

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

JAMES R. ADAMS,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 17-00181 MPT
)	JURY TRIAL DEMANDED
THE HON. JOHN CARNEY,)	
Governor of the State of Delaware,)	
)	
Defendant.)	

**MOTION FOR A RULE TO SHOW CAUSE WHY DEFENDANT
THE HON. JOHN CARNEY SHOULD NOT BE HELD IN
CONTEMPT OF COURT AND FOR EXPEDITED CONSIDERATION**

Plaintiff James R. Adams for a Rule to Show Cause why defendant The Hon. John Carney should not be held in contempt of court for disregarding this Court's Opinion and Order in the above-captioned action dated December 6, 2017, and in support thereof states as follows:

1. On November 14, 2017, the Delaware Judicial Nominating Commission ("JNC") published a Notice of Judicial Vacancy, seeking applications for the seat held by the Hon. Jane M. Brady, who was retiring. The Notice (attached hereto as Exhibit A) states, in pertinent part, that "In accordance with Article IV, Section 3 of the Delaware Constitution and in the Governor's discretion, the Governor intends to appoint a member of the Republican Party."

2. On or about February 15, 2018, after the Court ruled, Gov. Carney nominated the Hon. Sheldon Rennie of the Delaware Court of Common Pleas to Judge Brady's seat. (Ex. B hereto). On information and belief, Judge Rennie is a Republican.¹

3. On February 20, 2018, the JNC sent a "Final Notice for nomination for Resident Judge of the Superior Court, Sussex County." (Ex. C hereto). In that document the JNC gave notice of one and possibly two judicial openings. The first is for the seat currently held by the Hon. T. Henley Graves. The notice states that "There are requirements of political balance under Article IV, Section 3 of the Delaware Constitution. The Governor may appoint a judge currently serving on the Superior Court to the position of Resident Judge regardless of his or her party affiliation, but the Governor may not appoint another member of the Republican Party to the Court."

4. The JNC then referred to a second potential opening:

The Commission will simultaneously consider candidates for Resident Judge of the Superior Court, Sussex County, for a potential derivative vacancy in the office of Judge of the Superior Court, Sussex County, which would occur if a sitting Judge of the Superior Court were to be nominated to be Resident Judge. In such event, the Commission may choose not to solicit further applications for the office of Judge of the Superior Court, Sussex County. The appointee for a derivative vacancy in the office of Judge of the Superior Court, Sussex County, must be a citizen of the State of Delaware and learned in the law. *In accordance*

¹ Although Adams was interviewed for the position, he was not one of the applicants nominated.

with the mandate of Article IV, Section 3 of the Delaware Constitution and his preference, the Governor expects to appoint a member of the Democrat Party to fill any derivative vacancy.

Id. (italics added).

5. Both notices recognize and rely on the political balance requirement of Delaware's Constitution, which the Court struck down as unconstitutional in its Opinion and Order of December 6, 2017. Gov. Carney never sought a stay of that decision.

6. Gov. Carney apparently seeks to get around this Court's ruling by using words such as "discretion" and "preference." However, the Governor has no "discretion" to make political affiliation a factor. Political affiliation is only relevant as a factor when political affiliation is an appropriate requirement for the effective performance of the job involved. *Shumek v. McDowell*, 892 F.Supp.2d 647, 664 (M.D. Pa. 2012).

7. Even if the Court were permitted to consider political affiliation as a factor (and there would be no reason to do so, given its irrelevance to the performance of the judicial function), it may not be a substantial or motivating factor. *See Tapley v. Jeffers*, 96 F.3d 921, 928 (7th Cir. 1996). By announcing at the outset that he was going to select a candidate of a particular political party, Gov. Carney conceded that political affiliation was and is a substantial factor in his appointment decisions.

8. To establish liability for civil contempt there must be (1) a valid existing order of the court, (2) knowledge of the order on the part of the defendant, and (3) violation of the order by the charged party. *Marshak v. Treadwell*, 595 F.3d 478, 485 (3rd Cir. 2009).

9. These elements are clearly met. The Court issued its Opinion and Order. The Governor had full knowledge of the Opinion and Order (*See D*, "Carney's office said they were reviewing the decision"). The Order was clearly violated.

10. Expedition is necessary to prevent the unconstitutional appointment of any judgeship in violation of this Court's Opinion and Order.

WHEREFORE, for the foregoing reasons, plaintiff James R. Adams respectfully requests that the Court grant this motion and issue a Rule of Show Cause requiring Gov. Carney to appear and respond to this motion, at which time Adams will seek an injunction prohibiting political affiliation to be included in applications for judicial appointments and prohibiting judicial appointments to include political affiliation as a factor, as well as an award of attorney's fees incurred in prosecuting this motion.

Respectfully submitted,

/s/ David L. Finger

David L. Finger (ID #2556)

Finger & Slanina, LLC

One Commerce Center

1201 N. Orange St., 7th fl.

Wilmington, DE 19801

(302) 573-2525

Attorney for plaintiff James R. Adams

Dated: February 21, 2018