

JUDICIAL NOMINATING COMMISSION

OPEN SESSION

December 8, 2009

Minutes

A meeting of the Judicial Nominating Commission was held on December 8, 2009 at 5:30 p.m., in open session at the Department of Administration, One Capitol Hill, Third Floor Conference Room, Providence, Rhode Island, pursuant to the notice of the meeting to all Commissioners and to the public, as required by **RIGL § 42-46-6**.

The following Commissioners, constituting a quorum, were present and participated throughout the meeting: Herbert J. Brennan, D.O., Chairperson, Mirlen Martinez Mal, D. Faye Sanders, Robert Silva, C. June Tow, Jeffrey M. Grybowski and Norman L. Landroche, Jr.

Commissioner(s) absent: Dennis M. Coleman.

Also present: Eneida Diaz, Legal Assistant to the Commission.

Also present: Attorney Deming Sherman, guest of Dr. Brennan.

Dr. Brennan presided over the meeting and Ms. Diaz acted as recording secretary.

Dr. Brennan called the meeting to order at 5:30 p.m. and stated the purpose of the meeting, which was to address the letter of John R. Gowell, Esquire dated December 1, 2009, requesting a remedy of the voting error that occurred on June 10, 2009, during a vote by the Commission after a Public Comment Hearing for candidates who would be considered to fill the vacancy created by the retirement of Superior Court Justice Marc A. Pfeiffer.

Dr. Brennan asked that a motion be made to engage Attorney Deming Sherman, for the purpose of discussion, on a voluntary basis to counsel the commission in the matter of John R. Gowell ("Gowell Matter"). The motion was made by Commissioner Tow and seconded by Commissioner Grybowski. The motion was passed.

Dr. Brennan explained how he came to contact Attorney Sherman and clarified that Attorney Sherman had not been retained but that the commission was deciding for the first time, during this meeting, as to whether or not the commission would retain Attorney Sherman on a voluntary basis for assistance with the Gowell Matter. Commissioner Sanders expressed concern with retaining Attorney Sherman versus soliciting an advisory opinion from the Attorney General on how to proceed with the Gowell Matter. Commissioner Tow brought up another similar issue that arose when Attorney William Poore was retained as counsel and thought it would be beneficial to review past meeting minutes to determine if Attorney Poore was chosen by the Chairman at that time or if the Commission agreed to retain counsel. Commissioner Grybowski also discussed the differences in retaining Attorney Sherman versus requesting an advisory opinion from the Attorney General and how each could be beneficial.

Dr. Brennan addressed John R. Gowell's request and suggestions for remedy in his December 1, 2009 letter and discussion was had by the Commission on this topic.

Attorney Sherman addressed the Commission regarding his discomfort with advising the Commission in the Gowell Matter if the Commission was going to simultaneously request an advisory opinion from the Attorney General. He also expressed concern with the matter and its potential to go to litigation and being opposing counsel in the Gowell Matter. Discussion was had by the Commission on this topic.

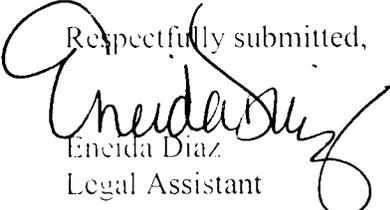
Commissioners Tow and Grybowski withdrew their motions to engage Attorney Sherman for the purpose of discussion, on a voluntary basis, to counsel the commission in the Gowell Matter and thanked Attorney Sherman for his willingness to assist the Commission on a voluntary basis.

Commissioner Sanders made a motion that the Commission submit a request to the Attorney General asking for an expedited response for guidance on how to proceed with the Gowell Matter in light of the fact that that Commission would be recommending nominees for another Superior Court Associate Justice vacancy as early as December 18, 2009. The motion was seconded by Commissioner Silva. The motion was carried.

Commissioner Grybowski made a motion to have Chairman Brennan act as representative of the Commission and to provide information and have discussions with the Rhode Island Attorney General staff but not individually make decisions in regard to the Gowell Matter. The motion was seconded by Commissioner Silva. The motion was carried.

A motion was made to table further agenda items by Commissioner Grybowski and seconded by Commissioner Silva. The motion was carried.

There being no further business in open session, upon motion made and seconded, the meeting was adjourned at 6:20 p.m.

Respectfully submitted,

Eneida Diaz
Legal Assistant