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For a more Authentic Democracy

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August 10, 2007

Dear Commission Chair Friedman:

Regarding your letter of August 9, there is at best a miscommunication. At worst, it seems you may be attempting to avoid carrying out your statutory duties regarding a colleague. Such an appearance of a violation of ethical standards is unacceptable from the Chair of the Ethics Commission. Therefore it is necessary that we clarify this immediately by having this matter on the agenda for Monday's meeting.

First, your letter misstates key facts:

The call for an investigation I sent to the Governor and legislative leadership on July 2 was not addressed to the Commission as you indicate. I copied the Commission as a courtesy. Why was the Commission not included despite the fact that many of the matters clearly fall within its jurisdiction? It should be self-evident that the Commission should not investigate and adjudicate matters regarding one of its own. That does not mean the Commission is excluded from taking other actions pertaining to this matter. I detailed some of those in my August 6 letter.

Also, you misrepresent what I requested in that letter. This is unworthy of the Chair of the Ethics Commission. I did not, as you state, request "...that the Ethics Commission undertake to determine the qualifications to serve as a member of the Commission...and to investigate whether she had engaged in any prohibited activities..."

At the July 16 meeting, Assistant Attorney General Gardiner offered her novel "It Just Sits There" doctrine as the appropriate procedure here. In my letter, I put forward a different approach and asked the Commission to decide between them:

The following document compares and contrasts the "It Just Sits There" doctrine and the "Above Reproach" approach as well as the actions that must follow either of their formal adoption. I request that a discussion of these and a formal vote to choose between them and these actions be included on the August 13 agenda.

That was what I requested. As yet, you have not responded to it.

In addition, statements you make in your letter need to be addressed. My letter details many possible responses that would be taken by an "Above Reproach" Commission. Are any actions pertaining to Commissioner Ginn Marvin required by law? The statutes you quote make it clear that for the Commission to "just sit there" would be a dereliction of duty:

1 § 1008. General duties

The general duties of the commission shall be:

1. **Legislative ethics.** To investigate and make advisory recommendations to the appropriate body of any apparent violations of the ethical standards set by the Legislature...

This is drawn very broadly. There is no explicit exemption made to exclude adherence to the “ethical standards set by the Legislature” regarding membership on the Commission esp:

2. **Qualifications.** The members of the commission must be persons of recognized judgment, probity and objectivity.... A person may not be appointed to this commission...who is an officer of a political committee...

Does Commissioner Ginn Marvin have the requisite objectivity while serving on the MHPC board? The question itself indicates an “apparent violation of the ethical standards.” In addition, following the Commission’s statutory standard for initiating an investigation, I have shown in the addenda to my letter of August 6 “sufficient grounds for believing that” MHPC is a “political committee.” By this, I have met the requirement to “show sufficient grounds for believing that a violation (of the ethical standards) may have occurred” by the fact that Commissioner Ginn Marvin simultaneously serves on the Commission and on the MHPC board.

The Commission is required by statute “to investigate...any apparent violations of ethical standards.” The Commission may fulfill that obligation partially by placing the matter on the Commission meeting agenda Monday. The next step to fulfill the Commission’s statutory obligations is to acknowledge by formal vote that Commissioner Ginn Marvin’s actions are an “apparent violation of ethical standards.” Then the Commission must make a recommendation to the Attorney General, the Governor, or some other “appropriate body.” It seems that the appropriate recommendation is that the other “appropriate body” assume the investigatory and adjudicatory functions the Commission would normally exercise in such cases but cannot here because it concerns a member of the Commission.

I await your response to the actual request made in my August 6 letter. In addition, I ask that the Commission add to that agenda item the determination by formal vote that Commissioner Ginn Marvin is in “apparent violation of the ethical standards” and then vote to “make advisory recommendations to the appropriate body.” With all due respect, your letter raises questions about your commitment to governmental ethics. Failure to put this matter on the Monday agenda would raise fundamental doubts about the agency’s integrity.

Yours very truly,

A handwritten signature in black ink, appearing to read "Carl P. Fick", with a long, sweeping underline.

cc Cassidy, Shiah, Thompson, Wayne, Gardiner, Lavin, *et alia*.