

THE STATE OF NEW HAMPSHIRE
THE GOVERNOR AND EXECUTIVE COUNCIL

Docket #10-001

In re: Commissioner Mark Bodi

OBJECTION TO RESPONDENT'S MOTION FOR LEAVE TO TAKE DEPOSITIONS

NOW COMES Michael A. Delaney, Attorney General, by and through counsel, and respectfully objects to the Respondent's Motion for Leave to Take Depositions. In support of his objection, General Delaney says the following:

1) The Governor and Executive Council have accepted a Petition for Removal of Chairman Bodi, filed by the Attorney General pursuant to RSA 4:1,1, in which it is alleged that that Chairman Bodi improperly interfered with an-ongoing law enforcement on or about December 15-16, 2009.

2) On August 5, 2010, and again on August 10, 2010, Commissioner Bodi sent a letter requesting that the Governor agree to submit to a deposition relating to this matter.

3) On August 12, 2010, counsel for the Governor denied the requests in writing, stating, "Your . . . request provides no reason for the Governor's deposition. The central allegation brought by the Attorney General is that Commissioner Bodi improperly interfered with an ongoing criminal investigation of a licensee by the Liquor Enforcement Bureau. The Governor could not provide any testimony that is relevant to that allegation."

4) That same day, Commissioner Bodi filed a motion for leave to take the deposition of Governor John Lynch for the purpose of "fully examin[ing] the factual basis, and such contacts

and advice as he may have had from third parties, which predicated his May 12, 2010, request for Chairman Bodi's resignation." Motion, ¶6.

5) To prevail on a motion to compel discovery, Chairman Bodi must demonstrate that the information is "necessary for a full and fair presentation of the evidence at the hearing." Jus 811.02(c). That showing has not been made. The reasons underlying the Governor's decision to call for Commissioner Bodi's resignation have no bearing on the issue of whether the Commissioner interfered with a criminal investigation one month earlier. Accordingly, the request must be denied.

6) To the extent that the Chairman is requesting the deposition to obtain information to support his request that the Governor recuse himself from the removal proceeding, it should not be permitted.

7) While New Hampshire has traditionally favored a liberal policy of discovery, that policy is not without limitations. Superior Court Rule 35(c) permits a court, upon good cause shown, to "make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, during discovery, including an order that the discovery request not be allowed."

8) "[T]he federal courts have uniformly held that a highly-placed executive branch governmental official should not be called upon personally to give testimony by deposition, at least unless a clear showing is made that such a proceeding is essential to prevent prejudice or injustice to the party requesting it." *Monti v. State of Vermont*, 563 A.2d 629, 631 (Vt. 1989). This policy is "founded on notions of the public's interest in limiting unnecessary demands on the time of highly placed public officials." *Id.* "[P]ublic policy requires that the time and energies of public officials be conserved for the public's business to as great an extent as may be consistent with the

ends of justice in particular cases.” *Community Fed. Sav. & Loan Assoc. V. Fed. Home Loan Bank Bd.*,
96 F.R.D. 619, 621 (D.D.C. 1983).

9) A deposition aimed at seeking evidence to support the Commissioner’s assertion that the Governor has prejudged the case and should recuse himself would be an unnecessary demand on the Governor’s time. As was stated in the letter to Chairman Bodi denying his initial request, “the Governor has stated publicly that he will listen to and evaluate all of the evidence presented at the hearing and act accordingly without prejudice.”

10) In his motion, Commissioner Bodi includes a list of other individuals he wishes to depose. Those depositions will be done by agreement and thus no order from this body is required.

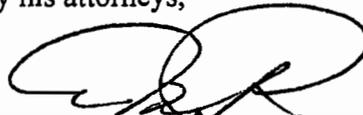
WHEREFORE, Attorney General Delaney respectfully requests that:

- a) Commissioner Bodi’s request to depose Governor Lynch be denied; and
- b) Such further relief be granted as may be deemed just.

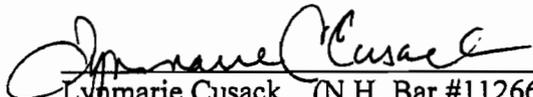
Respectfully submitted,

MICHAEL A. DELANEY,
Attorney General

By his attorneys,



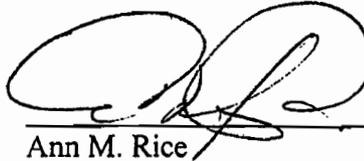
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August 20, 2010

I hereby certify that a copy of the foregoing was mailed this day, postage prepaid, to Philip T. McLaughlin, counsel of record.



Ann M. Rice