



TOOHER & WOCL LLC
ATTORNEYS AT LAW

80 FOURTH STREET
STAMFORD, CT 06905
TEL (203) 324-6164
FAX (203) 324-1407
www.tooherwocl.com

PLEASE REPLY TO
STAMFORD OFFICE

1375 KING'S HIGHWAY EAST
FAIRFIELD, CT 06824
TEL (203) 333-3339

NICHOLAS E. WOCL
BRENDEN P. LEYDON*
DONALD A. HENDEIE, JR.
RIKER J. DONAHUE
DAVID J. TIANI
JOSEPH J. TOOHER, JR.*
*Of Counsel
*also admitted in N.Y.

August 17, 2007

Sen. Andrew J. McDonald
Rep. Michael P. Lawlor
Co-Chairs Judiciary Committee
Legislative Office Building
Hartford, CT 06106-1591

Re: Nomination of Hon. John R. Downey to Appellate Court

Dear Honorable Chairman:

It has been brought to my attention that an issue has been raised regarding a dialogue occurring during an oral argument I had before Judge Downey in the case of Jaiquay v. Vasquez, DN CV 03-0195804 S. This was a complex summary judgment proceeding in a matter which was subsequently transferred on appeal to the Connecticut Supreme Court, where it is currently pending, Supreme Court Docket Number 17814.

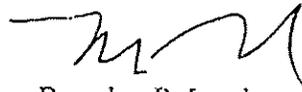
The subject matter of the case was the wrongful death of my client, a recent immigrant from Ecuador, who was being illegally transported in truck by a driver who was not properly licensed in a truck that was only legally able to carry 5 people but whom 9 people had been placed on the way back from a landscaping job. The summary judgment proceeding dealt with difficult and challenging legal issues relating to choice of law and worker's compensation exclusivity.

During the course of that proceeding, Judge Downey stated that he presumed that my client had legal immigration status and posited that someone who did not have legal immigration status might not have the right to bring a proceeding in a court of law. This was a very cursory discussion of an interesting intellectual issue that did not go anywhere as it was not an issue raised or briefed by the parties, nor did it factor into Judge Downey's decision legally or factually. I did not perceive there to be anything improper about this exchange and frankly hadn't given it any thought since until recently being informed that it had surfaced as an issue in Judge Downey's nomination.

From a policy perspective, I think it would be particularly problematic if we were to start jeopardizing the careers of our judges on the basis of what amounts to academic musings in the course of oral argument. From the advocate's perspective, this is the one opportunity to have a discourse with the court on whatever issues may be concerning them about our case. We should be encouraging such discourse as much as possible in an age when the quantity and quality of oral argument is continually shrinking across all forums. It would set a terrible precedent to seek to overly scrutinize and interpret such discourse and impose any adverse consequences on it based on a perceived conflict between what was said and someone else's political agenda. This could easily lead to judicial aversion to any type of exchange on the record on topics that might be controversial or politically charged.

Judge Downey has a well earned reputation for fairness and thoughtfulness, and I say this despite his having ruled against my client in the case in question. I fully support his nomination and would hate to see an innocent intellectual exchange occurring during the course of one of my arguments misconstrued to hinder his appointment. Thank you for your consideration.

Sincerely,



Brenden P. Leydon

Hon. John R. Downey
Ms. Melissa Farley, Executive Director Judicial Branch External Affairs