

OFFICE OF THE
FEDERAL PUBLIC DEFENDER
MIDDLE DISTRICT OF TENNESSEE

HENRY A. MARTIN
FEDERAL PUBLIC DEFENDER

810 BROADWAY, SUITE 200
NASHVILLE, TENNESSEE 37203-3805
TELEPHONE: 615-736-5047
FAX: 615-736-5265

September 23, 2013

Mr. Brian Livingston
Mr. John "Jack" LaSota
Ms. Ellen Kirschbaum
Ms. Donna Harris
1645 W. Jefferson
Suite 101
Phoenix, AZ 85007

Via Facsimile and Email

Re: Edward Schad Request for Sentence Commutation and Executive Clemency

Dear Members of the Arizona Board of Executive Clemency,

On behalf of Mr. Schad, I write to request that each of you recuse yourself from the upcoming, October 2, 2013 hearing. The reason for this request is that I have recently received information that I believe reveals that Mr. Schad cannot currently obtain a full and fair clemency hearing that comports with principles of federal due process before this board. *See Ohio Adult Parole Authority v. Woodard*, 523 U.S. 272 (1998).

With respect to Mr. Livingston and Ms. Kirschbaum, I have been informed that a witness has indicated that Mr. Livingston and Ms. Kirschbaum, and possibly others, engaged in an informal conversation wherein each specifically opined that he or she would never recommend clemency for Mr. Schad and expressed concern about what the Governor might think of such a recommendation. It is alleged that this conversation took place shortly after the previous hearing for Mr. Schad was cancelled either in late February or early March, 2013. Such a conversation violates the Arizona open meetings law, A.R.S. § 38-431.04, and evidences a specific bias on the part of Mr. Livingston and Ms. Kirschbaum against Mr. Schad denying him of fundamental due process. *See Ohio Adult Parole Authority v. Woodard*, 523 U.S. 272 (1998).

With respect to Ms. Harris, Ms. Harris has only recently been appointed to the Board and as such cannot comply with the training requirements necessary to sit as a voting member of the Board at Mr. Schad's upcoming scheduled clemency hearing. A.R.S. § 31-401.

With respect to all Board Members, I have been informed that the Governor's office has in the past sent letters addressed to Board Members expressing displeasure with certain board members votes in favor of clemency. It has also been alleged that certain Board Members have been summoned to

September 25, 2013

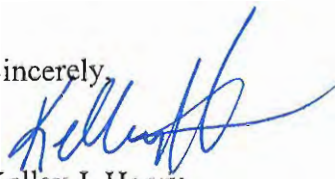
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meetings with members of the Governor's staff to express displeasure with board member votes. This attempt to influence the outcome of clemency procedures by members of the Governor's staff undermines the fairness and impartiality of the Board's hearings, promotes bias against an applicant, and deprives Mr. Schad of fundamental due process at any hearing. *See Ohio Adult Parole Authority v. Woodard*, 523 U.S. 272 (1998).

Accordingly, I ask each of you to recuse yourself from Mr. Schad's hearing. As time is of the essence, I request a written response by close of business, Wednesday, September 25, 2013. Response via email or facsimile is acceptable. My email address is kelly_henry@fd.org. My facsimile number is (615) 736-5265.

Thank you for your immediate attention.

Sincerely,



Kelley J. Henry

Supervisory Asst. Federal Public Defender



RE: Edward Schad #40496 
Kelley Henry to: Daisy Kirkpatrick
Cc: dyoung3
Bcc: Dale Baich, Tim Gabrielsen

09/23/2013 01:21 PM

Ms. Kirkpatrick,

Please deliver the attached letter to each member of the Board. Thank you.



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Kelley J. Henry
Supervisory AFPD - Capital Habeas
810 Broadway, Suite 200
Nashville, TN 37203
(615) 695-6906 (direct)
(615) 337-0469 (cell)

***** -COMM. JOURNAL- ***** DATE SEP-23-2013 ***** TIME 13:04 *****

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-FEDERAL PUBLIC DEFENDER -

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