




THE FLORIDA SENATE
SENATOR BILL GALVANO
President

MEMORANDUM

TO: All Senators
FROM: Bill Galvano 
SUBJECT: Executive Suspension of Dr. Brenda Snipes
DATE: December 13, 2018

Florida's Constitution delegates to the Senate the authority to remove from office or reinstate a suspended elected official. The procedures for such action are enumerated in state law and our Senate Rules, and informed by relevant case law. The decision to remove or reinstate a public servant duly elected by the citizens of this state is a solemn responsibility; one I have approached cautiously and with the due diligence you expected when you entrusted me with the responsibility of serving as President of the Senate.

As you are aware, on November 30, 2018, Governor Scott issued an Executive Order suspending Dr. Brenda Snipes, Broward County Supervisor of Elections. Upon receiving notice of the suspension, I directed Senate General Counsel Jeremiah Hawkes to review the requirements under Florida's Constitution and the process under Senate Rule 12.7 for the Senate to act on the suspension. I directed Mr. Hawkes to take into account the totality of facts surrounding the suspension, including the unconditional letter of resignation Dr. Snipes submitted to the Governor on November 18, 2018, and the Governor's subsequent appointment of a successor.

I have reviewed Mr. Hawkes' legal memorandum on this matter, which I have attached for your reference. In summary, the Florida Constitution provides the only two options for the Senate in regards to an executive suspension are to remove from office or to reinstate the suspended official, and the Senate Rules require an inquiry or investigation prior to such an action by the body. We are presented with a situation where Dr. Snipes' unconditional resignation will take effect on January 4, 2019, well before the Senate can complete a full investigation into the serious assertions made in the Governor's Executive Order.

Past Senate practice as recently as 2012 dictates if a term ends prior to the Senate being able to take action, then no further proceedings are held. For this reason, I have directed Secretary Brown to inform Dr. Snipes no further action will be taken by the Senate. Secretary Brown's letter is also attached for your reference.

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This decision in no way reflects on Dr. Snipes, the Governor, or their actions. The decision merely reflects that no timely action can be taken by the Senate. Nothing precludes Dr. Snipes from seeking a judicial determination of any rights she may have related to the Office of Broward County Supervisor of Elections.



THE FLORIDA SENATE

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DEBBIE BROWN
Secretary

December 13, 2018

Dr. Brenda C. Snipes
2726 Northwest 36th Terrace
Lauderdale Lakes, FL 33311
VIA CERTIFIED MAIL

Re: Executive Order of Suspension, EO 18-342

Dear Dr. Snipes,

On December 3, 2018, the Florida Senate received notification of Executive Order Number 18-342, Executive Order of Suspension issued by Florida Governor Rick Scott, which suspends you from office as the Broward County Supervisor of Elections effective November 30, 2018. The Senate also obtained a copy of your November 18, 2018, unconditional letter of resignation from office effective January 4, 2019. By its terms your resignation was unconditional, it was acted upon by the Governor in the Executive Order, and a successor has already been appointed and sworn into office. Your term of office will expire under any circumstance prior to the Senate being able to consider the matter. The Senate President has determined under Senate Rule 12.7, no further action is required.

A handwritten signature in cursive script that reads "Debbie Brown".

Debbie Brown
Secretary
The Florida Senate
Suite 405 Capitol
404 South Monroe Street
Tallahassee, FL 32399-1100
Phone: (850) 487-5270

Cc: Mr. Jeremiah M. Hawkes, General Counsel, The Florida Senate
Mr. Dan Nordby, General Counsel, Governor Rick Scott
Ms. Burnadette Norris-Weeks, Counsel, Dr. Brenda Snipes



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MEMORANDUM

To: The Honorable Bill Galvano, President
From: Jeremiah M. Hawkes, General Counsel 
Subject: Executive Suspension of Dr. Brenda Snipes
Date: December 13, 2018

You inquired as to the Senate's options under Senate Rule 12.7 to act on Governor Scott's suspension of Dr. Brenda Snipes, Broward County Supervisor of Elections. You also inquired as to how the options available to the Senate could be impacted when an elected official withdraws a resignation after it has been submitted to the Governor.

The facts presented are these:

- On November 18, 2018, Dr. Brenda Snipes, Broward County Supervisor of Elections, tendered an unconditional resignation to Governor Rick Scott effective January 4, 2019.
- On November 30, 2018:
 - Governor Scott issued an executive order suspending Dr. Snipes from Office, with immediate effect. The order cited, amongst other reasons, the resignation tendered by Dr. Snipes.
 - Governor Scott also issued a letter appointing Mr. Peter Antonacci as Broward County Supervisor of Elections for a term beginning November 30, 2018, and ending January 4, 2021.
- On December 3, 2018:
 - The Secretary of the Senate received official notification of the executive suspension.
 - Mr. Antonacci took the oath and assumed the office.
 - Ms. Burnadette Norris-Weeks, Esquire, attorney for Dr. Snipes contacted the Senate inquiring about the process for initiating a Senate hearing regarding the Governor's suspension.
- On December 6, 2018, Ms. Norris-Weeks submitted a letter to Governor Scott purporting to rescind the resignation on behalf of Dr. Snipes.

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The Florida Supreme Court in *In Re Advisory Opinion to the Governor*, 151 So. 441 (Fla. 1934) held that a resignation could only be withdrawn prior to the Governor issuing a commission to a new appointee. See also AGO 88-2. In the context of judicial resignations, unconditional resignations have been considered grounds to call the Judicial Nominating Commission and appoint a new judge. See *Trotti v. Detzner*, 147 So.3d 641 (1st DCA 2014). In these cases, Florida courts are applying what has been referred to as a reliance standard, where the resignation is effective when the appointing authority acts upon it, versus an acceptance standard where the resignation is effective when the appointing authority accepts it. Office holders have a right to resign and choose the timing of their resignation. Florida Courts have been quite clear acceptance by the Governor is no bar to resignation. See *Smith v. Brantley*, 400 So.2d 443, (Fla. 1981).

Therefore in the present case, where the officeholder made an unconditional resignation, the Governor suspended the officeholder and appointed another, in part because of that resignation, case law informs us the officeholder can no longer withdraw the resignation.

This case is distinct from the 1934 *In Re* case in that the commission has not been delivered. However, this is not fatal to the conclusion above for a number of reasons. Firstly in that case, the successor had not yet taken office. In this case the successor has. Secondly, the legislature has passed section 112.46, Florida Statutes which provides in relevant part: "It is the intent of this part to provide that the formal execution of a commission by the Governor and a delivery thereof to the officer is a ministerial duty not necessary either to the performance of the duties of that officer or to the susceptibility to suspension of that officer." In 1934, under the previous constitution, there was no provision for resignation and no statutes dealing with it. With the modern statutory scheme, it is clear the Governor has acted relying on Dr. Snipes' resignation and the opportunity for Dr. Snipes to withdraw her resignation has passed.

Article IV, Section 7 of the Florida Constitution states the only two options before the Senate in regards to a suspension are to "remove from office or to reinstate the suspended official." Since Dr. Snipes resignation will have taken effect before the Senate can complete an investigation into the assertions made in the Governor's Executive Order, neither of these options are available to the Senate.

This is not to suggest Dr. Snipes is without any redress. Section 112.46 F.S. provides "nothing in this part shall prohibit or preclude any officer claiming title to any office from seeking a judicial determination of his or her right to such office."

The only issue a future suspension hearing might take up is the question of back pay for the time period of November 30, 2018, through January 4, 2019, and attorneys' fees. The award of back pay and attorneys' fees is discretionary with the Senate. See Section 112.44 F.S. There is only an entitlement if there is a definite reinstatement. See AGO 13-23.

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Past Senate practice has been that if a term ends prior to the Senate being able to take action then no further proceedings are held. See e.g. *Fla. S Jour.* 699 (Reg. Sess. 2012). Since Dr. Snipes has resigned and the expiration of her term is on January 4, 2019, this matter is moot and should be considered closed.