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1995-2007

October 19, 2010

10-002

Hon. Joanne Ruel, Executive Assistant
Executive Council
State House, Room 207
107 N. Main Street
Concord, NH 03301-4990

Re: Peter C. Hildreth, Bank Commissioner

Dear Ms. Ruel:

Enclosed herewith, please find original and six (6) copies of a Motion for Recusal of Governor John H. Lynch Founded on Constitutionally-Prohibited Bias in regard to the above-captioned matter.

Thank you very much.

Very truly yours,

By: _____
Kirk C. Simoneau, David L. Nixon, and
Lawrence A. Vogelman, Attorneys for
Peter C. Hildreth

KCS/jmj
Enclosures
cc: Peter B. Krupp, Esq., Prosecuting Attorney to Gov. John H. Lynch and the Executive Council
Donald J. Perrault, Esq., Legal Counsel to the Executive Council
Jeffrey A. Meyers, Esq., Legal Counsel to Gov. John H. Lynch
Hon. Michael A. Delaney, Esq., Attorney General

THE STATE OF NEW HAMPSHIRE

EXECUTIVE COUNCIL

IN RE

PETER C. HILDRETH, BANK COMMISSIONER

MOTION FOR RECUSAL OF GOVERNOR JOHN H. LYNCH FOUNDED ON CONSTUTIONALLY-PROHIBITED BIAS

NOW COMES Bank Commissioner Peter C. Hildreth, respondent in the above-captioned matter, and respectfully moves that Governor John. H. Lynch recuse himself from participating in the above-captioned matter, and in support thereof, states:

1. Part I, Article 35 of the New Hampshire Constitution states plainly, "[I]t is the right of every citizen to be tried by judges as impartial as a lot of humanity will admit." As it is the Governor who called for Commissioner Peter Hildreth's removal, he certainly cannot be called impartial. The fact that he initiated the proceedings to terminate Mr. Hildreth as Bank Commissioner evinces his partiality.

2. Both *John A. King v. Meldrim Thomson, Jr.*, 166 NH 838 (1976) and *NH Milk Dealers Assoc.v. Milk Control Board*, 107 NH 335 (1966) clearly state that Part I, Article 35 of the New Hampshire Constitution governs proceedings of the Governor and Council, "[W]hile they are conducting hearings pursuant to RSA 4:1."

3. The issue here is fundamentally one of due process. Commissioner Hildreth met with the Governor on the FRM Matter at least twice, and was instructed during those meetings to "remain silent" on the matter, and not respond to criticisms of his, the Bureau of Securities, or the Attorney General's handling of the FRM Matter, or criticisms of him or the New Hampshire

Banking Department. In fact, in a May 27th meeting between the Governor and Commissioner Hildreth, the Governor informed Commissioner Hildreth that the Governor and the five members of the Executive Council demanded that Commissioner Hildreth resign. At that meeting, the Governor gave Commissioner Hildreth the weekend to "think about it," and Commissioner Hildreth was again instructed not to speak to the press. Commissioner Hildreth very rarely was invited to meet the Governor during his time in office. The fact that these limited meetings involved the Governor informing the Commissioner that he insisted upon his resignation, clearly demonstrates the Governor's bias in this matter, prohibited by the New Hampshire Constitution.

4. Additionally, there have been, on information and belief, three to four meetings of the Governor and the Executive Council prior to the initiation of the pending removal proceedings against Bank Commissioner Peter C. Hildreth. These included nonpublic sessions during which Mr. Hildreth's conduct and activities and his tenure as Bank Commissioner for the State of New Hampshire were, in fact, discussed and severely criticized by Governor John Lynch. The minutes of all these meetings are the subject of a Motion for Discovery filed on October 15, 2010. The fact that after these meetings the Governor demanded the removal of Commissioner Hildreth manifests his inability to be fair and impartial, as required by the Constitution; and thus, he should be recused from participating in the instant proceeding.

WHEREFORE, the Respondent respectfully requests that the Executive Counsel issue an order:

A. Recusing Governor John H. Lynch from participating in the RSA 4:1 removal proceedings set to commence November 29, 2010, only six weeks away; and

B. Order such other and further relief as is deemed equitable and just.

Respectfully submitted,

Peter C. Hildreth,

BY: NIXON, RAICHE, VOGELMAN,
BARRY & SLAWSKY, P.A.

DATE: October 19, 2010 BY: _____

Kirk C. Simoneau (NHB# 19291)
David L. Nixon (NHB# 1879), and
Lawrence A. Vogelman (NHB #10280)
77 Central Street
Manchester, NH 03101
603-669-7070

CERTIFICATION

I hereby certify that copies of the foregoing Motion For Recusal of Governor John H. Lynch were this date mailed to Peter B. Krupp, Esq., Prosecuting Attorney for Governor John H. Lynch and the Executive Council, Donald J. Perrault, Esq., counsel to the Executive Council, Jeffrey A. Meyers, Esq., Legal Counsel to Governor John H. Lynch, and Hon. Michael A. Delaney, Attorney General or his designee.

_____
Kirk C. Simoneau