January 14, 2022

Ms. Shanta Matthews
Chair – Fifth Judicial Circuit
Judicial Nominating Commission
108 N Magnolia Ave. Suite 600
Ocala, FL 34475

Dear Ms. Matthews:

I write because the Fifth Judicial Circuit Nominating Commission ("the Commission") has failed to provide the minimum number of nominees required under Article V, Section 11(b) of the Florida Constitution. On September 28, 2021, the Governor convened the Commission to select nominees for two vacancies on the Fifth Judicial Circuit Court created by the retirement of Judge S. Sue Robbins, effective October 31, 2021, and the retirement of Judge William H. Hallman III, effective December 31, 2021. On November 16, 2021, the Commission provided the names of only five nominees for both vacancies, notwithstanding that Article V, Section 11(b) of the Florida Constitution entitles the Governor to "fill each vacancy on a circuit court" from "not fewer than three persons nor more than six persons." Because the Commission was convened at one time to fill two vacancies from the same applicant pool, the Commission should have nominated at least six persons to meet the constitutional requirement of no fewer than three nominees for each vacancy. On November 23, 2021, I alerted the Commission of this deficiency, but instead of accommodating my concern and correcting the deficiency, the Commission recertified the same five nominees. On January 7, 2022, the Governor appointed County Court Judge Jason Nimeth to fill one vacancy, but because the Commission failed to certify a constitutionally adequate number of nominees for two vacancies, the Governor declined to fill the other.

I appreciate the Commission's desire that all five nominees be considered for both vacancies. For that reason, I do not ask for a minimum of three new names to fill the second vacancy. Instead, I only ask for one additional name to satisfy the Florida Constitution's three-to-one minimum ratio of nominees to vacancies. The Florida Supreme Court has made clear that the Commission must submit at least three nominees for each vacancy when the Commission certifies a single list for multiple vacancies, as occurred here. *In re Advisory Opinion to the Governor*, 551 So. 2d 1205, 1209 (Fla. 1989); *see also* Op. Att'y Gen. Fla. 1993-87 (1993). Additionally, the Commission may supplement a list with additional names at any time prior to the Governor's appointment to fill a vacancy. Op. Att'y Gen. Fla. 1996-04 (1996). To be clear, the Commission only provided five nominees for two vacancies. That does not comport with the constitutionally required minimum ratio. The Commission did not remedy this deficiency by resubmitting the same list of five nominees. To fill two vacancies at one time from the same applicant pool, the Governor is entitled to a minimum of six nominees. *See* 551 So. at 1209. Accordingly, the
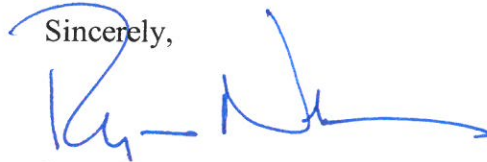
Governor will not make an appointment to fill the second vacancy until the Commission certifies a sixth nominee.

On behalf of the Governor, therefore, I request that you reconvene the Commission for the purpose of selecting at least one new nominee (in addition to the five already nominated) for the Fifth Judicial Circuit Court. The Commission is welcome to nominate more than one additional candidate if it chooses. The Commission's deadline for completion of this undertaking is ***Monday, January 31, 2022***. However, I encourage you to submit the additional nominee(s) as soon as possible.

Administrative support for the Commission will be provided by the Governor's Office, pursuant to section 43.291(7), Florida Statutes. This includes all essential administrative needs such as document distribution, public announcements, and the like. Our JNC Coordinator Annie Ortega (850-717-9448; Annie.Ortega@eog.myflorida.com) will contact you to these ends.

The Commission's handling of this matter is most appreciated.

Sincerely,

Ryan Newman
General Counsel

cc: The Honorable Daniel B. Merritt, Jr.
        Chief Judge