

BUY™

SELL™

SHOP™



Downloaded From
www.TextBookDiscrimination.com



SELL YOUR OWN SAMPLES

(help others get the justice that they deserve)



BUY™

SELL™

SHOP™

www.TextBookDiscrimination.com

Get ***Booked Up*** on Justice!

© TBD Corporation. All Rights Reserved.

IN THE FLORIDA THIRD DISTRICT COURT OF APPEAL

GERARDO CASTIELLO,

Petitioner,

Fla. 3d DCA Case No. 3D17-0341

vs.

**STATEWIDE NOMINATING
COMMISSION FOR JUDGES OF
COMPENSATION CLAIMS,
OFFICE OF THE JUDGES OF
COMPENSATION CLAIMS,
DIVISION OF ADMINISTRATIVE
HEARINGS, and ADMINISTRATION
COMMISSION,**

Lower Tribunal Cases:

DOAH Case No. 17-477RU

DOAH Case No. 17-1248

OJCC Case No. _____

SNC Case No. _____

Admin. Comm. Case No. _____

Respondents.

_____ /

PETITIONER'S APPENDIX TO REPLY BRIEF

Pursuant to Florida Rules of Appellate Procedure 9.100(e) and 9.220, Petitioner Gerardo Castiello provides the following appendix in support of his reply brief:

Date	Document	Pages
2/24/2017	SNC's Letter to Governor	RA 1-2
1/20/2017	Email messages between de la Parte & Gilbert, P.A. and Robert Cohen	RA 3-4
2/22/2017	Petitioner's Motion for Appointment of Administrative Law Judge, and Notice of Objection to Consideration by Administration Commission	RA 5-9
2/22/2017	Petitioner's Motion to Refer Case to DOAH for Appointment of Administrative Law Judge, and Notice of Objection to Consideration by Administration Commission	RA 10-17

2/22/2017	Petitioner's Motion to Commence Rulemaking, and Notice of Objection to Consideration by Administration Commission	RA 18-21
-----------	---	----------

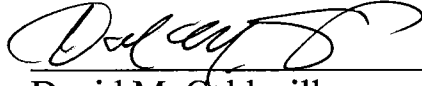
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy hereof was **electronically filed** with the Clerk of the Florida Third District Court of Appeal, and **served by Email on** the following persons on this 27th day of MARCH, 20 17 :

- Jonathan A. Glogau, Esquire, Special Counsel, Chief, Complex Litigation, Office of the Attorney General, PL-01, The Capitol, Tallahassee, FL 32399-1050, Email: *jon.glogau@myfloridalegal.com*,
- Wogan "Wogie" Badcock, III, Chairman, Statewide Nominating Commission for Judges of Compensation Claims, P.O. Box 497, Mulberry, FL 33860, Email: *wogieiii@badcock.com*,
- Lisa Mustain, The Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060, Email: *lisa.mustain@doah.state.fl.us*,
- Honorable Robert S. Cohen, Chief Judge and Director of the Division of Administrative Hearings, 1180 Apalachee Parkway Suite A, Tallahassee, Florida 32301-4574, Email: *bob.cohen@doah.state.fl.us*,
- J. Andrew Atkinson, Esquire, General Counsel, Florida Department of Management Services, Office of the General Counsel, 4050 Esplanade Way, Suite 160, Tallahassee, Florida 32399-0950, Email: *jandrew.atkinson@dms.myflorida.com*,
- Peter Penrod, Esquire, Office of General Counsel, Administration Commission, Office of the Governor, Room 209, The Capitol, Tallahassee, Florida 32399-0001, Email: *peter.penrod@eog.myflorida.com*, and
- Barbara Leighty, Agency Clerk, Administration Commission, The Capitol, Room 1801, Tallahassee, Florida 32399-0001, Email: *ac.clerk@laspbs.state.fl.us*.

Respectfully submitted,

de la PARTE & GILBERT, P.A.

A handwritten signature in black ink, appearing to read 'David M. Caldevilla', is written over a horizontal line.

David M. Caldevilla

Florida Bar No. 654248

Post Office Box 2350

Tampa, Florida 33602-2350

Telephone: (813) 229-2775

ATTORNEYS FOR PETITIONER

State of Florida
Division of Administrative Hearings

Rick Scott
Governor

Robert S. Cohen
Director and Chief Judge

Claudia Lladó
Clerk of the Division



Lisa Nelson
Deputy Chief
Administrative Law Judge

David W. Langham
Deputy Chief Judge
Judges of Compensation Claims

February 24, 2017

Honorable Rick Scott, Governor
State of Florida
The Capitol
400 S. Monroe St.
Tallahassee, FL 32399-0001

William Spicola, Esq.
General Counsel
State of Florida
The Capitol
400 S. Monroe St.
Tallahassee, FL 32399-0001

Re: Statewide Judicial Nominating Commission for Judges of Compensation Claims

Dear Sirs:

The Statewide Judicial Nominating Commission for Judges of Compensation Claims (SJNCJCC) convened on February 20, 2017 at 9 a.m. in Orlando, Florida to review applicants for open positions in the Miami District (Judges Castiello and Hill).

The Commission interviewed five total applicants for the two vacant positions, and the following three individuals were nominated for appointment to each by the Governor:

Miami District - Judge Hill
Jeffrey Jacobs
Michele Ready
Robert Wells

Miami District Judge Castiello
David Goehl
Walter Havers
Robert Wells

Additionally, there are two current Gubernatorial JNC Commissioners with expired terms:

Wogan Badcock (July 1, 2016)
Victor Marrero (July 1, 2015)

The Commission notes that the remainder of Gubernatorial appointed commissions will expire July 1, 2017.

Thank you for your attention to these nominations and for the opportunity to serve the people of Florida.

Sincerely,

Wogan Badcock, III
SJNCJCC Chair

David Caldevilla

From: Cohen, Bob <Bob.Cohen@doah.state.fl.us>
Sent: Friday, January 20, 2017 7:12 PM
To: Linda K. Foy
Cc: diane.wint@dms.myflorida.com; David Caldevilla; Syrenia Hamilton; Debbie Carlisle
Subject: Re: SERVICE OF NEW PETITION - Gerardo Castiello v. Offices of the Judges of Compensation Claims

Thank you Linda.
Bob Cohen

Sent from my iPhone

> On Jan 20, 2017, at 1:20 PM, Linda K. Foy <lfoy@dgfirm.com> wrote:
>
> Please find attached a new Petition to Initiate Rulemaking to be filed with your Agency.
>
>
> SERVICE OF COURT DOCUMENT
>
> Court:
>
> State of Florida
> Department of Management Services
> Office of the Judges of Compensation Claims
>
> Case Style:
>
> Gerardo Castiello, Petitioner
> v.
> Statewide Nominating Commission for Judges of Compensation Claims, Respondent.
>
> Court Case No:
>
> NEW CASE
>
> Document Served:
>
>
> Petition to Initiate Rulemaking
>
> On Behalf Of:
>
> David M. Caldevilla, Esquire
> dcaldevilla@dgfirm.com<<mailto:dcaldevilla@dgfirm.com>>
> de la PARTE & GILBERT, P.A.
> (813) 229-2775
>
>

>
>
> Linda Kaufmann Foy
> Advanced Certified Paralegal
> de la Parte & Gilbert, P.A.
> P.O. Box 2350
> Tampa, FL 33601
> Direct Line: 813.276.7298
> Fax 813.229.2712

>
>
>
> NOTICE: This email and any files transmitted with it are the property of de la Parte & Gilbert, P.A. and are ATTORNEY PRIVILEGED AND CONFIDENTIAL. The information contained in this email and any files transmitted with it is intended for the use of the recipient(s) named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copy of this communication is strictly prohibited. If you received this email in error, please notify the sender immediately and delete the original message and any files transmitted. The unauthorized use of this email or any files transmitted with it is prohibited and disclaimed by de la Parte & Gilbert, P.A. Thank you.

>
>
> <17-01-20 Castiello-Petition to Initiate Rulemaking (00514958).pdf>

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

GERARDO CASTIELLO,

Petitioner,

vs.

Case No. 17-000477RU

**STATEWIDE NOMINATING
COMMISSION FOR JUDGES OF
COMPENSATION CLAIMS,**

Respondent.

**PETITIONER'S MOTION FOR APPOINTMENT OF
ADMINISTRATIVE LAW JUDGE, AND NOTICE OF OBJECTION
TO CONSIDERATION BY ADMINISTRATION COMMISSION**

Pursuant to Florida Administrative Code Rule 28-106.204, the Petitioner, Gerardo Castiello hereby moves for the appointment of a DOAH administrative law judge and also provides notice that he objects to any consideration by the Administration Commission, and states:

1. This case involves the Petitioner petition challenging the Respondent's unadopted rules pursuant to Section 120.56(4), Florida Statutes.
2. The Petitioner's petition was filed with the Division of Administrative Hearings ("DOAH") on January 20, 2017. As of this date, it is 33 days later and an administrative law judge has not been assigned to the case.
3. Section 120.56(1)(c), Florida Statutes expressly requires DOAH to assign this case to an administrative law judge "within 10 days of receiving the petition...." This 10-day deadline expired on Monday, January 30, 2017.
4. As of this date, no attorney has filed a formal notice of appearance on behalf of the Respondent. However, on February 8, 2017, the Petitioner's undersigned attorney received

an email message from Assistant Attorney Jonathan A. Glogau which in pertinent part stated the following:

... I have been retained ... to represent all of the respondents in the above referenced cases. In the future, please direct all communications regarding these matters to me as counsel for the Respondents. Because of [DOAH's] position with respect to the named Respondents and its duties with respect to any possible remedies in these matters, the Administrative Commission has been requested to appoint a special hearing officer to deal with these matters. The matter of that appointment is now scheduled for the Administration Commission's March meeting. Therefore, no action is anticipated in any of these matters until after that meeting.

A copy of that email message is attached hereto as "**Exhibit A.**"

5. Despite Assistant Attorney Glogau's message, the Petitioner's undersigned attorney has not received any motion requesting that this case to be referred to the Administrative Commission or any other agency, and has not received any formal notice indicating that anything has been referred to the Administration Commission for consideration. Further, no citation of authority has been provided to establish that DOAH has any authority to refer this petition to the Administrative Commission, or that the Administrative Commission has any subject matter jurisdiction to consider this petition.

6. According to Florida Administrative Code Rule 28-106.204(1), "All requests for relief shall be by motion. All motions shall be in writing unless made on the record during a hearing, and shall fully state the action requested and the grounds relied upon." Absent such a motion, there is no legal basis for DOAH to refer this case to the Administration Commission for consideration or for any other purpose.

7. Moreover, the Administration Commission lacks subject matter jurisdiction to take any action concerning Judge Castiello's petition in this case. Section 120.56(1)(c), Florida Statutes specifically states, "The petition shall be filed ... with the division." In addition, Section

120.80, Florida Statutes states:

120.80 Exceptions and special requirements; agencies.—

(1) DIVISION OF ADMINISTRATIVE HEARINGS.—

(a) Division as a party.—Notwithstanding s. 120.57(1)(a), a hearing in which the division is a party may not be conducted by an administrative law judge assigned by the division. An attorney assigned by the Administration Commission shall be the hearing officer.

In this case, DOAH is not identified as a party and is not otherwise a party in this case. Nor do DOAH and the Respondent have any statutory affiliation. Rather, DOAH and the Respondent are two separate and distinct state agencies as a matter of law. Therefore, the Petitioner is not aware of any statutory basis or other legal basis to conclude that the Administration Commission could possibly have any subject matter jurisdiction concerning the Petitioner's petition.

8. Consequently, the Petitioner objects to any attempt to refer this case to the Administration Commission, and further objects to any attempts to bring this matter before the Administration Commission based on ex parte communications, and/or without formal reasonable notice and motion, and/or without citations to applicable legal authority.

9. The undersigned attorney has conferred with Assistant Attorney General Glogau and he indicated that the Respondent opposes this motion.

WHEREFORE, the Petitioner, Gerardo Castiello, respectfully requests the appointment of a DOAH administrative law judge to preside over this case, and objects to any consideration by the Administration Commission.

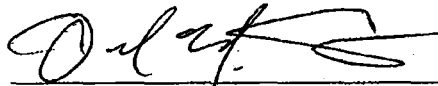
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing was **electronically filed** with the Division of Administrative Hearing's Agency Clerk, and that a true and correct copy was **served by Email** on Lisa Mustain, The Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060, Email:

lisa.mustain@doah.state.fl.us; Wogan "Wogie" Badcock, III, P.O. Box 497, Mulberry, FL 33860, Email: *wogieiii@badcock.com*; and Jonathan A. Glogau, Esquire, Special Counsel, Chief, Complex Litigation, Office of the Attorney General, PL-01, The Capitol, Tallahassee, FL 32399-1050; Email: *jon.glogau@myfloridalegal.com*; on this 22nd day of February, 2017.

Respectfully submitted,

de la PARTE & GILBERT, P.A.



David M. Caldevilla
Florida Bar No. 654248
Post Office Box 2350
Tampa, Florida 33602-2350
Telephone: (813) 229-2775

ATTORNEYS FOR PETITIONER

David Caldevilla

From: Jon Glogau <Jon.Glogau@myfloridalegal.com>
Sent: Wednesday, February 08, 2017 8:45 AM
To: David Caldevilla
Cc: Cohen, Bob
Subject: Gerardo Castiello v. Statewide Nominating Commission for Judges of Compensation Claims, "Petition for Formal Administrative Proceeding," Case No. _ ; Gerardo Castiello v. Office of the Judges of Compensation Claims, Case No., "Petition to Initiate Rule...

Mr. Caldevilla: I have been retained by the Division to represent all of the respondents in the above referenced cases. In the future, please direct all communications regarding these matters to me as counsel for the Respondents. Because of the Division's position with respect to the named Respondents and its duties with respect to any possible remedies in these matters, the Administrative Commission has been requested to appoint a special hearing officer to deal with these matters. The matter of that appointment is now scheduled for the Administration Commission's March meeting. Therefore, no action is anticipated in any of these matters until after that meeting. If you believe that there is some reason that this delay is inappropriate, I would be happy to discuss it with you. As to the case styled Gerardo Castiello v. Statewide Nominating Commission for Judges of Compensation Claims, "Petition for Formal Administrative Proceeding," Case No. _ , we have not yet seen a copy of the Petition and I would appreciate it if you could forward a copy to me. Thank you for your cooperation and I look forward to working with you on these matters.

Jonathan A. Glogau
Special Counsel
Chief, Complex Litigation
Office of the Attorney General
PL-01, The Capitol
Tallahassee, FL 32399-1050
(tel) 850-414-3817
(fax) 850-414-9650
Email: jon.glogau@myfloridalegal.com



**STATE OF FLORIDA
STATEWIDE NOMINATING COMMISSION
FOR JUDGES OF COMPENSATION CLAIMS**

GERARDO CASTIELLO,

Petitioner,

vs.

Case No. _____

**STATEWIDE NOMINATING
COMMISSION FOR JUDGES OF
COMPENSATION CLAIMS,**

Respondent.

**PETITIONER'S MOTION TO REFER CASE TO DOAH FOR APPOINTMENT OF
ADMINISTRATIVE LAW JUDGE, AND NOTICE OF OBJECTION
TO CONSIDERATION BY ADMINISTRATION COMMISSION**

Pursuant to Florida Administrative Code Rule 28-106.204, the Petitioner, Gerardo Castiello hereby moves to refer this case to the Division of Administrative Hearings ("DOAH") for the appointment of a DOAH administrative law judge and also provides notice that he objects to any consideration by the Administration Commission, and states:

1. This case involves the Petitioner petition for a formal administrative proceeding challenging the Respondent's proposed agency action pursuant to Sections 120.569 and 120.57, Florida Statutes.

2. The Petitioner's petition was filed with the Chairman of the Statewide Nominating Commission for Judges of Compensation Claims (the "SNC") on January 20, 2017. As of this date, it is 33 days later and the case has not been referred to DOAH.

3. Section 120.569(2)(a), Florida Statutes (2016) states in pertinent part:

(2)(a) Except for any proceeding conducted as prescribed in s. 120.56, a petition or request for a hearing under this section shall be filed with the agency. If the agency requests an administrative law judge from the division, it shall so notify [DOAH] by electronic means through [DOAH's] website **within 15 days** after receipt of the petition or request.

A request for a hearing shall be granted or denied **within 15 days** after receipt.....

(Emph. added). This 15-day deadline expired on Monday, February 6, 2017.

4. On February 3, 2017, which was the 14th day after the petition was filed, the Petitioner's undersigned attorney sent a letter to the SNC, which stated:

As you will recall, our petition for formal administrative proceeding was filed with you on January 20, 2017. Today is the fourteenth day since that petition was filed, and as far as I know, the Statewide Nominating Commission for Judges of Compensation Claims has not taken any action on it.

Please be advised that Section 120.569(2)(a), Florida Statutes (2016) states in pertinent part:

(2)(a) Except for any proceeding conducted as prescribed in s. 120.56, a petition or request for a hearing under this section shall be filed with the agency. If the agency requests an administrative law judge from the division, it shall so notify [DOAH] by electronic means through [DOAH's] website **within 15 days** after receipt of the petition or request. A request for a hearing shall be granted or denied **within 15 days** after receipt.....

(Emph. added).

I respectfully request that you take appropriate steps to ensure that the [SNC] timely complies with this statutory deadline.

A copy of that letter is attached hereto as "**Exhibit A.**"

5. As of this date, no attorney has filed a formal notice of appearance on behalf of the Respondent. However, on February 8, 2017, the Petitioner's undersigned attorney received an email message from Assistant Attorney Jonathan A. Glogau which in pertinent part stated the following:

... I have been retained ... to represent all of the respondents in the above referenced cases. In the future, please direct all communications regarding these matters to me as counsel for the Respondents. Because of [DOAH's] position with respect to the named Respondents and its duties with respect to any possible remedies in these matters, the Administrative Commission has been requested to appoint a special hearing officer to deal with these matters. The matter of that appointment is now scheduled for the Administration Commission's March

meeting. Therefore, no action is anticipated in any of these matters until after that meeting.

A copy of that email message is attached hereto as "Exhibit B."

6. Despite Assistant Attorney Glogau's message, the Petitioner's undersigned attorney has not received any motion requesting that this case to be referred to the Administrative Commission or any other agency, and has not received any formal notice indicating that anything has been referred to the Administration Commission for consideration. Further, no citation of authority has been provided to establish that the SNC or DOAH have any authority to refer this petition to the Administrative Commission, or that the Administrative Commission has any subject matter jurisdiction to consider this petition.

7. According to Florida Administrative Code Rule 28-106.204(1), "All requests for relief shall be by motion. All motions shall be in writing unless made on the record during a hearing, and shall fully state the action requested and the grounds relied upon." Absent such a motion, there is no legal basis for the SNC or DOAH to refer this case to the Administration Commission for consideration or for any other purpose.

8. Moreover, the Administration Commission lacks subject matter jurisdiction to take any action concerning Judge Castiello's petition in this case. Section 120.80, Florida Statutes states:

120.80 Exceptions and special requirements; agencies.—

(1) DIVISION OF ADMINISTRATIVE HEARINGS.—

(a) Division as a party.—Notwithstanding s. 120.57(1)(a), a hearing in which the division is a party may not be conducted by an administrative law judge assigned by the division. An attorney assigned by the Administration Commission shall be the hearing officer.

In this case, DOAH is not identified as a party and is not otherwise a party in this case. Nor do DOAH and the SNC have any statutory affiliation. Rather, DOAH and the SNC are two separate

and distinct state agencies as a matter of law. Therefore, the Petitioner is not aware of any statutory basis or other legal basis to conclude that the Administration Commission could possibly have any subject matter jurisdiction concerning the Petitioner's petition.

9. Consequently, the Petitioner objects to any attempt to refer this case to the Administration Commission, and further objects to any attempts to bring this matter before the Administration Commission based on ex parte communications, and/or without formal reasonable notice and motion, and/or without citations to applicable legal authority.

10. The undersigned attorney has conferred to with Assistant Attorney General Glogau and he indicated that the SNC opposes this motion.

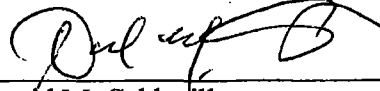
WHEREFORE, the Petitioner, Gerardo Castiello, respectfully requests that this case be referred to DOAH for the appointment of an administrative law judge to preside over this case, and objects to any consideration by the Administration Commission.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing was **electronically filed** with the Division of Administrative Hearing's Agency Clerk, and that a true and correct copy was served by Email on Lisa Mustain, The Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060, Email: *lisa.mustain@doah.state.fl.us*; Wogan "Wogie" Badcock, III, P.O. Box 497, Mulberry, FL 33860, Email: *wogieiii@badcock.com*; and Jonathan A. Glogau, Esquire, Special Counsel, Chief, Complex Litigation, Office of the Attorney General, PL-01, The Capitol, Tallahassee, FL 32399-1050; Email: *jon.glogau@myfloridalegal.com*; on this 22nd day of February, 2007.

Respectfully submitted,

de la PARTE & GILBERT, P.A.



David M. Caldevilla
Florida Bar No. 654248
Post Office Box 2350
Tampa, Florida 33602-2350
Telephone: (813) 229-2775

ATTORNEYS FOR PETITIONER

David M. Caldevilla
Edward P. de la Parte, Jr.
Richard A. Gilbert
Donald C. Greiwe

de la Parte & Gilbert, P.A.

ATTORNEYS AT LAW



Patrick J. McNamara
Kristin Y. Melton
Nicolas Q. Porter

Louis A. de la Parte, Jr.
Founder (1929-2008)

February 3, 2017

By Email to wogieiii@badcock.com
and lisa.mustain@doah.state.fl.us;
and by U.S. Mail

Mr. Wogan "Wogie" Badcock, III
Post Office Box 497
Mulberry, FL 33860

Ms. Lisa Mustain
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, FL 32399-3060

Re: *Gerardo Castiello v. Statewide Nominating Commission for Judges of Compensation Claims*, "Petition for Formal Administrative Proceeding," Case No. _____ (filed with the Statewide Nominating Commission for Judges of Compensation Claims on January 20, 2017)

Gerardo Castiello v. Office of the Judges of Compensation Claims, Case No. _____, "Petition to Initiate Rulemaking" (filed with the Florida Department of Management Services, Office of the Judges of Compensation Claims on January 20, 2017)

Gerardo Castiello v. Statewide Nominating Commission for Judges of Compensation Claims, DOAH Case No. 17-000477RU, "Petition Challenging Agency Statements Defined as Unadopted Rules" (filed with the Division of Administrative Hearings on January 20, 2017)

Dear Mr. Badcock and Ms. Mustain:

This law firm represents Gerardo Castiello in the above-referenced administrative actions.

As you will recall, our petition for formal administrative proceeding was filed with you on January 20, 2017. Today is the fourteenth day since that petition was filed, and as far as I know, the Statewide Nominating Commission for Judges of Compensation Claims has not taken any action on it.

(00515876.1)

101 East Kennedy Blvd., Suite 2000
Mailing Address: Post Office Box 2350
T: (813) 229-2775 F: (813) 229-2712

Tampa, Florida 33602
Tampa, Florida 33601-2350
www.dgfirm.com



RA 15

de la Parte & Gilbert, P.A.
Attorneys at Law

Mr. Wogan "Wogie" Badcock, III
Ms. Lisa Mustain
February 3, 2017
Page Two

Please be advised that Section 120.569(2)(a), Florida Statutes (2016) states in pertinent part:

(2)(a) Except for any proceeding conducted as prescribed in s. 120.56, a petition or request for a hearing under this section shall be filed with the agency. If the agency requests an administrative law judge from the division, it shall so notify the division by electronic means through the division's website **within 15 days** after receipt of the petition or request. A request for a hearing shall be granted or denied **within 15 days** after receipt.

(Emph. added).

I respectfully request that you take appropriate steps to ensure that the Statewide Nominating Commission for Judges of Compensation Claims timely complies with this statutory deadline.

Thank you for your attention to this matter. If you have any questions or comments, please feel free to call me.

Sincerely,

de la Parte & Gilbert, P.A.



David M. Caldevilla

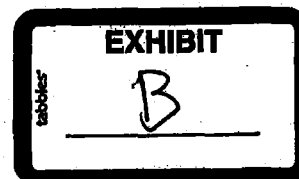
cc: Gerardo Castiello

David Caldevilla

From: Jon Glogau <Jon.Glogau@myfloridalegal.com>
Sent: Wednesday, February 08, 2017 8:45 AM
To: David Caldevilla
Cc: Cohen, Bob
Subject: Gerardo Castiello v. Statewide Nominating Commission for Judges of Compensation Claims, "Petition for Formal Administrative Proceeding," Case No. _ ; Gerardo Castiello v. Office of the Judges of Compensation Claims, Case No., "Petition to Initiate Rule...

Mr. Caldevilla: I have been retained by the Division to represent all of the respondents in the above referenced cases. In the future, please direct all communications regarding these matters to me as counsel for the Respondents. Because of the Division's position with respect to the named Respondents and its duties with respect to any possible remedies in these matters, the Administrative Commission has been requested to appoint a special hearing officer to deal with these matters. The matter of that appointment is now scheduled for the Administration Commission's March meeting. Therefore, no action is anticipated in any of these matters until after that meeting. If you believe that there is some reason that this delay is inappropriate, I would be happy to discuss it with you. As to the case styled Gerardo Castiello v. Statewide Nominating Commission for Judges of Compensation Claims, "Petition for Formal Administrative Proceeding," Case No. _ , we have not yet seen a copy of the Petition and I would appreciate it if you could forward a copy to me. Thank you for your cooperation and I look forward to working with you on these matters.

Jonathan A. Glogau
Special Counsel
Chief, Complex Litigation
Office of the Attorney General
PL-01, The Capitol
Tallahassee, FL 32399-1050
(tel) 850-414-3817
(fax) 850-414-9650
Email: jon.glogau@myfloridalegal.com



**STATE OF FLORIDA
DEPARTMENT OF MANAGEMENT SERVICES
OFFICE OF THE JUDGES OF COMPENSATION CLAIMS**

GERARDO CASTIELLO,

Petitioner,

vs.

Case No. _____

**OFFICE OF THE JUDGES OF
COMPENSATION CLAIMS,**

Respondent.

**PETITIONER'S MOTION TO COMMENCE RULEMAKING,
AND NOTICE OF OBJECTION TO CONSIDERATION
BY ADMINISTRATION COMMISSION**

Pursuant to Florida Administrative Code Rule 28-106.204, the Petitioner, Gerardo Castiello hereby moves to commence rulemaking, and also provides notice that he objects to any consideration by the Administration Commission, and states:

1. This case involves the Petitioner petition to initiate rulemaking pursuant to Section 120.54, Florida Statutes.
2. The Petitioner's petition was filed with the Office of Compensation Claims (the "OJCC") on January 20, 2017. As of this date, it is 33 days later and no action has been taken on the petition.
3. Section 120.54(7) states, "Not later than 30 calendar days following the date of filing a petition, the agency shall initiate rulemaking proceedings under this chapter, otherwise comply with the requested action, or deny the petition with a written statement of its reasons for the denial." This 30-calendar day deadline expired on Monday, February 19, 2017.
4. As of this date, no attorney has filed a formal notice of appearance on behalf of the Respondent. However, on February 8, 2017, the Petitioner's undersigned attorney received

an email message from Assistant Attorney Jonathan A. Glogau which in pertinent part stated the following:

... I have been retained ... to represent all of the respondents in the above referenced cases. In the future, please direct all communications regarding these matters to me as counsel for the Respondents. Because of [DOAH's] position with respect to the named Respondents and its duties with respect to any possible remedies in these matters, the Administrative Commission has been requested to appoint a special hearing officer to deal with these matters. The matter of that appointment is now scheduled for the Administration Commission's March meeting. Therefore, no action is anticipated in any of these matters until after that meeting.

A copy of that email message is attached hereto as "Exhibit A."

5. Despite Assistant Attorney Glogau's message, the Petitioner's undersigned attorney has not received any motion requesting that this rulemaking proceeding to be referred to the Administrative Commission or any other agency, and has not received any formal notice indicating that anything has been referred to the Administration Commission for consideration. Further, no citation of authority has been provided to establish that the OJCC has any authority to refer this rulemaking proceeding to the Administrative Commission, or that the Administrative Commission has any subject matter jurisdiction to consider the petition.

6. This case does not invoke the quasi-judicial authority of any state agency, and the Administrative Commission is not implicated in any way by the Petitioner's petition to initiate rulemaking under Section 120.54. Accordingly, the Administration Commission lacks subject matter jurisdiction to take any action concerning Judge Castiello's petition in this rulemaking proceeding.

7. Consequently, the Petitioner objects to any attempt to refer this rulemaking proceeding to the Administration Commission, and further objects to any attempts to bring this matter before the Administration Commission based on ex parte communications, and/or without formal reasonable notice and motion, and/or without citations to applicable legal authority.

8. The undersigned attorney has conferred to with Assistant Attorney General Glogau and he indicated that the OJCC opposes this motion.

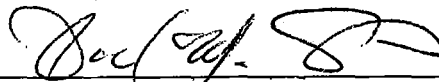
WHEREFORE, the Petitioner, Gerardo Castiello, respectfully requests to commence rulemaking and objects to any consideration by the Administration Commission.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and a true and correct copy hereof was filed and served by **Email** on Diane Wint, Agency Clerk for the Department of Management Services, 4050 Esplanade Way, Suite 160, Tallahassee, FL 32399-0950; Email: *diane.wint@dms.myflorida.com*; the Honorable Robert S. Cohen, Chief Judge and Director of the Division of Administrative Hearings, 1180 Apalachee Parkway Suite A, Tallahassee, Florida 32301-4574, Email: *bob.cohen@doah.state.fl.us*; and J. Andrew Atkinson, Esquire, General Counsel, Department of Management Services, Office of the General Counsel, 4050 Esplanade Way, Suite 160, Tallahassee, FL 32399-0950; Email: *andrew.atkinson@dms.myflorida.com*; on this 22nd day of February, 2017.

Respectfully submitted,

de la PARTE & GILBERT, P.A.



David M. Caldevilla
Florida Bar No. 654248
Post Office Box 2350
Tampa, Florida 33602-2350
Telephone: (813) 229-2775

ATTORNEYS FOR PETITIONER

David Caldevilla

From: Jon Glogau <Jon.Glogau@myfloridalegal.com>
Sent: Wednesday, February 08, 2017 8:45 AM
To: David Caldevilla
Cc: Cohen, Bob
Subject: Gerardo Castiello v. Statewide Nominating Commission for Judges of Compensation Claims, "Petition for Formal Administrative Proceeding," Case No. _; Gerardo Castiello v. Office of the Judges of Compensation Claims, Case No., "Petition to Initiate Rule...

Mr. Caldevilla: I have been retained by the Division to represent all of the respondents in the above referenced cases. In the future, please direct all communications regarding these matters to me as counsel for the Respondents. Because of the Division's position with respect to the named Respondents and its duties with respect to any possible remedies in these matters, the Administrative Commission has been requested to appoint a special hearing officer to deal with these matters. The matter of that appointment is now scheduled for the Administration Commission's March meeting. Therefore, no action is anticipated in any of these matters until after that meeting. If you believe that there is some reason that this delay is inappropriate, I would be happy to discuss it with you. As to the case styled Gerardo Castiello v. Statewide Nominating Commission for Judges of Compensation Claims, "Petition for Formal Administrative Proceeding," Case No. _ , we have not yet seen a copy of the Petition and I would appreciate it if you could forward a copy to me. Thank you for your cooperation and I look forward to working with you on these matters.

Jonathan A. Glogau
Special Counsel
Chief, Complex Litigation
Office of the Attorney General
PL-01, The Capitol
Tallahassee, FL 32399-1050
(tel) 850-414-3817
(fax) 850-414-9650
Email: jon.glogau@myfloridalegal.com



BUY™

SELL™

SHOP™



Downloaded From
www.TextBookDiscrimination.com



SELL YOUR OWN SAMPLES

(help others get the justice that they deserve)



BUY™

SELL™

SHOP™

www.TextBookDiscrimination.com

Get ***Booked Up*** on Justice!

© TBD Corporation. All Rights Reserved.