

Neil J. Gillespie
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VIA FIRST CLASS MAIL

April 20, 2010

Mr. S. Cary Gaylord
Gaylord Merlin Ludovici Diaz & Bain
5001 West Cypress Street
Tampa, FL 33607

Dear Mr. Gaylord:

Thank you for your letter dated April 13, 2010. Concerning the openness of the JNC process to the public, the Florida Constitution states:

“Except for deliberations of the judicial nominating commissions, the proceedings of the commissions and their records are open to the public.” (Article V, Section 11(d))

Your letter describes an investigative process that does not appear to comply with the requirements of the Florida Constitution. Only JNC deliberations are confidential, the rest of the proceedings of the commissions and their records are open to the public. Notes or files of interviews, investigations and conclusions concerning applicants are records that should be retained and open to the public.

You wrote the following: “The judges, cases and lawyers were those involved in Mr. Rodems' application, any mentioned in your complaint and any mentioned by individuals I interviewed as part of my investigation. I reported the results of my investigation orally to the other JNC members. I did not keep any notes or files related to my investigation. The 13th Circuit JNC does not keep any notes of any investigation.” (§2)

You also wrote: “My objective was to investigate Mr. Rodems' background, report my conclusions about his fitness to be a judge and report on the reasonableness of your complaints and objections. As I said, my report was oral and I kept no records.” (§3)

As I understand the Florida Constitution, the proceedings of the 13th Circuit JNC and their records are open to the public. This includes any notes or files of interviews,

investigations and conclusions. Your letter suggests that you had notes or files of your interviews, investigations and conclusions but you did not keep them. You also wrote that the 13th Circuit JNC does not keep any notes of any investigation. What happened to your records or the records of the 13th Circuit JNC? Were the records destroyed?

The Uniform Rules of Procedure for Circuit Judicial Nominating Commissions shows your practice and that of the 13th Circuit JNC violates the Rules.

JNC Rules Section I, Initial Procedure; Investigative Sources; Notice, states:

“The commission shall require completion of the application form attached hereto and incorporated herein, which shall include a waiver of confidentiality of all material necessary to adequately investigate each applicant, including but not limited to, disciplinary records of The Florida Bar, records of the Florida Board of Bar Examiners, credit records, records maintained by any law enforcement agency, and records of the Florida Judicial Qualifications Commission.” (10-15)

JNC Rules Section IV, Further Investigation; Interviews, states:

“The commission shall investigate the fitness and qualifications of each applicant, utilizing all sources reasonably available within the time permitted by the Florida Constitution. In addition, the commission may invite any applicant to appear before a quorum of the commission sitting as a whole to respond to questions deemed pertinent to each applicant's fitness and qualifications to hold the judicial office. All applications, and other information received from or concerning applicants, and all interviews and proceedings of the commission, except for deliberations by the commission, shall be open to the public to the extent required by the Florida Constitution or Florida Statutes. (38-46)”

JNC Rules Section VI, Final Selection of Nominees, states:

The names of such nominees selected by the commission shall be certified to the governor in alphabetical order, and a copy of all investigative information and documents relating to each such nominee shall be forwarded to the governor. (91-93).

It appears that notes or files of interviews, investigations and conclusions are required by JNC Rules Section I and IV, the records are open to the public, and the records shall be forwarded to the governor pursuant to Section VI. For some reason you and the 13th Circuit JNC are not in compliance with the cited JNC Rules or the Florida Constitution, and this reflects discredit upon the judicial selection process.

Mr. Gaylord, there is another problem with your email to Mr. Wheeler of March 15, 2010, it violates JNC Rules, Section VIII, Ethical Responsibilities. While your entire email appears inappropriate, this part is particularly egregious: “I have personally spoken

with Mr. Gillespie, with judges presiding over various cases mentioned in his complaints and with other lawyers who have been involved in litigation mentioned by Mr. Gillespie and involving Mr. Rodems. After hours of personal work and after hearing from other members of the committee who have done similar work, I am convinced that all of Mr. Gillespie's complaints against Mr. Rodems, Mr. Barker and Mr. Bajo are completely without merit.”

JNC Rule, Section VIII states:

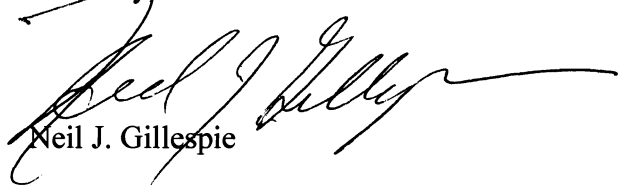
“Upon certification of a list of nominees to the governor, no commissioner shall contact the governor or any member of his office or staff, for the purpose of further influencing the governor's ultimate decision.” (112-115)

Your email to Mr. Wheeler, as it relates to Mr. Rodems, was for the purpose of further influencing the Governor’s ultimate decision. You wrote that my complaints against Mr. Rodems are completely without merit. Your contact with the Governor’s General Counsel was made after the list of nominees was certified to the Governor.

Finally, according to your response you were unable to recall whether you spoke with Judge Barton who is presiding over my case with Mr. Rodems. This is hard to believe unless you suffer from significant memory impairment.

At this time it appears your investigative process and that of the 13th Circuit JNC violate the Florida Constitution and the JNC Uniform Rules of Procedure. This misconduct is a violation of the public trust, reflects discredit upon the judicial selection process, and suggests partiality in the consideration of applicants.

Sincerely,



Neil J. Gillespie

cc: Mr. Robert R. Wheeler, General Counsel
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209 The Capitol
Tallahassee, Florida 32399

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