

From: "NFox@foley.com" <NFox@foley.com>
Date: February 10, 2014 at 9:07:09 PM PST
To: Carla Bressler <carla.j.bressler@gmail.com>
Cc: Denise Visconti <DVisconti@littler.com>, "NFox@foley.com" <NFox@foley.com>
Subject: Follow-Up From Today's Conversation

Dear Carla,

I wanted to send this follow-up email regarding our conversation this morning, both to reemphasize the concerns I expressed on the call and to convey some information I did not raise.

As you know, both Judge Rubin and Judge Rosenstein have expressed a concern coming from their colleagues on the Superior Court regarding your running against a sitting judge. As strong supporters of THLA, Judges Rubin and Rosenstein wanted to alert THLA of these concerns.

As you know, many judges on the Superior Court support THLA and its mission. They attend our events, including our annual dinner. In fact, I think the THLA annual dinner has the best showing from the Superior Court as compared to all other diversity bar associations. Our good relationship with the bench is something we have worked hard to establish, and something we cherish and need to protect.

The underlying tension is that these supportive judges are concerned by a THLA Board member taking on one of their colleagues in an election. Although all judges are individuals and subject to electoral challenge, they also collectively form part of the greater "Superior Court." There is a great deal of collegiality among judges, and having a Board member of an organization that the judges strongly support directly challenge one of their own colleagues has raised concern. Of course, THLA strives to build a healthy relationship with the bench, and we have been successful over the years in doing so by being supportive of the bench's efforts. Openly challenging a sitting judge can be seen by some as undermining the support and relationship we have worked so hard to build.

But the concern does not stop with just the judges. Several Board members have independently raised this concern with either Denise or me. From the THLA standpoint, we want to promote LGBT issues and equality, including seeing LGBT candidates in prominent governmental and judicial positions. At the same time, we need to balance our goals of promoting LGBT issues and candidates with the reality that sometimes pursuing certain "limited" goals (such as a single election) may result in alienating allies or compromising the bigger picture, including THLA's reputation and relationship with other individuals or organizations. There is a generally expressed a concern that a Board member openly challenging a sitting judge will reflect poorly on the organization and be seen as an affront to the Superior Court and its sitting judges generally. The Superior Court's perception of THLA may be negatively affected (as is perhaps evidenced by the concerns received thus far). Although THLA supports LGBT issues and

candidates, there is a growing concern and consensus that we cannot do so at the expense of the organization.

After hearing these concerns from both the bench and within THLA, Denise and I talked this afternoon about the implications of having a Board member challenge a sitting judge. Of course, the decision to run is ultimately yours. Although there are alternative ways to become a judge (such as through the appointment process), I know you have been set on the June election for some time, and that circumstances changed at the last minute. However, as a Board and organization we need to be cognizant of what our Board members are doing and how those actions affect THLA.

Because of the concerns coming from various sectors in the legal community, we ask that you consider resigning from the Board during the pendency of the election. This will protect THLA by not having a current Board member directly challenge a sitting judge, and hopefully will alleviate concerns from the Board and bench that THLA's reputation may be damaged as part of the electoral process.

In addition, because of these changed circumstances, I need to emphasize that the endorsement THLA provided to you back in October 2013 was for an election to a vacant seat on the bench. Now that you are running against a sitting judge and not for a vacant seat, THLA's prior endorsement is no longer in effect under Policy 2 of our Standing Policies and Procedures. Policy 2 states that an endorsement is only for a particular candidate and a particular office and election. Because the office and election have now changed from an open seat to a direct challenge to a sitting judge, our prior endorsement is no longer for the same office and same election. I hope you understand that we adopted this Policy well before you ever decided to run for judge, and this just happens to be the first application of the Policy (that I can think of).

So as the Co-President of the organization, the heavy burden falls to me to convey the concerns we have received internally and from the bench. I know what I've conveyed above is a lot, but I think it is necessary to underscore the import of the concerns we have received thus far. I hope you understand that there is nothing personal about this. From my personal perspective, I think it is great you are running for judge, and I of course want you to be successful (in the election or otherwise). However, my personal opinions are irrelevant to the issues above. As members of the Board, we are stewards of the organization. We have a duty to the organization not only to promote what is in the best interests of THLA, but also to avoid actions that may harm THLA or its reputation. It is from the THLA perspective that we have to analyze what is happening.

Please give some thoughtful consideration to the above. I know Denise and I have been thinking about it throughout the weekend, as well as during our lengthy call this afternoon. THLA is in a difficult position. Should you decide to resign from the Board during the pendency of your campaign, we would of course welcome you back to the Board at the conclusion of the election if you are willing and able to serve on the Board. We truly do appreciate all of the work that you have done for THLA.

Please let me know if you have any questions or would like to discuss further.

PLEASE NOTE NEW ADDRESS AND PHONE NUMBER BELOW EFFECTIVE DECEMBER 9, 2013

Thanks,

NJF

-----Nicholas J. Fox, Esq. Foley & Lardner LLP 3579 Valley Centre Drive Suite 300
San Diego, CA 92130

858.847.6729 (p) 858.792.6773 (f) 117.6729 (internal) nfox@foley.com