

IN THE SUPREME COURT OF FLORIDA

LEAGUE OF WOMEN VOTERS OF
FLORIDA, INC., COMMON CAUSE,
PATRICIA M. BRIGHAM, JOANNE
LYNCH AYE, and ELIZA
McCLENAGHAN,

Petitioners,

v.

Case No.: SC18-1573

HON. RICK SCOTT, in His Official
Capacity as Governor of Florida,
FLORIDA SUPREME COURT
JUDICIAL NOMINATING COMMISSION,
and JASON L. UNGER, in His Official
Capacity as Chair of the Florida Supreme
Court Judicial Nominating Commission,

Respondents.

**APPENDIX TO PETITIONERS' REPLY TO RESPONSES TO
SUPPLEMENTAL PETITION FOR WRIT OF QUO WARRANTO AND
FOR CONSTITUTIONAL WRIT**

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to the following counsel for Respondents by email on November 7, 2018:

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JUDICIAL NOMINATING TRAINING PART 1
11/13/15

* * *

1

2 MR. CERIO: We haven't had a chance to meet
3 yet. My name is Tim Cerio. I'm general counsel
4 to Governor Scott. I want to thank each of you
5 for being here today for our Judicial Nominating
6 Commission training. Many of you have already
7 done a great job sending the governor some very,
8 very qualified candidates, and we thank you for
9 your service.

10 For those of you who are relatively new to
11 the JNCs, I hope you'll find today helpful and
12 informative and for nothing -- you know, nothing
13 else, a chance to get away on a great Friday and
14 enjoy a great afternoon once we finish.

15 But, you know, we do -- we do take this very
16 seriously that the relationship between the
17 governor and the JNCs is a terribly important
18 one. It's important to my office. It's also
19 very important to Governor Scott. The quality
20 of the appointments that the governor makes is
21 dependent on your dedication to really vet these
22 candidates and to do your best to really dig in
23 and just send us the best names possible. And
24 we know you do that, and we appreciate it very
25 much.

1 You know, we care about getting names of men
2 and women of character, humility and who are
3 committed to just following the law. And it
4 really -- the theme you're going to hear today
5 again and again, it really is as simple as that.
6 At least in the mind of the governor it is and
7 to our office.

8 Appointing qualified individuals to the
9 bench, it is one of the greatest
10 responsibilities the governor has. He does take
11 it very seriously. Obviously, you know, it is
12 no secret that Governor Scott cares very much
13 about creating an environment of economic
14 prosperity for individuals and families in our
15 state. But what is not as well known is how
16 much he cares about the judiciary. It really is
17 one of his very, very highest priorities. He
18 knows that the judges he appoints will affect
19 families and businesses in our state long after
20 he's out of office.

21 And as of today's training, since taking
22 office in 2011, Governor Scott has appointed 219
23 judges to our state trial and appellate courts.
24 And, honestly, he could not have done that
25 without the help of those of you in this room.

1 So just as Governor Scott takes these
2 appointments very seriously, he takes his
3 appointments to the JNCs very seriously. Our
4 office does its best to really thoroughly vet
5 applicants for the JNC and to ensure that the
6 governor has all of the information he needs so
7 that the individuals he appoints to serve on the
8 JNCs are the absolute best.

9 You should be proud of your position and the
10 fact that you're in this room and be proud of
11 the responsibility that you've been asked to
12 bear in just finding great judges for our state.

13 I want you to know that our office is
14 dedicated to serving you, to helping you, to
15 providing you with the resources you need to do
16 your job.

17 I want to recognize Laura Dane (phonetic)
18 who many of you already know. Laura, can you
19 please stand up? She is our judicial
20 appointments and JNC coordinator. She does a
21 fantastic job. And, again, she can be a great
22 resource for you, so please do not hesitate to
23 call upon her.

24 I also want to recognize, I would say my
25 right arm and my left arm, two attorneys in my

1 office who are critical to me and devote a
2 significant amount of their time to the JNC and
3 to the judicial appointments, my deputy judicial
4 counsel, Heather Stearns, and my assistant
5 general counsel, Ben Gibson.

6 So we do stay very busy with judicial
7 appointments. I think right now we have 27
8 vacancies currently right now to fill, so -- and
9 that's fairly constant. So it's always, it's an
10 ongoing process.

11 People often ask me and others in our office
12 what does the governor look for in a judge. And
13 it is a question that we get asked all the time,
14 frankly. A lot of people ask it. A lot of
15 people ask the governor that. And it really
16 isn't a mystery. The governor believes there
17 are many qualities that make a good judge,
18 intellect, ability, experience, diversity,
19 reputation in their community, demeanor. But
20 there are really, there are two criteria that he
21 does consider paramount. And, again, he'll talk
22 about it frequently.

23 The first is that a judge must be committed
24 to the rule of law. By this, the governor wants
25 to see a proven track record of caring about the

1 application of the strict letter of the law
2 either in one's private practice or in one's
3 history on the -- and record on the bench if
4 they're already a judge. He believes that good
5 judges respect separation of powers and
6 understands the judicial branch's unique role.
7 Good judges know that it is not their job to
8 make the law or pursue policy outcomes.

9 And as the governor, you know, very bluntly
10 told me and matter of factly, he said, "Tim, I
11 don't get to make the laws and neither do the
12 judges. That's the legislature -- that's the
13 prerogative of the legislature. So that is
14 criteria one.

15 Criteria two is that a -- the governor wants
16 to see humility in a judicial candidate
17 personally and professionally. Judges who are
18 humble can be more entrusted to -- well, with
19 exercising power over liberty and property. And
20 they also tend to exercise restraint, which is
21 necessary for the proper functioning of a
22 constitutional government. Judges with humility
23 listen to both sides and make thoughtful
24 decisions based on what the law is, not on what
25 they think the law should be.

1 So that's pretty much it in a nutshell. I
2 think we have a great training plan for you
3 today. The entire training is being filmed and
4 will be available on the governor's website for
5 easy access for those of you who are unable to
6 be here today in person. I assume if you're
7 watching this, you've already -- and you weren't
8 here, you've already figured out how to find it,
9 so that was probably unnecessary for me to
10 mention, but -- but you can also find an updated
11 2015 Florida JNC manual on our website.

12 All of this information is at www.flgov.com,
13 and you click on the judicial link. The
14 training has also been approved by the Florida
15 Bar for CLE credit, and we'll be providing you
16 that information. It is on the agenda, so
17 you've got it. And also please make sure you
18 sign in with your Bar number to receive credit.

19 So without any further ado, we would like to
20 queue up a brief video from Governor Scott.

21 (Video played.)

22 GOVERNOR SCOTT: Good morning. I'm
23 Governor Rick Scott. Thank you for being in
24 today's training session for judicial nominating
25 commissioners. Thank you for your service as a

1 commissioner. The quality of judges we have the
2 opportunity to appoint is completely tied to the
3 quality of individuals you select. We need to
4 find the most highly qualified individuals we
5 can, individuals that are going to uphold the
6 law and respect the law. Thanks again for being
7 here, and thanks for your service.

8 MR. CERIO: So, I also want to be very --
9 you know, keep this thing moving. I want to
10 introduce our first speaker to you. We're very
11 honored and excited that Ramón Abadin, the
12 president of the Florida Bar, could be here
13 today. As many of you know, Ray is a partner
14 with the Sedgwick Law Firm. He has served on
15 the ABA Standing Committee on the federal
16 judiciary. He's a former member and chair of
17 the Third DCA JNC.

18 Ray has many, many other honors and
19 accolades that he asked me to go over in detail,
20 but we just don't have the time for that today.
21 And Ray also said that after he leaves, he's got
22 to rush to a plane; is that correct? So if you
23 have questions, just feel free to grab him and
24 pull him aside as soon as he's done. Take as
25 much time as you want.

1 Without any further ado, Ray Abadin.

2 MR. ABADIN: Good morning, everyone. First,
3 thank you for your service. It was a highlight
4 in my career that I got to serve on the JNC for
5 the Third DCA and then ultimately became its
6 chair. It's one of the most important functions
7 that we can do as a lawyer is to help the
8 process of our government, how we govern
9 ourselves. And choosing, helping the governor
10 choose judges, I think is one of the highest
11 callings we have as a lawyer.

12 And so you will, those of you who are new
13 will get to see that. Those of you who have
14 done that sort of know the experience.

15 Two things I want to talk to you about.
16 Judicial Nominating Procedures Committee. It's
17 a committee of the Florida Bar. You can help us
18 put people on that committee. The applications
19 are open from December 1st through January 15th.
20 It's a committee of the Bar, and it sort of
21 helps the Bar organize itself with making
22 Judicial Nominating Commission applications to
23 the governor.

24 Number two is get people to volunteer. Get
25 people to come into the system. We need to

1 encourage others to follow us in our obligation
2 to the system, to the Bar, to the governor to
3 make sure we have diversity on the JNCs, we have
4 well-qualified smart folks that are committed to
5 making sure we have a fair, open-minded
6 independent judiciary.

7 How we pick, then, ultimately from the
8 Florida Bar Board of Governors, we do a
9 background check on everybody. The board of
10 governors itself looks at the list of names. We
11 engage the governors from every circuit to tell
12 the board who these folks are to make
13 recommendations to us. There's a committee that
14 looks at every one of the names. We have all
15 been through that committee. We get ranked on a
16 scale of one to five, and then three names come
17 out of the committee as recommendations to the
18 board of governors, and the board of governors
19 votes.

20 Those names are then sent up to the
21 governor, and the governor picks at his -- at
22 his le -- at his convenience who he wants.

23 We have over the years developed a very good
24 dialogue with the governor's office. It's the
25 governor's choice who he picks for the judge.

1 It's the governor's choice who he picks for JNC
2 members. And it's our job at the Bar to make
3 sure we're providing appropriate people for the
4 governor to make those choices.

5 Other than that, it's really an
6 interesting -- an interesting thing that you all
7 do. I had, I remember the first -- I got
8 appointed as a Bar nominee, and my first one
9 were three vacancies on the Third DCA. We got
10 56 applications, and I had been in an
11 arbitration for a week, and I got home, and my
12 wife said somebody delivered these ten boxes of
13 documents, and our first meeting was Monday.

14 So I spent the weekend, I locked myself in
15 my room, literally. I said, okay, leave me
16 alone. Dogs, kids, everybody out. And I locked
17 myself in my room, and I just picked, at random
18 just picked a name out of a folder out of a box
19 because I didn't want to have -- I didn't want
20 to have any preference. So that's what I did.
21 And I just read through, made notes and spent
22 the whole weekend doing it.

23 And it was really thrilling to look at the
24 quality and good and bad. There were some that
25 were just shouldn't have been lawyers, but they

1 wanted to be on the Third DCA. So, anyway, it's
2 really -- it was really a fascinating
3 opportunity for me as a lawyer in my growth as a
4 lawyer. Made me think more about the law, the
5 role of judges. Made me aspire to be a better
6 lawyer because when you look at the candidates
7 that come through, it's really awesome the
8 quality of some of the lawyers in Florida, who
9 they are and who -- who wants to give of
10 themselves, take a pay cut so we can have a
11 better state.

12 So with that, I'll leave you. If you have
13 any questions, I'm happy to answer them now or
14 later you can find me. Good?

15 MR. CERIO: Any questions?

16 MR. ABADIN: Any questions for me? Anything
17 about the Bar? Just get us candidates. Really
18 the most important thing I can tell you today is
19 please get, encourage people wherever you are
20 from to apply to be on the JNCs. That's --
21 that's important. Get women; get minorities;
22 get qualified -- qualifications. And then
23 diversity is really important because everybody
24 depends on us to -- on us to do that, on us to
25 do that.

1 Any questions, please? Questions? No?

2 Who are the new folks? I'll ask a question.

3 Cool. Yeah. You're gonna love it. It's

4 really -- it's really cool.

5 UNIDENTIFIED AUDIENCE MEMBER: Well, I was

6 appointed, and one week later we had three

7 openings on the bench. We don't know if

8 that's -- (inaudible).

9 MR. CERIO: Ready, set go. Ready, set, go.

10 Right. It's fun, yeah.

11 UNIDENTIFIED AUDIENCE MEMBER: (Inaudible).

12 MR. CERIO: Yes, it will be fun. It will be

13 good. Yes, sir.

14 UNIDENTIFIED AUDIENCE MEMBER: I have a

15 question. What can we do at the JNC office?

16 We've tried. You and I spent a lot of time

17 talking about communication, keeping the lines

18 open. Anything that we could do differently?

19 Anything that you've done that has a help for

20 the Bar? Anything that, you know, to better

21 improve the process?

22 MR. ABADIN: I think we have had a lot of

23 conversations. That's a good chance. We do

24 have open and candid conversations. That's been

25 the norm, but you have been very open in talking

1 to Greg Coleman, my predecessor, and me. We --
2 I think the process is working. It's, you know,
3 I would -- I have the same question from you.
4 What do you want from us? What you could tell
5 us if you could guide us a little bit more where
6 the rails are so we can go out and look for
7 folks that comport with those sort of your
8 general requirements?

9 But I'm really happy with -- as president of
10 the Bar I'm really happy with my relationship
11 with Tim who's been great and open, and he's
12 accessible. We talk whenever, you know,
13 whenever -- whenever you call me, I call you
14 back and vice versa rather quickly. So I think
15 the relationship is good.

16 It's just a question of getting numbers and
17 people to volunteer. So I think it's good.
18 It's as good as it's been and better, I think.

19 Anything else? Nothing? Shall we?

20 MR. CERIO: If you don't ask questions,
21 he'll make his flight.

22 UNIDENTIFIED AUDIENCE MEMBER: Well, then
23 I'll ask one. So we get a lot of information as
24 commissioners that we're reviewing, and most of
25 that is public information. But it occurs to me

1 that there's one type of information that might
2 not yet be public that might be helpful to us,
3 and that's if there's a discipline proceeding
4 that is early in the process before there's been
5 a finding. You know, allegations are one thing.
6 We wouldn't want to base our entire decision on
7 the allegation. But if there is something
8 pending in the process, do we have any access to
9 that information?

10 MR. ABADIN: You know, Laird [sic], I don't
11 know. We do? The oracle says we do. This is
12 Vicki Band (phonetic). Vicki, stand up, please.
13 She doesn't like to stand up. Vicki's been
14 involved in judicial nominating procedures and
15 judicial nominating process since forever. So
16 she knows -- she knows all of this. It's true.
17 She knows everything. She's been involved in
18 the process almost from the beginning and is --
19 and is the one we look to. So she says, yes, I
20 think you can get it.

21 UNIDENTIFIED AUDIENCE MEMBER: And so that's
22 the information that we should routinely -- we
23 should routinely, then, request of the Bar, and
24 you could help us with that?

25 MS. BRAND (PHONETIC): When you request the

1 (inaudible) from the Florida Bar, if there's
2 anything pending, I will check with the Bar
3 staff counsel to see if there's -- what they
4 believed if it's a complaint that may go further
5 than just (inaudible). But anything relative to
6 complaints about trust accounting or ethical
7 conflicts.

8 UNIDENTIFIED SPEAKER: I'm sorry. We will
9 give to the grievance committee chair for their
10 information and during their deliberations.

11 UNIDENTIFIED SPEAKER: Tim (inaudible).

12 MR. ABADIN: Do you have a question? No?
13 Please. Yes, sir.

14 UNIDENTIFIED AUDIENCE MEMBER: This might be
15 for the governor's office or for you. I just
16 wanted to get your reaction. We have several
17 selections on our commission since the financial
18 reporting rules have changed. And one of the
19 things that has impressed our group is the
20 significant amount of student loan debt that
21 many of our candidates have. And some -- some
22 will react negatively to that; some just
23 neutrally to that.

24 Could I get a reaction from you kind of from
25 the Bar what your reaction may be? I mean, as

1 long as there's no default or anything like
2 that, maybe it's no harm, no foul. But it's --
3 it's -- it shocks you, or at least it does me,
4 when you see the amount of debt some folks have
5 acquired.

6 MR. ABADIN: I haven't been on a JNC in a
7 while, so I don't remember -- I don't remember
8 that being an issue in the three years I was on.
9 It's a reality of our life now as lawyers that
10 anybody under 40 is going to have pretty
11 significant debt. It is the rare person that
12 doesn't have some debt and even rarer that they
13 have no debt. It's just a -- I've been -- as
14 part of being president, I toured the law
15 schools and 150, 180, \$200,000 of debt is not
16 uncommon in about half of the population coming
17 out of law school.

18 And so I don't know how that -- what that
19 would mean to me if I were a commissioner. I
20 agree with you. If they were paid -- if they
21 paid their debt, if they're paying their debt,
22 if they're otherwise working to, you know, pay
23 their credit cards and student loans, then
24 that's a criteria that you would look at, I
25 looked at and certainly the governor is going to

1 look at. But that's just a reality of being a
2 lawyer in -- now that a lot of folks have a lot
3 of debt, a lot of debt. It's kind of sad on a
4 different note, but that's just the way it is.
5 That's just the way it is.

6 Mr. Cerio, anything else?

7 MR. CERIO: Thank you for being here.

8 MR. ABADIN: Okay. Thank you all.

9 MR. CERIO: So we will go ahead and start
10 our first panel now if our panel members could
11 come up to talk about meeting procedures,
12 interviews and uniform rules.

13 Any particular place they should sit,
14 Ms. Dane (phonetic)?

15 MS. DANE: Wherever they want to be.

16 MR. CERIO: All right.

17 UNIDENTIFIED SPEAKER: (Inaudible).

18 MR. CERIO: Exactly.

19 So just some brief introductions on our
20 panel. Allen Winsor. Allen, raise your hand.
21 Allen currently serves as the solicitor general
22 for the State of Florida and is a former partner
23 at the GrayRobinson law firm.

24 Christa Calamus. Christa is the -- she's
25 basically the chief health policy advisor to the

1 speaker of the Florida House. She is a former
2 secretary of the Agency for Health Care
3 Administration, a former general counsel for the
4 Agency for Health Care Administration and a
5 former assistant general counsel to Governor Jeb
6 Bush. Thank you for being here today.

7 And Paul Huck. Paul is a partner with the
8 Jones Day law firm, former general counsel to
9 Governor Crist, former deputy AG to Governor
10 Crist.

11 And I was remiss in pointing this out. So
12 Allen serves on our Second Circuit JNC; Christa
13 serves on our First DCA JNC; and Paul serves on
14 our Eleventh Circuit JNC. So thank you all for
15 being here today.

16 So go ahead and talk. No. So obviously
17 we're here to talk about --

18 UNIDENTIFIED SPEAKER (Huck or Winsor):
19 About rules. That's really --

20 MR. CERIO: -- about rules, that's right.
21 That's right, procedures, the interviews, the
22 uniform rules, things of that nature. And we
23 want to be able to answer some questions that
24 you all may have on the procedures. Talk a
25 little bit, if you don't mind, unless somebody

1 wants to make any type of opening statement or,
2 you know, some -- share some just general words
3 of wisdom. How do each of your JNCs handle the
4 procedures, your internal procedures and your
5 committees? Paul?

6 MR. HUCK: Sure, I'll take it first. So
7 obviously, and for those who are new, I should
8 learn this, but we have -- there's a set of
9 uniform rules that govern each of the three
10 types of JNCs. And those are kind of your
11 defaults. But I think each JNC has its own,
12 whether you want to call them internal
13 procedures or just course of conduct that
14 develops over time through the members.

15 You know, Tim, I can talk to you kind of
16 beginning to end of how the process works per
17 our rules, but basically we get notification
18 from the governor's office. There's a vacancy.
19 Most of time we know that's coming because in
20 our community we know when there's a judicial
21 vacancy. And then the members of the JNC
22 convene informally usually on the phone. We set
23 timelines and deadlines for when we're going to
24 have applications in, for when we're going to
25 put out the advertisement for the vacancy,

1 things like that, kind of set up, you know, the
2 time horizon for us in order to make a decision
3 to get our nominees up to the governor's office
4 to start out with.

5 Allen.

6 MR. WINSOR: I'll go. Yeah, the schedule is
7 really important. And one of the things that's
8 kind of good and bad about the process is
9 there's a very strict schedule. We have, you
10 know, certain time period in which we have to
11 give the names to the governor, and then the
12 governor has a certain time period in which to
13 make the selection.

14 The good news in all that is that there
15 aren't going to be vacancies that stay open for
16 a long time like in the federal system. The bad
17 news is it's a lot of work to do often in a
18 compressed time period. And there's a balance
19 we found on our -- on our JNC. You know, once
20 you get the letter from the governor, as Paul
21 said, we'll convene and put together a schedule,
22 when's the deadline going to be; when are we
23 going to have interviews.

24 And we want as much time as we can to vet
25 the applicant so that we can make the best

1 choices we can, but we also want to put the
2 application deadline back as far as we can to
3 make sure that we have plenty of opportunity for
4 people to -- to apply. There's no fixed
5 schedule. Because you have different situations
6 going right now, we've got an opening where I
7 have a deadline coming up, and we've got the
8 holidays to navigate and things like that. We
9 don't want to burden applicants for having
10 something due the day after Thanksgiving and
11 have interviews and so forth.

12 But the first thing we do and I think one of
13 the most critical when the letter comes is to
14 get together and try and agree on a schedule
15 that makes the most sense for everybody, which
16 is no easy task with nine commissioners who are
17 typically very busy and things like that to
18 block off days for interviewing. But that's, I
19 think, a pretty critical component.

20 MS. CALAMUS: It's the same for the First
21 DCA. The scheduling challenges can be very
22 difficult. We always back up our schedule from
23 the due date that the governor's office gives
24 us. And sometimes that means we only have a
25 week to vet the candidates. We have two

1 vacancies right now in the First DCA and a
2 little over a week to vet them, but one of those
3 weeks is Thanksgiving week, so that makes it
4 difficult to reach out to co-counsel and other
5 folks whose offices might be closed that week.

6 So working through those schedules,
7 wrangling nine commissioners who have busy
8 practices can be very difficult. But we get on
9 the phone right away and do that. And that
10 first meeting for us, for the First DCA, can be
11 an open meeting as well because we're not doing
12 anything that's confidential, so that's
13 something to keep in mind as well as planning
14 for those open meeting issues.

15 MR. HUCK: Right. You know, I think one of
16 the things that's important is the stages that
17 the JNCs go through. So you have an initial
18 kind of scheduling meeting. Then how we do it
19 at the Eleventh, and I think most JNCs do it, is
20 we have another, a subsequent meeting once we've
21 received application, we've done initial reviews
22 where we will kind of condense the list to get a
23 list of applicants that we're going to
24 interview. And so -- and so then we'll have our
25 final session with those applicants that we

1 voted on in order to interview where we inter --
2 you know, we have interviewing and ultimately
3 make our nominations. So it's kind of a
4 multi-stage process.

5 MR. CERIO: Will you always do that, or are
6 there times where you decide to interview
7 everybody?

8 MR. HUCK: I see a member of my JNC is
9 laughing. There was -- we had -- there was a
10 time, one instance where we had a couple
11 vacancies at the same time, and we decided to
12 interview everybody, and it was a three-day
13 interview process where we interviewed, I think,
14 30 odd candidates. That was not the norm of the
15 JNC, and it will not be repeated again. I think
16 that -- I think -- I think it's --

17 UNIDENTIFIED AUDIENCE MEMBER: On Super Bowl
18 Sunday.

19 MR. HUCK: Yes, it was Super Bowl Sunday.
20 But -- but so those who got stuck on Sunday
21 interviews were not that happy.

22 But I do think it's important to think about
23 that process. It's incumbent, in my opinion, on
24 all commissioners to really exercise good
25 judgment at that point because if you do and

1 have a list that is too long, you're not going
2 to be able to, A, vet the candidates who really
3 deserve to be vetted and interviewed because
4 they're the ones who really deserve the
5 attention of the commission, and you're not
6 going to have time also to give them any kind of
7 substantive interview. You're going to end up
8 having the situation that we had, which is just
9 a free for all, and it becomes very difficult to
10 kind of make appropriate nominations to the
11 governor's office.

12 MS. CALAMUS: We've also dealt with the
13 interview question repeatedly. We've had
14 several openings on the First DCA recently, and
15 our applicant pool is not usually terribly
16 large. It's 20 to 25 applicants. And so in
17 that instance we interviewed all of them a
18 couple of times in a two-day interview process.
19 And in that process it was very helpful, for
20 example, to have the candidates' pictures
21 because sometimes we needed them after two days
22 of interviewing people that we didn't know. But
23 because we were having some vacancies in a short
24 period of time, we were reconvening two months
25 or three months after the last time we convened.

1 So in one instance when we had all the same
2 commissioners on the commission, no new people,
3 and we had just interviewed all the applicants,
4 maybe two or three months prior, we decided only
5 to interview new applicants, which made for a
6 much shorter interview schedule, and we all had
7 previously vetted those folks and seen them and
8 knew them. But we had to communicate that very
9 carefully to the applicants so they didn't feel
10 that they were, you know, receiving some sort of
11 light scrutiny that way.

12 But it certainly made for a smoother
13 process.

14 MR. WINSOR: In the Second we typically
15 interviewed not everyone, but, you know, maybe
16 two-thirds of them. A lot of it, again, is
17 driven by how many you get to start with. Maybe
18 some people you've seen before. Maybe some you
19 haven't. And like Paul said, the fewer that you
20 interview, you know, the more work you're able
21 to do on the front end that leaves you more,
22 more time to do work on who's left at the end,
23 but that's -- but you also don't want to
24 certainly overlook anyone.

25 But there's a lot of -- as you'll find,

1 there's a lot of phone calls to be made. And
2 so, you know, when you've got a list of
3 applicants that you are going to interview and
4 can focus just on those, it gives you better
5 opportunity to reach out to everyone and learn
6 everything you can.

7 One other thing on --

8 MR. CERIO: Go ahead.

9 MR. WINSOR: One other thing on the
10 procedure, so the other thing that we do like,
11 you know, starting with the date that we're
12 obligated to give the names up to the governor
13 and work backwards from there, and typically
14 what we'll do is have the interviews at the very
15 latest we can in that period. And then once the
16 interviews are finished, the commissioners will
17 stay and try and make the decisions that night.
18 And we -- we always, we'll block off the next
19 day in case the need arises, but typically we've
20 be able to finish it that night. Sometimes it's
21 a long night, but...

22 MR. CERIO: And I do want us to take a
23 deeper dive into the interviews, but before we
24 really get into that let me ask you a question.
25 Voting is always -- we get a lot of questions

1 about, well, how do we vote? How should we
2 vote? I think there's a lot of many ways to do
3 it. Talk about the different options and how
4 you all do it on your respective JNC.

5 MR. WINSOR: I'll go. So the -- the final
6 voting -- well, the rules call for any voting on
7 the applicants have to be done by secret ballot.
8 So that's one requirement by rule. The -- at
9 the end, you know, you have, when you're
10 actually nominating people, you have a
11 constitutional restriction you have to do
12 between three and six, so you can't just go down
13 the line and vote up and down. The Supreme
14 Court JNC has a process that provides for that.

15 But on the front stage at the interview
16 stage there's no rules about how many you can
17 interview or can't, and so you can just do those
18 on a one-off basis or, you know, after a lot of
19 discussion, and it doesn't necessarily have to
20 be a lot of formality on that. But...

21 MS. CALAMUS: Yeah, our process is after the
22 interviews we -- there's usually a generally
23 discussion kind of reminding ourselves how we
24 have done this in the past. And sometimes
25 there's some discussion about changing it. And

1 sometimes there are motions to do so, and we
2 debate those motions and vote on those. And
3 sometimes we -- there's kind of general
4 consensus to keep doing it the way we did it
5 last time.

6 But I would say through the secret ballot
7 process it's usually, in my experience, there
8 are usually one or two or maybe three people
9 that there is, you know, full consensus on that
10 arise immediately to the top. And we usually
11 spend the bulk of our time working on the last
12 three of the six that we wish to nominate.

13 MR. CERIO: Do you have any --

14 MR. HUCK: And, I mean --

15 MR. CERIO: Do you have any formalized
16 process, or is it sort of, hey -- (inaudible).

17 MR. HUCK: Well, the rules only require
18 majority vote --

19 MR. CERIO: Right.

20 MR. HUCK: -- for the circuit court and for
21 the DCA and JNCs. Allen is correct, if anybody
22 is on the Supreme Court JNC, if you pull up your
23 rules, you'll actually see a fairly elaborate
24 voting procedure in there and those -- and I
25 can't comment on --

1 MR. CERIO: Which I was actually going to
2 ask Christina to put Jason Unger on the spot and
3 hand him the mic. And I wanted Jason, if you
4 could, talk a little bit about the Supreme Court
5 voting procedure, because it is unique, and I do
6 think some JNCs try and emulate it from time to
7 time.

8 MR. UNGER: Well, depending on the number of
9 applicants we have --

10 MR. CERIO: Jason, grab the mic, would you?

11 MR. UNGER: Oh. Depending on the number of
12 applicants we have, if we try to pare it down.
13 If there's nobody supporting a particular
14 applicant, we kind of take them off the list.
15 But then our process does call for each
16 commissioner secret ballot putting their top
17 numbers of candidates on, and then we weed it
18 down through taking off the people that have the
19 lowest number of votes at the end until we get
20 to three final and -- applicants.

21 From there our rules then allow us on
22 majority vote to add names or even subtract
23 names from there, and we try to get to six
24 wherever we can.

25 But unlike the circuit in the DCA JNC rules,

1 our end at three, and sometimes we can't get a
2 majority vote to add anybody on. And that's why
3 even though we -- we would strive to get six.
4 Sometimes we just can't get there because of our
5 process.

6 MR. HUCK: Yeah, I mean, I think it's
7 important to understand that if you look at
8 those rules, it's built in in the Supreme Court
9 JNC to send three to the governor. Anything
10 above three is the exception, not the rule.

11 Our experience on our JNC is has been to try
12 to give the governor the full range of six which
13 he's entitled to under the constitution and so,
14 which I prefer. And having sat on the other
15 side, I very much preferred to get a full range
16 of six nominees coming to the governor's office.
17 I think that's more appropriate for -- to -- for
18 the governor to receive. So that's something to
19 be aware of.

20 I, frankly, it's not my -- I'm not on that
21 Supreme Court JNC, but I think that that JNC
22 should vet that issue because I think it does,
23 it's built in to kind of restrain the governor's
24 ability to appointment, which I don't think is
25 really probably optimal.

1 MR. CERIO: And just -- and we do appreciate
2 that. I mean, as the governor's general counsel
3 and our entire general counsel's office, and
4 I've had this discussion with some of you in the
5 audience, we do appreciate getting the maximum
6 number of nominees. And sometimes -- and we
7 understand that sometimes that's tough. I know
8 that a lot of times the JNCs worry that, well,
9 if we just send six names, you know, is there a
10 qual -- a quality drop off. That's a constant
11 tug of war. But we do appreciate having the
12 opportunity to give the governor the largest
13 number of applicants possible.

14 MR. WINSOR: Yeah, I mean, the bottom line
15 is other than the Supreme Court JNC there's no
16 one way to do it other than it has to be secret
17 and it has to be by majority vote. And then
18 there's a lot of flexibility beyond that.

19 MR. CERIO: How about the meeting being open
20 to the public or media inquiries or some folks
21 from the media or just the general public
22 wanting to sit in. Talk a little bit about
23 that.

24 MR. HUCK: Okay. So first I'll kind of
25 mention media issues and then public attendance.

1 So occasionally we'll have folks from the media
2 who will want to sit in on the interviews. And
3 so what we do is, generally speaking, you know,
4 we set it up with the applicant sitting at the
5 top of table and the commissioners sitting
6 around it, and the members from the public,
7 whether they're media or not, will sit kind of
8 at the bottom of the table and can sit in on the
9 interviews.

10 And to the extent we're going to have then
11 discussions either between interviews where
12 maybe we're discussing information that the
13 commissioner who was assigned to vet a candidate
14 has and wants to discuss with the commission or
15 we just are taking a break, we'll ask members of
16 the public to leave during that and then rejoin
17 us when the public session starts up again.

18 In terms of media inquiries, our practice is
19 to direct all of them to our chair so that
20 you'll have one person responding or not
21 responding to a media inquiry rather than to
22 having individual commissioners responding even
23 if they, he or she received the inquiry
24 themselves.

25 And our experience has been we've had

1 members of the public come and want to watch
2 interviews. One -- one time we had the father
3 of someone who was going to be interviewed the
4 next day come in and watch on day one all the
5 interviews. We've had folks who are curious
6 about how the process worked come and watch,
7 whether they're thinking of applying or whether
8 they just want to see, you know, what kind of
9 questions get asked of the applicants in the
10 nominations. It works smoothly and we've never
11 had a problem with it.

12 MR. WINSOR: We do the same thing directing
13 all the inquiries to the chair. And similarly,
14 you know, it's media are welcome there. In our
15 experience sometimes they'll come for just a
16 piece of it just maybe to get some video clips
17 or to listen for 20 minutes but not to spend the
18 whole day. And then occasionally we'll have
19 members of the public just sitting there
20 watching. But that's been it.

21 MS. CALAMUS: We use the same partner for
22 media inquiries, although I don't think we've
23 ever received one in my memory. We always have
24 members of the public there. Usually a member
25 there, for example, the Tallahassee Women

1 Lawyers that like to observe the interviews.

2 I think people expect the interview process
3 to be more contentious than it is or more
4 controversial than it is, and I think people are
5 surprised by at times how tedious it can be.

6 MR. HUCK: I think it that's -- I echo that
7 comment. I mean, in some ways that's good,
8 right, because it kind of, first of all,
9 demystifies the process, which is great. And,
10 second, people realize what goes on in the
11 interview. It's not contentious; there are no
12 fireworks; and it's very professional. And it's
13 exactly as it -- and appropriate, exactly how it
14 should be. So I think that's a good thing.

15 And I think sometimes folks who are coming
16 to go watch it, they may get a little bored
17 watching it because it's -- it can be a long
18 day.

19 MS. CALAMUS: Yes.

20 MR. HUCK: So --

21 MR. CERIO: Okay. Let's turn to a little,
22 again, digging in more on interview questions.
23 Talk about what you're looking for in a
24 candidate. What makes a good judge? How do you
25 think about that when you're interviewing or

1 screening applicants?

2 MR. HUCK: Okay. There's -- well, there's a
3 couple ways to talk about that. So we've got --
4 and one thing maybe we should think about is to
5 what extent the interview drives the decision
6 making at the end versus the kind of the whole
7 package of the applicant, including their
8 application and the vetting process, et cetera.
9 But, you know, different applicants, you're
10 going to want to ask different questions of him
11 or her.

12 So, for example, there may be things in the
13 application itself that we're going to want to
14 talk to the applicant about, cases they've had,
15 matters that they disclosed in the application.
16 You may want to ask them questions about stuff
17 that's come up in the vetting process.

18 And I'm a firm believer that if there's
19 negative information that's, you know,
20 substantive and non -- and not anonymous, you --
21 it behooves you as a commission to ask the
22 applicant about it and to be very upfront about
23 it and not to have information that gets
24 discussed during deliberations which the
25 applicant didn't have a chance to address.

1 In terms of substance, what are you looking
2 for, I mean, think it's absolutely appropriate
3 to ask questions about how they -- how they
4 would judge matters before them. So, for
5 example, I frequently will ask questions about
6 statutory interpretation. You know, how does --
7 how would an applicant confronting a brand new
8 statute enacted by the legislature, how would
9 they go about analyzing that as a matter of
10 first impression.

11 And I think it's -- you get a lot of
12 information about first how much thought has an
13 applicant given to what it means to judge, and
14 you also get some pretty good insight into how
15 they would approach things kind of from a legal
16 or a philosophical standpoint. I think it's
17 indicative of how they would act kind of
18 subjectively when they have subs -- actual legal
19 questions in front of them.

20 MR. WINSOR: Yeah, I think on our commission
21 there's two categories of questions. And one
22 is, just like Paul was saying, what is -- what
23 is it -- what in your view makes somebody a good
24 judge? You know, how would you look at these
25 issues? How would you approach these type of

1 things that could be kind of open to anyone.

2 And then there's candidate-specific
3 questions that, you know, maybe something came
4 up in the application that you want more
5 information about, maybe a case they were
6 involved in or an answer to one of the questions
7 raised some other questions in one of the
8 commissioner's minds, and you want to dig in a
9 little more on that.

10 Some people sometimes will ask the same
11 question more or less of every applicant, and
12 other people move it around a little bit. And
13 but at the end the day, what you're looking for
14 is people that have what it takes to be a judge,
15 people who are smart, people that are qualified,
16 people that have good experience.

17 And you can get a lot of that from talking
18 to other people. You can get a lot of that from
19 the application itself. You can get a lot from
20 the interview.

21 MS. CALAMUS: And I think the -- the
22 commissioners themselves, their own
23 personalities dictate the questions that are
24 asked. Some commissioners are very interested
25 in people's personal backgrounds and personal

1 stories and what that brings to the bench for
2 the DCA. I think we look for temperament and
3 collegiality, particularly for the First DCA.
4 We just had a great deal of turnover recently,
5 and we want that, you know, group to be
6 collegial and work well together.

7 I think also there are those kinds of
8 philosophical questions trying to get at how
9 this person thinks and whether they have, as
10 previously mentioned, thought, thought
11 thoughtfully about what it means to judge
12 particularly the differences between being a
13 trial judge and being an appellate judge. I
14 would never ask an appellate candidate how would
15 you handle a pro se litigant, for example, but
16 that's something that people probably should be
17 thinking of before they become a trial judge.

18 The questions about statutory
19 interpretation, that's one of my favorite
20 questions because you learn whether people have
21 some technical expertise about the canons of
22 construction, and you learn what they think
23 maybe about those canons and how far along that
24 continuum they want to go or whether they want
25 to skip the first five canons and jump to one

1 that may be less reliable, whether they've
2 looked at the case law that talks about those
3 things or whether they're going to be winging it
4 when they're, you know, writing their opinion
5 for the appellate court.

6 MR. HUCK: Yeah, and, you know, Tim you
7 touched on a point, or during your presentation
8 about temperament issue you described as
9 humility, which I think is a great one to talk
10 about. That's a hard one to take the
11 temperature of, right, because you've got
12 someone sitting in front of you, and the
13 candidates that you're interviewing are folks
14 who are successful in what they do. And they're
15 having a job interview essentially, so they're
16 want -- they want to tell you why they're
17 qualified for this. And it's hard to be humble,
18 and a lot of times in that situation that's just
19 reality. And I think the commissioners, you
20 know, we need to be sensitive to that.

21 But I think there are ways to get at it.
22 You get it from talking to opposing counsel.
23 You get it from talking to co-counsel,
24 references. But, you know, sometimes ways to
25 get at it are, which I always think is an

1 interesting issue of what, what constraints do
2 they feel a judge operates under, right, what
3 are the legal and nonlegal constraints that kind
4 of keep judges within their sphere of governance
5 in our system of tripartite governance that we
6 have. So I think you can get to that issue as
7 well with questions along those lines.

8 MR. CERIO: You know, one thing I'd like to
9 do -- I mean, I don't want to ask all the
10 questions. For our folks in the audience, any
11 questions about process or the interview
12 techniques, any -- if you don't have a question,
13 anything you want to talk about? Jason?

14 MR. UNGER: You talked about the vetting
15 process. And I think the majority of my JNC is
16 up here, and we do a very detailed vetting of
17 the applicants. One of our commissioners went
18 so far as a practice, and his was always to call
19 an ex-spouse to get a real detailed vetting of
20 the applicant. One of the frustrating things
21 I've seen in the past is a commissioner basing
22 their voting solely on the application and the
23 interview without really delving into the
24 personal references, opposing counsel, other
25 things like that.

1 I'm curious from your standpoint, what have
2 you all found as a best practice on where do you
3 get the best true feedback on an applicant in
4 the vetting process?

5 MR. WINSOR: Well, that's a great point.
6 And, you know, to Paul's point it's one thing to
7 put together a great application and deliver a
8 great interview. That doesn't necessarily mean
9 that that's -- that's enough. One thing that
10 our commission tries to do is not limit it to
11 the -- you know, one is you want to call
12 everybody you can, anybody whose listed as an
13 opposing counsel, anyone who's listed as a
14 co-counsel, you want to call as many people as
15 you can and ask those people kind of like the
16 spiderweb thing or whatnot other people who
17 might know who would have good information on
18 this person and then just other members of the
19 community. Someone who maybe is a reference for
20 one candidates maybe will have something to say
21 about other candidates, and also just to reach
22 out to people whose name don't show up anywhere
23 but just people who are members of that legal
24 community.

25 It's easier for us in the Second Circuit

1 than you maybe on the statewide JNC. But
2 there's a lot of -- you know, this is a small
3 legal community, and you can find out a lot
4 about people by just asking.

5 So there's really no answer other than to
6 put in the work and make the calls and do as
7 much diligence as you can.

8 MR. HUCK: Well, and I do think, I mean, I
9 think the vetting process is critical, critical,
10 critical. And, frankly, I think in terms of the
11 constitutional deadlines that we all operate
12 under in terms of making our nominations to the
13 governor's office and the governor having to
14 make the appointments, I mean, particularly for
15 the Supreme Court, I think, is very short
16 because of what you want to be looking at and
17 also for the DCAs as well.

18 I actually don't think it's maybe that
19 inappropriate, depending on what the application
20 and applicant is, to talk to ex-spouses because
21 I know the federal JNC does that on a frequent
22 basis and as they should because we've seen some
23 stories nationally reported that those things
24 can be indicative of judicial temperament.

25 But I do think, and kind of Allen and I are

1 maybe echoing each other, the whole package is
2 important for this -- for this process. So
3 someone could have a great interview, but they
4 may have a mediocre application in terms of
5 substance and quality, and they may have okay
6 references, not great references, but they just
7 hit it out of park at the interview.

8 And I think it's important for us when we're
9 sitting there not to let that, the immediacy of
10 the interview dictate, right, our decision.
11 It's hard because it's natural to do that, but I
12 think that's important to keep in mind as we're
13 making our nominations to the governor.

14 MR. CERIO: Question?

15 UNIDENTIFIED AUDIENCE MEMBER: Paul, as you
16 know, recently we were called Rick Scott cronies
17 on Facebook by a lawyer in our community because
18 they didn't like a particular nominee or
19 candidate that was appointed by the governor.
20 How important is whether the candidate has the
21 ability to win an election? As you know,
22 Miami-Dade County is fertile ground for judicial
23 election.

24 MR. HUCK: Sure. I do think that it's --
25 it's something for -- that's, I think, more of

1 the governor's office ultimately consideration.
2 It's important, I think, for the JNC to take it
3 into account in the sense that when you're doing
4 the review of the application and talk -- and
5 vetting process or the investigation process,
6 however you want to denominate it, to think
7 about does this person have support within their
8 community. And their community may be a small
9 community, it may be a broad community, because
10 they are going to have to stand for election.

11 So I think and oftentimes the way some of
12 the questions get asked of applicants before, it
13 says, you know, have you thought about election,
14 what concrete things have you -- will you do if
15 you are appointed by the governor because you're
16 going to have to stand for election pretty
17 shortly thereafter, what concrete things have
18 you thought about and what are you going to
19 implement because I think it does give you some
20 insight into whether he or she, you know,
21 realizes I'm going to be up for election. It's
22 not just -- the appointment is just the
23 beginning of my process in many ways. I think
24 that gives you some good insight.

25 Whether we can gauge whether or not someone

1 in time is electable, that's, I think, too tough
2 for us to figure out. I think that's more
3 appropriate in some ways for the governor's
4 office to ultimately take that into subsequent
5 consideration.

6 MS. CALAMUS: Tim, if I could just weigh on
7 the vetting a little bit, just some nuts and
8 bolts. I don't know how other people do it, but
9 I usually ask my administrative assistant to
10 block off two or three hours of my time and call
11 folks on this list that I give her and schedule
12 15-minute increments so that I don't end up
13 chasing people around, and I can do three solid
14 hours of conversations with some folks.

15 I think some surprising things sometimes
16 come up in the vetting process. I try to call
17 all the references and as many opposing counsel
18 and co-counsel as I can. Opposing counsel is
19 crucial, I think, because sometimes you hear
20 that someone is just fabulous to work with and,
21 you know, easy to communicate with, and
22 sometimes you hear temperament issues.

23 Sometimes I call references, and they don't
24 know that they're references for the applicant.
25 Sometimes I call references -- everyone I call,

1 I go through the whole list of all of the
2 candidates. Often references like other people
3 more than the person they're the reference for,
4 which is important to know. These are all just
5 taking the time to talk to folks. I have preset
6 questions that I ask them, but, you know, allow
7 that to be a little bit open-ended and, you
8 know, have that full conversation.

9 Candidates know when you're vetting them.
10 They hear from their references. They hear from
11 folks that they've practiced with or attorneys
12 that practiced before them if they're sitting
13 judges, so I think it's an important part of the
14 credibility of the commission that that is taken
15 seriously and that a serious effort is made to
16 contact a great many people.

17 MR. CERIO: Mr. President, you had a
18 question?

19 MR. ABADIN: No, more what we did on the
20 Third is we got the list, and we checked for
21 conflict, and then we went around the room, and
22 we assigned one person to drill down on every
23 particular nominee, so we just went right down
24 the list. You get number one and you get number
25 two, and then that person would really do the

1 in-depth interview.

2 Didn't preclude anybody else. If I knew
3 someone, I could certainly call or I'd, you
4 know, we were all looking at the same
5 information but not to bombard everybody and to
6 give everybody a chance to really drill down.
7 One person did it, and then during the interview
8 process, I forget, I think we did 30 minutes,
9 and then we gave ourselves ten minutes in
10 between so that, you know, if Cerio is the next
11 interviewee, the person in charge of the Cerio
12 investigation would say, okay, this what I have
13 found. I called all the references. I found
14 this. Anybody have anything different? Anybody
15 know anything that we need to talk about with
16 this particular nominee that's going to be
17 controversial or that we need to all address.

18 And so that was really helpful to us because
19 it broadened the scope of that spiderweb, which
20 works really well. The other thing I did and we
21 did was whenever I was on phone with someone, if
22 I was on the phone with Tim talking about Paul,
23 I'd say, Well, Tim, who do you know else on the
24 list and do you have any comments about? I
25 called Tim specifically to talk about Paul, but

1 I'd say, Okay, Tim, what do you know? Because
2 these are all prominent people in our community.
3 So are the references. If you've been around
4 long enough, as all of us have, we all know most
5 of the people.

6 And the other thing I want to say is from
7 the interview process, the chair, I got to call
8 folks that were not nominated. And the thing
9 that made me proudest of those calls was
10 everybody was disappointed because they thought
11 the interviews were conducted so professionally
12 that the interviews went well. And they said,
13 you know, I left. I'm so disappointed I didn't
14 get it, but I really thought everybody, you
15 know, was so polite and so nice that I knocked
16 the interview out of the park.

17 And my comment was, well, of course, you're
18 a prominent member of the community. Why would
19 you be treated any differently even though we
20 asked hard questions?

21 And so those are just two thoughts if I
22 could add those. Thanks.

23 MR. CERIO: Thank you.

24 MR. HUCK: And I wanted to add something
25 just to tag on types of questions. And we got

1 an earlier question about student loan debt and
2 things like. So we do have this new financial
3 disclosure. And it's -- the fact that folks
4 have to fill it out, at least our experience has
5 been it hasn't been immediate that folks have
6 realized that they have to fill out that new
7 form, but that's the same form the judges fill
8 out, right. And so it's the same form that if
9 the person gets appointed, they're going to be
10 filing that with the Commission of Ethics, and
11 it's a publicly available form for anybody to
12 kind of go online and access.

13 And you do get information revealed, and I
14 think it is appropriate to ask if there are some
15 red flags on that. I think it is appropriate to
16 ask, because let me tell you something, at least
17 in our neck of the woods, if there are red flags
18 on that disclosure form, it will get -- and the
19 person's appointed and kind of judicial election
20 comes around, media will look at that, and
21 that's an appropriate story for the media to
22 report as well. So I think it is appropriate,
23 and it's kind of incumbent on you to ask the
24 questions if there are some red flags on there
25 and to see what the answer is.

1 MR. CERIO: I think there's question in the
2 back. Oh, right in the middle there.

3 UNIDENTIFIED AUDIENCE MEMBER: Are there any
4 top questions you avoid? Are there any things
5 you just you're not going to -- you're not going
6 to touch or that you honestly feel it's just not
7 appropriate, or is it all fair game?

8 MR. HUCK: I personally feel that anything
9 in the application is completely fair game. And
10 any information that you obtain in the vetting
11 process is fair game as long as you disclose it
12 to the applicant during the interview process.

13 And, like I said earlier, if there is -- and
14 Ray's right. The process Ray described is
15 probably pretty standard for most JNCs. You
16 know, each commission is assigned one or more
17 person to really concentrate on and you report
18 back to the commission about positive and
19 negative stuff you've received during that
20 process.

21 And, you know, I feel that if you get some
22 negative information that is important and you
23 want and is -- you know is going to be part of
24 your deliberation process, you should give the
25 applicant -- the applicant the opportunity to

1 respond to that during the interview. So I
2 think anything in the application is definitely
3 fair game, whatever it may be.

4 Other questions that are, you know,
5 completely off limits, I mean, it's kind of like
6 cocktail parties. You know, I guess there are
7 certain questions you just don't ask anybody at
8 cocktail parties. Maybe that's kind of your
9 best guide for that.

10 MR. CERIO: Sure. We had a question.

11 UNIDENTIFIED AUDIENCE MEMBER: Yes, I do.
12 I'm in the Second Circuit, and we have a small
13 legal community, and we had an incident where
14 someone had a direct conflict of interest and
15 they recused themselves. And then how do you do
16 a voting procedure when one person is recusing
17 themselves, especially if it's a strong
18 applicant? We didn't really know what to do.
19 We had lengthy discussions on how to proceed
20 that way.

21 MR. HUCK: That's a great question. And
22 we -- we haven't had to face that situation. I
23 do know, interestingly enough, in the Supreme
24 Court rules, that person if they're conflicted
25 off to one person, one applicant, they're barred

1 from voting for any applicants until that --
2 until the person they have a conflict with is no
3 longer at issue.

4 But the DCA and the J -- and the circuit
5 county court JNCs are silent on that issue. And
6 so then you come to an issue, well, what's the
7 fairest way to deal with that. We haven't had
8 to confront that, so maybe we're lucky that way.
9 But the Supreme Court JNC rules do have a
10 solution for that. Whether that's the best
11 solution, I don't know. But, again, this kind
12 of goes down to discretion of the commission on
13 how to deal with it, and the chair kind of can
14 give some guidance on that.

15 But how did you guys end up? Were you on
16 the commission when that happened? How did you
17 end up resolving it?

18 MR. WINSOR: I was. You know, I think
19 it's -- it all turned out fine. I mean, like I
20 said, there's flexibility with the rules other
21 than Supreme Court JNC rules.

22 MR. CERIO: We had another question over
23 here.

24 UNIDENTIFIED AUDIENCE MEMBER: Ramón
25 described the process that our commission uses

1 also where you assign a particular candidate to
2 one of the commissioners or, you know, to two or
3 three candidates to one commission if we've got
4 a lot of candidates.

5 And then what you described was that that
6 person will -- will then report to the
7 commission about what they found, and the
8 discussion ensues. Do you consider that to be
9 deliberation, and can you kick the public out?
10 Because often that is stigmatizing information
11 that is, at a minimum, sensitive that you
12 would -- you would prefer that, you know, out of
13 respect for the candidate that that only stay in
14 the room. What are your thoughts on that?

15 MS. CALAMUS: We usually -- we usually
16 handle that instead of in between the
17 interviews. I mean, it's up to the discretion
18 of the commission. But instead even between, we
19 do that process at the end of the interviews,
20 and absolutely it's part of the deliberation
21 process and is not public. But we usually sit
22 around for an hour or two sometimes talking
23 about what we've learned from the vetting
24 process and how that maybe compared with the
25 interviews before we ever take a vote. But it's

1 definitely not public.

2 MR. HUCK: It's deliberative. So whether
3 you do it either before, after or, you know,
4 kind of slice it in between, it's a
5 deliberative, it's part of the deliberations of
6 the JNC because you're talking amongst yourself
7 for purposes of reaching decision on the
8 nominations. So to me it's irrelevant when you
9 do it. But it's deliberative. So if you were
10 going to do that and you had members of the
11 public observing you, you would say, okay, now
12 we're going to go into a deliberative session.
13 If you could please wait, you know, wherever
14 you're having your interviews, and we'll call
15 you back in when we're back in public session.

16 MR. WINSOR: And we'll notice meetings that
17 way too that are kind of combo meetings, so they
18 generally say, we're going to talk about
19 schedules and talk about procedures. And then,
20 you know, that part is public, and then we'll
21 move to a deliberative part where we're
22 either -- you know, a lot of that happens on
23 front end when you're deciding who will be on
24 interview list and things like that, some of
25 those deliberations but-

1 UNIDENTIFIED AUDIENCE MEMBER: Just one
2 further comment that I would add with regard to
3 voting procedure. Regardless of what
4 methodology you as a commission may use, you
5 need to decide that upfront and then stick to it
6 rather than try to decide it on the fly because
7 when you do that, it becomes about the guy or
8 about the person rather than the process. So I
9 found that out the hard way.

10 MR. CERIO: And we have a question up front
11 here, but before we do that, are there -- have
12 you all ever had occasion, whether on voting or
13 anything else, to amend your rules? Has that
14 ever come up or have they been pretty static for
15 a while?

16 MS. CALAMUS: Are you talking about the
17 official JNC rules?

18 MR. CERIO: You're -- like any rules that
19 you established for your JNC.

20 MS. CALAMUS: We -- we don't have -- we have
21 a negative information policy, so to speak,
22 which I think someone has already spoken of.
23 And we usually kind of revisit that before each
24 round of work that we do. Do we still want that
25 to be our policy? A motion. And so we kind of

1 renew that each time.

2 But other than that, I think that's the only
3 kind of official policy we've adopted.

4 MR. CERIO: Okay.

5 MR. HUCK: Ours are pretty static. And,
6 again, it's kind of policy course of conduct.
7 We know what they are. We have to educate
8 incoming commissioners to our JNC on what they
9 are.

10 And the one that we revisited most recently
11 was whether our -- the members of the JNC can
12 participate in judicial elections in terms of,
13 you know, hosting or being on a campaign
14 committee and things like that. So that was one
15 we revisited recently.

16 Again, that's something that our commission,
17 you know, voted on and adopted a policy on.
18 It's not in the uniform rules.

19 MR. CERIO: Okay. Question.

20 UNIDENTIFIED AUDIENCE MEMBER: Yes, I think
21 about how long do your interviews last? We've
22 changed it around over the years and had
23 sometimes longer and shorter interviews, and I'd
24 be interested in knowing what others do.

25 MR. WINSOR: We do --

1 MR. CERIO: Good question.

2 MR. WINSOR: We do 20 minutes sometimes and
3 30 minutes sometimes. It's just depending on
4 what the schedule looks like.

5 MR. HUCK: Ours are -- ours are about 20
6 minutes. Of course, that's our guideline. They
7 sometimes go longer. We've had situations that
8 Christa talked about where we've had a lot of
9 vacancies in a very short period of time, and so
10 you see, you know, the same group of people or
11 essentially the subset of the same group of
12 people applying for that. And when that's the
13 case, we give them a shorter interview time and
14 are very clear on the front end that we are
15 giving you this because we just saw you, you
16 know, four weeks ago.

17 And so rather than, it's kind of awkward to
18 revisit the person that you've just interviewed
19 for a long period of time, and so rather than
20 kind of making them feel awkward the
21 commissioners feel awkward, people have to come
22 up with new questions, et cetera, we give them a
23 much shorter period of time. And then the other
24 thing we go do, and I think most JNCs do this,
25 you know, we ask them to give a very short

1 opening statement. And we -- and we really ask
2 them to keep it to two minutes because our
3 interview period is not that long.

4 And -- and you learn a lot about a candidate
5 as to whether they can give an opening statement
6 to you in two minutes or whether it takes 15
7 minutes. And that tells you a lot about the
8 person.

9 So that's kind of our process in terms of
10 that.

11 MS. CALAMUS: And then an unrelated question
12 that I have is sometimes there are topics that
13 are not included in an application that may come
14 up during the course of deliberations. For
15 example, extra-marital affairs, things of that
16 sort. Do your committees typically give people
17 a heads-up that those topics are going to be
18 addressed? Do you just address them? Do you
19 not address them? How do you do that?

20 MR. HUCK: We've not encountered that, but
21 I'll go back to the question sort of
22 procedurally on the interviews, just to follow
23 up on Paul's comment. We'll do an opening
24 statement the same way and then just go right
25 down the line. And so the chair will manage it,

1 and then each person will ask a question and
2 then with the chair's permission maybe a
3 follow-up or something like that. And then if
4 we have time, maybe we'll -- you know, people
5 might have some additional questions. But it's
6 kind of a formal, somewhat formal process there,
7 an opening statement followed by individual
8 questions.

9 MR. WINSOR: Okay. I do want to address
10 your question about things that are not part of
11 the application, whether it's an extramarital
12 affair, financial issues or things like that.
13 And maybe this gets to your negative
14 information. I mean, and I've kind of said
15 during this presentation here, if you're going
16 to -- I think if there's negative information
17 that you're going to take into account as a
18 commission during your deliberations, it's not
19 fair to the applicant to have that done kind of
20 behind closed doors where he or she hasn't had
21 an opportunity to respond to it.

22 So if you are -- to me, if it's something
23 that's going to be taken into account during the
24 deliberation, the applicant should be advised
25 and asked questions about it. If it's something

1 that's very, very sensitive, like an
2 extramarital affair, there has been times when
3 commissions have decided as a commission that
4 the attorney -- the person who's vetting may let
5 the person know, this has come up. We're going
6 to ask you questions about it, and you should be
7 prepared for that. And so let us know if you
8 still want to have an interview. And applicants
9 have then withdrawn their application as a
10 result of that.

11 So it's all about kind of transparency and
12 disclosure to the applicant, I think.

13 UNIDENTIFIED AUDIENCE MEMBER: Thank you.

14 MR. CERIO: We are about out of time. I
15 want to thank the panel for your insight today.
16 I appreciate it. Everybody, let's give them a
17 round of applause. Thank you all.

18 And we are -- let's just move right into our
19 next speaker. Thank you all very much.

20 We're delighted that Virlindia Doss, the
21 executive director of the Florida Commission on
22 Ethics, is here today with us to talk about
23 ethics and disclosure issues and conflicts of
24 interest. After Ms. Doss finishes, we'll have a
25 brief 15-minute break. But I'm very happy to

1 have Virilindia here. Let's give her a warm
2 welcome.

3 Thanks so much, Virilindia. Thank you.
4 Thank you.

5 I'll get this out of your way.

6 MS. DOSS: Good morning. It's so nice to be
7 here. I see former bosses and colleagues
8 around. And I love to speak to the JNCs because
9 you're so easy. The ethics commission, I think,
10 got a complaint against a JNC member in 1974,
11 and that was the last one we've received.
12 Hopefully I'm not jinxing you here.

13 We get very few opinions. Part of that is
14 because I think you're very sensitive to ethical
15 issues. Part of it is because, although almost
16 all the ethics laws apply to you, because of the
17 way you're structured, a lot of them in a
18 practical sense don't really have any
19 applicability.

20 And I'm really glad that I got here early
21 because it was very interesting to watch the
22 panel that preceded me. And like so many
23 lawyers, I'm sure, you know, in my secret heart
24 of hearts I harbor that aspiration that some day
25 I might make a good judge. But now that I know

1 you call former spouses, I'm thinking I chose
2 the right career path. Do you call them all or
3 just the most recent one? Is it -- because it
4 could make a difference.

5 Okay. I'm going to talk a little today
6 about the commission on ethics and what we do,
7 and then I'm going to talk about a few major
8 areas, substantive areas of the law, financial
9 disclosure, conflicts and voting conflict and
10 gifts, which is something everybody's always
11 interested in.

12 I've been working for the ethics commission
13 since 2003. From 1990 until 2003 I worked for
14 the Attorney General's office, and I was the
15 prosecutor for the ethics commission. And even
16 though I've been working with this law for 25
17 years, I don't know all the answers. So if you
18 have a question, you're welcome to answer -- ask
19 it. If I can answer it, I will. And if I
20 can't, I will get your name afterwards and
21 research it and get back to you.

22 But anybody who's looked at the ethics laws
23 knows that they are fairly complicated. One
24 lawyer described them as Byzantine. I couldn't
25 really disagree with that, so sometimes they can

1 get confusing even for lawyers.

2 We're a nine-member body. Five are
3 appointed by the governor. Only three of those
4 can be of his same party. Two are appointed by
5 the senate president. Only one of those can be
6 of his own party or her own party. And two by
7 the house speaker. Again, only one can be of
8 the speaker's own party.

9 So we never, you know, run into that kind of
10 political gridlock that you see in Washington
11 sometimes.

12 We have 25 and a half full-time equivalent
13 employees. We're located in Tallahassee. Seven
14 investigators, six lawyers. We investigate and
15 hear complaints from the public about public
16 officers and employees. We're the independent
17 body that the constitution speaks to in
18 Article 2, Section 8, the sunshine amendment.

19 What we really like to do, even more than
20 investigate and prosecute people, is to render
21 advice. The commission does formal opinions,
22 but our staff does hundreds of informal letters
23 of guidance every year. We literally have
24 operators standing by to serve you, so if you
25 run into problems or questions that involve the

1 Code of Ethics for public officers and
2 employees, give us a call. We do have an
3 attorney on call every day. We pride ourselves
4 in trying to return all our calls the same day.
5 If somebody needs an informal letter of
6 guidance, our informal in-house goal is to get
7 it done in two weeks. We often get it done more
8 quickly than that.

9 Formal opinions take more time because the
10 commission only meets once every six weeks or
11 so. So if you miss a deadline for meeting
12 materials being sent to the commission, then you
13 have to wait until the next commission meeting.
14 But if you have questions, call us and we'll
15 walk through the question with you. And if it
16 turns out it's something that needs to be
17 answered by the commission because we don't have
18 enough precedent on it for a staff member to go
19 out on a limb and give you an answer, we will
20 happily work to figure that out for you.

21 We also handle financial disclosure filings
22 and other reports. We administer fines for
23 failure to file, and we run the executive branch
24 lobby registration and reporting system. Just
25 like with the legislature, people have to

1 register to lobby the executive branch.

2 So that's kind of an overview of who we are,
3 what we do.

4 As to the substantive law, I'm going to
5 start with financial disclosure because it's the
6 easiest and the most clear-cut. All of you are
7 subject to the financial disclosure law. You're
8 considered state officers even if you're on a
9 circuit JNC and you file the Form 1 with the
10 ethics commission every year. You have to file
11 within 30 days of appointment to your position,
12 and you file every year by July 1st.

13 When you leave, you need to file a final
14 Form 1 which will cover that little window of
15 time from January 1 until the day you leave.
16 And you need to file that within 60 days of
17 leaving. If I could give you three pieces of
18 advice about filing financial disclosure, one is
19 file it on time. Failure to file -- as I said,
20 the deadline is July 1st. There's a grace
21 period to September 1st. After that it's a \$25
22 a day automatic fine that happens by operation
23 of law that maxes out at \$1,500.

24 Recently the legislature changed the law so
25 that if somebody doesn't file their form at all,

1 the commission is required to investigate him or
2 her to determine whether that failure to file
3 was willful.

4 So, you know, enough said. Get it done on
5 time.

6 Nobody does this, but I always advocate
7 reading the instructions. I know they're
8 tedious, and I know that because every year I
9 personally work on trying to clarify, shorten,
10 improve those instructions. And they change
11 because sometimes the law change or sometimes we
12 have a commission opinion that clarifies some
13 reporting requirement. So I strongly recommend
14 reading the instructions.

15 Also, don't just copy over last year's form.
16 I know this comes as a surprise, but sometimes
17 people's financial picture changes during the
18 year. And even though the Form 1 is not that
19 detailed, not like the Form 6 that the judges
20 file, you know, your financial disclosure
21 picture may change over the years. So don't
22 just copy over what you did.

23 Now, I would keep it. I would look at it so
24 you don't accidentally leave something off that
25 you reported last year and you should still

1 report. But I wouldn't just copy it over.

2 If for some reason you need an extension to
3 file your financial disclosure, you can get one.
4 It's provided for in law. So if you have -- if
5 you're running up against a deadline for filing,
6 you should contact our office and ask about
7 getting an extension.

8 Another disclosure form that you are
9 required to file is called the quarterly client
10 disclosure. And, by the way, all these forms
11 and instructions are available on our website.
12 Quarterly financial disclosure is where you
13 report representations made by you or any
14 partner or associate of your firm before any
15 state level agency. You do that on a quarterly
16 basis. The end of -- it's due by the end of the
17 quarter, following the quarter in which the
18 representation was made. If there are no
19 representations, you don't have to file the
20 form. It's not like the financial disclosure
21 where you have to file it even if you're broke.
22 This one if you don't have any representations,
23 you don't have to file it.

24 I'm often asked whether people are required
25 to give their client's name. Okay. And the

1 short answer is yes. There's an old ethics
2 commission opinion, 74-69 for anybody
3 interested, and there's an old Bar opinion,
4 77-25, which indicates that, yes, you do.

5 Now, I'm aware that sometimes you or your
6 partner may be representing a client in some
7 matter in which by law the client's identity is
8 not supposed to be revealed. And I think that
9 would be a really good subject for a formal
10 opinion by our commission some day because I
11 think the underlying law may have changed since
12 1974 and 1977, and the rationale for revelation
13 of the client's name may have changed. But as
14 staff, I don't get to make the policy, so that's
15 not something that I can just, as they say, go
16 out on a limb and say, well, don't worry. That
17 would be a really good subject for a commission
18 opinion.

19 Moving on to conflict and voting conflicts,
20 this is an area where there's not a lot to tell
21 you other than what's in the statutes, because
22 you don't really have an agency. Your agency is
23 the JNC, but it's -- there's not much staff to
24 it. It doesn't get lobbied by people. It
25 doesn't enter into contracts typically, so

1 there's not a lot there. But there is a little
2 bit, so I will tell you what there is to tell.
3 And I will preface everything I say by saying
4 that the laws relating to conflicts of interest
5 and voting conflicts are geared towards
6 conflicts that arise because of pecuniary
7 interests and financial interests. They're not
8 talking about conflicts that arise which may be
9 just as real, that arise because of friendship
10 or affiliation or dislike or because it's your
11 ex-spouse who's applying or things of that
12 nature.

13 The conflict of interest law has two parts,
14 and the first part says you can't have an
15 employment or contractual relationship with a
16 business entity or agency doing business with or
17 regulated by your agency, which is going to be
18 the JNC. That part I don't really see applying
19 to you at all because the JNCs don't regulate
20 anybody. They don't do business with anybody.
21 So I think there's very little to worry about
22 there.

23 The second part of the statute says you
24 can't have any contractual or employment
25 relationship that would give rise to a

1 continuing or frequently recurring conflict or
2 would impede you in the performance of your
3 public duties, meaning, a contractual
4 relationship or a job that may tempt you to
5 dishonor your public responsibilities.

6 I suppose it's possible to have such a job
7 or a contractual relationship, something that
8 would make you be less than objective in your
9 analysis. Well, not even less than objective in
10 your analysis of a particular candidate. I
11 suppose it would be possible to have a job that
12 would make it impossible for you to serve. But
13 I'm having trouble thinking of what that would
14 be. I think for the most part any conflicts you
15 might have would be resolved by your not
16 participating in the that particular candidate's
17 process.

18 And I think that the standards that are
19 applicable to you under the rules, under your --
20 the rules of the nominating commissions are
21 probably stricter than the state law regarding
22 conflicts of interest.

23 I did have a comission member actually who
24 was -- ethics commission member who was later
25 promoted and made a judge of the Third District

1 Court of Appeals, Ed Scales, and he asked me
2 what if you're on a JNC and your law partner is
3 an applicant? Would that create a conflict that
4 would prevent you from serving? I do not know
5 the answer to that question. That's the short
6 answer. The commission's never been asked.

7 It's a -- it would be a conflict possibly in
8 the ordinary sense of the word. I mean, this is
9 your partner. You like him. You want to, you
10 know, curry some favor with him. But would
11 there be a conflict based on a pecuniary
12 interest? I'm not sure.

13 So, again, if that's not resolvable in your
14 circuit or your, you know, your appellate JNC or
15 your Supreme Court JNC, that may be a good topic
16 for a commission opinion.

17 That leads me to the issue of voting
18 conflicts. A voting conflict occurs when you
19 know something will inure to your own special
20 private gain or loss or that of a relative, a
21 principal by whom you're retained which could
22 include a client of your firm or a business
23 associate such as a business partner.

24 As state officers, you only have to
25 abstain -- under the ethics laws I think your

1 rules are stricter here. Under the ethics laws
2 you only have to abstain if the matter benefits
3 you personally. Otherwise, your standard is to
4 disclose. But I think your rules are stricter
5 on that. And I think, obviously, you know,
6 public confidence is enhanced if you're not
7 participating in things that benefit relatives
8 or partners or employers.

9 There's an attorney general opinion, 96-63,
10 that talks about the phrase that's in your
11 rules, substantial conflict of interest. And it
12 says, the phrase is, essentially means the same
13 thing as it does in the Code of Ethics, which
14 is, inures to the special private gain or loss
15 of yourself, a relative, a partner, et cetera.
16 So if you run into that issue, you might want to
17 review that attorney general's opinion.

18 Oddly enough, that attorney general opinion
19 dealt not with a partner but with a co-worker.
20 It was a fellow employee in the public
21 defender's office. And the attorney general
22 concluded that under the nominating commission's
23 rules, a JNC member could vote on an application
24 from an attorney employed in the same office.
25 The public defender employee/JNC member didn't

1 stand to benefit, and the applicant was not a
2 business associate relative or employer. So, as
3 you see, lots of things in the ethics code are
4 not as strict as what is in your own rules. I
5 think maybe there are some laws in the -- in the
6 Code of Ethics gift laws that maybe are a little
7 stricter, and I'm going to move to those now.

8 First, let me say, there are a lot of laws
9 in the Code of Ethics pertaining to gifts and
10 acceptance of gifts. The first two are very
11 intuitive. If you think someone is giving you
12 something in an effort to influence you, don't
13 take that. If someone is offering you a thing
14 of value and it -- with an understanding that
15 your official judgment will be impacted, don't
16 take that. This is basically bribery.
17 Everybody really understands that pretty well.

18 Now, here's one that's not so intuitive.
19 Section 112.3215 for those of you who want to go
20 back and look at this later -- also, all the
21 laws and our administrative code rules are on
22 our website -- prohibits people in the executive
23 branch who filed disclosure from accepting any
24 expenditure from executive branch lobbyist or
25 the principal of an executive branch lobbyist.

1 As I told you, people who want to lobby the
2 governor, et cetera, they have to register
3 first.

4 So, now, first of all, are you in the
5 executive branch? You know, I think you are
6 because there's an advisory opinion to the
7 governor, 276 So. 2d 25 that says that. I
8 looked yesterday. I didn't see anything more
9 recent than that. So -- and you file financial
10 disclosure. So you fall under this law. So you
11 would be prohibited from accepting anything of
12 value from either a lobbyist of the executive
13 branch or the principal of that lobbyist.

14 Now, how do you know who these people are?
15 I have often suggested that they should be
16 branded. They don't want to do that. They also
17 refuse to be tattooed. I was thinking L for
18 lobbyist, you know. But they have rejected
19 that. There's a list if you go to our website,
20 there's a link to the lobbyist registration
21 office, and you can look up to see who's a
22 lobbyist. So if you -- if someone wants to give
23 you something and you're concerned that it might
24 be prohibited under that law, there is a pretty
25 easy way to look and see if that person is a

1 lobbyist or, of course, you can ask them.

2 There are other gift prohibitions so that if
3 you get past those, you know, okay, it's not a
4 bribe. This person's not an executive branch
5 lobbyist or the principal of an executive branch
6 lobbyist. Now what? You can't accept any gift
7 from a political committee, nor can your spouse,
8 child, parent or sibling.

9 In this context gift has a specific
10 definition. Usually it means anything that you
11 get that you don't pay for within 90 days. In
12 this it's anything that you get, period, that's
13 not related to political activities authorized
14 under Chapter 106. This is a pretty new law,
15 and there's not any interpretation on it that I
16 think would be of value to you.

17 But political committees, the legislature
18 got pretty exercised over the concern that
19 people were using political committees to kind
20 of, you know, finance things that didn't really
21 have anything to do with politics, and so they
22 enacted that law. Again, probably won't apply
23 to most of you. And then you can't accept
24 anything worth more than \$100 from a vendor of
25 your agency. Probably doesn't apply. Lobbyist

1 of your agency, probably doesn't apply.
2 Principal of a lobbyist of your agency, probably
3 doesn't apply. So that part of the law,
4 probably nothing to worry about there.

5 Two things that do apply. One is you can
6 always accept a gift from a relative of any
7 amount even if he's a lobbyist or whatever, and
8 you don't have to report it. The definition of
9 relative is found in the definition section of
10 the code, 112.312 and it is broad. It
11 encompasses all the people you'd normally think
12 of, including your spouse and people who live in
13 the same household with you and your fiance'.

14 It doesn't include boyfriends and
15 girlfriends. And I get asked that question a
16 lot. If you're not living in the same
17 household, and it's your boyfriend, and they
18 give you something worth more than \$100, that is
19 something you would have to report because you
20 have to report gifts that you receive from
21 nonrelatives that are worth more than \$100. So
22 I always tell people if my husband gives me a
23 bracelet and it's worth more than \$100, I don't
24 have to report it. But if my boyfriend gives me
25 a bracelet that's worth more than \$100, I do.

1 Again, just cross my name off the list for
2 consideration.

3 And then the last thing I'm going to talk
4 about is honoraria because probably lots of you
5 get invited to give speeches, trainings,
6 whatever because of the positions that you hold
7 and because of your stature in the community.
8 You cannot solicit an honorarium, which is
9 payment for a speech. I'm not getting one.
10 Just saying. You cannot solicit an honorarium
11 for lecturing about your public position for
12 things related to your public position. The law
13 doesn't prohibit accepting an honorarium, but I
14 don't recommend it. If it's related to your
15 public responsibilities, just say no to
16 honoraria is my -- my motto.

17 And, by the way, I and my staff will always
18 give you the conservative advice, not because we
19 don't like you and we don't want you to have fun
20 and take advantage of fun things that are
21 offered to you but because we want to help keep
22 you out of trouble.

23 You cannot accept an honorarium from a
24 vendor, a lobbyist of your agency, a principal
25 of a lobbyist of your agency. That's not going

1 to apply usually because you don't have vendors
2 and lobbyists of your agencies.

3 However, this is something -- again, nobody
4 has asked this question, but I tell people about
5 it because it's something to think about. Okay.
6 The expenditure ban that I talked about just a
7 few minutes ago that says that you can't take
8 anything from an executive branch lobbyist or
9 the principal of an executive branch lobbyist,
10 the anything in -- in the law, it says "includes
11 reimbursements."

12 So the question has occurred to me and to
13 our staff, well, what if you're invited to speak
14 someplace and they offer to reimburse you for
15 your travel or the hotel you have to stay in?
16 There's a concern in my mind that if --
17 ordinarily you would be able to accept that,
18 reasonable and actual travel and lodging and
19 food expenses. Ordinarily you would. But given
20 the draconian nature of expenditure ban, it says
21 you can't accept anything including
22 reimbursements from an executive branch lobbyist
23 or the principal of an executive brand lobbyist.
24 I'm concerned that even accepting reimbursement
25 of travel and lodging and food expenses might

1 trigger that loss.

2 So if you are invited to speak by an entity
3 or a person who is either an executive branch
4 lobbyist or the principal of one, that might be
5 something that you want to consider. And I'm
6 hopeful that some day someone will request an
7 opinion on that subject.

8 Yes, sir.

9 UNIDENTIFIED AUDIENCE MEMBER: But if they
10 paid the expense directly -- (inaudible).

11 MS. DOSS: They're still paying -- yeah, I
12 mean, it's the same six and one-half dozen
13 other. The question is what if they pay the
14 expense directly, and my answer is that's just
15 like reimbursing you. So -- so that's a concern
16 that's kind of floating around out there.

17 So if that comes up for you, give us a call
18 and we can maybe help figure out. I have to
19 say, the governor's office has been fantastic
20 about asking for opinions that everybody wants
21 to know the answer to the question, but nobody
22 wants to ask it. So we're not that scary,
23 honestly. We're not bad. We're not bad at all.
24 So, any other questions? Yes, sir.

25 UNIDENTIFIED AUDIENCE MEMBER: Do you have a

1 (inaudible)?

2 MS. DOSS: No, you do not. You should --
3 usually every agency has a financial disclosure
4 coordinator, and usually when we get a notice
5 from two different coordinators about the same
6 person, we can figure it out and we have a way
7 of ranking, which is the -- because sometimes
8 we'll have somebody who's in a Form 1 filing
9 position and a Form 6 and they don't have to
10 file two different forms. They just file the
11 Form 6 so we'll rank them.

12 Sometimes that's not so obvious, so if
13 you're doing your Form 1, I would put both your
14 positions, write in both your positions on it so
15 that we will notice it and we'll not start
16 sending you late notices for your other
17 position.

18 In the event that we do send you a late
19 notice and you've already sent it in -- and this
20 is great question. The question was, do you
21 have to file two Form 1s if you served in two
22 different positions, and the answer so no.

23 But that leads me to say, if we send you a
24 notice that says you have not filed your form,
25 get it in, and you know that you have filed that

1 form, call us. Do not ignore that notice
2 because the next notice you get will say you're
3 getting a fine, okay, because sometimes things
4 get lost in the mail. Sometimes we could have
5 you under a different position and we don't
6 realize that you're the same person. So never
7 ignore mail from us, even if you've left your
8 position.

9 And this happens all the time. Somebody
10 leaves their position in January of 2015, okay.
11 June of 2015 comes, and they get a Form 1 from
12 us because it's for the previous year, okay.
13 It's for 2014. They get the Form 1, and they
14 said, I'm gone. I'm not... and the next thing
15 they know they're getting fined because they
16 didn't realize that this is for the preceding
17 year. So never ignore mail from us.

18 Yes, ma'am.

19 UNIDENTIFIED AUDIENCE MEMBER: Yes. Is the
20 rendering -- thanks. Is the rendering of an
21 ethics opinion dependent upon an actual case or
22 controversy, or may one solicit an ethics
23 opinion in a theoretical sense?

24 MS. DOSS: That's a great question. Does an
25 ethics opinion have to be based on actual fact,

1 or can it be based on, you know, potential
2 facts. And it's a hard question to answer
3 because, of course, the opinion has to be --
4 have a factual basis. But hopefully the person
5 is asking for the opinion before they engage in
6 the conduct. So they might -- so they might not
7 have all the facts or the thing hasn't actually
8 happened.

9 So the answer is really there has to be some
10 basis in fact. You have to -- you have to
11 really be thinking, I'm thinking of accepting
12 this other job. Would it cause a conflict with
13 the job I have or, you know, my -- my next-door
14 neighbor wants to give me his lawnmower. Can I
15 accept it given the position that I hold?
16 Something like that.

17 And it has to pertain to you, the
18 individual. You can't ask for opinions about
19 other people's conduct, which many people find
20 incredibly disappointing. So but it can't be so
21 broad as to say, well, what ethical parameters
22 apply to me for the rest of my career? You
23 know, it can't be that hypothetical. But if you
24 have something and you, you know, you've got a
25 particular situation in mind, what we strive to

1 do is to give people as much advance knowledge
2 as they can get so that they do or don't do
3 whatever it is they should or should not do.

4 So, and if -- if we get an opinion and it's
5 too broad, then we'll just tell you, this is
6 too -- this isn't ripe yet. You know, this
7 hasn't jelled into enough of an actual situation
8 that we would have enough information to answer
9 the question.

10 So that's kind of my wishy washy answer to
11 that question.

12 Thank you very much. I really appreciate
13 being here. Thank you so much for having me.

14 MR. CERIO: Thank you very much. I
15 appreciate you being here. We're going to take
16 a break and we will resume at 10:30.

17 (The foregoing proceedings were concluded.)

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COURT CERTIFICATE

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STATE OF FLORIDA)
COUNTY OF PALM BEACH)

I, BARBIE GALLO, RMR-CRR, Registered Merit Reporter, Certified Realtime Reporter, State of Florida at Large, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

Dated this 1st day of November, 2018.



BARBIE GALLO, RMR-CRR

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JUDICIAL NOMINATING TRAINING PART 2

11/13/15

1 * * *

2 MR. CERIO: ... everybody while they're
3 taking their seat.

4 Darrick McGhee. Darrick, raise your hand.
5 Darrick serves on the Second Circuit JNC as a
6 non-attorney. Many feel that he's got more
7 walking-around sense than most of us, but we're
8 happy to have him serving. He is a vice
9 president for government relations for the
10 Johnson & Blanton firm, and he's a former
11 legislative director for Governor Scott.

12 Also on the panel is Lara Tibbals. Lara is
13 a -- served on -- former member and chair of the
14 Second DCA JNC and is of counsel with the law
15 firm of Hill, Ward & Henderson.

16 And Pete Antonacci. Pete, raise your hand
17 for those in the audience. Pete is a former
18 general counsel for Governor Scott. He is
19 currently executive director of the South
20 Florida Water Management District. He is a
21 former state attorney in Palm Beach County, a
22 former assistant -- or Deputy AG under Attorney
23 General Butterworth, a former statewide
24 prosecutor. And with Pete's stellar resume and
25 credentials you would think he's about 138 years

1 old, but actually he's a spry 110, so we're
2 happy he could be with us here today.

3 Pete, did you want to say something? Okay,
4 then. So -- no, thank you all for being here
5 today to talk about the authority and roles of
6 the JNCs. This is, I don't want to say
7 controversial, but it is something that's
8 important. It's important for people to
9 understand. There's a lot questions about it,
10 diversity issues, interaction with the
11 governor's office, and what we wanted to give
12 you all was a very, just a candid conversation
13 about what's involved in it and to have this
14 dialogue. I think it's important. And we could
15 just jump into some questions or if you all have
16 any, you know, initial thoughts that you want to
17 open up with or we can just get right to it.

18 MR. ANTONACCI: No questions.

19 MR. CERIO: We can just get right to it. So
20 talk about the authority of the JNCs and, you
21 know, the -- there's a lot questions about is it
22 a part of the judicial branch, the executive
23 branch, is it a hybrid, you know, what is it, or
24 in your viewpoint.

25 MS. TIBBALS: Yes, certainly and the

1 authority -- can you all hear me? The authority
2 for the JNCs comes from the Florida
3 Constitution, of course. Article 5, Section 11
4 of the Florida Constitution establishes the JNCs
5 and also through the legislature, through
6 Section 43.291 of the Florida Statutes.

7 Now, that being said, there has been some
8 controversial discussion in some legal
9 authorities as to whether they are
10 constitutionally independent or part of one of
11 the branches of government. And certainly
12 the -- it appears that the greater weight of
13 authority is that they are an arm of the
14 executive appointment power of the governor.

15 MR. CERIO: Pete, Darrick, any thoughts?

16 MR. ANTONACCI: And creatures of the
17 legislature. And that has -- that's been -- has
18 been, since Governor Bush served, a matter of a
19 point of contention at least between the Bar and
20 the governor's offices for the last three
21 governors. I think the prevailing attitude
22 amongst rank and file Bar members is, is that
23 the JNCs are actually arms of the Bar. And as a
24 matter of staffing prior to Governor's Scott's
25 term the Florida Bar was the primary staff for

1 the JNCs. And staff oftentimes paints and
2 colors what JNCs do. The -- and so rank and
3 file lawyers justifiably felt that JNCs were
4 much closer to the Bar than they were to the
5 appointment power of the governor.

6 That all changed in the, I think, year seven
7 of Governor Bush's two terms, and the old system
8 of three from the governor, three from the Bar
9 and three from the other six was set aside and
10 made the governor more favorable position with
11 the appointment power. The governor now
12 appoints all nine subject to the Bar's
13 nomination of four of the nine.

14 So over the years the JNCs were once a sort
15 of creature of the Bar, and that has now
16 developed to where the governor is much more in
17 command of the JNCs beyond the constitutional
18 power to appoint.

19 MR. CERIO: Darrick, and actually all of
20 you, but I'm going to ask this question of
21 Darrick. You know, what is the interaction like
22 as a nonlawyer member of the JNC and your role
23 as a voice as a nonlawyer member?

24 MR. MCGHEE: Interesting question. So it's
25 one in the same. I mean, one of the things

1 about being on the JNC, especially as a
2 nonlawyer, is, I mean, you come in with respect
3 for your colleagues, but you also come in
4 preparing to be vocal and being engaged in the
5 conversation and really wanting to make sure
6 that you contribute to the best candidates you
7 can to recommend to the governor. I think
8 that's important. I don't think that it's wise
9 to be on a JNC if you're not -- if you're going
10 to be a rubber stamper. You're there really to
11 be a contributor in the deliberations, be a
12 contributor in the selection process, the
13 vetting process, be argumentative with respect
14 as relates to trying to narrow it down in that
15 regard.

16 And so for me being on there, I'm honored to
17 be on there, but I'm also on there to make sure
18 that as an appointee of it all that I'm also
19 contributing in that regard. And I serve with
20 some great individuals. But that is very, very
21 important in that regard is making sure that you
22 are contributing to the end goal, which is to
23 get the top candidates to be able to recommend
24 to the governor.

25 MR. CERIO: One of the things that you all

1 touched on and I'd like to talk a little bit
2 about it, and Pete mentioned this, is the -- is
3 the frame, you know, whose JNC is it. You know,
4 we have this discussion. It's been a very good
5 dialogue with the Bar. We have, you know,
6 people, there are folks get very upset when the
7 governor rejects a JNC list. And one of the
8 things that I think that, you know, I've had
9 great discussions with Bar leadership, and I
10 think people are really sort of getting a hold
11 of is this is the framework that has been set
12 up. The -- the governor must appoint judges
13 from a list presented to him or her by the JNC.

14 Conversely, the governor does get to reject
15 a list of JNC candidates proposed by the Bar.
16 There is a give and take. And I think that, you
17 know, there have been -- there's folks who don't
18 really understand how that framework is set up.
19 They may disagree with it, and that's okay, but
20 there is a framework. There is no sort of
21 going, you know, outside the margins.

22 And I wanted to ask the panel members if
23 you've ever encountered that, what your thoughts
24 are about sort of the, you know, who's got the
25 authority, how do your JNCs -- how do they react

1 when there's questions about the authority or
2 the legitimacy of the JNC.

3 MS. TIBBALS: Well, I certainly from serving
4 on the Second DCA JNC would say that my
5 position, and I believe the other commissioners
6 probably share this as well, and there are a few
7 here today, was that our job was to act really
8 in an advisory capacity to the governor and to
9 the governor's office, and in that respect that
10 we had to do our jobs and really very carefully
11 investigate and screen the applicants and to do
12 a very thorough job.

13 And as you all who have already served on
14 commissions understand and those of you who will
15 be engaging in the appointment process, it is a
16 very time-consuming process, and it is one that
17 you have to dedicate a great deal of hours on
18 the phone to, a great deal of hours interacting
19 with other members of the Bar.

20 And so from my standpoint it was important
21 to hear from any of the members of the Bar who
22 wanted to provide input, which is the reason
23 that those background investigations take so
24 much time, because we were the filters, as
25 commissioners, you're the filters through which

1 all of that information comes, whether it's
2 someone who's practiced with or against the
3 applicant, a judge that the applicant has
4 appeared in front of or a co-worker. All of
5 those people, including members of the Bar, do
6 have opinions that they want heard and should be
7 considered when making recommendations to the
8 governor.

9 And the reason that it has to be taken so
10 seriously, of course, is that the governor is
11 bound to appoint one person, if there's one
12 opening, from the list of no fewer than three
13 and no more than six nominees. And so at least
14 from my standpoint we were really sort of acting
15 in an advisory capacity to the governor in that
16 respect. Tim.

17 MR. MCGHEE: And from our end, I would agree
18 with that 100 percent. I think that's key to
19 know and understand. And when you're looking at
20 it, you know, we've -- we've -- our JNC here in
21 the Second Circuit, we've been called in twice
22 thus far to look at that, and you're looking at
23 a lot of applications. And the vetting process
24 is extensive. Phone calls are extensive and
25 in-depth, but you are trying to be in the best

1 advisory role as possible in that regard and
2 submitting those names in that regard, so I
3 would agree with my colleague on that.

4 MR. ANTONACCI: My proviso on that is that
5 virtually everybody you talk to as a JNC member
6 has an agenda, and oftentimes if they're -- if
7 the name -- the person who you're calling is off
8 the application of a particular applicant, you
9 can almost rest assured that that person is
10 going to say laudatory things about the
11 applicant. Sometimes they don't, and it's a
12 real surprise sometimes when you talk to people
13 like that.

14 But I think for JNC members it's important
15 to exercise some judgment because you're
16 expected to report back to the committee sitting
17 collegially about the information that's
18 gathered. That information can oftentimes be
19 designed for purposes that aren't intended to --
20 that the process is not intended to serve. And
21 you're trying to get the most qualified list
22 together, and sometimes, particularly in the
23 business that we're in, people litigate against
24 each other or hear tell about litigation that
25 they don't like and, accordingly, attempt to

1 submarine or marginalize applicants for reasons
2 that are not improper but certainly should be
3 considered as motivated by something other than
4 quality.

5 MR. CERIO: Any questions from the audience
6 at this point? There's -- there's a lot of
7 information to convey about the authority.
8 That's not really conducive to, you know, a
9 dialogue, though. A lot of this information
10 will be in your packets. But, you know, I think
11 most people in the room know that, you know, the
12 JNCs are nine members, five appointed by the
13 governor and four selected, appointed from the
14 governor from lists provided by the Bar.
15 There's information about dual office holding,
16 you know, JNC, a spot on a JNC if you hold
17 another public office, it doesn't qualify as
18 dual office holding. There's a lot of
19 information that we kind of wanted to convey,
20 but I realized it's not, it's not really a
21 dialogue. That's just sort of more of an
22 information dump.

23 But does anybody have any questions? And we
24 can do that, but does anybody have any questions
25 about the authority of the JNCs or the nuances?

1 And what I would do is ask you to wait for poor
2 Christina to give you the mic because it won't
3 pick it up on the recording that the Florida
4 Channel is doing. Thank you.

5 UNIDENTIFIED AUDIENCE MEMBER: This isn't
6 about the authority. This is from last
7 discussion, but I thought that maybe Pete and
8 the others could tell us. What do you do about
9 a request for anonymity? We have talked to
10 somebody, and they say, "Is this confidential?"

11 And we say, "Yes, this conversation is
12 confidential, but I will share this information
13 with everybody else on the commission."

14 So then they say, "Well, do you have to use
15 my name? Can I not give my name? What do you
16 do about anonymity --

17 MR. CERIO: Requests.

18 UNIDENTIFIED AUDIENCE MEMBER: -- requests
19 for anonymity?

20 MS. TIBBALS: I have faced that from time to
21 time, and I'm sure many commissioners have. You
22 know. You know, oftentimes, and the practical
23 reality for me has been that by the time I've
24 spoken to 60 or 70 different people about
25 various applicants, I oftentimes can't really

1 remember who gave me which information -- what
2 information that I have. And I don't
3 necessarily think that that is a bad thing. You
4 know, the way that I do my note-taking process
5 oftentimes does not have the source of
6 information.

7 And so, you know, depending on the nature of
8 the information, and obviously it would have to
9 be a judgment call on behalf of the
10 commissioner, but I'm not necessarily sure that
11 the source of the information necessarily
12 matters.

13 MR. ANTONACCI: Yeah, I've faced that
14 several times, and I hope I've been uniform in
15 this in saying, sure, your -- you may remain
16 anonymous, but I will not share that information
17 with anybody else. And so that usually stops
18 them in their tracks or says, okay, they'll say
19 okay, then you can use my name, because what
20 they're really trying to do is influence the
21 process, and they're not doing much influence if
22 it's just one commissioner.

23 MR. CERIO: Darrick, anything? Okay. Any
24 other questions?

25 Talk about in the interaction in your

1 authority how do you -- on the timeframes. Do
2 the timeframes ever present a challenge? For
3 most of you who don't know, the JNCs have 30
4 days to do their work, but an additional 30 days
5 can be granted. Our office uniformly just gives
6 you 60 days just to cut through it, so that's
7 why it is a firm deadline. We're not trying to
8 be draconian. We're just -- you know, that's
9 the outside of the statute.

10 But when you're doing your work, has it ever
11 been difficult to meet a timeframe? Or how does
12 the timing work for you all?

13 MS. TIBBALS: The timing is difficult from
14 what we've experienced simply because you have
15 nine very busy commissioners that are either in
16 private practice or, you know, have a very full
17 plate of their own with respect to their
18 professional obligations, and it can be very
19 difficult from a scheduling standpoint.

20 One of the rounds that we went through we
21 ended up with 33 applicants for two simultaneous
22 vacancies that had been created by the
23 legislature. And so really trying to vet 33
24 applicants and dividing that up amongst the nine
25 of us was difficult to do in the timeframe

1 given. It -- you have to very much work
2 quickly. And that's why it is so important to
3 stay in touch with the governor's office for
4 knowing when a vacancy may come down and when
5 the commission may be asked to convene so that
6 those deadlines can be kept in mind because it
7 is a constitutional deadline, of course, that
8 you have, 30 days and then 30 days potentially
9 by extension of the governor's office, not an
10 automatic extension, but I understand that the
11 governor's office has been giving it most of the
12 time since Governor Scott has been in office,
13 which has been very helpful, I know, certainly
14 to the commission that I served on.

15 But it is hard. And especially because if
16 you have not had an opening for a while on
17 your -- on your court that you're serving the
18 commission for, then people really need time to
19 put their applications together. There's a
20 great deal of work that these applicants go to.
21 They're delving through years, you know, 20
22 years sometimes or more of their professional --
23 everything that they've done professionally, all
24 of their accomplishments, the trials that
25 they've had, their most significant cases. It

1 can take a long time to put that information
2 together. So you certainly would like to give
3 the applicants three to four weeks on the front
4 end just to apply.

5 One thing that we have done in the past is
6 to do a sort of rolling process with assigning
7 out the applicants to the commissioners, so that
8 if we all of a sudden have five applications
9 delivered early on in the process, even several
10 weeks before the deadline, then we will go ahead
11 and assign out to the various commissioners on a
12 rolling format the people that they will be
13 asked to vet and to investigate so that that way
14 they can begin work, because it does take a long
15 time to get the vetting finished.

16 MR. MCGHEE: I think that's a good point
17 because one of the things that was referenced
18 that I want to emphasize on is really the
19 balance of it all, balancing your professional
20 responsibilities and the JNC responsibilities.

21 And, for example, our JNC is back in now.
22 We have a deadline out there for applications to
23 come in, and we're going to run into the
24 Thanksgiving holiday. And so when we convened a
25 week ago, we were trying to be sensitive to when

1 applications should come in in that regard, so
2 there is a balance there, and you want to be
3 sensitive to that.

4 The application by itself is a very
5 strenuous process, and it's a lot of information
6 you're asking for, a lot of copies you want to
7 get and get disbursed out. Our JNC has created
8 methods to make it easier on our end as well as
9 on the applicant within the frame, don't get me
10 wrong, but it is a balance in that regard
11 because you want to be responsible to your
12 professional obligations. The same point as an
13 appointee of a JNC, you want to make sure you
14 are upholding your responsibilities the governor
15 is expecting of you, so that balance is
16 important.

17 And then also you want to consider in that
18 balance is when you go into the vetting process,
19 you have to factor in if an applicant has given
20 the ten names and let's say half, if not
21 three-quarters, of those names are judges, you
22 have to factor in that piece as well, those
23 timeframes.

24 I know our first time getting called in
25 since I've been on the JNC, I spent Saturday and

1 Sunday making a lot of phone calls. And to my
2 surprise most of my answers came on Saturdays
3 and Sundays. But it is a balance you have to
4 make in that regard and being sensitive to those
5 individuals in that regard.

6 And so, again, I mean, I alluded to this
7 earlier, our JNC is now in active duty, as I
8 will call it, to fill another vacancy here, and
9 our deadline will be the 14th of December. And
10 so when those applications come in, you're
11 working extensively. We met to kind of divvy
12 out the calendar, how we want to get things
13 done. And that calendar has to be compared to
14 professional responsibilities in that regard.
15 Again, with the holiday in the middle there, how
16 do you that and still meet deadlines. But the
17 balance is very, very important, and considering
18 your colleagues on the JNC is also important.

19 MR. ANTONACCI: There's never enough time.
20 If you think about this, there's a vacancy. The
21 governor rings the bell and says, okay, JNC,
22 start meeting. And from that point, the maximum
23 amount of time you have is 120 days, which is
24 just blinking of an eye in the real world. And
25 if you consider what you're doing, which is

1 putting someone on the bench, giving that person
2 the road, that's hugely important, particularly
3 if you're some poor schlub standing in front of
4 that judge a year from now with a DUI or
5 something like that. It's real important to
6 that person.

7 And it's, from the governor's office point
8 of view, it's real important to the governor's
9 office because that is, whether anybody uses the
10 legacy phrase around here or not, that's part of
11 the governor's legacy. Every governor leaves
12 behind a trail of judges that not only
13 adjudicate cases but on the appeals bench
14 interpret the law. So it's not much time.

15 Whoever put -- whoever decided that 30 days
16 was going to be enough for a JNC to meet, I
17 mean, that's just nutty because those of you who
18 have done this know how sort of difficult it is
19 to latch nine people together, nine busy people,
20 get their calendars right and then do the
21 difficult work, so it's not very much time for
22 nine people. And in some ways it gets even more
23 difficult or the time gets compressed even more
24 when it reaches the governor's office because
25 there are times when at the governor's office

1 there can be more than five vacancies that are
2 pending. So the governor doesn't have a fleet
3 of lawyers. The governor has a few lawyers, and
4 those lawyers -- I always said we took about a
5 third of our time doing judicial vetting.

6 And, again, it's so important that there's
7 just not enough time. I often felt that
8 recommendations that we made to Governor Scott
9 in my term, I often felt like I just didn't have
10 enough information. I needed more time. I
11 needed more information. I wanted to do a
12 little bit better job in vetting the people out
13 so the fine distinctions could be made. But
14 that's the system that we're stuck with and 120
15 days, that is not much.

16 MR. CERIO: Talk about the vetting. Talk
17 about the, you know, the communication.
18 Obviously there's some statutory prohibitions on
19 a JNC member reaching out to the governor's
20 office, but how do you all navigate that from
21 your experience? Both sides?

22 MS. TIBBALS: Well, you know, from my
23 standpoint, we typically would only communicate
24 with the governor's office when it came to
25 procedural type questions, questions of timing,

1 questions of, you know, the deadline making sure
2 that we were being sensitive to meeting the
3 strict deadline that does exist.

4 And so, you know, we really -- there's a
5 prohibition, of course, against once nominate --
6 once the commission has made final nominations
7 that have been certified for the governor's
8 office, at that point no commissioners can have
9 any communication that they've initiated to the
10 governor or his staff. So there is a
11 bright-line distinction there when it comes to
12 communications with the governor's office.

13 However, the governor's office or the
14 governor could reach out to a commissioner or
15 commissioners to ask questions about applicants.
16 Of course, at that point it is clear that the
17 commissioners cannot rank any applicants or any
18 nominees for the governor or governor's office
19 but can provide information that was learned
20 during the investigative process.

21 So really the communications that as a
22 commissioner I had on behalf or with the
23 governor's office were primarily procedural in
24 nature.

25 MR. ANTONACCI: Just speaking as a former

1 JNC member, I always felt reluctant to contact
2 the governor's office before the process began.
3 I tended to believe and believe even from the
4 perspective of the governor's office that the
5 JNCs should be independent. The governor makes
6 the appointments and expects the members to do
7 their jobs properly, so there's very little need
8 for communication as far as I'm concerned if
9 there's some -- in my experience I never had any
10 anybody from the governor's office reach to me
11 as a member and say, "I need information." It
12 certainly happens, but -- at least I heard tell
13 that it happens, but it didn't happen to me.

14 MR. CERIO: Pete, did you ever reach out?

15 MR. ANTONACCI: Before? Before nominations
16 were made, I did, yeah.

17 MR. CERIO: But sitting as general counsel,
18 did you reach out to JNC members for info?

19 MR. ANTONACCI: I've always felt a little
20 reluctant to do it because it had a heavy-handed
21 feeling to me. The -- if you're in Tallahassee
22 and there's a vacancy in the 20th Circuit, what
23 in the heck do you -- do we know about what's
24 going on in Punta Gorda, you know? We just --
25 there's just -- there's none. There's very

1 little that we can know. And from afar, you
2 don't -- you don't have the feeling of what it's
3 like to live in the community. You certainly
4 don't know what's going on in the legal world.

5 So although I really liked conversing with
6 JNC members when the opportunity arose, I didn't
7 reach out for those kinds of purposes.

8 MR. MCGHEE: And from our end, Pete used the
9 word "reluctancy." I would agree with that. I
10 mean, any discussion that's being had with the
11 governor's office from our JNC, if any, would be
12 through our chair, our JNC chair. But we are
13 very reluctant in having those conversations.

14 I agree with the word "independent." I
15 think that is important because you also don't
16 want to give the perception to the external
17 world that your JNC is rubber stamping. You
18 want to make sure that when you are working as a
19 JNC and you are vetting and you're deliberating
20 that when you submit those six names, those six
21 names are submitted through the process through
22 the work of that JNC, not through a skewed
23 process and people can later come back in and
24 say you guys are just rubber stampers, and so
25 reluctancy of that conversation is important.

1 And to date, I have had no one reach out to me.
2 If there's been any conversations, it's usually
3 been beforehand and usually through our chair
4 just getting notification that it's time for us
5 to convene.

6 MR. ANTONACCI: Yeah, Tim, there was once a
7 time when I know some governors were real intent
8 on having maximum number of names appear on it,
9 every list. I didn't -- I -- we had some
10 experiences where the maximum number of names
11 were just not possible, or there were -- the
12 pool of applicants didn't lend itself to the
13 maximum number of names. And so -- and that's
14 just one small area.

15 I know there's been a lot of back and forth
16 between the governor's office and JNCs over the
17 last 20 years on that issue, but I think the
18 JNCs were in a much better position to gauge
19 that. There will always be a little bit of pull
20 and tug inside the JNC whether they, you know,
21 there's enough votes for candidate X, there's
22 not enough votes for candidate Y. But I think
23 the JNCs should meet the constitutional minimum
24 first, and then if there are additional names
25 that are qualified in other respects, send those

1 names up.

2 MR. CERIO: What do you all feel? Is there
3 a role of the JNC members in recruiting
4 applicants?

5 MR. MCGHEE: Well, that's actually a very
6 good question, Tim. And I say that because I'm
7 in -- I'm in a position now mentally where I'm
8 having that discussion with myself and mainly
9 because of diversity. And our JNC has worked
10 very, very well with -- with -- together as
11 relates to the names that were submitted to us.
12 I think our first round we had 22 names. In the
13 second round I think we had about 17 names.

14 But the think that you notice in the
15 diversity is you wonder why aren't some parties
16 applying. And I say "parties." I mean a
17 certain age bracket, more than a race. My
18 stance has always been I want to make sure that
19 when I'm going through the process that I'm
20 looking at the -- recommending the best
21 candidate versus anything else.

22 But I have found myself in that regard, I've
23 been honored to go and speak before some groups,
24 and I've asked that question. And, you know,
25 and some of it it's an array of things as to why

1 individuals aren't applying. And some of them
2 are just intimidated by the application, you
3 know. Some don't believe they're ready yet in
4 their legal experience. But I have found myself
5 of late considering that.

6 Our last time we were in, you know, we found
7 ourselves, the Second Circuit, you know, is the
8 big part of Leon County when you have the
9 surrounding counties which are rural counties,
10 and so you look at it from that perspective as
11 well. And so from a JNC member, I -- my
12 vetting, my recruiting is less about me saying
13 you ought to apply and more by have you ever
14 thought about applying or why haven't you
15 applied and really just trying to get that
16 knowledge base in that regard. And so that's
17 how I would answer that question. But I have of
18 late found myself asking that question of my
19 colleagues but mainly of individuals I know who
20 are lawyers and just wondering mainly is this
21 even something on their radar. And some people,
22 it's not on their radar, which is okay as well.
23 And for some it may be and maybe they just feel
24 like this is not the time or the season in their
25 life when they want to apply for it.

1 And so as a nonlawyer on the JNC, I'm
2 just -- I'm interested knowing why and knowing
3 on the back end the work that we put in to
4 recommend the best parties, the best persons
5 it's interesting to know why persons aren't.

6 However, there are some people who apply
7 every time there's a vacancy. And some of you
8 laughing because you've experienced that. And
9 there are some where they made sporadically
10 depending on what it is. And you have some who
11 you wonder why haven't you ever applied. And so
12 you kind of have that matter that goes on.

13 MS. TIBBALS: I do think it's important to
14 consider this issue really sort of in two
15 different respects. One is a commissioner's
16 individual recruitment of an individual
17 applicant. And, you know, to me that is a more
18 difficult issue because you're one commissioner
19 sitting on a commission of nine members. And so
20 it can be very difficult even if you know
21 someone that you believe would be perfect for
22 this appointment, nomination and appointment to
23 go out and actively recruit, because -- because,
24 again, you -- they could -- they could be under
25 the impression that you carry more weight

1 potentially on the commission than you do as
2 only one member.

3 MR. ANTONACCI: Very true.

4 MS. TIBBALS: And so I've always found it
5 difficult personally for me to do a one-on-one
6 type recruitment of individual applicants.

7 There are some other ways, though, to more
8 spread the word. And this would bring me sort
9 of to the second part of recruitment. And that
10 is, in serving on the Florida Bar's Judicial
11 Nominating Procedures Committee, one of the
12 comments that we hear time and time again from
13 members of the Bar is the lack of diversity in
14 the applicants. And that is something that I
15 have seen firsthand serving on the commission is
16 that we have had a lot of women who have
17 applied. But when it comes to racial and ethnic
18 minorities, we, at least the commission that I
19 had the opportunity to serve on, did not have
20 very many applicants. And that is a separate
21 issue and one that I think there needs to be
22 some attention paid to by all commissions. And
23 that would be really to make sure, you know, the
24 guidelines that we are under is to make sure
25 that the Florida Bar News receives the press

1 release of judicial openings.

2 And at that point, you know, typically the
3 Florida Bar does a very good job of
4 disseminating that information to all of the
5 local and minority Bar associations who are
6 underneath the Florida Bar.

7 Part of the practical problem that comes
8 into play, especially in some of the smaller
9 counties or circuits is that some of the local
10 and minority Bar associations simply don't
11 update the current information with the Florida
12 Bar. And so they simply, the Florida Bar simply
13 is sending the information to a past president
14 or someone who may not be active in that
15 association anymore. And so I do think to the
16 extent that we can as commissioners, that it is
17 important to make sure that the local and
18 minority Bar associations received actual notice
19 of openings within that jurisdiction, because it
20 is important for them to disseminate that
21 information to their members. And it's
22 something that I think that we should, we should
23 all sort of do, at least from my standpoint, a
24 little better job of making sure that the
25 information is really out there.

1 MR. ANTONACCI: I wouldn't use the term
2 "recruit" as a JNC member because that connotes
3 favoritism to me, but I think we all have a
4 duty, for those of us who are familiar with the
5 appointments process, the nomination and
6 appointments process, to encourage everyone to
7 apply.

8 There's a kind of an opaque quality about
9 what we do. I think if you went to any Bar
10 meeting around the state and said, "Hey, what do
11 you know about your JNC," you probably wouldn't
12 get much take on that.

13 So we should be talking it up with lawyers
14 all the time to consider, to encourage people to
15 consider applying, because unless you get in the
16 game, you're not going to have a shot at getting
17 nominated and appointed.

18 MR. CALLOWAY: This is Sidney Calloway. I
19 absolutely agree with you Pete, and I think one
20 of the things that's really important, an couple
21 of things actually, we know that the state is
22 becoming more diverse every day, but I think one
23 of the more important reasons why we should be
24 encouraging folks to get involved is one of the
25 things I found was working with some of the

1 younger lawyers and the Bar associations is that
2 we want the best judges. We want the best
3 judicial candidates. We want the best
4 applicants. And part of that process means
5 we've got to have people who are educated in the
6 process but also to get to the younger lawyers
7 and talk to them about the things that they can
8 do within the community to help themselves
9 become better lawyers, better involved in the
10 communities so that when an application is ready
11 or when they are ready for an application,
12 again, they're better lawyers, they're more
13 qualified to sit in the seats that we're going
14 to be looking at.

15 And so I think it's extremely important that
16 we are reaching out particularly to the younger
17 lawyers so that they have an understanding of
18 some of the things that they can do now that
19 will prepare them to be one of the best
20 applicants in a pool of 20 or 30 applications
21 that the JNC has within its review.

22 MR. ANTONACCI: Sidney, I wish, I wish all
23 the pools were 20 and 30. We -- these days,
24 we're not getting the -- those kinds of pools.
25 In some circuits people are not as interested in

1 serving.

2 MR. CALLOWAY: I have seen a surge in for --
3 a surge in, well, at least in South Florida
4 where the voluntary Bar associations -- again, I
5 think it's been the great work between the
6 governor's office and the Florida Bar presidents
7 from a few years ago up through today with Ray
8 that have gotten the word out, and I think it's
9 resonating in some parts of the state. So I'm
10 extremely excited. But the Bar association, the
11 voluntary Bar associations are working together
12 to help, again, address getting folks educated
13 and knowledgeable and getting the word out about
14 the process.

15 And so, again, I think it's been very
16 helpful for what we're trying to do here in
17 terms of making sure that we have good judges.

18 MR. CERIO: Other questions? Right here?

19 MR. CABALLERO: Alex Caballero from Tampa.
20 The question I have is your thoughts, I want to
21 get your thoughts on when after the process the
22 applicant says, "I want to talk to you about my
23 application. Why didn't I get selected? What
24 can I do better?" Where are the boundaries
25 there? I just want to know your thoughts on how

1 to handle those situations.

2 MS. TIBBALS: You know, I think that's a
3 tough one because most of what you've learned at
4 that point as a commissioner occurred during
5 deliberations. And so I think, you know, it's
6 very difficult to be able to give anyone real
7 meaningful feedback when it comes to the
8 point -- it's very hard to take sort of a knife
9 and at that point dissect what you learned just
10 by reading the application or just in the
11 interview versus what you learned from hours
12 potentially of deliberation.

13 So I think that you can give some, you know,
14 feedback potentially about the interview itself
15 but certainly nothing that came from the
16 deliberative process.

17 MR. MCGHEE: And I think also -- I agree
18 with that. I think also, amazingly, and not
19 many applicants I've experienced have actually
20 even reached out in that regard to ask that
21 question.

22 I had one in particular who reached out
23 because mainly we have a mutual friend, and I
24 did this what Lara mentioned is to talk about
25 more about the interview and the application and

1 less about liberations, because I know for our
2 JNC, deliberations produce a lot of fruit, and
3 you want to always protect the integrity of the
4 deliberations. But it is interesting because
5 many of them don't. They just make up in their
6 minds they don't make it, they're just going to
7 reapply for the next vacancy, and they may end
8 up repeating the same errors from before. And
9 so but I've only had one encounter in that
10 regard and very, very disciplined and strict to
11 just what I noticed in the interview as one JNC
12 member. And I'm very clear with them I'm
13 speaking solely on my own. I'm not speaking for
14 the JNC as a whole. This is what I know.

15 But trial to make sure -- Lara mentioned
16 something earlier, I think, that is key, which
17 is trying to make sure they understand that
18 there's nine of us. And the power of the nine
19 is -- we each have our roles and our
20 responsibilities. And so but it is interesting
21 in that regard because not many that, again,
22 I've experienced have actually asked that
23 question.

24 MR. ANTONACCI: Most people don't, are not
25 asking that question. They're asking whether

1 they should apply again. That's what they want
2 to know, whether it's worth their time, worth
3 the emotional fallouts that it takes, because it
4 is very difficult on candidates. Lara mentioned
5 that just the execution of the application.
6 That's difficult enough. But to live with it
7 for the next 30 or 45 days is very difficult.

8 And then if you get nominated, it's even
9 worse. You got to come to Tallahassee or
10 wherever else the governor's office is convening
11 to meet. And it's so nerve-racking. And you're
12 calling your friends trying to help your
13 friends. So really all they want to know is
14 should they apply again.

15 And I've answered the question in that way
16 generally, and I always say the same thing, "You
17 should seek your ambition," you know, encourage
18 people to keep at it.

19 And recently I've been able to add an
20 additional story. Those of us who lived through
21 this with me on the governor's staff,
22 Judge Lambert who is now a member of the
23 5th DCA, was nominated seven times to serve on
24 the District Court of Appeal. And every time he
25 was rejected he got back up and applied again.

1 And on the seventh time he was appointed.

2 And so I use that as an example for people
3 to say, sometimes it could take seven times. If
4 you -- if you really have the ambition, keep
5 after it.

6 MR. CERIO: It is a real danger. There are
7 some great candidates that we see come through
8 and some folks assume -- well, you know, there
9 is a lack of humility, and I'm outraged I wasn't
10 appointed the first time. But most people get
11 it takes several times.

12 The concern is when you have a good -- you
13 know, we know in the process, we kind of have,
14 we have a good idea if somebody was close or
15 not, of course, and if they didn't get it, and
16 there's a -- you're always concerned, and I know
17 JNCs are concerned, well, should this person not
18 reapply? I mean, just because somebody's
19 rejected often does not mean that they're not in
20 the running. And that's a very difficult --
21 that's a very difficult thing to balance. You
22 don't want to be discouraging, to Pete's point.
23 Sometimes it takes a lot.

24 So any other questions? Yes.

25 UNIDENTIFIED AUDIENCE MEMBER: You know, I'm

1 not answering this question.

2 MR. CERIO: Neither am I.

3 UNIDENTIFIED AUDIENCE MEMBER: Yeah, this
4 may be directed a little bit at Antonacci.

5 Just for clarifications so we all have a
6 better understanding, every governor I've served
7 under has sought to get a maximum slate of six.
8 And it may be an instance where you only have
9 five people applying and you just can't get
10 there. And I think that's what you're talking
11 about as far as sometimes it's impossible to get
12 a full slate if there's only five people
13 applying.

14 But an issue that's come up often is, and
15 I'll just use a hypothetical of seven people
16 applying for a judicial vacancy. Five of them
17 are deemed to be excellent. The remaining two
18 may be qualified, good but just not maybe of the
19 same caliber. And what I've always asked and
20 sought for of my JNC that I've served on is
21 let's get the best of those remaining two so the
22 governor does have full flexibility and has the
23 maximum of six. Even if there's a, maybe a
24 disparity perception from us, certainly the
25 governor's legal counsel and office staff can

1 vet throw those six and figure out which are the
2 best.

3 But I assume that's -- and I guess I'm
4 looking for feedback from Tim and Pete as former
5 general counsel, that is what we strive for,
6 correct, get that full six, and you guys have
7 the office manpower certainly with Ben and
8 Heather to vet the others?

9 MR. ANTONACCI: If possible. If possible.
10 You know, we have a vacancy in the Third
11 Circuit. And for those of you who don't know
12 where Mayo and Jasper and those kinds of things
13 are, that's the Third Circuit. They have, I
14 think, five applicants, six applicants,
15 something like that?

16 Ben?

17 BEN: (Inaudible) Four.

18 MR. ANTONACCI: Yeah? And the names that
19 they sent us --

20 MR. CERIO: Easy. You're being recorded.

21 MR. ANTONACCI: -- were... and so you
22 can't -- you can't -- you can't squeeze six out
23 of a rock sometimes. So, sure, the goal is to
24 send as many qualified people that collectively
25 the nine think that will -- will be worthy of

1 the governor's consideration, but sometimes it's
2 just not possible. Not to pick on the Third
3 Circuit.

4 What was that lady's name?

5 (Inaudible and simultaneous speaking by
6 audience members.)

7 MR. CERIO: Any other -- any other questions
8 moving on quickly?

9 No? Well, I would like, a special request
10 of our next speaker, unless you have to go, I'd
11 like to ask the panel to stay seated for our
12 next speaker, but let's give them a round of
13 applause, if you would.

14 Our next speaker on open records and
15 sunshine law is the maven of open records and
16 sunshine law. She is an assistant AG and
17 special counsel for Open Government Attorney
18 General Pam Bondi. She's a former chief cabinet
19 aid to Governor Charlie Crist, a long and
20 distinguished career in the AG's office,
21 Pat Gleason. Pat, thanks so much for being here
22 today.

23 Give her a round of applause, everybody.

24 MS. GLEASON: Okay. It makes no difference.
25 I appreciate the panel staying on as long as

1 your schedule permits it because I've noticed
2 when I've given this talk in the past that I am
3 able to discuss at length -- not that long. I
4 know time is precious. -- of the constitutional
5 and statutory open government requirements, but
6 I find that a lot of the questions that the JNC
7 members have are not about so much the legal
8 parameters but really how do you deal with this;
9 how do you deal with the records; what are the
10 ways in which the JNCs notice their meetings.
11 These kind of practical questions I think our
12 panel members, if they are willing -- I see one
13 has already left -- can provide that insight,
14 I'm hoping.

15 So my part starting off with the legal
16 parameters, Florida's open government law is
17 among the broadest in the nation. Open meetings
18 and open records are the rule for governmental
19 boards except as otherwise specifically provided
20 by the constitution or the legislature. So
21 unlike in other states, boards of whatever sort
22 lack the ability to create exemptions from open
23 meetings and open records provisions simply
24 based on policy considerations. The boards
25 aren't the ones that choose whether or not

1 meetings are open or closed. It's really the
2 legislature or the constitutional provisions
3 that apply to them.

4 In Florida the public's right of access to
5 meetings of the JNCs is established under the
6 constitution, though, not Florida's sunshine
7 law. As the Third District Court of Appeal
8 pointed out in a case that's almost 30 -- over
9 30 years now, Kanner V Frumkes. I put the cite
10 down there. Sometimes people are looking it up
11 and reading to make sure that this is the case.
12 353 So.2d 196.

13 The JNCs because of their creation in
14 Article 5, Section 11 of the Florida
15 Constitution have deemed -- been deemed to be an
16 executive function, and so, therefore, their
17 authority flows from the constitution, not the
18 legislative enactments. So based on principles
19 of separation of powers, the sunshine law,
20 Section 286.011 does not apply. This is a
21 question often that members of the public have
22 because they're not quite sure where the JNCs
23 fit into the process.

24 But the fact that the sunshine law as a
25 statute does not apply to the JNCs does not mean

1 that the JNCs are immune from public access
2 requirements. Two different provisions of the
3 Florida Constitution address public access to
4 JNC proceedings, and some of this has already
5 been brought up in the context of some of the
6 earlier discussions.

7 First, Article 5, Section 11(d) states that
8 except for deliberations, the proceedings of a
9 JNC and its records are open to the public. And
10 the open government constitutional amendment
11 approved by voters, overwhelmingly, I might add,
12 over 80 percent, really a record number of
13 Floridians approved inserting an open government
14 provision in the constitution. And that
15 provides a right of access to meetings of
16 collegial boards in the executive branch
17 regardless of whether they're created by law or
18 the constitution.

19 So you have those twin constitutional
20 provisions that apply to the JNCs. And since
21 the constitution provides that the only meetings
22 that are closed are those relating to
23 deliberations of the JNCs, the rest of the JNC
24 proceedings are open all the way. And that's
25 essentially, when the legislatures talked about

1 changing that, no surprise that the discussion
2 that the -- or that constitution revision
3 proposals have had about changing that, the
4 usual proposal has been to consider whether to
5 eliminate the provision that now allows JNCs to
6 deliberate in closed session. Most boards in
7 Florida are not authorized to do that.

8 And when those proposals are made, it's
9 emphasized that for everything else, JNCs open
10 all the way.

11 Deliberations have been defined in one AGO
12 as those instances in which the commissioners
13 are weighing and examining the reasons for and
14 against a choice. So it's that deliberative
15 process that I think has been alluded to for
16 prompting the difficulties sometimes about when
17 there are questions about why didn't -- why
18 wasn't someone approved or their name submitted
19 on, and it's that discussion during the
20 deliberation's process that is closed under the
21 Article 5 provision. That includes voting.

22 The rules contemplate that the JNC goes into
23 executive session to do this. And some of the
24 agendas that I have seen, sometimes that's part
25 of an open meeting that then goes into closed

1 session. And sometimes the JNCs prefer to have
2 a separate closed session for deliberations.

3 And in interpreting the scope of the public
4 access guaranteed under the constitution, in
5 Article 1, Section 24, the other provision in
6 the constitution that relates to
7 constitutionally created commissions -- I think
8 I've said the word "constitution" five times in
9 one sentence -- the courts have said that the
10 sunshine laws should be used as a guide. So as
11 the court has been trying to interpret what
12 these constitutional open government provisions
13 mean, they use the sunshine law case law to help
14 guide them.

15 As the Third DCA pointed out in another
16 case, the open meetings mandate in Article 1,
17 Section 24 is, quote-unquote, virtually
18 identical to that of the sunshine law.
19 Therefore, no reason to construe that
20 differently.

21 So for that reason it's important to go over
22 the basic requirements of the sunshine law since
23 with the exception of deliberations these
24 requirements would govern the JNC. So when
25 you're talking about all the proceedings of the

1 JNC other than deliberations, you're using this
2 standard: Any gathering of two or more members
3 of the board to discuss any matter on which
4 foreseeable action may be taken must be noticed
5 to the public, open to the public and minutes
6 kept. So this is the kind of standard that will
7 apply to the JNC. No private discussions.
8 That's the same standard as applies under the
9 sunshine law.

10 So just as governmental boards throughout
11 Florida had to become familiar with the system,
12 so foreign really to those who serve on boards
13 of directors, for example, you can't have these
14 one-on-one or small group discussions.
15 Everything is done in open session with the
16 exception of deliberations.

17 The notice and minutes requirements are
18 outlined in the JNC rules, summarized in the JNC
19 handbook. And the responsibility generally
20 falls on the chair of the JNC to make sure that
21 all of this is done properly. If there are any
22 questions, then there are a number of people
23 that can help.

24 I get a lot of calls from the JNC members if
25 there's some particular issue that -- or the

1 chairman, typically that comes up. But, of
2 course, the governor's general counsel's office
3 provides a great deal of assistance based on the
4 calls that I get.

5 So with the primary responsibility for
6 ensuring that the meetings are properly noticed
7 falling on the chair of the JNC, it's the two or
8 more standard that the JNC commissioners have to
9 directly concern themselves with.

10 So with the exception of the deliberations,
11 when the board members are meeting in executive
12 session to discuss candidate qualifications and
13 vote, the proceedings of the JNC must be noticed
14 and open to the public. I believe I have said
15 that also at least five times. No private
16 discussions. Ditto.

17 This would include emails or text messages.
18 In other words, the requirements of the open
19 government laws do not extend to just
20 face-to-face communications. They also do not
21 allow private telephone calls or email
22 communications back and forth, text messaging
23 between commissioners.

24 You may have read in your local newspapers
25 of some elected boards that have gotten into

1 difficulty with text messaging. That's an issue
2 that I think there's a lot of focus,
3 particularly with the sunshine law.

4 So with regard to open meetings, the
5 requirements are clear.

6 Moving on to the records made or received by
7 the JNCs, once again, we have a situation where
8 the constitutional status of the JNCs takes them
9 out of Chapter 119, the public records law which
10 applies to city councils, school boards, et
11 cetera.

12 So, again, we're looking to the constitution
13 to see how the records are made accessible to
14 the public and also, most importantly, retained.

15 The provisions in, relating to public
16 records in Article 5, Section 11(d) essentially
17 mirror the public meetings provision. Except
18 for the deliberations of the commissions, their
19 records shall be open to the public. Article 1,
20 Section 24 also states that the records of
21 public entities, including those created by the
22 constitution like the JNCs, are open unless
23 otherwise exempted by the constitution or law.

24 As noted in the JNC rules, this includes all
25 applications and other information received from

1 our concerning applicants. The JNCs lack the
2 ability to label a record as confidential at the
3 request of the sender.

4 So I noticed there was an earlier
5 conversation about somebody who asks that their
6 identity be made confidential. If this person,
7 instead of telephoning a JNC member and making
8 that request sends something in writing, "Here's
9 how I feel about this candidate. Do not make
10 this public." That's a public record. That
11 person has sent something in writing, and only
12 the legislature or court rules can dictate what
13 is confidential in the material that the JNCs
14 receive.

15 So there are some exceptions to the rule of
16 public disclosure. Records relating to voting
17 including vote sheet, ballots and ballot tally
18 sheets are not subject to public access because,
19 as the First District pointed out in Justice
20 coalition versus First DCA JNC, 823 So.2d 185,
21 "These are clearly part of the deliberation
22 process."

23 Records or portions of records that the
24 legislature has exempted from the public records
25 law not subject to access. This typically, for

1 the JNC purposes, includes Social Security
2 numbers, or sometimes you have people because
3 who bifurcation of their occupation, law
4 enforcement, sitting judges, there's a provision
5 that provides that they can exempt their home
6 address and telephone number. So these are the
7 types of materials typically that would be
8 redacted from the materials the JNC has before
9 they're being produced.

10 The third area is personal notes of JNC
11 members which are prepared for their own
12 personal use in remembering certain things.
13 This issue used to be somewhat unclear. The
14 status of someone's personal handwritten notes
15 that they have not communicated or forwarded to
16 other people.

17 But it was decided in the First District
18 Court of Appeal case I mentioned earlier that
19 these personal handwritten notes are created as
20 sort of a jog to memory, not within the scope of
21 public records access. The court's saying that
22 these types of materials are precursor documents
23 that don't reach the status of becoming a public
24 record, because in order to be a public record,
25 the material has to have been prepared to

1 perpetuate, communicate or formalize knowledge.
2 And the court's saying notes you write to
3 yourself handwritten do not fall in that
4 category.

5 The First DCA opinion relied on a Florida
6 Supreme Court case from 1980 dealing with a
7 consultant's handwritten notes of interviews
8 with job prospects saying these fell outside the
9 definition of public record because they were
10 not prepared to perpetuate, communicate or
11 formalize knowledge.

12 Retention requirements are also a big part
13 of the public records access provisions that the
14 JNCs have to provide -- comply with.
15 chapter 119, the public records law, makes that
16 easy for state and local agencies by providing
17 expressly in the law that the Department of
18 State retention schedules control how long
19 records are maintained by state and local
20 agencies. They are based primarily on content.

21 But, of course, JNCs not subject to Chapter
22 119, I always see lot of people scratching
23 through all of that. Not relevant because JNC
24 is not controlled by Chapter 119. Instead, the
25 rules of the JNCs provide those retention

1 requirements and determine how long, which
2 records are retained and for how long.

3 Typically the records are retained for one
4 year. And under the rules what the JNC members
5 do is furnish their records that they may have
6 received. Emails about the candidates, for
7 example, those types of things are then
8 furnished to the chairman to retain or the chair
9 to retain in accordance with the retention
10 schedule.

11 The records relating to the nominees then
12 are sent up to the government's office who then
13 maintains them. The chair maintains all the
14 rest of the records in accordance with what is
15 generally that one-year standard. So sort of
16 flows, JNC members give their public records to
17 the chair. The chair sends off to the
18 governor's office all the records relating to
19 the nominees who then keeps them. The other
20 records, I guess those that did not make it that
21 particular time but, like has been pointed
22 out -- hmm.

23 UNIDENTIFIED SPEAKER: (Inaudible).

24 MS. GLEASON: Two different, not on the same
25 JNC, not discussing applicants, I bless them.

1 They are all right, you know.

2 But I -- so that is, for the JNCs, to me,
3 the primary responsibility and issues really
4 fall on the chair. That's a extensive
5 responsibility. And the members make that easy
6 by ensuring that the records in particular are
7 sent to the chair and avoiding those private
8 conversations about JNC business. All of the
9 discussions, including the closed discussions,
10 should take place at a meeting of the JNC.
11 Unless it's deliberations, that meeting is open
12 to the public. If it's deliberations, then the
13 JNC as a group meets in executive session to
14 consider and deliberate and vote on the
15 applicants.

16 If there are any questions, I'll be happy to
17 answer them. And I'm inviting our panel members
18 who apparently have anticipated questions to
19 provide guidance as needed. So many of these
20 issues are practical ones, aren't they?

21 Yes, once the microphone gets there.

22 UNIDENTIFIED AUDIENCE MEMBER: So I'm
23 assuming that all the notes that you do for your
24 investigation are public records.

25 MS. TIBBALS: No. So individual members'

1 notes are not public records. Individual
2 members' notes do not become part of the chair's
3 files that are maintained.

4 UNIDENTIFIED AUDIENCE MEMBER: Okay. Okay.

5 MS. GLEASON: That is something that I'm so
6 glad you asked about because the way the courts
7 looked at that issue by saying that someone's
8 own personal notes are outside the definition of
9 public record, in other words, the requirement
10 that notes -- or that records, rather, be
11 maintained involves only those materials that
12 are deemed to be public records. And personal
13 handwritten notes are considered to be precursor
14 documents. They haven't reached the status of
15 becoming a public record unless, of course, they
16 would be sent from one board member to another
17 or one JNC member to another.

18 If that happens -- I doubt that happens very
19 often, but if it did, then they -- then those
20 materials would be communicated, physically sent
21 from one person to another. But, otherwise, the
22 JNC case mentioned earlier clearly establishes
23 that a JNC members own -- it has to do with JNC
24 notes of a JNC member who called up and received
25 information over the phone and then made notes.

1 And the court said those are not within the
2 definition of public records, so you don't have
3 to even apply an exemption.

4 MR. CALLOWAY: I noticed the opinion
5 referred to handwritten notes. What if I'm
6 typing or if I'm dictating? Or how does that
7 come into the context of me really, again,
8 taking personal notes but not actually writing
9 them but doing them through some other medium.

10 MS. GLEASON: That's a good question that
11 people have asked before. The court cases
12 involved have really dis -- have talked about
13 handwritten notes, but my own personal view is
14 that that's because the technology in those
15 days, that's what's everyone did. And now -- I
16 would be surprised if a court were somehow to
17 draw a distinction between notes that you write
18 to yourself and simply writing them on your
19 computer.

20 UNIDENTIFIED AUDIENCE MEMBER: What about
21 (inaudible) attached to a meeting?

22 MS. GLEASON: Minutes?

23 UNIDENTIFIED AUDIENCE MEMBER: Yes.

24 MS. GLEASON: The rules of the JNC -- I
25 better wait until you get -- okay. Oh, all

1 right.

2 UNIDENTIFIED AUDIENCE MEMBER: A requirement
3 that minutes be maintained since it's a sunshine
4 body.

5 MS. GLEASON: The rules of the JN -- the JNC
6 rules, my recollection is, dovetail with the
7 sunshine law by requiring some form of minutes.
8 But minutes are not a transcript of everything
9 that took place. Instead, they're a brief
10 summary. And that portion, presumably, I would
11 imagine in most cases would, of course, be the
12 public portion of the meeting. And it would be
13 that portion where that's essentially reflected
14 in the press release that goes out when the
15 nominees are selected. That's the minutes of
16 the meeting. They met at this date and at this
17 place and put forward the following candidates
18 to the governor would be my sense. They may --
19 it may be done differently by the various JNCs.

20 MS. TIBBALS: And that is the way that we
21 have handled it in the past. The minutes are
22 usually very brief. For example, if a vice
23 chair is a -- is elected at a meeting, that
24 would be part of the minutes, things like that
25 as well. And any type of rule, any type of

1 local rule, if you will, or standing policy
2 that's adopted by the JNC at a particular
3 meeting would become part of the minutes.

4 But other than that, of course, they usually
5 are pretty brief since any of the deliberations
6 would not be a part of the minutes.

7 MS. GLEASON: You know, that's such an
8 excellent question because so many times members
9 of the public will envision very detailed
10 minutes. And the opinions in construing the
11 requirement in the sunshine laws say that the
12 minutes is only a brief summary. It doesn't
13 have to include every discussion. In fact, some
14 of the minutes of the agencies of the governor
15 and cabinet when they are presenting their
16 agendas, they'll be one page, even though the
17 enormity of the issues being discussed is quite
18 significant.

19 Yes.

20 UNIDENTIFIED AUDIENCE MEMBER: Can you
21 confirm that there's no obligation of the JNC to
22 keep the actual paper votes? In other words,
23 once we vote, we make the list, that's the
24 record of the outcome.

25 MS. GLEASON: That's a question that with --

1 that would be controlled by the retention
2 requirements. I have -- you know, I'm not sure
3 how to answer that because it's not -- that's
4 not something that's -- all the constitution
5 requires is that there be -- that public records
6 be made accessible if they're open to the
7 public, and those that are not, like votes and
8 tally sheets, et cetera, are all considered to
9 be closed records.

10 But my guess -- I am guessing, and I will
11 try to find out, that those tally sheets are
12 still kept. That's a record of what the board
13 does, but I'm only guessing. I'll defer to you
14 on that.

15 UNIDENTIFIED SPEAKER: (Inaudible).

16 MS. TIBBALS: It really is part of the
17 deliberative process is the way the courts have
18 interpreted that. So I think it may depend on
19 the commission, but certainly the commission
20 that I have served on we have not retained those
21 because they are part of the deliberative
22 process.

23 MS. GLEASON: Well, see, isn't it great that
24 the panel is here and has interpreted that.
25 Because it really gets to something like this,

1 what types of materials are retained would
2 really be governed by rule by the retention
3 procedures. And it sounds as though, based on
4 what you're saying, that they're not. Sometimes
5 it's so difficult for me to switch from doing
6 these very strict PCB public records sunshine
7 law aspect into this. The constitution
8 recognizing that JNCs are different and have
9 different public policies involved in their
10 creation. So I am willing to accept, obviously,
11 the views of the existing JNCs on this issue.

12 MR. CERIO: Any questions? Thank you.

13 MS. GLEASON: Thank you so much. Please
14 thank the panel members for bailing me out here.
15 Thank you very much.

16 MR. CERIO: Thank you very much.

17 MS. GLEASON: Thank you for inviting me.

18 MR. CERIO: So we're going to wrap it up
19 now. Does anybody have any final questions,
20 whether about substance or on getting your CLE
21 credits?

22 We were afraid that we'd get -- we might get
23 some negative feedback, so there is no
24 opportunity for written feedback for you guys,
25 so...

1 But, no. Thank you all for being here. It
2 was a great morning, and we appreciate it.
3 Thank you four your service to the State of
4 Florida.

5 (The proceedings concluded.)

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STATE OF FLORIDA)
COUNTY OF PALM BEACH)

I, BARBIE GALLO, RMR-CRR, Registered Merit Reporter, Certified Realtime Reporter, State of Florida at Large, certify that I was authorized to and did stenographically transcribe from video the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

Dated this 1st day of November, 2018.



BARBIE GALLO, RMR-CRR

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