



CHARLIE CRIST
GOVERNOR

STATE OF FLORIDA

Office of the Governor

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June 22, 2010

Mr. Neil J. Gillespie
8092 Southwest 115th Loop
Ocala, Florida 34481

Dear Mr. Gillespie:

The Office of the Chief Inspector General has concluded its investigation of your complaint against Mr. Barker. I have attached a copy of the inquiry for your convenience.

Sincerely,

A handwritten signature in black ink, appearing to be "RF", with a long, sweeping horizontal line extending to the right.

Rick Figlio
General Counsel

RF/dml
cc: Chris A. Barker

Executive Office of the Governor
Office of the Chief Inspector General



Chief Inspector General Case #201003040004
June 2010

INTRODUCTION

On March 4, 2010, former General Counsel Robert Wheeler, Executive Office of the Governor, requested the Office of the Chief Inspector General conduct an investigation of allegations made by complainant Neil J. Gillespie concerning misconduct by a Thirteenth Judicial Circuit Judicial Nominating Commission¹ member. Specifically, Mr. Gillespie alleged that Chris A. Barker,² Commissioner and current Vice-Chair, has a substantial and ongoing conflict of interest with regard to a repeat applicant for judicial vacancies within the Thirteenth Judicial Circuit, his law partner Ryan Christopher Rodems.

OVERALL CONCLUSION

Based on testimonial and documentary evidence, the allegation of misconduct on the part of Commissioner and Vice-Chair Chris A. Barker is **unfounded**.

BACKGROUND AND SUMMARY OF COMPLAINT

In a letter dated January 15, 2010 to Governor Crist, Mr. Gillespie outlined his specific allegations of misconduct in the following pertinent excerpts:

"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."³

"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

¹ According to Article V, section 11(d) of the Florida Constitution, "There shall be a separate judicial nominating commission as provided by general law for the supreme court, each district court of appeal, and each judicial circuit for all trial courts within the circuit. Uniform rules of procedure shall be established by the judicial nominating commissions at each level of the court system." Section 43.291, Florida Statutes, Judicial nominating commissions.--, outlines the membership and terms for judicial nominating commission members. Further, Section 43.291(7), Florida Statutes, states: "The Executive Office of the Governor shall provide all administrative support for each judicial nominating commission. The Executive Office of the Governor shall adopt rules necessary to administer this section."

² In a letter to former Secretary of State Kurt Browning dated April 24, 2008, Governor Charlie Crist advised that Mr. Barker was appointed to the Thirteenth Circuit Judicial Nominating Commission for a term beginning April 24, 2008, and ending July 1, 2011.

³ In a letter to former Secretary of State Sue M. Cobb dated July 6, 2006, then Governor Jeb Bush advised that Mr. Bajo was appointed to the Thirteenth Circuit Judicial Nominating Commission for a term beginning July 2, 2006 and ending July 1, 2010. Further, in a March 3, 2010 letter to Debra Lewis, Judicial Nominating Commission Coordinator, Office of the General Counsel, Executive Office of the Governor, Mr. Gillespie informed her that he was withdrawing his complaint against Mr. Bajo.

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.”⁴

“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 [Judicial Nominating Commission] Rules, Section IX, beginning at line 166).”

“After Mr. Barker’s appointment to the Commission, Mr. Barker’s law partner, Ryan Christopher Rodems, has applied for at least (5) judicial vacancies in the 13th Judicial Circuit, and has been nominated at least four (4) times...”

“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.”

“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.”

“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 [Judicial Nominating Commission]. 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 [Judicial Nominating Commission] 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

⁴ As previously stated, in a March 3, 2010 letter to Debra Lewis, Judicial Nominating Commission Coordinator, Office of the General Counsel, Executive Office of the Governor, Mr. Gillespie informed her that he was withdrawing his complaint against Mr. Bajo.

Statutes §43.291 requires the JNC [Judicial Nominating Commission] have nine members, but the conflict has effectively reduced this JNC [Judicial Nominating Commission] to eight members.”

“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.”

“The ongoing substantial conflict of interest has also unfairly benefited Mr. Rodems by having an insider on the JNC [Judicial Nominating Commission] 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 [Judicial Nominating Commission] was primarily to benefit his law partner Mr. Rodems to become a judge, that may amount to malfeasance.”

In a letter dated January 19, 2010, to Governor Crist, Mr. Gillespie submitted an addendum to his complaint letter of January 15, 2010, outlining additional allegations of misconduct against Mr. Barker in the below pertinent excerpts:

“Question number 27 lists ‘Chris Rodems’ as a person he has known well within the past five (5) years. The address for ‘Chris Rodems’ is listed as 400 North Ashley Dr. #2100, Tampa, FL 33602. ‘Chris Rodems’ is in fact Ryan Christopher Rodems, his law partner, and the address is that of his law firm, Barker, Rodems & Cook, PA.” ...

“Question number 29 on Mr. Barker’s questionnaire asked, ‘Do you know of any reason why you will not be able to attend fully to the duties of the office or position to which you have been or will be appointed?’ Mr. Barker responded ‘no.’” ...

“At the time he sought appointment to the JNC [Judicial Nominating Commission], Mr. Barker knew or had reason to believe his law partner Ryan Christopher Rodems planned to apply for judicial vacancies. Mr. Barker knew a substantial conflict of interest would exist if he were appointed Commissioner and his law partner applied for a vacancy to the JNC [Judicial Nominating Commission] on which he served. Therefore Mr. Barker knew a reason why he would not be able to attend fully to the duties of Commissioner if appointed, but he failed to disclose this when answering the questionnaire he submitted to the Governor July 6, 2007. Therefore it appears Mr. Barker obtained appointment to the JNC [Judicial Nominating Commission] under false pretenses. It appears

Mr. Barker sought appointment to the JNC [Judicial Nominating Commission] not to serve the public, but to help his law partner become judge.”

In an email dated January 20, 2010, to Mr. Gillespie, and copied to Mr. Bajo and Mr. Barker, Mr. Wheeler acknowledged receipt of Mr. Gillespie’s written complaint and advised that the complaint will be reviewed.

In a March 3, 2010 letter to Debra Lewis, Judicial Nominating Commission Coordinator, Office of the General Counsel, Executive Office of the Governor, Mr. Gillespie informed her that he was withdrawing his complaint against Mr. Bajo.

In an email, dated March 4, 2010, to Mr. Gillespie, Mr. Bajo and Mr. Barker, Mr. Wheeler confirmed that Mr. Gillespie withdrew his complaint against Mr. Bajo and that an investigation will be conducted of Mr. Gillespie’s allegations against Mr. Barker.⁵

In a March 17, 2010 letter to Mr. Wheeler, Mr. Gillespie provided additional information concerning his complaint against Mr. Barker. Specifically, Mr. Gillespie advised that Mr. Barker failed to include BRC Properties, LLC in response to a question on his application for the Judicial Nominating Commission that requested applicants list all employment during the previous five years. According to information provided by Mr. Gillespie, Mr. Barker is listed as the corporation’s Operating Manager.⁶

Based on the above information, the Office of the Chief Inspector General initiated an inquiry to examine allegations raised by Mr. Gillespie against Mr. Barker. Inspector General Ned Luczynski, Department of Business and Professional Regulation, provided assistance during this inquiry.

GOVERNING DIRECTIVES

Section 43.291, Florida Statutes, states in pertinent parts:

“(2) ...All acts of a judicial nominating commission must be made with a concurrence of a majority of its members.”

⁵ In this same email, Mr. Wheeler also stated that “all parties have agreed to waive the requirement provided by the rules that “[a]ction shall be taken within 60 days of receipt of any written complaint...”.

⁶ In consultation with a representative from the Office of General Counsel, Executive Office of the Governor, Mr. Barker was not required to list BRC Properties, LLC on his application for appointment because Mr. Barker was not “employed” by BRC Properties, LLC. During his interview, Mr. Barker said he received no salary money from BRC Properties, LLC. Therefore, no further investigative activity was conducted on this issue.

“(5) 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.”

“(6) A quorum of the judicial nominating commission is necessary to take any action or transact any business. For purposes of this section, a quorum consists of a majority of commission members currently appointed.”

Uniform Rules of Procedure for Circuit Judicial Nominating Commissions, as amended June 25, 2003, states in pertinent parts:

“Section I. Initial Procedure; Investigative Sources; Notice”

“Whenever a vacancy occurs in a judicial office within the jurisdiction of a judicial nominating commission, the appropriate commission shall actively seek, receive and review the approved background statements submitted by those who voluntarily request consideration, and by those who otherwise consent in writing to such consideration by the commission.”

“Section VI. Final Selection of Nominees”

“By majority vote, the commission shall select no fewer than three and no more than six nominees from the list of applicants who meet the requirements of the Florida Constitution and all other legal requirements for the judicial office.”

“Section VIII. Ethical Responsibilities”

“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. Alternatively, upon motion by any Commissioner, a majority of all the Commissioners may declare that a commissioner has a conflict of interest. The affected Commissioner may vote on the motion.”⁷

⁷ In contrast to the Uniform Rules of Procedure for Circuit Judicial Nominating Commissions, the Supreme Court Judicial Nominating Commission Rules of Procedure, as amended November 7, 2002, are more restrictive. **“Section IX. Ethical Considerations”**, states in pertinent part: “A Commissioner shall disclose to other Commissioners present all personal, professional and business relationships with an applicant. ... If a substantial conflict of interest is apparent, that Commissioner **shall not vote on further consideration of any applicants** [emphasis added] so long as the applicant creating the conflict is under consideration during the selection of the initial

“Section IX. Misconduct”

“Each commissioner shall be accountable to the Governor and the chair of their commission for compliance with these rules and the proper performance of their duties as a member of a judicial nominating commission. Each commissioner affirms that under these rules the Governor and/or the chair of their commission may dispose of any legally sufficient written complaint alleging the misconduct of one or more commissioners or commissions, limited only by Article IV, Section 7 of the Constitution of the State of Florida. Each commissioner further acknowledges that pursuant to Article IV, Section 7 the Governor may suspend from office any commission member for malfeasance, misfeasance, neglect of duty, drunkenness, incompetence, permanent inability to perform their official duties, or commission of a felony.”

Further, this section 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.” ... “The Governor shall investigate any complaint if the allegations are in writing, signed by the complainant, and legally sufficient. A complaint is legally sufficient if the Governor determines that it contains ultimate facts which show a violation of these rules or reflects discredit on the judicial selection process.” ... “Disposition of a complaint shall include a hearing which affords the opportunity for the presentation of evidence to be evaluated by a clear and convincing standard of proof.”

THIRTEENTH CIRCUIT JUDICIAL NOMINATING COMMISSION MEMBERS

Mr. Pedro F. Bajo, Jr., Chair (term ends July 1, 2010);
Mr. Chris A. Barker, Vice Chair (term ends July 1, 2011);
Mr. S. Cary Gaylord (term ends July 1, 2012);
Mr. Edward W. Gerecke (term ends July 1, 2012);
Mr. Ronald P. Hanes (term ends July 1, 2010);
Mr. Bing Charles W. Kearney, Jr. (term ends July 1, 2012);
Mr. John J. McLaughlin (term ends July 1, 2011);
Mr. William J. Schifino, Jr. (term ends July 1, 2011);
Ms. Barbara N. Wilcox (term ends July 1, 2010).

three (3) nominees. In addition, the Commissioner **shall not participate in the selection of any additional nominees** [emphasis added] so long as the applicant creating the conflict is eligible for consideration.”

FINDINGS

Based on testimonial and documentary evidence, the allegation of misconduct on the part of Commissioner and Vice-Chair Chris A. Barker is **unfounded**.

In accordance with the Uniform Rules of Procedure for Circuit Judicial Nominating Commissions (Uniform Rules), Mr. Barker appropriately disclosed to Commission members his business relationship with applicant Mr. Rodems. Pursuant to the Uniform Rules, "[i]f a substantial conflict of interest is apparent, that commissioner shall not vote on further consideration of any affected applicants." Although testimony is conflicting as to whether Mr. Barker's recusal was from all duties and responsibilities of the Commission on those occasions when Mr. Rodems applied for a Judicial Vacancy, all Commissioners testified that Mr. Barker recused himself entirely from any activities concerning Mr. Rodems.

Evidence did not support that Mr. Barker's recusal from activities concerning Mr. Rodems showed a violation of the Uniform Rules, reflected discredit upon the judicial selection process or suggested partiality in the consideration of applicants. Both Mr. Barker and Mr. Rodems denied that Mr. Barker provided information to Mr. Rodems about the judicial selection process. To the contrary, Mr. Rodems said that Mr. Barker asked him (Rodems) about the process since he (Rodems) had applied for vacancies in a different circuit and he (Barker) wanted to know more about the process when he (Barker) was appointed to the Thirteenth Judicial Circuit Nominating Commission.

Evidence supports that Mr. Barker has not been able to participate fully in Commission activities during those occasions when Mr. Rodems applied for judicial vacancies in the Thirteenth Judicial Circuit. Further, Mr. Barker's recusal on those occasions did reduce the number of Commissioners from nine to eight. However, Section 43.291(6), Florida Statutes, states that "A quorum of the judicial nominating commission is necessary to take any action or transact any business." Evidence obtained did not support that Mr. Barker's recusal from Commission activities resulted in the inability to meet the quorum requirements or that it created a hardship for other Commission members.

Testimony from Commission members supports that Mr. Rodems' nominations to the Governor were not in any way due to the fact that Mr. Rodems is Mr. Barker's law partner. Commission members stated that they did not feel pressure to vote favorably for Mr. Rodems because of his relationship to Mr. Barker.

No evidence was found to support that Mr. Barker's application for appointment to the Thirteenth Judicial Circuit Nominating Commission "was primarily to benefit his law partner Mr. Rodems to become a judge." Mr. Barker stated that while he knew of Mr. Rodems' desire to one day become a judge, he did not know at the time he applied for appointment to the Thirteenth Judicial Circuit Nominating

Commission that Mr. Rodems would be applying for judicial vacancies in the Thirteenth Judicial Circuit or any other circuit in the near future. Furthermore, Mr. Barker indicated that he submitted his application for gubernatorial appointment in July 2007, listing his Boards of Interest as the Thirteenth Circuit Judicial Nominating Commission, the Second District Court of Appeals and the Supreme Court.

Witness Testimony⁸

Neil J. Gillespie confirmed that he withdrew his complaint against Commission Chair Pedro F. Bajo, Jr. In addition to the information contained in his written complaints, Mr. Gillespie commented that he believed the timing of Mr. Rodems' applications for judicial vacancies and Mr. Barker's application for the Judicial Nominating Commission was suspect. Mr. Gillespie further commented that because Mr. Rodems' indicated on his application for judicial vacancy that he had been considering serving as a judge for some time, Mr. Barker should not have checked "no" to the question on his application asking if he knew of any reason why he would be unable to fulfill his duties if selected for the Judicial Nominating Commission. Mr. Gillespie did not have specific evidence that Mr. Rodems has received "insider" information about the process from Mr. Barker.

Pedro F. Bajo, Jr. said he was appointed to the Commission in 2006 and is the current Chair of the Commission. Mr. Bajo generally explained the Commission's role to include: advertising a judicial vacancy; accepting and reviewing applications; and conducting background investigations and interviews of applicants. Mr. Bajo said the Commissioners discuss each applicant until a consensus on six names is reached, which he said does not always require an official vote. Finally, Mr. Bajo said the Commission then submits up to six nominees to the Executive Office of the Governor for judicial vacancies.

Mr. Bajo said he was aware of the relationship between Mr. Rodems and Mr. Barker prior to Mr. Barker's appointment. He added that both of names appear in the name of their law firm. He recalled that Mr. Barker disclosed his (Barker's) relationship with Mr. Rodems at a Commission meeting and that Mr. Barker recused himself from the process. Mr. Bajo recalled that Mr. Barker did not investigate or interview any applicants.

In response to questioning, Mr. Bajo recalled that he was assigned Mr. Rodems' application for investigation on one occasion and said he did not talk with Mr. Barker about Mr. Rodems. Mr. Bajo said Mr. Barker's situation with Mr. Rodems was not a unique one to the Judicial Nominating Commission, although he said he could not recall any other current Commission member who has had to recuse themselves because of a conflict with a law partner. He said

⁸ Telephone interviews were conducted with all witnesses. Witness statements presented in this report are paraphrased statements.

Mr. Barker's recusal just means that there is a little more work for the other Commissioners but that it is not a hardship.

Mr. Bajo recalled that Mr. Rodems applied for judicial vacancies in Polk County on three occasions before he applied for a judicial vacancy in Hillsborough County. He said many candidates apply multiple times and that the process becomes well known to applicants once they have been through it.

Mr. Bajo said that it's a voluntary Commission, and Commissioners try to do the right thing, be transparent, and submit six really good candidates to the Governor's office for consideration.

During his interview, Mr. Bajo was asked and agreed to look for any notes or written documentation of Mr. Barker's disclosure of a conflict of interest or recusal from participation in the process concerning his law partner, Mr. Rodems. Subsequently, in an email dated May 24, 2010 to the Office of the Chief Inspector General (Exhibit 1), Mr. Bajo said, "The County Court Vacancy due to the retirement of Judge Raul Palomino was the first vacancy I handled as Chair of the 13th JNC [Judicial Nominating Commission]. I located some spartan notes that I took during our meeting addressing the potential conflict of Mr. Barker and I attach them for you for your review. As I noted to you during our interview, Mr. Barker [sic] has not participated in any of the Background investigations or interviews of the JNC [Judicial Nominating Commission] candidates."

Pertinent excerpts from Mr. Bajo's notes dated January 5, 2009⁹ include:

"-Potential conflict issue with Chris Barker participating"

"-discussion about whether conflict exists or not"

"-discussion whether Barker should recuse himself from just Rodems interview & voting on Rodems altogether"

"-Barker volunteers to recuse himself completely from process due to Rodems App for Palomino seat & agrees to do the same should Rodems apply for Honeywell seat"

"-JNC voted to accept Barker's recusal and take potential conflict issues on case by case basis in future"

S. Cary Gaylord said he has been a Commission member for about 10 years. Mr. Gaylord said he did not know Mr. Barker at the time of his (Barker's) appointment. Mr. Gaylord said that when Mr. Rodems applied for a judicial vacancy, he recalled that Mr. Barker recused himself from the entire process. He

⁹ During a follow-up telephone conversation with Mr. Bajo, he confirmed that his notes should have been dated January 5, 2010.

said Mr. Barker has been present for a couple of meetings, but leaves when the process begins. Mr. Gaylord said he has never had a conversation with Mr. Barker about Mr. Rodems. When asked if he ever voted for Mr. Rodems' nomination for a judicial vacancy because he (Rodems) is Mr. Barker's law partner, Mr. Gaylord said "no." When asked if he ever felt pressure to nominate or vote favorably for Mr. Rodems, Mr. Gaylord responded "no." Mr. Gaylord said there have been times when one or more Commission members could not be present during every meeting.

Edward W. Gerecke recalled that Mr. Barker never participated in the process with respect to his law partner, Mr. Rodems. He further recalled that Mr. Barker did not participate at all during the last selection process. In response to questions, Mr. Gerecke said he never felt pressure to vote favorably for Mr. Rodems' nomination and did not believe that the Judicial Nominating Commission has failed to perform its duties because of Mr. Barker's recusal from the process.

Ronald P. Hanes said he has been a Commission member since 2006. Mr. Hanes said that Mr. Barker has specifically recused himself with regard to issues related to his law partner, Mr. Rodems. Mr. Hanes responded "no" to questions regarding whether he felt pressure to nominate or vote favorably for Mr. Rodems because of his relationship to Mr. Barker. Mr. Hanes commented that the rules take into account that recusals may occur.

Mr. Bing Charles W. Kearney, Jr. said he could not recall if Mr. Barker has recused himself from the entire selection process but recalled that during the last meeting, Mr. Barker left the meeting when his business partner, Mr. Rodems, came up in the meeting. Mr. Kearney commented that Mr. Barker has been very careful to avoid a perceived conflict of interest or the appearance of one concerning Mr. Rodems. Mr. Kearney said he never felt pressure to nominate Mr. Rodems because of his relationship to Mr. Barker and said Mr. Barker never exerted pressure on him to vote favorably for Mr. Rodems' nomination.

John J. McLaughlin said he has been a Commission member for about two years. Mr. McLaughlin recalled that Mr. Barker did not take part in any voting concerning Mr. Rodems. Mr. McLaughlin responded "no" or "absolutely not" to questions regarding whether he ever felt pressure to vote favorably for Mr. Rodems' nomination.

William J. Schifino, Jr. said he was the Chair of the Commission the year prior to Mr. Bajo (approximately July 2008 – June 2009). Mr. Schifino said he does not believe he missed a meeting as Chair or since Mr. Bajo has been the Chair. Mr. Schifino recalled that during one of the 1st meetings after Mr. Barker was appointed, Mr. Rodems' name was on the applicant list. Mr. Schifino further recalled discussing with Mr. Barker that the protocol in this instance is recusal.

When asked if he ever voted in support of Mr. Rodems' nomination for judicial vacancy, was his vote influenced by the fact that Mr. Rodems is Mr. Barker's law partner, Mr. Schifino responded, "oh God no." He added that no one on the Commission would influence his vote. Mr. Schifino responded "absolutely not" when asked if he ever felt pressure to nominate Mr. Rodems because of his relationship to Mr. Barker. Mr. Schifino said he believed Mr. Barker's recusal because of his potential conflict of interest actually brought credit to the Commission.

During his interview, Mr. Schifino was asked and agreed to look for any notes or written documentation of Mr. Barker's disclosure of a conflict of interest or recusal from participation in the process concerning his law partner, Mr. Rodems. Subsequently, in an email dated May 21, 2010, Jennifer Post, Assistant to Mr. Schifino, sent documentation (Exhibit 2) on behalf of Mr. Schifino in this regard. Pertinent excerpts from the documentation provided are as follows:

In an email dated February 27, 2009 to Mr. Schifino, Mr. Barker states:

"Bill: I just want to confirm that I cannot participate in this round because of my partner's applications. I would not want to have even the appearance of impropriety should anyone call my participation into question. I want to preserve the integrity of the process and avoid any problems for you or the Governor. Again, I am sorry and I look forward to serving with the next set of applications. Chris"

In an email dated July 13, 2009 to Mr. Schifino, Mr. Barker states:

"Bill: Am I doing any or do you want me to sit the whole thing out?"

"I will be happy to do my fair share and just abstain and recuse myself from voting for Chris Rodems... I just want to be sure of what you want me to do."

Ms. Barbara N. Wilcox said she has been a Commission member for four years and recalled that Mr. Barker recused himself during the voting regarding his law partner, Mr. Rodems. Ms. Wilcox said that she did not feel pressure to vote favorably for Mr. Rodems' nomination because of his relationship to Mr. Barker and commented that no one puts pressure on her and "everyone knows it." When asked if she believed that Mr. Barker's recusal due to his potential conflict of interest has brought discredit to the Thirteenth Judicial Nominating Commission, Ms. Wilcox said "yes" adding that it was starting to look that way.

Ryan Christopher Rodems said that he and Mr. Barker began working together in 1993 and subsequently formed their own law firm with a third attorney in 2000. Mr. Rodems said he first applied for a judicial vacancy in January or February 2008, in the Tenth Judicial Circuit (Hardee, Highlands, and Polk Counties). Mr. Rodems explained that he grew up in Polk County and had been considering a judicial vacancy for a number of years. He said he applied for six total vacancies in that circuit and was nominated each time.¹⁰ He said on one occasion, while in Tallahassee, an attorney in the Office of the General Counsel, Executive Office of the Governor,¹¹ advised him that it was difficult to get an appointment in a circuit where you don't live.

Mr. Rodems said he first applied for a judicial vacancy in the Thirteenth Judicial Circuit in January or February 2009. He said although he had not yet read the Judicial Nominating Commission Rules of Procedure, he assumed that Mr. Barker would have to recuse himself during the process. Mr. Rodems said that Mr. Barker did not sit in on his (Rodems') interviews.

When asked if he discussed his interest in applying for judicial vacancies in the Thirteenth Judicial Circuit with Mr. Barker, Mr. Rodems said "yes." He explained that he initially talked with both of his law firm partners back when he applied for a vacancy in the Tenth Circuit, because if successful, he would be leaving the firm. He said that he and Mr. Barker may have discussed what they should do concerning "recusal" when he (Rodems) initially applied for a vacancy in the Thirteenth Judicial Circuit.

Mr. Rodems said that he and Mr. Barker had an unwritten agreement not to put each other "in an awkward position" about the process. He said Mr. Barker may have informed him of pending retirements, but details regarding selections were not discussed.¹² Mr. Rodems said that the processes in the Tenth and Thirteenth Judicial Circuits were similar. He said that when Mr. Barker was appointed to the Thirteenth Judicial Nominating Commission, he asked Mr. Rodems how the process worked because Mr. Rodems knew more about it than Mr. Barker. Mr. Rodems said that he knows Mr. Barker has gone to Commission meetings, but added that Mr. Barker is not going to share what was discussed at meetings and he (Rodems) is not going to ask.

¹⁰ According to information provided by Debra Lewis, Judicial Nominating Commission Coordinator, Office of the General Counsel, Executive Office of the Governor, Mr. Rodems was nominated on six occasions for judicial vacancies in the Tenth Judicial Circuit during 2008 and on three occasions in the Thirteenth Judicial Circuit (October 2009, March 2010, and June 2010).

¹¹ Mr. Rodems could not recall who told him, adding that it was a comment in conversation as opposed to an official position.

¹² During a follow-up telephone conversation, Mr. Rodems explained that it was not uncommon to learn of pending judicial retirements through the legal community, before any official vacancy advertisement. Mr. Rodems said Mr. Barker did not share with him (Rodems) any information that he (Barker) learned about through being on the Judicial Nominating Commission, but rather, information he (Barker) may have heard about in the legal community.

Subject Testimony¹³

Chris A. Barker recalled that a friend of his asked the Executive Office of the Governor to send him (Barker) an application for gubernatorial appointee. Mr. Barker said he submitted his application in July 2007 and confirmed that he listed his Boards of Interest on the application as the Thirteenth Judicial Circuit, the Second District Court of Appeals and the Supreme Court. Mr. Barker said he had no specific interest in the Thirteenth Judicial Circuit. Mr. Barker said at the time he applied, he did not know who was on the Commission. He recalled receiving a telephone call in April 2008 from the Governor's former General Counsel Jason Gonzalez, advising him of his appointment to the Judicial Nominating Commission.

When asked if he knew at the time he submitted his application for a gubernatorial appointment that his law partner, Mr. Rodems, was planning on applying for judicial vacancies, Mr. Barker responded, "absolutely not." He said that he did not know until "New Years of 2008" when Mr. Rodems informed him he applied for a judicial vacancy in Polk County. Mr. Barker said that Mr. Rodems had mentioned years earlier that he might one day be interested in going back to Polk County to be a judge, toward the end of his career, but with no specific time frame. When asked if Mr. Rodems informed him of his interest in applying for a judicial vacancy in the Thirteenth Judicial Circuit, Mr. Barker said he could not recall if Mr. Rodems told him before he applied or not.

Mr. Barker said he did not remember discussing a conflict of interest or recusal with Mr. Rodems, but recalled that when Mr. Rodems' application came up in the process, he disclosed that Mr. Rodems was his law partner. Mr. Barker said he was completely recused from anything to do with his law partner. He said he was asked to do background checks on some candidates in one instance, but said he did not participate in any deliberations and did not vote. When asked if he has been able to participate in the nomination process for any vacancies, Mr. Barker said he has participated to the extent the rules allowed and when requested by the Chair. He said he has been totally recused from anything related to Mr. Rodems.

Mr. Barker said he and Mr. Rodems have had "passing" discussions about Mr. Rodems applying for judicial vacancies because of the impact of Mr. Rodems' possible selection for a judicial vacancy on their law firm. He said discussions were for law firm business planning purposes only. Mr. Barker said Mr. Rodems never asked him for insight about the process. When asked if he provided Mr. Rodems with information about the process, Mr. Barker said not that he could recall other than the timing for purposes related to their business. Mr. Barker said he did not attempt to persuade other Commission members to

¹³ A telephone interview was conducted with Mr. Barker and his statement presented in this report is paraphrased.

vote favorably for Mr. Rodems' nomination or unfavorably for other applicants in order to benefit Mr. Rodems.

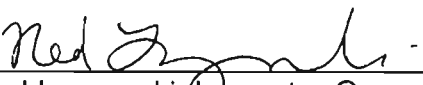
Mr. Barker said he does not believe his recusal from Commission activities has brought discredit to the judicial selection process. He said the purpose of the rule was to deal with situations of this nature. Mr. Barker said he did not seek appointment to the Commission for the purpose of assisting Mr. Rodems in the process and said that Mr. Rodems had not expressed his interest in applying at that time.

RECOMMENDATION

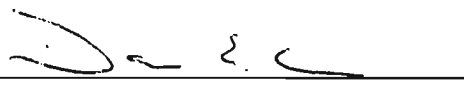
It is recommended that the Commission consider expanding the current practice of disclosing conflicts of interest and obtaining recusals from the process to include a written disclosure and written documentation of the recusal for each selection process.

SIGNATURE PAGE

Inquiry Conducted by:

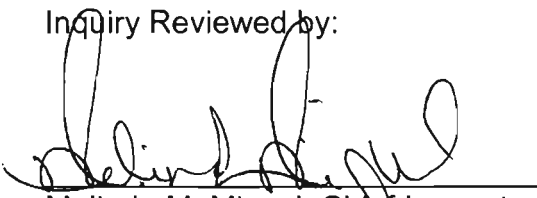

Ned Luczynski, Inspector General
Department of Business and Professional Regulation

6/21/2010
Date


Dawn E. Case, Deputy Inspector General
Office of the Chief Inspector General
Executive Office of the Governor

6/21/10
Date

Inquiry Reviewed by:


Melinda M. Miguel, Chief Inspector General
Executive Office of the Governor

6/21/2010
Date

Case, Dawn

From: Pedro Bajo [pedro.bajo@bajocuva.com]
Sent: Monday, May 24, 2010 4:52 PM
To: Case, Dawn
Subject: FW: Judge Palomino Vacancy
Attachments: doc20100524163502.pdf

Dear Ms. Case

The County Court Vacancy due to the retirement of Judge Raul Palomino was the first vacancy I handled as Chair of the 13th JNC. I located some spartan notes that I took during our meeting addressing the potential conflict of Mr. Barker and I attach them for you for your review. As I noted to you during our interview, Mr. barker has not participated in any of the background investigations or interviews of the JNC candidates.

Please let me know if you need anything further or have any further questions.

Regards,

Pedro



Pedro F. Bajo, Jr., Esq.
BajoCuva, P.A.
100 N. Tampa Street
Suite 1900
Tampa, FL 33602
813-443-2199 (telephone)
813-443-2193 (fax)
813-785-6653 (cell)
pedro.bajo@bajocuva.com

1-5-09

JNC - Judge Palosino

- Potential conflict issue with Chris Barker participating
- discussion about whether conflict exists or not
- discussion whether Barker should recuse himself from just Rodera's interview & voting on Rodera altogether
- Barker volunteers to recuse himself completely from process due to Rodera's App for Palosino seat + agrees to do the same should Rodera apply for Hargrett seat
- JNC voted to accept Barker's recusal and take potential conflict issues on case by case basis in future

12-21-09

INC- Judge Palosino

Conflict Issue : Re Barker/Rodriguez

- Address on 544
- send out ABO

- Barker not to participate in
background investigations etc. until
issue is addressed on 544

Case, Dawn

From: Jennifer Post [jpost@WSMSLAW.COM]
Sent: Friday, May 21, 2010 11:54 AM
To: Case, Dawn
Cc: William J. Schifino
Subject: JNC - 13th Judicial Circuit
Attachments: 20100521114629723.pdf

Ms. Case,

Attached please find the documentation you requested for your investigation.

Thank you.

Jennifer Post

Assistant to William J. Schifino, Jr. and
Daniel P. Dietrich
WILLIAMS SCHIFINO MANGIONE & STEADY P.A.
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William J. Schifino

From: Chris Barker [cbarker@barkerrodemsandcook.com]
Sent: Friday, February 27, 2009 2:43 PM
To: William J. Schifino
Subject: RE: Upcoming meetings.

Chris Rodems.... Ryan Christopher Rodems.

From: William J. Schifino [mailto:WSchifino@WSMSLAW.COM]
Sent: Friday, February 27, 2009 2:39 PM
To: Chris Barker
Subject: RE: Upcoming meetings.

Yes Chris I agree. What is your partners name?

From: Chris Barker [mailto:cbarker@barkerrodemsandcook.com]
Sent: Friday, February 27, 2009 2:41 PM
To: William J. Schifino
Subject: RE: Upcoming meetings.

Bill: I just want to confirm that I cannot participate in this round because of my partner's applications. I would not want to have even the appearance of impropriety should anyone call my participation into question. I want to preserve the integrity of the process and avoid any problems for you or the Governor. Again, I am sorry and I look forward to serving with the next set of applications.

Chris

From: William J. Schifino [mailto:WSchifino@WSMSLAW.COM]
Sent: Friday, February 27, 2009 2:21 PM
To: Amanda Bowers; Amy Eber; Barbara Wilcox; Charles "Bing" Kearney; Chris Barker; Edward W. Gerecke; John McLaughlin; Pedro Bajo, Jr.; Ronald Hanes; S. Cary Gaylord; William J. Schifino
Cc: Amy Eber
Subject: Upcoming meetings.

March 18th is the night that works for most of us to meet to discuss who we will be interviewing. Start time 2 PM

March 25th and 26th are the two dates that work for everyone. Start time for interviews will be 1:30.

Location here in my office. Bring your parking ticket up stairs and we will validate it for you.

Your boxes with applications will be ready to be picked up by noon on Tuesday March 3rd. Please contact Amy Eber, my assistant to arrange for pick up. As in the past I will randomly assign which candidates for which we each will be conducting the back ground checks.

Any questions or comments please let me know.

William J. Schifino, Jr., Esq.
WILLIAMS SCHIFINO MANGIONE & STEADY P.A.
201 North Franklin Street, Suite 3200

5/19/2010

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5/19/2010

William J. Schifino

From: William J. Schifino
Sent: Monday, July 13, 2009 4:41 PM
To: 'Chris Barker'
Subject: RE: Your boxes are ready to be picked up.

I want you to participate. I'll explain more later. Thanks.

From: Chris Barker [mailto:cbarker@barkerrodemsandcook.com]
Sent: Monday, July 13, 2009 4:37 PM
To: William J. Schifino
Subject: RE: Your boxes are ready to be picked up.

Bill: Am I doing any or do you want me to sit the whole thing out?

I will be happy to do my fair share and just abstain and recuse myself from voting for Chris Rodems... I just want to be sure of what you want me to do.

Very Truly Yours,

Chris A. Barker
Barker, Rodems & Cook, P.A.
400 North Ashley Drive, Suite 2100
Tampa, Florida 33602
813/489-1001 Telephone
813/489-1008 Facsimile
cbarker@barkerrodemsandcook.com

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From: William J. Schifino [mailto:WSchifino@WSMSLAW.COM]
Sent: Monday, July 13, 2009 4:27 PM
To: Amanda Bowers; Barbara Wilcox; Bill Schifino; Charles "Bing" Kearney; Chris Barker; Edward W. Gerecke; Jennifer Post; John McLaughlin; Pedro Bajo, Jr.; Ronald Hanes; S. Cary Gaylord
Cc: Jennifer Post
Subject: Your boxes are ready to be picked up.

If you would like I can have someone meet you down stairs if you are driving down town. Call Jennifer and she will have someone meet you so you don't have to get out of the car. Reminder we only have two weeks to conduct the background checks.

Bill.

5/19/2010

William J. Schifino, Jr., Esq.
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5/19/2010

Background Checks - Assignments

PEDRO BAJO:

Michael Benito
Gary Dolgin – applied for both seats
Carolle Hooper – applied for both seats
Troy Lovell
Randall Reder
Miriam Valkenberg

S. CARY GAYLORD:

Herbert Berkowitz
Thomas Dickerhoof – applied for both seats
Jesse Dominguez
Paul Huey
Elizabeth Rice
Richard Weis – applied for both seats

EDWARD GERECKE:

Ada Carmona – applied for both seats
Scott Farr
Alyssa Katz
Yvette MacMillan – applied for both seats
Ryan Rodems – applied for both seats
Zachary White – applied for both seats

RONALD HANES:

Patrick Courtney
Jennifer Gabbard
Robert Kelly – applied for both seats
Judge Nick Nazaretian
Christopher Shulman – sent 1 application for both seats, applied for both seats
Lanell Williams – applied for both seats

BING KEARNEY:

Helene Daniel

Tomas Gacio – applied for both seats

Rhonda King

Kyle Pennington – applied for both seats

John Terry – applied for both seats

JOHN McLAUGHLIN:

Constance Daniels – applied for both seats

Richard Greco

Jenifer Lehner – applied for both seats

Frances Perrone

Cheryl Thomas

BILL SCHIFINO:

John Holsonback

Matthew Lucas – applied for both seats

Joseph Ludovici

Robert Petschow

Barbara Twine-Thomas – applied for both seats