

VIA FAX (850) 488-9810
Email and First Class Mail

July 28, 2010

Mr. Erik M. Figlio, General Counsel
Executive Office of the Governor
The Capitol, Suite 209
Tallahassee, Florida 32399

RE: Your letter of July 12, 2010

Dear Mr. Figlio:

On July 12, 2010 you wrote I was welcome to submit a letter memorandum that does not need to comply with rules of civil procedure in terms of form. This is my response.

When Mr. Bajo and I met February 24, 2010 at the office of Akerman Senterfitt and reached agreement on matters in my complaint concerning him, we discussed who would decide my remaining complaint against Mr. Baker. My understanding was Mr. Bajo did not feel comfortable deciding the balance of the complaint and wanted the Governor or his designee to decide.

My complaint and addendum of January 2010 alleged misconduct by the chair and vice chair. Under that circumstance the Uniform Rules mandate that the complaint be reported in writing to the Governor for action. R. Proc. Cir. JNC § IX at line 166. The Governor shall investigate the complaint if the allegations are in writing, signed, and legally sufficient. Id. at line 171. That is how your office became involved.

Since making my complaint in January new misconduct has come to light, and some members of the JNC have reached the end of their terms.

I believe Mr. Bajo's term expired June 30, 2010, although he wrote in an email June 9, 2010 that "I will remain chair until at least the end of this month. Mr. Barker will not become chair until the investigation pertaining to him is resolved one way or the other. Following that resolution the JNC will determine what steps to take with respect to my successor. Whether Mr. Barker recuses himself in the future is something that will be determined at the appropriate time when considering potential vacancies and applicants."

The Chief Inspector General (CIG) reported that the terms of Mr. Bajo, Mr. Hanes and Ms. Wilcox end July 1, 2010. (page 7). So the current situation is unclear. If Mr. Bajo is Chair, he previously told me he does not want to decide the complaint. If Mr. Barker is Chair, it would be a conflict for him to rule on the complaint.

New misconduct involving the 13th Circuit JNC:

1. On February 24, 2010 Mr. Bajo provided me a letter Mr. Rodems wrote the JNC dated December 28, 2009¹ about my lawsuit with Barker, Rodems & Cook, PA. The letter was from Barker, Rodems & Cook, PA, a professional association corporation of which Mr. Barker is a named partner and president. Since Mr. Baker is a JNC member too, the letter creates a conflict when considered as evidence in support of Mr. Rodems. In my view the letter is also defamatory and inaccurate, which further discredits the JNC since it comes from the law firm of the vice chair.

2. Misconduct of Cary Gaylord. I learned of the misconduct in April 2010.

a. Mr. Gaylord's March 15, 2010 email to Rob Wheeler states in part "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." When I asked Mr. Gaylord about his email, he was unable to substantiate his comments or even remember much about them, according to his written responses. This brings discredit on the JNC.

b. Mr. Gaylord was unable to provide records and denied any existed. I made a public records request to Mr. Gaylord April 10, 2010 about his March 15, 2010 email to Rob Wheeler. Mr. Gaylord responded April 13, 2010 in part "...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. I have nothing to refer to in order to refresh my memory. I recall that there were judges I talked to but I can't recall which ones...As I said, my report was oral and I kept no records. I hope this answers your questions." In my view the operative words are "did not keep" any notes or files related to investigations.

On April 20, 2010 I wrote Mr. Gaylord and reminded him that "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). On April 23, 2010 Gaylord wrote in part "You are correct that all JNC records are open to the public but I can't give you records that I don't have. If I had notes of interviews and investigations I would gladly give them to you but they don't exist."

It appears from Mr. Gaylord's responses that he had notes of his interviews, investigations and conclusions but either withheld or destroyed them to avoid public disclosure. In my view he has not complied with the open records provision of Article V, Section 11(d) of the Constitution. In addition, notes or files of interviews, investigations and conclusions are required by the Uniform Rules § I and § IV. The records are open to the public, and the records shall be forwarded to the Governor pursuant to § VI. It appears the JNC has not complied with the Uniform Rules public records rules either.

In fact, the absence of records required under the Uniform Rules § I and § IV would indicate that Mr. Gaylord may not have attend fully to his duties as commissioner.

¹ I had not seen or read the letter prior to February 24, 2010.

In Lorenzo v. City of Venice, case no. 2008-CA-8108-SC, (12th Judicial Circuit, FL), the city counsel failed to comply with public records law. The city counsel was eventually held liable for attorney's fees exceeding \$1 million. Who would pay the attorney's fees incurred by the JNC if court action is required to obtain public records?

3. Inside information provided by the JNC to Mr. Rodems. It appears someone from the JNC contacted my former attorney Robert W. Bauer, which resulted in Bauer's letter to the Governor dated January 4, 2010, and my reply. That's fine. What happened next is a problem. In my lawsuit with him, Mr. Rodems submitted to the court March 29, 2010, Defendants Motion for Sanctions Pursuant to Section 57.105(1) and (3), Florida Statutes Regarding Plaintiff's Amended Motion to Disqualify Counsel.

Mr. Rodems' pleading made reference to an argument I had with Mr. Bauer. How did Rodems learn of this argument? It appears a JNC commissioner spoke with Mr. Bauer, learned of the argument, and then disclosed the information to Mr. Barker, who in turn told Mr. Rodems. Or the JNC actor could have relayed the information directly to Mr. Rodems.

4. Mr. Barker was not able to attend to his duties as commissioner June 15, 2010 due to conflict with Mr. Rodems' application for the vacancy of Judge Black. The CIG's report did not consider that three better qualified applicants were likely passed over to nominate Mr. Rodems as described in my July 19, 2010 letter to you.

The CIG stated that none of the commissioners felt pressured to nominate Mr. Rodems. (page 8, ¶5). However I did make that accusation. In the addendum to my complaint, January 19, 2010, page 2, paragraph 2, I wrote: "Commissioner Barker has made a favorable impression on the Commission, goodwill which extends to his law firm, Barker, Rodems & Cook, PA, and flows to Mr. Rodems, his law partner."

As I wrote you July 19, 2010 "I believe the reason Mr. Rodems continues to receive gratuitous support is due to the prestige of his law partner, JNC Commissioner and Vice Chair Chris A. Barker. Influence is not always overt or intentional. In police forensics for example, there is a growing movement in law enforcement to use a double blind procedure in which the officer who shows police lineup photos to the witness does not know which photo is of the suspect, in effort to remove a source of bias."

The CIG's report showed conflicting testimony: "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." (page 8, ¶2). The witness testimony of Mr. Bajo shows "[h]e could not recall any other current Commission member who has had to recuse themselves because of a conflict with a law partner, and Mr. Barker's recusal just means that there is a little more work for the other Commissioners but that it is not a hardship." (page 9, ¶5, to page 10)

The CIG's report stated Ms. Wilcox said Mr. Barker's recusals brought discredit on the JNC. "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." (page 12, ¶5).

The CIG's report stated "Mr. Rodems said that he and Mr. Barker had an unwritten agreement not to put each other "in an awkward position" about the process." (page 13, ¶4). My ten year experience with Messrs. Barker and Rodems shows that nothing puts them "in an awkward position" regarding their behavior, making Mr. Rodems' assertion meaningless. Mr. Barker has not been able to fully attend his duties on the JNC for over a year and a half. If that is not an awkward position, what is?

Given the above, I believe Mr. Barker's continued presence on the 13th Circuit JNC is a violation of the public trust, reflects discredit upon the judicial selection process, and suggests partiality in the consideration of applicants.

5. On May 5, 2010 I submitted Plaintiff's First Amended Complaint in my lawsuit with Messrs. Barker and Rodems. The amended complaint adds Messrs. Barker and Rodems as defendants. Partners engaged in the practice of law are each responsible for the fraud or negligence of another partner when the later acts within the scope of the ordinary business of an attorney. Smyrna Developers, Inc. v. Bornstein, 177 So.2d 16 (Fla. Dist. Ct. App. 2d Dist. 1965). The amended complaint alleges the following:

- Count 1, Breach of Fiduciary Duty
- Count 2, Breach of Implied in Law Contract, AMSCOT
- Count 3, Breach of Implied in Fact Contract, AMSCOT
- Count 4, Fraud, AMSCOT Release And Settlement
- Count 5, Fraud, Closing Statement
- Count 6, Negligence
- Count 7, Negligent Misrepresentation
- Count 8, Unjust Enrichment
- Count 9, Civil Conspiracy
- Count 10, Invasion of Privacy
- Count 11, Abuse of Process
- Count 12, Claim for Punitive Damages, §768.72 Florida Statutes

In an email to Mr. Bajo May 28, 2010, I objected to Mr. Rodems nomination for judge and provided him a PDF of Plaintiff's First Amended Complaint. These claims against Mr. Barker bring discredit him and to the JNC, as does any nomination of Mr. Rodems.

6. On July 9, 2010 I submitted an Emergency Motion to Disqualify Defendants' Counsel Ryan Christopher Rodems & Barker, Rodems & Cook, PA. This motion shows that Mr. Rodems is unlawfully representing his firm and partners against a former client in the same or substantially related matter. On July 9, 2010 I hand delivered Mr. Bajo a copy of the emergency motion to disqualify Rodems.

Taken together with the amended complaint, Messrs. Barker and Rodems have violated many rules of professional conduct. This is not an isolated incident. Mr. Rodems' application for judge shows other clients made bar complaints against him for similar misconduct. Former clients Rita M. Pesci and Roslyn Vazquez alleged Mr. Rodems overcharged them in a contingency case. Former clients Eugene Clement and Gay Ann Blomefield were defrauded along with me.

There are likely more clients of Barker, Rodems & Cook, PA who have been cheated, but Mr. Rodems has refused to provide most of the lawful discovery in our lawsuit.

Given the forgoing, I believe Mr. Barker's presence brings discredit to the JNC. Any nomination of Mr. Rodems is an abomination, and further discredits the JNC.

7. On July 20, 2010 I submitted Plaintiff's Notice of Filing, my affidavit showing that Mr. Rodems mislead the court during hearings on October 30, 2007 and July 1, 2008 for the purpose of obtaining a dismissal of claims against Barker, Rodems & Cook, P.A. and William J. Cook. Mr. Rodems misrepresented to Judge Barton that there was a signed written fee agreement between me and Barker, Rodems & Cook, P.A. when in fact there was none. There is no signed written fee agreement between me and Barker, Rodems & Cook, P.A. No such agreement was signed, none exists, and Mr. Rodems has not produced one. The lack of a signed written fee agreement between the parties is also a violation of Bar Rule 4-1.5(f)(2). Because Mr. Rodems mislead the court, Plaintiff's Motion For Rehearing was submitted July 16, 2008 by the Law Office of Robert W. Bauer, P.A. who formally represented me. The motion for rehearing was signed and submitted by attorney Tanya M. Uhl, Florida Bar No. 0052924. (n.k.a. Tanya Marie Bell)

8. FL Bar Rule 4-8.3(a) Reporting Misconduct of Other Lawyers. A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects shall inform the appropriate professional authority.

On July 22, 2010 I wrote Mr. Bajo that "You and the lawyer members of the 13th Circuit JNC may have an obligation under Florida Bar Rule 4-8.3 to report this misconduct" and that the misconduct, and conflicts created by the misconduct, are a violation of the public trust, reflects discredit upon the judicial selection process, and suggests partiality in the consideration of applicants. I provided you a copy of the letter and am currently awaiting a response from Mr. Bajo. I am also awaiting a response from Mr. Bajo to my July 22, 2010 email about the financial history questions on the application for judge.

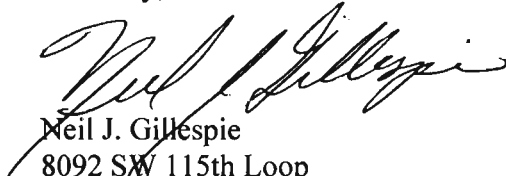
9. On July 12, 2010 I gave notice of claim to the 13th Judicial Circuit under section 768.28(6)(a), Florida Statutes. I provided you a copy of the notice. My claim is for the misuse and denial of judicial process and related civil rights violations. Within hours of serving the notice Mr. Rodems moved the court for an order directing the Clerk of Court to issue a writ of execution commanding the Sheriff to levy upon Judgment Debtor and

Defendant-in-Execution Neil J. Gillespie's choses in action. Meanwhile Judge Cook failed to recuse herself after receiving notice of my claim against her and the court, and has continued to make rulings in this case, bringing further discredit to the 13th Circuit.

Given the transgressions found since my complaint in January 2010, how should that misconduct be addressed? Should I make a new complaint? Please advise.

Thank you and the Governor for your patience and assistance with this matter. You, your predecessor Mr. Wheeler, and your entire staff have been great. I appreciate your efforts.

Sincerely, ..



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*Due to past issues with harassing email sent to me by Mr. Rodems, I only communicate with Barker, Rodems & Cook and its lawyers by fax, postal letter, or equivalent.