

KUEHNE DAVIS LAW

PROFESSIONAL ASSOCIATION

BENEDICT P. KUEHNE*
SUSAN DMITROVSKY
MICHAEL T. DAVIS

*Board Certified
Appellate Practice and
Criminal Trial Practice

MIAMI TOWER, SUITE 3550
100 S.E. 2nd Street
MIAMI, FLORIDA 33131-2154
Tel: 305.789.5989
Fax: 305.789.5987
ben.kuehne@kuehnelaw.com
susand@kuehnelaw.com
mdavis@kuehnelaw.com

FORT LAUDERDALE OFFICE

1 W. Las Olas Blvd., Suite 500
Ft. Lauderdale, FL 33301

REPLY TO: Miami

February 5, 2018

George Vallejo, Mayor
Pamela Latimore, City Clerk
Ana M. Garcia, City Manager
City of North Miami Beach
NMB City Hall
17011 NE 19 Avenue
North Miami Beach, FL 33162-3100
Fax: 305-787-6026

Jose Smith, City Attorney
City of North Miami Beach
NMB City Hall
17011 NE 19 Avenue
North Miami Beach, FL 33162-3111
josesmith@citynmb.com

Re: City Commissionerr Frantz Pierre
Objection to Vacancy Recommendation
and Selection of Replacement

Dear Mayor Vallejo, Clerk Latimore, Manager Garcia, and City Attorney Smith:

Please distribute this letter to the entire Commission prior to the Special Meeting.

On behalf of duly elected City Commissioner Frantz Pierre, I register this objection to the determination that his seat has automatically become vacant by operation of City Charter section 2.5.

At no time has Commissioner Pierre vacated his office or failed to comply with the attendance requirements of the City Charter and Florida law. Even as he slowly recovers from a serious medical condition, he has attended to his duties and responsibilities as an elected public official. He continues to serve the interests of the public and his constituents.

Contrary to the assertions contained in the January 25, 2018 Memorandum from Jean Olin, Commissioner Pierre attended Commission Meetings telephonically. He was present telephonically at Commission Meetings. His telephonic attendance was duly and officially recognized in the City Commission Minutes. He cast votes during his telephonic attendance, and his votes have been deemed official votes and counted. At no time has either his telephonic attendance or his voting been questioned or made the subject of a formal or informal objection.

Even more to the point, Commissioner Frantz recently participated in the Commission Meeting on January 16, 2018, both online and by phone. His participation in this form has been acceptable for any Commissioner unable to physically participate. Commissioner Pierre's presence and attendance was facilitated by the City, since he was sent the necessary equipment to participate as designated. Commissioner Pierre attended the entire meeting, starting at 6:00 p.m., through its conclusion at 2:00 a.m.

Most importantly, Commissioner Pierre's telephonic attendance was based on the specific advice given to him by the City Attorney, who informed Commissioner Pierre of his ability to attend Commission Meetings by telephone as he recuperates. Commissioner Pierre relied on the advice and counsel of City Attorney Smith, and scrupulously followed that advice. Commissioner Pierre believed that advice was fully compliant with Florida law. His attendance by telephone is legally permissible under Florida law.

Commissioner Pierre's attendance and presence at the Commission Meetings satisfied his Charter attendance obligation. Had the City Attorney informed him of an obligation to be "physically present" or "present in person" in order to comply with the Charter provision, he would have physically appeared at the Commission chambers for the meetings when he was physically able to do so. Instead, his reliance on the City Attorney's advice and the specific Charter language that does not require "physical" presence comports with his Charter obligations and Florida law.

In view of Commissioner Pierre's attendance at required Commission Meetings, he has not "failed to attend a meeting of the City Commission for a period of one hundred twenty (120) days ..." There is no automatic vacancy. Accordingly,

Commissioner Pierre requests that the Commission not act to fill a vacancy that does not exist by operation of law or fact.

Commissioner Pierre intends to seek enforcement of his status as an elected official in good standing, and disputes the ability of the Commission to declare a vacancy or act to fill the seat to which he was elected and still occupies by the affirmative vote of the citizens of North Miami Beach.

Commissioner Pierre also objects to the City's unilateral determination without proper and timely notice to him, and without any meaningful opportunity to participate in the City's decisions or protest its actions. He further objects to the locks being changed on his Commission office door.

Please contact me if you have any questions or seek further information.

Respectfully submitted,

A handwritten signature in blue ink that reads "Benedict P. Kuehne". The signature is written in a cursive style with a large initial 'B'.

BENEDICT P. KUEHNE