the victim’s family and on the community;
- ▶ The defendant’s age, maturity, intellectual capacity, and mental and emotional health at the time of the offense;
- ▶ The defendant’s background, including his or her family, home, and community environment;
- ▶ The effect, if any, of immaturity, impetuosity, or failure to appreciate risks and consequences on the defendant’s participation in the offense;
- ▶ The extent of the defendant’s participation in the offense;
- ▶ The effect, if any, of familial pressure or peer pressure on the defendant’s actions;
- ▶ The nature and extent of the defendant’s prior criminal history;

The Campaign for the Fair Sentencing of Youth published the *Trial Defense Guidelines for Representing a Child Client Facing a Possible Life Sentence* in 2015. The CFSY Guidelines, endorsed by the FACDL and the Florida Public Defender Association, call for a team approach which includes at least two attorneys, one investigator, and a mitigation specialist.

READ THE GUIDELINES AT:

<http://fairsentencingofyouth.org/our-trial-defense-guidelines-for-children-facing-life-are-released/>

- ▶ The effect, if any, of characteristics attributable to the defendant’s youth on the defendant’s judgment; and,
- ▶ The possibility of rehabilitating the defendant.¹³

Juveniles facing life in prison are entitled to an individualized sentencing proceeding that is comparable to a capital penalty phase proceeding.¹⁴

Given the breadth of factors to be considered at a Miller hearing, the need to investigate and prepare a complete multi-dimensional and culturally-sensitive social history cannot be overstated. Before the lawyer can make any decisions about how to proceed on a case, it is necessary for the mitigation specialist to “compile[] a comprehensive and well-documented psycho-social history of the client based on an exhaustive investigation.”¹⁵ The mitigation specialist will already have the requisite releases for confidential records and, in many cases, a contact within some of the programs where your client was sent prior to being charged in the instant case. He or she will spend hours reviewing the records, looking for names of people to interview, finding clues regarding mental illness or cognitive deficits, and identifying places to send additional releases. Once the records have been reviewed, the mitigation specialist then “analyzes the significance of the information in terms

of impact on development, including effect on personality and behavior; [and] finds mitigating themes in the client’s life history.”¹⁶ It may take six months or more just to gather and review the records and conduct in-person interviews of your those who knew your client as he or she was growing up. No lawyer, even one who has education or training in mental health, has the time to fulfill both roles.¹⁷

A lawyer may not forgo the constitutionally required mitigation investigation simply because there is no prior diagnosis of a major mental illness, or because the client claims that there is no history of abuse, or because the family wants to show the court that the client came from a good and loving family, or even where the client maintains his innocence. It is impossible to make a strategic decision about the direction of your case unless you have conducted an adequate and reasonable investigation.¹⁸ The Sixth Circuit has held that defense counsel was ineffective in failing to use a mitigation specialist in order to gather records in support of mitigation. While counsel did not have a “specific obligation to employ a mitigation specialist, they did have an obligation to fully investigate the possible mitigation evidence available.”¹⁹ In finding trial counsel ineffective for failing to conduct a constitutionally adequate investigation,

the Florida Supreme Court has turned to the American Bar Association Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases: "Among the topics that counsel should consider presenting in mitigation are the defendant's medical history, educational history, employment and training history, family and social history, prior adult and juvenile correctional experience, and religious and cultural influences."²⁰ Given the foregoing, it is hard to think of a reason not to retain and use a mitigation specialist to help you with your case.

ADVOCATING FOR A MITIGATION SPECIALIST WHEN YOUR CLIENT IS INDIGENT

As Justice Pariente noted in *Middleton*, the Florida Legislature made provisions for the appointment of mitigation specialists in capital cases and payment of up to \$75.00 an hour.²¹ The issue in *Middleton* was not that capital defendants are not entitled to the assistance of a mitigation specialist; to the contrary, the use of such professionals is standard practice.²² The problem in that case is the lawyers failed to make a record establishing the need for special expertise in gathering mitigation evidence.²³ A number of attorneys in Florida have been successful in having mitigation specialists as well as other experts appointed to assist in their *Miller* and *Graham* cases. In some cases, the court will limit the payment for the collection of records to \$40 an hour (the standard fee for investigative work) but will agree to payment of review of those records at the rate of \$75 an hour. Should that happen, the lawyer can either have the investigator gather the records, or see if the mitigation specialist will perform that function at the approved rate.

You must make a record: "[w]hen funding is properly requested, the defense team should receive the assistance of both a fact investigator and a mitigation specialist to ensure a complete and reliable mitigation investigation."²⁴ Unfortunately, there are some jurisdictions in Florida where the courts have

severely limited the number of hours for the mitigation specialist for juvenile sentencing hearings. In order to preserve the matter for appeal, defense counsel must establish the need for a particular expert in the motion which will necessarily entail revealing confidential work product. Depending on the specific area of expertise, even the name of a certain mental health expert can provide the prosecution with hints as to the theory of defense. Therefore, any motion for defense funds, whether for a mitigation specialist, investigator, or other expert, should be filed under seal with service on the JAC (the interested party) and proper notice to the Office of the State Attorney. Both federal and state case law as well as the Florida Rules of Judicial Administration provide authority for this quasi-*ex parte* procedure.²⁵

Remember that you are hiring a mitigation specialist because he or she has certain skills that have been acquired through a combination of education, training and experience and not because the person has a particular license. Nevertheless, lawyers have found that using generic language such as "forensic social worker or other expert" has been more effective in convincing both JAC and the courts to appoint a professional to assist with mitigation. It does not matter what you call your proposed professional because you will set forth his or her particular qualifications and explain exactly why you need a person with those skills on your case. You will only be able to do this if you spend enough time talking with the proposed mitigation specialist about your case! You must also show that because your client is a juvenile facing life in prison, he or she is entitled to a proceeding that is the equivalent of a penalty phase hearing in a capital case.²⁶ If you have a judge who does not understand why you need a mitigation specialist or you think might restrict the number of hours allowed, do not be afraid to request an evidentiary hearing on the issue. There is no reason not to present the live testimony of experienced capital mitigation specialists and lawyers. You can even attach

additional affidavits or declarations about how these cases require the same care and level of expertise as capital cases in order to preserve the issue for appeal.

If you work for a state agency, you will likely be in a position of competing for the time of maybe one or two mitigation specialists who were hired to work on capital cases. There are some state agencies in Florida who do not have mitigation specialists on staff but they will contract with one if you show a need in your case. Although there may be limited funds, it is still your job to advocate for your client. You won't be able to do that unless you know enough about your client to allow you to explain how a mitigation specialist can help you. Perhaps your client was in numerous programs through the Department of Juvenile Justice before the instant crime and there are thousands of records to review. Or maybe the client has an extensive mental health history and you need the mitigation specialist to review the mental health records and flag certain sections for your expert. Some clients have family members who live across the state and who are reluctant to cooperate—your mitigation specialist can spend time with them at their home gaining their trust. Make sure you support your request by documenting the specific facts in your case and providing copies of some of the sources referenced at the end of this article.

USING THE MITIGATION SPECIALIST

My experience in capital postconviction litigation has been that trial lawyers sometimes retain mitigation specialists and then either fail to provide direction or consider the suggestions of the specialist. In the worst cases, the lawyers never review the records obtained or return the repeated calls of the mitigation specialist. In a case out of Alabama, the Eleventh Circuit found the lawyer ineffective, in part, because he failed to follow up on red flags such as prior suicide attempts that were documented in a report prepared by a social worker at the lawyer's behest for the purpose of a

competency evaluation.²⁷ While the role of the mitigation specialist is paramount, it is the lawyer who is responsible for providing effective assistance of counsel under the Sixth Amendment and that includes fulfilling the duty to fully investigate and present mitigation. This cannot be done without communication within the defense team.

Even if you are representing a juvenile who has just been charged as an adult, a mitigation specialist should be brought in as soon as possible because, for example, he or she can advise on any possible competency issues or assist in gathering evidence that may be helpful in suppressing the introduction of your client's inculpatory statements. While you must develop your own relationship with the client,²⁸ the mitigation specialist can spend more time with your client who may be in a prison facility across the state from the jurisdiction in which he was convicted. He or she will also spend a significant amount of time visiting the family in an effort to develop mitigation concerning the client's background which would include obtaining records on parents, caregivers, and siblings.²⁹ The family and other people who knew the client growing up can corroborate record evidence regarding your client's maturity, intellectual capacity, and mental and emotional health at the time of the offense.³⁰ It might be helpful for the team to think about the client's life story in three stages: 1) the factors that influenced him from conception through adolescence; 2) the circumstances leading up to the crime and the crime itself; and 3) the evidence that your client has been rehabilitated or has the capacity for change based on his or her records of incarceration.

Once the records are reviewed and collateral interviews have taken place, the mitigation specialist "identifies the need for expert assistance; assists in locating appropriate experts; [and] provides social history information to experts to enable them to conduct competent and reliable evaluations."³¹ The mitigation specialist is skilled in identifying mental health issues, cognitive deficits, and any relevant cultural

issues that may present a barrier between the client and the chosen expert. While it is natural to want to work with an expert with whom you are used to, it is dangerous to discount the expertise of your mitigation specialist in choosing and working with the expert. Generally, it is not the best practice to seek the appointment of a particular mental health expert simultaneously with the mitigation specialist because without a thorough review of the records, you do not know whether you want an expert in sexual trauma, fetal alcohol syndrome, gang violence, or some other field. Once an expert is selected and retained, the entire team should work with the expert in developing a "comprehensive and cohesive case in mitigation."³² The expert should not be going to see the client before meeting with the mitigation specialist who has spent time with the client and family.

The entire team should work together to decide whether a written report should be prepared. It may be beneficial to put together a mitigation packet that contains a summary of the records, witness statements, and the expert's opinion if you think the prosecutor might offer a plea. Given that the court must consider victim impact, the mitigation specialist can be instrumental in reaching out to the surviving family members who may be agreeable to a sentence less than life. Once a reasonable plea offer has been secured, the rapport that the mitigation specialist has developed with the client and the family can be useful in helping the client evaluate a reasonable plea offer.³³ This is important because juveniles generally "mistrust adults and have limited understandings of the criminal justice system."³⁴ Because of their inability to accurately perceive the future and weigh the benefits versus the risks of different options, some juveniles will go to trial despite overwhelming

evidence of guilt. Therefore, every effort should be made to ensure that plea offers are communicated in a way that the child can understand.

MOVING FORWARD

The research on adolescent neurodevelopment establishes that juveniles are far less culpable for their crimes because they are more likely to be influenced by their peers, they have less of a capacity to evaluate risk, they have difficulty considering the future, and they have a reduced capacity for self-management.³⁵ This research applies to the behavior of all juveniles who are facing adult sanctions, even those who are charged with non-violent felonies as well as those who are facing mandatory minimum penalties.³⁶ Because children are constitutionally different from adults, you should seek to present mitigation in an individualized sentencing proceeding any time you are representing a child who is facing adult sanctions. The use of a mitigation specialist in the preparation for any juvenile sentencing proceeding should become standard practice. ■

¹ *Roper v. Simmons*, 543 U.S. 551 (2005); *Graham v. Florida*, 560 U.S. 48 (2010), *Miller v. Alabama*, 132 S. Ct. 2455 (2012); and *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016).

² *Graham v. Florida*, 560 U.S. at 71.

³ *Miller v. Alabama*, 132 S. Ct. at 2466.

⁴ Chapter 2014-220, Law of Florida; Florida Statute §§941.1401, 941.1402, and 775.082 (2014).

⁵ Florida Statute §941.1402 (2014).

⁶ *Falcon v. State*, 162 So. 3d 954 (Fla. 2015) and *Horsley v. State*, 160 So. 3d 393 (Fla. 2015).

⁷ Florida Statute §985.557 (2011); Human Rights Watch, *Branded for Life: Florida's Prosecution of Children as Adults under its "Direct File" Statute*, p. 19 (April 2014).

⁸ Campaign for the Fair Sentencing of Youth, *Trial Defense Guidelines: Representing a Child Facing a Possible Life Sentence* (2015); found at fairsentencingofyouth.org/defense-guidelines/.

⁹ *Middleton v. State*, 2015 WL 6387760, at *28 (Fla. 2015) citing "American Bar Association Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases," 31

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and *Vega v. State*, 182 So. 3rd 848 (Fla. 4th DCA 2016).

³ *Farias v. State*, 540 So.2d 201 (Fla. 3rd DCA 1989).

⁴ *Van Poyck v. Singletary*, 715 So.2d 930 (Fla. 1998); *Kearse v. State*, 770 So.2d 1119 (Fla. 2000); *Turner v. State*, 645 So.2d 444 (Fla. 1994); *Busby v. State*, 894 So.2d 88 (Fla. 2004); *Ferrell v. State*, 697 So.2d 198 (Fla. 2nd DCA 1997); *Smith v. State*, 699 So.2d 629 (Fla. 1997); *Bigham v. State*, 995 So.2d 207 (Fla. 2008); *Aguirre-Jarquín v. State*, 9 So.3d 593 (Fla. 2009); *Ault v. State*, 866 So.2d 674 (Fla. 2003); *Overton v. State*, 801 So.2d 877 (Fla. 2001) and *Carratelli v. State*, 961 So.2d 312 (Fla. 2007).

⁵ *Thomas v. State*, 958 So.2d 1047 (Fla. 2nd DCA 2007).

⁶ *Vegu v. State*, 781 So.2d 1165 (Fla. 3rd DCA 2001).

⁷ *Meade v. State*, 867 So.2d 1215 (Fla. 3rd DCA 2004).

⁸ *Chapman v. State*, 593 So.2d 605 (Fla. 4th DCA 1992).

⁹ *Salazar v. State*, 564 So.2d 1245 (Fla. 3rd DCA 1990).

¹⁰ *Peters v. State*, 874 So.2d 677 (Fla. 4th DCA 2004).

¹¹ *McKay v. State*, 61 So.3d 1178 (Fla. 3rd DCA 2011).

¹² *Cottrell v. State*, 930 So.2d 827 (Fla. 4th DCA 2006).

¹³ *Plasir v. State*, 785 So.2d 502 (Fla. 3rd DCA 1999).

¹⁴ *Kopsho v. State*, 959 So.2d 168 (Fla. 2007).

¹⁵ *Williams v. State*, 755 So.2d 714 (Fla. 4th DCA 1999).

¹⁶ *Lawe v. State*, 718 So.2d 920 (Fla. 4th DCA 1998).

¹⁷ *Marquez v. State*, 721 So.2d 1206 (Fla. 3rd DCA 1998).

¹⁸ *Thompson v. Singletary*, 655 So.2d 1282 (Fla. 4th DCA 1995); *Lazara v. State*, 666 So.2d 588 (Fla. 2nd DCA 1996); *James v. State*, 736 So.2d 1260 (Fla. 4th DCA 1999); *Gibson v. State*, 534 So.2d 1231 (Fla. 3rd DCA 1988); *Mitchell v. State*, 862 So.2d 908 (Fla. 4th DCA 2003) and *Overton v. State*, 801 So.2d 877 (Fla. 2001).

¹⁹ *Crawford v. State*, 805 So.2d 997 (Fla. 2nd DCA 2001).

²⁰ *Henry v. State*, 586 So.2d 1335 (Fla. 3rd DCA 1991).

²¹ *White v. State*, 579 So.2d 784 (Fla. 3rd DCA 1991).

²² *Perea v. State*, 657 So.2d 8 (Fla. 3rd DCA 1995).

²³ *Jones v. State*, 660 So.2d 291 (Fla. 2nd DCA 1995) (See also *Huber v. State*, 669 So.2d 1079 (Fla. 4th DCA 1996); *Rodius v. State*, 821 So.2d 1150 (Fla. 4th DCA 2002) and *Hill v. State*, 477 So.2d 553 (Fla. 1985)).

²⁴ *Imbimbo v. State*, 555 So.2d 954 (Fla. 4th DCA 1990) and *Vega v. State*, *Id.*

²⁵ *Brown v. State*, 728 So.2d 758 (Fla. 3rd DCA 1999).

²⁶ *Gill v. State*, 683 So.2d 158 (Fla. 3rd DCA 1996).

²⁷ *Long v. State*, 151 So.3d 498 (Fla. 1st DCA 2014); *Denson v. State*, 609 So.2d 627 (Fla. 4th DCA 1992); *Jones v. State*, 652 So.2d 967 (Fla. 3rd DCA 1995) and *Akins v. State*, 694 So.2d 847 (Fla. 4th DCA 1997).

²⁸ *Price v. State*, 538 So.2d 486 (Fla. 3rd DCA 1989).

²⁹ *Melendez v. State*, 700 So.2d 791 (Fla. 4th DCA 1997); *Standers v. State*, 707 So.2d 664 (Fla. 1998) and *Puryear v. State*, 890 So.2d 2 (Fla. 2nd DCA 2004).

³⁰ *Cottrell v. State*, *Id.*

³¹ *Martinez v. State*, 795 So.2d 279 (Fla. 3rd DCA 2001).

³² *Slater v. State*, 910 So.2d 347 (Fla. 4th DCA 2005).

³³ *Adkins v. State*, 736 So.2d 719 (Fla. 2nd DCA 1999).

³⁴ *Gilbert v. State*, 593 So.2d 597 (Fla. 3rd DCA 1992).

³⁵ *Mann v. State*, 571 So.2d 551 (Fla. 3rd DCA 1990).

³⁶ *Scott v. State*, 825 So.2d 1067 (Fla. 4th DCA 2002).

³⁷ *Salgado v. State*, 829 So.2d 342 (Fla. 3rd DCA 2002); *Rimes v. State*, 993 So.2d 1132 (Fla. 5th DCA 2008); *Clayton v. State*, 616 So.2d 615 (Fla. 4th DCA 1993); *Polite v. State*, 754 So.2d 859 (Fla. 3rd DCA 2000) and *Vega v. State*, 182 So. 3rd 848 (Fla. 4th DCA 2016).

³⁸ *Witherspoon v. Illinois*, 391 U.S. 510 (1968).

³⁹ *Guardado v. State*, 176 So.3d 886 (Fla. 2015); See also *Ault v. State*, *Id.*

⁴⁰ *Sanchez-Velasco v. State*, 570 So.2d 908 (Fla. 1990).

⁴¹ *Bryant v. State*, 656 So.2d 426 (Fla. 1995).

⁴² *Bryant v. State*, 601 So.2d 529 (Fla. 1992).

⁴³ *Kearse v. State*, 662 So.2d 677 (Fla. 1995); *Hall v. State*, 614 So.2d 473 (Fla. 1993); *Mendoza v. State*, 700 So.2d 670 (Fla. 1997); *Smith v. State*, 516 So.2d 43 (Fla. 3rd DCA 1987); *Tennon v. State*, 545 So.2d 382 (Fla. 1st DCA 1989); *Ortiz v. State*, 543 So.2d 377 (Fla. 3rd DCA 1989); *Garcia v. State*, 570 So.2d 1082 (Fla. 3rd DCA 1990); *Jones v. State*, 660 So.2d 291 (Fla. 2nd DCA 1995) and *Cummings v. State*, 715 So.2d 944 (Fla. 1998).

⁴⁴ *Trotter v. State*, 576 So.2d 691 (Fla. 1990).

⁴⁵ *Matarranz v. State*, 133 So.3d 473 (Fla. 2013); See also *Green v. State*, 711 So.2d 69 (Fla. 4th DCA 1998).

⁴⁶ *Nibert v. State*, 508 So.2d 1 (Fla. 1987).

⁴⁷ *Kramer v. State*, 747 So.2d 1046 (Fla. 4th DCA 2000).

⁴⁸ *Bryant v. State*, 765 So.2d 68 (Fla. 4th DCA 2000).

⁴⁹ *Crevit v. State*, 673 So.2d 168 (Fla. 3rd DCA 1996).

⁵⁰ *Melbourne v. State*, 679 So.2d 759 (Fla. 1996).

⁵¹ *Smith v. State*, 28 So.3d 838 (Fla. 2009); *Conde v. State*, 860 So.2d 930 (Fla. 2003) and *Busby v. State*, 894 So.2d 88 (Fla. 2004).

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Hofstra Law Review 913, 959 (2003).

¹⁰ Hon. Helen G. Berrigan, "The Indispensable Role of the Mitigation Specialist in a Capital Case: A View From the Federal Bench," 36 *Hofstra Law Review* 819, 828 (2008).

¹¹ CFSY Guidelines, Part 4.1 p. 17.

¹² *Miller v. Alabama*, 132 S. Ct. at 2475.

¹³ Florida Statute §921.1401(2)(2014).

¹⁴ *Miller v. Alabama*, 132 S. Ct. at 2467; David Siegel, "What Hath Miller Wrought: Effective Representation of Juveniles in Capital-Equivalent Proceedings," 39 *New England Journal on Criminal & Civil Confinement* 363 (2013).

¹⁵ ABA Guidelines; 31 *Hofstra Law Review* at 959.

¹⁶ *Id.*

¹⁷ Sean D. O'Brien, "When Life Depends on It: Supplementary Guidelines for the Mitigation Function of Defense Teams in Death Penalty Cases," 36 *Hofstra Law Review* 693, 709 (2008).

¹⁸ *Wiggins v. Smith*, 539 U.S. 510, 521-22 (2003) citing *Strickland v. Washington*, 466 U.S. 668, 691 (1984).

¹⁹ *Jells v. Mitchell*, 538 F.3d 478, 495-96 (6th Cir. 2008).

²⁰ *Parker v. State*, 3 So. 3d 974 (Fla. 2009).

²¹ Florida Statute §27.425 (2010).

²² *Criminal Specialist Investigations, Inc. v. State*, 58 So. 3d 883, 886 (Fla. 1st DCA 2011).

²³ *Middleton v. State*, at *27.

²⁴ *Middleton v. State*, at *27.

²⁵ *Ake v. Oklahoma*, 470 U.S. 69, 82-83 (1985); *Cowley v. Stricklin*, 929 F.2d 640, 644 (11th Cir. 1991); *State v. Nolasco*, 803 So. 2d 757, 758 (Fla. 3d DCA 2001); and Florida Rule of Judicial Administration 2.420(c)(9)(A)(i) & (vii).

²⁶ David Siegel, "What Hath Miller Wrought: Effective Representation of Juveniles in Capital-Equivalent Proceedings," 39 *New England Journal*

on Criminal & Civil Confinement 363 (2013).

²⁷ *DeBruce v. Comm'r, Alabama Dep't of Corr.*, 758 F.3d 1263, 1270-75 (11th Cir. 2014).

²⁸ CFSY Guidelines, Part 2.2, p. 11.

²⁹ Fla. Stat. §921.1401(2)(d).

³⁰ Fla. Stat. §921.1401(2)(c).

³¹ ABA Guidelines, 31 *Hofstra Law Review* at 959-60.

³² *Id.*

³³ *Id.*

³⁴ *Graham v. Florida*, 560 U.S. at 78-79.

³⁵ Steinberg and Scott, "Less Guilty by Reason of Adolescence; Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty," *American Psychologist* (Dec. 2003).

³⁶ *State v. Lyle*, 854 N.W.2d 378 (Iowa 2014) (finding mandatory minimum sentences unconstitutional as applied to juveniles based on the Iowa Constitution.).

