

STATE OF NEW HAMPSHIRE
THE GOVERNOR AND THE EXECUTIVE COUNCIL

Docket No. 10-001

In re: Petition for Removal of Commissioner Mark Bodi

**PROVISIONAL ORDER REGARDING PENDING MOTIONS
AND PRE-HEARING DISCLOSURES**

The following Provisional Order is issued following a pre-hearing conference of the parties conducted on September 14, 2010 with respect to several motions and pre-hearing disclosures filed by the parties in the above-captioned matter. To the extent possible, the motions will be addressed in the order in which they were filed:

1. Commissioner Bodi's Pre-Hearing Disclosure of Witnesses and Exhibits and Addendum to Witness and Exhibit List.

Chairman Bodi, through counsel, has filed initial and supplemental witness lists identifying 13 potential witnesses that he may chose to call. The State filed a motion in limine to exclude testimony of several of these witnesses and has questioned the relevance of proffered testimony of others. Following the hearing and proffers of expected testimony, it would appear that ruling on the admissibility of testimony of several of these witnesses is premature. Chairman Bodi's counsel has indicated that Mr. Harvey Hill, Director John Bunnell, Director Craig Buckley Chief Financial Officer George Tsiopras, and Rep. Mary Beth Waltz are intended to be called as rebuttal witnesses in anticipation of evidence that the State has indicated it would not present. Consequently, ruling on the admissibility of testimony from the witnesses named by Commissioner Bodi and to which the State has moved to exclude is deferred until such time as they may be called at the hearing. With respect to the listing of Senator Margaret

Hassan and Senator Lou D'Allesandro; whose testimony was objected to by the State, the parties indicated that they may be able to submit an agreed-upon stipulation of their testimony and thereby obviate the need to call either or both of these witnesses. Consequently, we defer ruling on the admissibility of their testimony without prejudice to Commissioner Bodi to renew a request for their testimony at the hearing.

With respect to Mike Somers of the NH Lodging and Restaurant Association, Attorney McLaughlin indicated that he no longer seeks to call Mr. Somers as a witness.

Rulings on the admissibility of exhibits listed on Commissioner Bodi's initial and supplemental exhibit lists are also deferred until such time as any are offered as evidence at the hearing..

2. Motion to Compel Attendance of Representative Daniel Eaton.

Commissioner Bodi, through counsel, has moved to compel the testimony of Representative Daniel Eaton at the removal hearing. Although we note that compulsion of the testimony of an elected member of the legislature such as Representative Eaton by the Governor and Executive Council at an executive branch hearing raises questions concerning the separation of powers, Representative Eaton has voluntarily agreed to appear and testify at the removal hearing. As a result, Commissioner Bodi's motion, as well as the constitutional issues it raises, are moot.

3. Motion to Compel Disclosure of Contacts.

Commissioner Bodi filed a motion requesting that the Governor and Council compel the Attorney General to disclose "any communication with the Governor in person by e-mail, mail, and/or via Governor's staff, pertaining to the petition or the

allegations in the petition.” The parties advised counsel at the pre-hearing conference that the Attorney General has provided information in response to this motion and have resolved this issue. Accordingly, we need not take any action on this motion.

4. Motion to Confirm Order and Length of Opening and Closing Statements.

Commissioner Bodi’s motion to present an opening statement not to exceed forty minutes and a closing statement of the same length is granted. Opening and closing statements will be in the following order: The State will open first followed by the Respondent. Respondent will close first followed by the State.

5. State’s Motion in Limine Re: Evidence of Commissioner Bodi’s Work Performance.

The State seeks a ruling in advance of a hearing to prohibit Commissioner Bodi from introducing, inter alia, evidence of his general work performance as a Liquor Commissioner, as well as evidence regarding the “work performance of other commissioners and comparing his performance with that of other or current or former liquor commissioners.” As the State’s Petition seeks the removal of Commissioner Bodi from his position as Commissioner based upon his conduct of official duties as commissioner, testimony regarding Commissioner Bodi’s performance of his duties may be relevant to the issue of whether or not his removal is warranted. Testimony from Commissioner Bodi or witnesses he may call regarding the general work performance of other Liquor Commissioners is, in our opinion, irrelevant and immaterial to the the allegations of Commissioner Bodi’s interference in an ongoing law enforcement investigation, which constitute the basis of the Attorney General’s petition for removal. See RSA 541-A:33,II (irrelevant, immaterial and unduly repetitious evidence may be

excluded at an administrative adjudicative hearing). Commissioner Bodi may testify concerning his own job performance to the extent that it is relevant to the allegations in the petition and to the issue of his removal from office. Testimony regarding the general work performance of other commissioners, absent further showing of relevance, is excluded.

6. Motion to Exclude Testimony of Senator Hassan and Senator D'Allesandro.

The State has filed a Motion to Exclude Testimony of Senators Hassan and D'Allesandro. For the reasons cited above, a ruling on the motion is deferred until such time as the testimony of one or both are offered at the hearing.

7. Petitioner's Witness List.

The State has indicated that it intends to call five named individuals. Commissioner Bodi has raised no objection to the witnesses identified in this State's list. It is anticipated, therefore, that the State will present the identified witnesses without objection.

With respect to the State's Exhibit List, Commissioner Bodi has indicated that he has no objection to any of the exhibits listed therein. With the exception of enumerated Exhibit #8, which apparently purports to reserve the right on behalf of the State to introduce otherwise non objectionable exhibits from Commissioner Bodi's Exhibit List, it is anticipated that the exhibits listed on the State's Exhibit List will be admitted without objection.

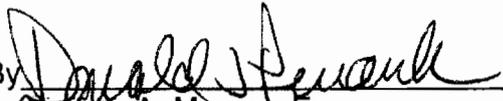
8. State's Omnibus Motion In Limine to Exclude Certain Testimony and Evidence Listed in Respondent's Addendum to His Exhibit and Witness List.

The State has filed the above-captioned motion asking for rulings in advance of the hearing concerning the exclusion of certain proffered testimony and exhibits. The issues raised in the State's motion have either been ruled upon elsewhere in this Order or deferred until the hearing on this matter. Consequently, no further ruling on the State's motion is required at this time.

The undersigned counsel have requested that the parties supply the Governor and Executive Council with one original and eight copies of any exhibit that is offered for identification and admission at the hearing.

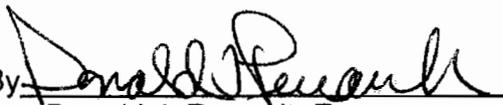
This Order is issued pursuant to the authority provided by the Governor and Council Order dated August 11, 2010 and is subject to the parties' rights to appeal as enumerated in the August 11, 2010 Order.

GOVERNOR JOHN H. LYNCH

By 
Jeffrey A. Meyers, Esq.
Legal Counsel

Dated: September 17, 2010

HON. MEMBERS OF THE NEW HAMPSHIRE EXECUTIVE COUNCIL

By 
Donald J. Perrault, Esq.

Dated: September 17, 2010

