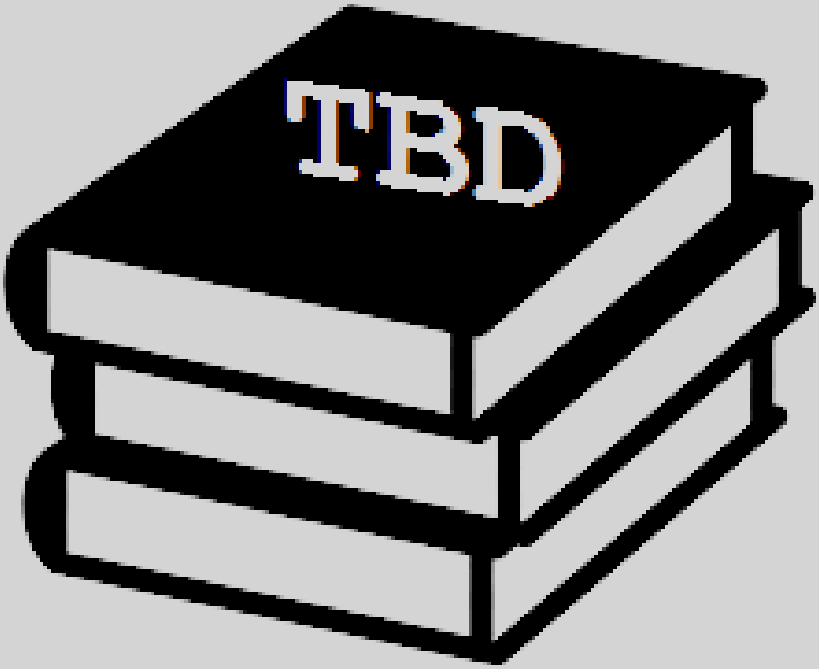
BUY™	SELL™	SHOP™



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 SUPREME COURT OF FLORIDA

Case No.

FILED
THOMAS D. HALL
2009 NOV 30 A 9:39
CLERK, SUPREME COURT
BY

ROBERT J. PLEUS, JR.,
Petitioner,

v.

HON. CHARLES CRIST, GOVERNOR,
Respondent.

PETITION FOR WRIT OF MANDAMUS

This petition for mandamus is brought under Article V, Section 3(b)(8) of the Constitution of Florida, and under Florida Rules of Appellate Procedure 9.030(a)(3), 9.100 and other relevant authorities to enforce a specific provision of the Constitution of Florida relating to filling a judicial vacancy.

1. Parties. The Petitioner, Robert J. Pleus, is a Senior Judge who has served by invitation from the Florida District Court of Appeal, Fifth District, after tendering his resignation and entering retirement in January 2009. The Respondent, the Honorable Charles Crist, is the Governor of Florida.

2. Jurisdiction. The Court has original jurisdiction under Article V, Section 3(b)(8), Constitution of Florida, as well as Florida Rule of Civil Procedure 9.030(a)(3).

3. Facts on which Petitioner Relies.

The Petitioner, a taxpayer of Florida, was appointed to the Florida District Court of Appeal in 2000 after being nominated by the judicial nominating commission for the Fifth District Court of Appeal ("JNC"). He has served since that time, including service for two years as the Chief Judge of the Court (2005-07).

The Petitioner submitted his resignation to the Respondent on September 2, 2008 to be effective on January 5, 2009. (A true copy of that letter is attached and incorporated herein as Exhibit A.) Petitioner noted in his letter that the orderly processes of the Fifth District required that his replacement be named in a timely manner.

On September 8, 2008, the Respondent wrote the Petitioner and acknowledged the importance of an orderly transition, and also recognized the need to make timely judicial appointments. (A true copy of the September 8th letter is attached and incorporated herein as Exhibit B.)

The JNC was thereafter asked to conduct a search for nominees under the provisions of the Constitution and the statutes of Florida. A total of 28 individuals submitted applications for the position, and the JNC fulfilled its duties by reviewing the applications and conducting interviews.

When the nominating commission completed its work, it sent six names to the Respondent in accordance with Article V, Section 11(b), Constitution of Florida, which authorizes the JNC to nominate from three to six persons to fill the vacancy. (A true copy of the letter of nomination is attached and incorporated herein as Exhibit C.) Under the Constitution, Article V, Section 11(c), the Governor shall make the appointment within 60 days of the date of this certification.

Instead of making an appointment, the Respondent instructed the JNC to reconvene and certify a new list of nominees. (This communication with the JNC is attached and incorporated herein as Exhibit D.)

The JNC responded that it already nominated the maximum of six individuals as permitted by the Constitution of Florida, and that it had significant concerns about whether it had the Constitutional authority to reconvene to consider the Respondent's request. It also stated that it was unaware of any Constitutional or statutory authority that would allow it to take the actions requested by the Respondent, and requested that if the Respondent was aware of any such authority, that it be provided to the JNC. The JNC then certified again the six names previously submitted. (This communication from the JNC is attached and incorporated herein as Exhibit

E.) The Petitioner is unaware of any authority provided to the JNC from the Respondent which supported the requested actions.

As time has passed without an appointment or, to the knowledge of the Petitioner, any effort to even interview the persons whose names have been certified by the JNC, the Chief Judge of the Fifth District, on behalf of the entire Court, communicated with the Respondent asking that he take some action on this matter. The Chief Judge noted that the failure to make a timely appointment was having an adverse impact on the Court, and asked that the Respondent advise the Court of when he intended to make the appointment. (A copy of the court's letter to the Governor is attached and incorporated herein as Exhibit F.) The Petitioner is unaware of any response to this request nor to subsequent requests.

4. Nature of Relief Sought. The Petitioner seeks an order of mandamus, requiring the Respondent to complete the appointment process from the list of names certified by the JNC. The Petitioner is aware of the heavy burden on the Respondent at this time, but it is essential for the orderly functioning of the Court that vacancies be timely filled in accordance with the mandate of the Constitution.

5. Argument.

Article V, Section 3(b)(8) authorizes this Court to issue writs of mandamus. The jurisdiction of this Court to issue such writs is limited to actions involving "state officers and state agencies." Art. V, § 3(b)(8), Fla. Const. The Governor is a state officer subject to this Court's jurisdiction under Article V, Section 3(b)(8). *See, e.g.*, *Flack v. Graham*, 453 So. 2d 819 (Fla. 1984). One seeking a writ of mandamus must demonstrate a clear legal right to the performance of a clear legal duty by a public officer, and that no other remedies are available. *Hatten v. State*, 561 So. 2d 562, 563 (Fla. 1990). Mandamus is used to compel the exercise of ministerial duties, which are defined as duties "positively imposed by law to be performed at a time and in a manner or upon conditions which are specifically designated by the law itself absent any authorization of discretion to the agency." *Solomon v. Sanitarians' Registration Bd.*, 155 So. 2d 353, 356 (Fla. 1963).

The Petitioner respectfully submits that Article V, Section 11(c), Constitution of Florida provides a clear duty for the Respondent to fill the judicial vacancy from the list of six names certified by the JNC. Because compliance with this provision of the Constitution is acknowledged by the Respondent himself to be important, no other argument seems appropriate. (See Exhibit B.) It is respectfully requested that this Court grant this

Petition and order the Respondent to expeditiously appoint a judge to the Fifth District Court of Appeal from the list certified by the JNC. If the Respondent seeks an advisory opinion from this Court concerning the issues raised herein, or if the Respondent begins the appointment process, considering the names submitted by the JNC, the Petitioner requests that this Court stay consideration of this Petition.

Respectfully submitted,

Talbot D'Alemberte
D'Alemberte & Palmer
Florida Bar # 0016529
1117 Myers Park Drive
Tallahassee, Florida
(850) 325-9262

Exhibit A

WILLIAM D. PALMER
CHIEF JUDGE

JACQUELINE R. GRIFFIN
THOMAS D. SAWAYA
ROBERT J. PLEUS, JR.
RICHARD B. ORFINGER
DAVID A. MONACO
VINCENT G. TORPY, JR.
C. ALAN LAWSON
KERRY I. EVANDER
JAY P. COHEN
JUDGES

DISTRICT COURT OF APPEAL
FIFTH DISTRICT
300 SOUTH BEACH STREET
DAYTONA BEACH, FLORIDA 32114
(386) 947-1500 COURT
(386) 255-8600 CLERK

SUSAN WRIGHT
CLERK

TY W. BERDEAUX
MARSHAL

September 2, 2008

Governor Charles J. Crist, Jr.
Office of Governor
State of Florida
The Capitol
400 S. Monroe St.
Tallahassee, FL 32399-0001

Dear Governor Crist:

The Florida Constitution requires that I retire on January 5, 2009, as a district judge on the Fifth District Court of Appeal.

Serving the people on the bench since April 1, 2000, has been the highlight of my 46 year legal career. I will be forever grateful to Governor Bush who appointed me. The judges with whom I have served are, and will always be, an inspiration to me. It has been an honor serving with them.

Even though my retirement is four months away, the process of reviewing applicants takes time, as well it should. The sooner you appoint my replacement, the easier the transition.

I am confident your next appointment will be as outstanding as your first appointment to the Fifth, Judge Jay Cohen. Your appointments to the bench are so important, and with Judge Cohen, you truly got it right.

It is my fervent hope that you will not let politics control your appointments. The strongest appellate courts are those with a mix of distinguished former trial judges and outstanding and experienced lawyers.

I suggest that you look for applicants with an unblemished and proven record of morality, integrity and community involvement. Collegiality is also a most important ingredient.

FAX NUMBER (386) 947-1562
E MAIL ADDRESS 5dca@flcourts.org

Thank you for serving the people of Florida as Governor. I look forward to learning who my replacement will be.

Respectfully yours,

Robert J. Pleus, Jr.

RJP,Jr./jfw

cc: 5th DCA Judges

Exhibit B

CHARLIE CRIST
GOVERNOR

STATE OF FLORIDA
Office of the Governor
THE CAPITOL
TALLAHASSEE, FLORIDA 32399-0001
www.flgov.com
850-488-7146
850-487-0801 fax

September 8, 2008

The Honorable Robert J. Pleus, Jr.
District Court of Appeal, Fifth District
300 South Beach Street
Daytona Beach, Florida 32114

Dear Judge Pleus:

I have received your letter of resignation dated September 2, 2008 and accept your resignation effective January 5, 2009.

First and foremost, I want to thank you for the public service you have given to our State as a Judge on the Fifth District Court of Appeal. By contributing your talents and experience to the people of Florida, you have helped make our State a better place.

Second, I want to thank you for providing me with ample advance notice of the upcoming vacancy on your Court. I appreciate the importance of minimizing disruption to the courts' administration by making timely judicial appointments, and I appreciate your assistance in that goal. I wish you all the best in your future endeavors.

Sincerely,

Charlie Crist

CC/jg

Exhibit C

Fallace & Larkin, L.C.
Attorneys at Law

James H. Fallace
e-mail:
jim@fallacelarkinlaw.com
www.fallace.com

1900 S. Hickory St. Ste. A
Melbourne, Florida 32901
tel.: 321-951-9900
facsimile: 321-724-6002

November 6, 2008

Via Facsimile, (850) 922-0309

Jason Gonzalez, Esq.,
General Counsel to Governor Charlie Crist
The Capitol
400 South Monroe Street
Tallahassee, Florida 32399

RE: Fifth Appellate District Court of Appeals - Replacement for Judge Robert J. Pleus, Jr.

Dear Mr. Gonzalez:

This Commission certifies to you the following nominees to fill the above-captioned vacancy:

Nominee's Name	Office Phone	Home Phone
Edwards, James A.	(407) 839-2117	[redacted]
Flowers, Angela C.	(352) 622-4222	
Hamilton, John R.	(407) 244-3263	
Jacobus, Bruce Waldron	(321) 617-7260	
Lambert, Brian D.	(352) 401-6785	
Schumann, Belle B.	(386) 257-6042	

A formal letter including applications of the nominees will be submitted to you under separate cover to Governor Charlie Crist in accord with the Rules.

Please feel free to contact me if I can be of further assistance. My cell number is [redacted].

Respectfully submitted,

James H. Fallace, Chair
5th Appellate District
Judicial Nominating Commission

JHF/sjs

Copy: Vicki S. Brand, The Florida Bar

F:\wp60cs\TEMPLATE\JHF\JNC APPLICATION AND MATERIALS 2008\CORRESPONDENCE\Gonzalez General Counsel 11-06-08.wpd
November 6, 2008 (9:42am)

Exhibit D

CHARLIE CRIST
GOVERNOR

December 1, 2008

James H. Fallace, Chair
5th Appellate District
Judicial Nominating Commission
1900 South Hickory Street, Suite A
Melbourne, FL 32901

Re: Fifth District Court of Appeal Nominees

Dear Chairman Fallace:

I recently received the Judicial Nominating Commission's list of six nominees for consideration for appointment to the Fifth District Court of Appeals. In my previous correspondence to you notifying the Judicial Nominating Commission of the vacancy, I expressed my commitment to diversity on the bench. To that end, I requested that you give due consideration to diversity in the nominating process.

I have been advised that at least three well-qualified African-Americans applied for nomination. These applicants included the Chief Judge of the Ninth Circuit and a Seventh Circuit Judge. Unfortunately, none of these names were forwarded to me by the nominating commission, of which you chair. In the interest of diversity on our courts, I am hereby rejecting the list of nominees certified to me on November 6, 2008. Please reconvene the Judicial Nominating Commission and reconsider these important nominations and provide me with a new list of nominees as soon as possible.

Sincerely,

Charlie Crist

THE CAPITOL
TALLAHASSEE, FLORIDA 32399 • (850) 488-2272 • FAX (850) 922-4292

Exhibit E

Fallace & Larkin, L.C.

Attorneys at Law

James H. Fallace
e-mail:
jim@fallacelarkinlaw.com
www.fallace.com

1900 S. Hickory St. Ste. A
Melbourne, Florida 32901
Tel.: 321-951-9900
Facsimile: 321-724-6002

December 4, 2008

VIA FACSIMILE AND U. S. MAIL

Governor Charlie Crist
c/o Jason Gonzalez, Esq.,
General Counsel to the Governor
The Capitol
400 South Monroe Street
Tallahassee, FL 32399

Re: Recommendations of the Fifth Appellate District Judicial Nominating Commission Re: the Vacancy of Judge Robert J. Pleus, Jr.

Dear Governor Crist:

I have the honor of responding to your letter of December 1, 2008 on behalf of the Fifth Appellate District Judicial Nominating Commission. In your letter, you stated that you were "rejecting the list of nominees certified" to you on November 6, 2008 and requested that I "reconvene the Judicial Nominating Commission and reconsider these important nominations" and provide you with a new list of nominees as soon as possible. Upon receipt of your letter, I distributed your letter to the members of our Commission. This letter will confirm that our Commission did reconvene on December 2, 2008 and in its deliberation capacity contemplated in Article V, § 11 of the Florida Constitution, addressed your request, and authorized this response. This action on the part of our Commission is not intended as a determination that we have the constitutional authority to take the action you requested. As a result of our Commission's decision outlined below, it is beyond the scope of this letter to address the authority issue.

On November 6, 2008 our Commission recommended to you the following six (6) nominees for appointment to the Fifth District Court of Appeal:

RECEIVED
DEC 8 2008
Governor's Legal Office

Nominee Names

Edwards, James A.
Flowers, Angela C.
Hamilton, John R.
Jacobus, Bruce Waldron
Lambert, Brian D.
Schumann, Belle B.

We received twenty-six (26) applications after receipt of your request of September 8, 2008, to convene our Commission for purposes of selecting and submitting to you the names of "highly qualified individuals" for consideration and appointment to the Fifth District Court of Appeal to fill the vacancy resulting from the retirement of Judge Robert J. Pleus, Jr. The references and other information in each application were personally investigated and confirmed by members of the Judicial Nominating Commission. Additionally, each applicant was given a personal interview by the members of the Commission prior to our selection. As I indicated in my prior correspondence of November 6, 2008, this was an extremely well qualified group of applicants and the

ultimate recommendation was neither easily arrived at nor lightly made by the Commission. Please be assured that our Commission carefully considered for each applicant the criteria listed in the Standards and Qualifications Criteria Section of the Uniform Rules of Procedure for DCA Judicial Nominating Commissions. Our Commission also gave due consideration as you requested and contemplated in § 43.291(4) Fla. Stat. to the "racial, ethnic, and gender diversity, as well as geographic distribution of the population" at issue. Our Commission is also mindful of the constitutional requirements and limitations set forth in Article V, and particularly Section 11 of the Florida Constitution and as addressed in the advisory opinions to the Governor by the Florida Supreme Court and the Office of the Attorney General for the State of Florida in connection with this process. As you requested, a maximum of six (6) nominees from the twenty-six (26) applications were submitted to you for your consideration. It is the firm opinion and belief of our Commission that the above-named list of nominees certified to you on November 6, 2008 complied with your prior request and consists of the most qualified applicants for nomination and your consideration for the current vacancy.

With the greatest amount of respect and to the extent required by law, this letter will also serve to advise you that at the Commission meeting on December 2, 2008 upon proper and required vote and deliberation, our Commission is pleased to again recommend to you the following nominees for appointment to the Fifth District Court of Appeal, which is consistent with our prior recommendation included in my letter of November 6, 2008:

Nominee Names

Edwards, James A.
Flowers, Angela C.
Hamilton, John R.
Jacobus, Bruce Waldron
Lambert, Brian D.
Schumann, Belle B.

Since this list is the same as previously submitted to you with my prior letter of November 6, 2008 additional copies of the original applications submitted to the Commission by the above-named individuals are not attached or enclosed with this letter and are presumed to be in your possession. The names of the nominees submitted for this particular vacancy have been previously distributed to the public pursuant to the Rules Governing Nominating Commissions and I have previously provided to you all required information concerning the Applicants listed above.

The Commission stands ready to assist in any fashion you or your staff might determine appropriate.

Respectfully submitted,

James H. Fallace, Chair
5th Appellate District
Judicial Nominating Commission

JHF:sh
cc: All Nominees Listed Above
Vicki S. Brand, The Florida Bar

Exhibit F

WILLIAM D. PALMER
CHIEF JUDGE
JACQUELINE R. GRIFFIN
THOMAS D. SAWAYA
ROBERT J. PLEUS, JR.
RICHARD B. ORFINGER
DAVID A. MONACO
VINCENT G. TORPY, JR.
C. ALAN LAWSON
KERRY I. EVANDER
JAY P. COHEN
JUDGES

DISTRICT COURT OF APPEAL
FIFTH DISTRICT
300 SOUTH BEACH STREET
DAYTONA BEACH, FLORIDA 32114
(386) 947-1500 COURT
(386) 255-8600 CLERK

SUSAN WRIGHT
CLERK
TY W. BERDEAUX
MARSHAL

February 13, 2009

The Honorable Charlie Crist
Office of the Governor
The Capitol, PL05
Tallahassee, FL 32399-0001

Via facsimile (850) 487-0801 and U.S. Mail

RE: Overdue Appointment to fill vacancy on Fifth District Court of Appeal

Dear Governor Crist:

On behalf of the entire court, I am writing to ascertain your intentions with regard to filling the vacancy on our court resulting from the retirement of Judge Robert J. Pleus, Jr., on January 5, 2009.

Judge Pleus submitted his retirement notice several months in advance, so as to provide sufficient time to complete the nomination and appointment process before his retirement date. He did so to prevent the court's docket and other business from being disrupted by a gap between his retirement and the assumption of duties by a new judge.

The Judicial Nominating Commission for the Fifth District Court of Appeal timely advertised the vacancy, conducted interviews, and certified the nomination of six applicants to you on November 6, 2008. Pursuant to Article V, Section 11(c) of the Constitution of the state of Florida, "the Governor shall make the appointment within 60 days after the nominations have been certified to the governor." That 60 day time period expired on January 5, 2009.

The failure to timely make an appointment from the nominations certified to you is adversely impacting the court, affecting the assignment of cases, the scheduling of oral argument, the timely disposition of cases, and the utilization of staff personnel.

FAX NUMBER (386) 947-1562
E MAIL ADDRESS 5dca@flcourts.org

We are aware of your contacts with the Judicial Nominating Commission seeking a different list of nominees, but are also aware of the Commission's response, expressing their belief that no legal basis exists for withdrawing or amending the list of nominees certified to you.

The difficulties being encountered by the court as a result of the continuing vacancy and the uncertainty as to when the vacancy will be filled are increasing with each passing day and the court does not believe that it can simply passively wait to see if and when the appointment will be made. We would respectfully request your advising this court within the coming week when you intend to make this appointment so that we may plan for the management of the court's workload and determine whether any further action on our part will be necessary.

I look forward to hearing from you at your earliest convenience.

Very truly yours,

William D. Palmer

William D. Palmer
Chief Judge

WDP:vdw

Copies to:

Via facsimile (850) 488-9810 and U.S. Mail:

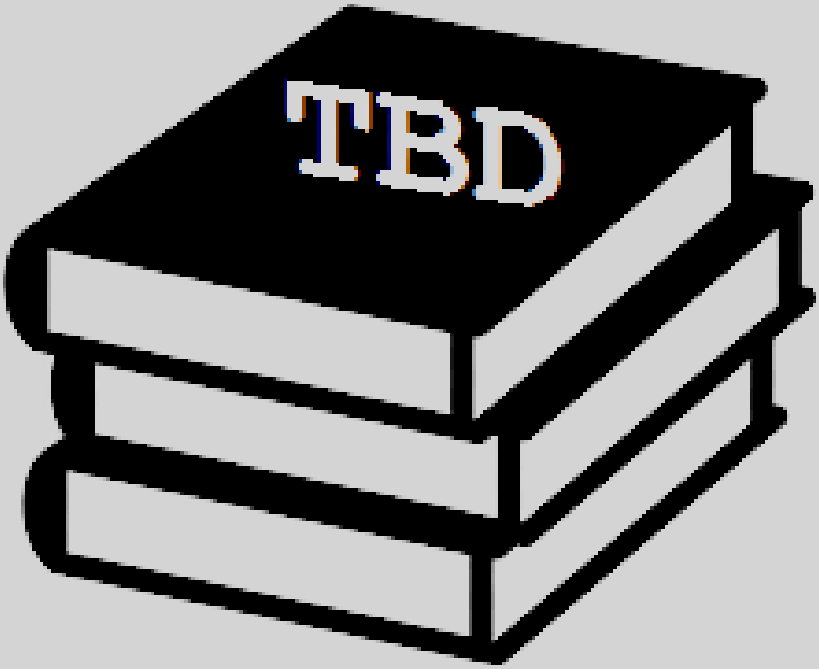
Jason B. Gonzalez, General Counsel
Office of the Governor
The Capitol, PL05
Tallahassee, Florida 32399

Via facsimile (850) 488-6130 and U.S. Mail:

The Honorable Peggy A. Quince
Chief Justice of the Florida Supreme Court
Supreme Court of Florida
500 South Duval Street
Tallahassee, Florida 32399-1925

Judges of the Fifth District Court of Appeal

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.