

January 15, 2010

Governor Charlie Crist
Office of the Governor
The Capitol
Tallahassee, FL 32399

Dear Governor:

This is a complaint alleging misconduct of Pedro F. Bajo, Jr., Chairperson, 13th Circuit Judicial Nominating Commission, and Chris A. Barker, Commissioner and Vice Chair, 13th Circuit Judicial Nominating Commission.

Commissioner Barker has a substantial conflict of interest with applicant Ryan Christopher Rodems, his law partner. It is an ongoing conflict as Mr. Rodems has applied for every vacancy for over a year. Chairperson Bajo has allowed the conflict to continue. Chairperson Bajo failed to provide public records for the Commission until the Office of Open Government intervened. A number of records are still outstanding. This misconduct is a violation of the public trust, reflects discredit upon the judicial selection process, and suggests partiality in the consideration of applicants.

This is a complaint made under the Uniform Rules of Procedure for Circuit Judicial Nominating Commissions, Section IX, Misconduct, which states a complaint alleging the misconduct of a judicial nominating commission chair and one or more commissioners of a judicial nominating commission shall be reported in writing to the Governor for action. (JNC Rules, Section IX, beginning at line 166).

Complaint against Commissioner and Vice Chair Chris A. Barker:

1. Mr. Barker was appointed Commissioner April 24, 2008 and is currently Vice Chair. Mr. Barker is partner in the law firm Barker, Rodems & Cook, PA.
2. After Mr. Barker's appointment to the Commission, Mr. Barker's law partner, Ryan Christopher Rodems, has applied for at least five (5) judicial vacancies in the 13th Judicial Circuit, and has been nominated at least four (4) times, including:
 - a. Mr. Rodems applied for and was nominated for a Hillsborough Circuit Court vacancy announced February 3, 2009, created by the appointment of Judge Marva L. Crenshaw to the Second District Court of Appeal.
 - b. Mr. Rodems applied for and was nominated for a Hillsborough County Court vacancy announced February 9, 2009, created by the resignation of Judge Charlotte W. Anderson.

c. Mr. Rodems applied for and was nominated for a vacancy on the Hillsborough County Court announced June 19, 2009, created by the appointment of Judge Elizabeth G. Rice to the Circuit Court.

d. Mr. Rodems applied for and was nominated for a vacancy on the Hillsborough County Court announced November 13, 2009 created by the retirement of Judge Raul C. Palomino, Jr.

e. Mr. Rodems applied for vacancy on the Hillsborough County Circuit Court announced December 14, 2009, created by the appointment of Judge Charlene Honeywell to the federal judiciary.

3. The applications submitted by Mr. Rodems to the Commission on which Mr. Barker serves creates a substantial conflict of interest. Mr. Barker and Mr. Rodems are law partners in the firm Barker, Rodems & Cook, PA, 400 North Ashley Dr. #2100, Tampa, FL 33602. Barker, Rodems & Cook, PA is a small, three attorney firm. The other partner is William John Cook. The relationship between Mr. Barker and Mr. Rodems is a personal and business relationship.

4. Section VIII of the JNC Circuit Rules, Ethical Responsibilities, states:

“Judicial nominating commissioners hold positions of public trust. A commissioner's conduct should not reflect discredit upon the judicial selection process or disclose partisanship or partiality in the consideration of applicants. Consideration of applicants shall be made impartially and objectively.”

“A commissioner shall disclose to all other commissioners present all personal and business relationships with an applicant. If a substantial conflict of interest is apparent, that commissioner shall not vote on further consideration of any affected applicants. A Commissioner shall declare any conflict of interest that he/she has.”

The substantial conflict of interest between Commissioner Barker and applicant Rodems is a personal and business relationship that is:

- a. A violation of the public trust.
- b. Reflects discredit upon the judicial selection process.
- c. Suggests partiality in the consideration of applicants.

5. The substantial conflict of interest between Commissioner Barker and applicant Rodems is ongoing and prevents Commissioner Barker from being able to attend fully to the duties of the JNC. Mr. Rodems appears to have applied for every vacancy in the 13th Judicial Circuit during the year 2009. Mr. Rodems has an application pending before the JNC for the year 2010. This ongoing substantial conflict of interest creates a permanent inability for Commissioner Barker to perform his official duties so long as Mr. Rodems continues to submit applications. Florida Statutes §43.291 requires the JNC have nine members, but the conflict has effectively reduced this JNC to eight members.

6. This ongoing substantial conflict of interest is unfair to other applicants and to the citizens of the 13th Judicial Circuit. Even if Commissioner Barker does not vote on the application(s) of Mr. Rodems, it deprives the other applicants and citizens of a full Commission consideration of all the applicants.
7. The ongoing substantial conflict of interest has also unfairly benefited Mr. Rodems by having an insider on the JNC to advise him of the inner workings of the Commission, to the disadvantage of applicants who do not have an insider serving on the Commission. If it is found that Commissioner Barker's service on JNC was primarily to benefit his law partner Mr. Rodems to become a judge, that may amount to malfeasance.
8. I have known Commissioner Barker and Mr. Rodems for about 10 years as a client of their current and past law firms. We are now opposing litigants in Gillespie v. Barker, Rodems & Cook, PA, 05-CA-7205, Hillsborough Circuit Court.
9. This complaint is in writing, signed, legally sufficient, and contains ultimate facts which show a violation of the rules and reflects discredit on the judicial selection process.

Respectfully submitted January 15, 2010.



Neil J. Gillespie
8092 SW 115th Loop
Ocala, Florida 34481
Telephone: (352) 854-7807
email: neilgillespie@mfi.net

Complaint against Chairperson Pedro F. Bajo, Jr.

10. Chairperson Bajo has allowed the above complained-about conflict of interest between Commissioner Barker and Mr. Rodems to exist for at least a year.
11. In an email to Chairperson Bajo January 9, 2010 I asked about the conflict of interest and other conduct that reflects discredit upon the judicial selection process. (Exhibit 1). Chairperson Bajo responded January 11, 2010 at 12:20pm "I acknowledge receipt of your email of Saturday and I will get back to you with respect to the remainder of the email in the next couple of days. I have some pressing client matters that I need to attend to until then." (relevant portion). As of the time of this complaint Chairperson Bajo has not responded further.
12. Florida Statutes §43.291, requires the JNC have nine members. The ongoing inability of Commissioner Barker to fully attend to the duties of the JNC because Mr. Rodems has applied for every vacancy in 2009 effectively reduces the JNC to eight members.

13. Article V, Section 11(d) of the Florida Constitution states (relevant portion) “Except for deliberations of the judicial nominating commissions, the proceedings of the commissions and their records shall be open to the public.” I have had difficulty obtaining public records from Chairperson Bajo, and some records have not been provided.

a. December 22, 2009: Initial request to Chairperson Bajo by email, fax and phone call for the application of Mr. Rodems and Mr. Lovell. Chairperson Bajo did not respond.

b. December 23, 2009: I followed up my records request to Chairperson Bajo by email, fax and phone. I also spoke with Barbara Moore, Chairperson Bajo’s assistant at Ackerman Senterfitt. Chairperson Bajo did not respond to me, but he called Kristen Wilson of the Florida Bar and assured her that he would call me December 28, 2009.

c. December 28, 2009: Chairperson Bajo did not call or provide records.

d. December 29, 2009: I emailed Kristen Wilson of the Florida Bar about Chairperson Bajo’s failure to provide the records or contact me. Ms. Wilson responded: “My suggestion would be to call the Governor’s office and asked for the person in charge of judicial appointments.” (Exhibit 2). I contacted the Governor’s office and was referred to the Office of Open Government and Jessica Kassees. I also emailed Ms. Kassees. At 7:51pm Chairperson Bajo called me and agreed to provide the public records subject to redaction of personal information and payment of \$1.00 per page.

e. December 30, 2009: I emailed Ms. Kassees at 10:17am: “Yesterday evening at 7:51pm I received a phone call from Mr. Pedro Bajo, Chairman of the 13th Judicial Circuit Nominating Committee. Mr. Bajo said he would provide the public records I requested, subject to redaction of personal information and payment of \$1.00 per page. I understand that personal information is redacted, but \$1.00 per page seems excessive. I told Mr. Bajo that I want the records and he said he is preparing them. He was supposed to call me this morning with the copying costs, but I have not heard from him as of the time of this email. Neil Gillespie.” (Exhibit 3). Chairperson Bajo telephoned me at 10:57am and advised that he would provide the records by email in PDF at no cost. Chairperson Bajo provided the application of Ryan Christopher Rodems at 11:39am, but not Mr. Lovell; that arrived the following day.

f. January 9, 2010: Requested records of Commission proceedings, including all public notes and tally sheets. I asked if Chairperson Bajo was able to disclose the final vote for each nominee. I requested copies of deliberation transcripts if public, records of the interviews with Mr. Rodems and any financial disclosure not part of his original application. I requested any other public record not already described. I also requested any electronic media and still photography coverage of JNC proceedings pursuant to the Uniform Rules of Procedure for Circuit JNCs, Section III. (Exhibit 3).

g. January 11, 2010: Chairperson Bajo responded: "I acknowledge receipt of your email of Saturday and I will get back to you with respect to the remainder of the email in the next couple of days. I have some pressing client matters that I need to attend to until then." As of the time of this complaint Chairperson Bajo has not responded further.

h. January 11, 2010: I emailed Chairperson Bajo to determine the total number of applications submitted by Mr. Rodems to the Commission. As of the time of this complaint Chairperson Bajo has not responded.

14. The Uniform Rules of Procedure for Circuit Judicial Nominating Commissions, Section X, states at line 195: "The chairperson shall keep a permanent written record of the minutes of all meetings of the commission, and all policies and procedures adopted by the commission, and all policies and procedures adopted by the commission during his or her term. At the conclusion of his or her term the outgoing chairperson shall turn over to the newly elected chairperson all minutes of meetings and written records of adopted policies and procedures." Chairperson Bajo has not made this information public.

15. Florida Statutes, §43.291(5) states "A member of a judicial nominating commission may be suspended for cause by the Governor pursuant to uniform rules of procedure established by the Executive Office of the Governor consistent with s. 7 of Art. IV of the State Constitution."

16. Article IV, Section 7(a) of the Florida Constitution states: "By executive order stating the grounds and filed with the custodian of state records, the governor may suspend from office any state officer not subject to impeachment, any officer of the militia not in the active service of the United States, or any county officer, for malfeasance, misfeasance, neglect of duty, drunkenness, incompetence, permanent inability to perform official duties, or commission of a felony, and may fill the office by appointment for the period of suspension. The suspended officer may at any time before removal be reinstated by the governor."

17. The 13th Judicial Circuit has a history of scandal. It is important that the Commission be conducted in a manner to restore public confidence in the courts. The following scandals have been reported:

A Grand Jury investigation into judicial misconduct resulted in a Presentment December 8, 2000 that recommended the resignation or removal of Judge Bonanno over his untoward entry into the chambers of Judge Holder, and a sexual affair in the courthouse with an employee of the clerk's office. The Grand Jury reported on an extramarital affair of Judge Ficarrota and bailiff Tara Pisano that included sexual relations in the courthouse during business hours. Judge Ficarrota also engaged in unlawful campaign fundraising for the Hillsborough County Sheriff while on duty.

In another scandal, an official investigation into State Attorney and former Judge Harry Lee Coe concluded that he committed suicide over gambling debts. Judge Holder, a critic

of wrongdoing at the court, spent \$1.9 million in legal fees defending against a false charge of plagiarism. The Florida Supreme Court recently awarded Judge Holder \$70,000 in expenses. In 2007 the US Justice Department brought a USERRA action against Pat Frank, the Clerk of Court, which has since settled for the plaintiff. In August 2009 the courthouse was evacuated over what turned out to be a false gun scare. And Judge Richard Nielsen, assigned to my lawsuit, was criticized in the St. Petersburg Times.

On May 29, 2002, the St. Petersburg Times published an editorial on Judge Richard Nielsen entitled "Judge should have known better". The editorial begins "What was Hillsborough County Circuit Judge Richard Nielsen thinking when he forced a 16-year-old to represent himself in court?" The Times said Judge Nielsen made a mistake that needed correction. The Times questioned Judge Nielsen's reasoning that he thought the child was somehow protected by the fact his co-defendant had an attorney: "That is either an alarming perspective on the law or an inept attempt at damage control, for he also said, in the same breath, that the attorney may have had a conflict playing two roles in the case." The Times published two prior news stories critical of Judge Nielsen in the matter. Judge Nielsen recused himself in my lawsuit after it was shown that Mr. Rodems falsely involved the judge in an affidavit sworn to by Mr. Rodems.

And in addition to the above, Mr. Rodems' former law partner attacked opposing counsel during an infamous coffee-throwing incident. A police report shows Mr. Rodems witnessed the attack by his law partner on attorney Arnold Levine. But Mr. Rodems did not report the assault to the Florida Bar or to me, the firm's client. I learned about the attack from other lawyers in Tampa when I sought representation against Mr. Rodems.

18. This complaint is in writing, signed, legally sufficient, and contains ultimate facts which show a violation of the rules and reflects discredit on the judicial selection process.

Respectfully submitted January 15, 2010.



Neil J. Gillespie
8092 SW 115th Loop
Ocala, Florida 34481
Telephone: (352) 854-7807
email: neilgillespie@mfi.net

Neil Gillespie

From: "Neil Gillespie" <neilgillespie@mfi.net>
To: "Pedro F Bajo, Jr." <pedro.bajo@akerman.com>
Cc: "Rob Wheeler" <Rob.Wheeler@eog.myflorida.com>; "Kristen Wilson" <kwilson@flabar.org>; "Ronald Hanes" <rhanes@trombleyhaneslaw.com>; "Barbara Wilcox" <rwilcox106@aol.com>; "John McLaughlin" <JOHN@WAGNERLAW.COM>; "William Schifino" <wschifino@wsmslaw.com>; "S. Cary Gaylord" <cgaylord@gaylordmerlin.com>; "Edward Gerecke" <egerecke@carltonfields.com>; "Bing Kearney" <Bing@KearneyConstruction.com>
Sent: Saturday, January 09, 2010 4:36 PM
Subject: additional records request

Dear Mr. Bajo,

Thank you for your reply about Mr. Barker's JNC application, I obtained it from the Office of Open Government. Public records are an important part of the JNC process, which unlike a judicial election, is not as well publicized. In order to maintain public confidence in the JNC process, why not put all the applications for commission members and judicial applicants online? They are public records and should be made more accessible than currently offered. Online JNC public records would also allow you the Chairman more time for other JNC duties.

The public record of Mr. Rodems' application let me know about two other clients who complained to the bar about him. Subsequently I located and spoke with one of the complainants, Rita Pesci, who was surprised and concerned that Mr. Rodems is trying to become a judge. Ms. Pesci may contact Governor Crist directly with her concerns. So by providing Mr. Rodems' public records to me, it allowed Ms. Pesci to participate in the process if she chooses. I share Ms. Pesci's belief that Mr. Rodems does not meet the criteria required by The Uniform Rules of Procedure for Circuit JNCs.

Thank you for Mr. Lovell's application for circuit court, for the seat being vacated by Judge Honeywell. I requested, but did not receive, Mr. Rodems' application for the same circuit court vacancy. When can I expect to receive an application for Mr. Rodems for circuit judge?

In addition, for the JNC proceedings related to the county court vacancy, the seat being vacated by Judge Palomino, kindly provide the following:

1. Records of commission proceedings, including all public notes and tally sheets. Are you able to disclose the final vote for each nominee?
2. Copies of deliberation transcripts if public information.
3. Records of the interviews with Mr. Rodems.
4. Any financial disclosure from Mr. Rodems not part of his original application.
5. Anything other public record not described above.

The Uniform Rules of Procedure for Circuit JNCs, Section III, provides for electronic media and still photography coverage of JNC proceedings. What is available in the form of public records from any such coverage?

The Uniform Rules of Procedure for Circuit JNCs, Section VIII, ethical responsibilities, states (in part) "A commissioner shall disclose to all other commissioners present all personal and

EXHIBIT

/

business relationships with an applicant. If a substantial conflict of interest is apparent, that commissioner shall not vote on further consideration of any affected applicants. A Commissioner shall declare any conflict of interest that he/she has."

I believe commission member Chris A Barker has a substantial conflict with Mr. Rodems, who is his long-time associate and law partner. Furthermore it appears this is a continuing conflict of interest given Mr. Rodems many applications to the JNC. What is being done about this substantial conflict of interest? I have known Mr. Barker and Mr. Rodems for about 10 years, and in my view Mr. Barker joined the JNC to provide an advantage for Mr. Rodems to become judge. It is unfair to the other applicants, unfair and to the citizens of the 13th Judicial Circuit. I believe either Mr. Baker should resign from the commission, or Mr. Rodems should withdrawal his pending applications and not submit further until Mr. Barker leaves the commission. Even if Mr. Barker refrains from voting when Mr. Rodems applies, it still shortchanges the other applicants and the citizens of the 13th Judicial Circuit who deserve a full panel JNC consideration. Mr. Rodems has also unfairly benefited from having an insider on the commission to advise him of the inner workings of the commission, to the determinate of all the applicants who do not have an insider serving on the commission.

Thank you.

Neil Gillespie

Neil Gillespie

From: "Kristen Wilson" <KWilson@flabar.org>
To: "Neil Gillespie" <neilgillespie@mfi.net>
Sent: Tuesday, December 29, 2009 9:02 AM
Subject: Re: Fw: comments to the Commission, records request

My suggestion would be to call the Governors office and asked for the person in charge of judicial appointments.

Thank you.

Kristen Wilson
Executive Office Assistant II
Ph: 850.561.5757
Fax: 850.561.5826
www.floridabar.org

"Neil Gillespie" <neilgillespie@mfi.net>

To "Kristen Wilson" <KWilson@flabar.org>

cc

12/29/2009 08:50 AM

Subject Re: Fw: comments to the Commission, records request

Ms. Wilson

I regret to inform you that Mr. Bajo did not contact me yesterday about my public records request. It was my understanding that Mr. Bajo told you that he would contact me Monday, December 28, 2009. At this point Mr. Bajo has failed to contact me as promised. I called him last evening at 6pm on his cell phone, was greeted by voice mail, and left another message.

At this point Mr. Bajo has not responded as he promised. What do you suggest now?

Neil Gillespie

----- Original Message -----

From: Kristen Wilson
To: Neil Gillespie
Sent: Wednesday, December 23, 2009 10:31 AM
Subject: Re: Fw: comments to the Commission, records request



Mr. Gillespie – Per our conversation, I sent an e-mail to Mr. Bajo requesting that he call you regarding the pick up of a copy of Mr. Rodems judicial application.

Thank you – Kristen

Kristen Wilson
Executive Office Assistant II
Ph: 850.561.5757
Fax: 850.561.5826
www.floridabar.org

Neil Gillespie

From: "Neil Gillespie" <neilgillespie@mfi.net>
To: "Kassees, Jessica" <Jessica.Kassees@eog.MyFlorida.com>
Sent: Wednesday, December 30, 2009 10:17 AM
Subject: Re: public records request, 13th Circuit Judicial Nominating Commission
 Ms. Kassees,

Yesterday evening at 7:51pm I received a phone call from Mr. Pedro Bajo, Chairman of the 13th Judicial Circuit Nominating Committee. Mr. Bajo said he would provide the public records I requested, subject to redaction of personal information and payment of \$1.00 per page. I understand that personal information is redacted, but \$1.00 per page seems excessive. I told Mr. Bajo that I want the records and he said he is preparing them. He was supposed to call me this morning with the copying costs, but I have not heard from him as of the time of this email.

Neil Gillespie

----- Original Message -----

From: Kassees, Jessica
To: Neil Gillespie
Sent: Tuesday, December 29, 2009 12:25 PM
Subject: RE: public records request, 13th Circuit Judicial Nominating Commission

Dear Mr. Gillespie:

This email is in response to your email below, in which you request records as follows: "the following applications to county court judge:

Ryan Christopher Rodems

Troy Matthew Lovell"

We will begin a search for the referenced documents. The legal cost of duplication is 15 cents per page, plus postage. If we find that the cost is significant, we will send you a breakdown of the tasks required and the final cost. Thank you.

Sincerely,

Jessica Kassees

Jessica P. Kassees
 Executive Assistant
 Office of Open Government
 Executive Office of the Governor
 400 South Monroe Street
 The Capitol PL04
 Tallahassee, FL 32399-0001
 Phone: (850) 921-6099
 Fax: (850) 488-0219



Under Florida law email addresses are public records. If you do not want your e-mail address released in response to a public record request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing.

-----Original Message-----

From: Neil Gillespie [mailto:neilgillespie@mfi.net]

Sent: Tuesday, December 29, 2009 12:20 PM

To: Kassees, Jessica

Subject: public records request, 13th Circuit Judicial Nominating Commission

Importance: High

Jessica Kassees,

Thank you for speaking with me earlier today. On December 22, 2009 I made a public records request to Pedro F. Bajo, Jr., Chairman of the 13th Circuit Judicial Nominating Commission for the following applications to county court judge:

Ryan Christopher Rodems

Troy Matthew Lovell

Here is a link to the 13th Circuit Judicial Nominating Commission web page

<http://www.fljud13.org/pdfs/12.9-09JNCPRESSRELEASEFORJUDGEPALOMINOSVACANCY.pdf>

Please provide the requested records. My contact information is listed below. Kindly acknowledge receipt of this request. Thank you again.

Neil J. Gillespie
8092 SW 115th Loop
Ocala, FL 34481
telephone: (352) 854-7807