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July 23, 2014

Kathleen Baydala Joyner
Staff Reporter
Fulton County Daily Report
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Re: Statement of Attorney General Olens on Ethics Commission Matters

Dear Ms. Joyner:

As you have requested, I have reviewed

1. the Memorandum of Record dated July 17, 2012 written by Holly LaBerge, Executive Secretary, Georgia Government Transparency & Campaign Finance Commission ("Ethics Commission") (Attachment 1) and related correspondence from her private attorney, Lee Parks, dated July 11 and July 16, 2014;
2. the Statement of Attorney General Olens on Ethics Commission Matters, regarding the LaBerge Memo, released July 15, 2014 (Attachment 2);
3. discovery requests and responses obtained by you from the Fulton County Clerk and from the Office of the Attorney General in the cases of Sherry Ellen Streicker v. Georgia Government Transparency & Campaign Finance Commission and Stacey Kalberman v. Georgia Government Transparency & Campaign Finance Commission, Holly LaBerge and Patrick Millsaps; and
4. various other documents posted publicly on the internet.

The Attorney General's Statement raises more questions than it answers as to whether Mr. Olens and the attorneys under his supervision conducted themselves in accordance with their duties as public officials and as licensed attorneys.

- In my opinion, the Attorney General should immediately release to the public documents relating to his determination in August 2013 that no criminal investigation should be made relating to the facts disclosed in the LaBerge memo; such

documents relate to his duties as a prosecutor and therefore attorney client privilege would not prevent making them available to the public.

- It is also my opinion that the Attorney General should immediately request specific permission from the Georgia Government Transparency & Campaign Finance Commission to release to the public documents from his office relating to his decisions in August 2013, and thereafter, not to disclose the LaBerge memo to the plaintiffs or to the court during the Kalberman, Streicker and Hair lawsuits.
- If the Commission refuses to give that permission, the Attorney General should consider releasing these documents pursuant to Georgia Rule of Professional Conduct 1.6, which allows a lawyer to release information otherwise protected by client confidentiality to the extent necessary to respond to assertions that the lawyer has acted unethically. Comment 16 to Rule 1.6 indicates that the lawyer can defend himself without waiting for the commencement of an action or proceeding formally alleging misconduct.
- Finally, these documents can be produced pursuant to Rule 1.6(b)(1)(iii) if the Investigative Panel of the State Disciplinary Board initiates an investigation into the conduct of the responsible attorneys in the office of the Attorney General. State Bar Disciplinary Rule 4-203(a)(2) provides that the Investigative Panel has the power and duty "to initiate grievances on its motion." Internal Rule 5(e) of the Investigative Panel further provides that "When the Office of the General Counsel receives information that appears to invoke the disciplinary jurisdiction of the State Bar of Georgia, but no grievance form is filed, the information should be brought to the attention of the Panel for the Panel to consider instituting a grievance on its own motion pursuant to Bar Rule 4-203."

According to the LaBerge Memo, on July 16 and 17, 2012, while various complaints alleging misconduct by Nathan Deal during his 2010 gubernatorial campaigns were pending before the Ethics Commission, she received text messages on her personal cell phone while on vacation from Chris Riley, the Governor's Chief of Staff, and Ryan Teague, the Governor's Executive Counsel. LaBerge copied these text messages into her memo. On July 16, 2012, Riley explicitly engaged in negotiation with LaBerge regarding the pending complaints. In his first text message he asked "can [we] resolve all DFG [Deal for Governor] issues by Monday?" LaBerge replied by text saying, "A realistic counter [offer] by noon tomorrow is the best chance of a resolution." Riley wrote back by text, saying "That will be difficult, Ryan [Teague] said two of [the] issues, legal fees and aircraft are not even on the table for discussion. How can we give you a realistic counter [offer] when not all issues are ready?"

Between 6:31 am and 6:42 am on July 17, 2012, LaBerge and Teague exchanged 6 text messages, finally agreeing to talk by telephone that afternoon. According to the memo, Teague called LaBerge on her personal cell phone at 1:04 pm on July 17, 2012 and “made an offer of \$1,500 settlement, no admission of violations and everything else to be dismissed.” When LaBerge responded indicating that the offer was too low, according to the memo, Teague replied by saying, “it was not in the agency’s best interest for these cases to go to a hearing Monday [July 23, 2012]; nor was it in their best political interest either and that our rule making authority may not happen if the complaints were not resolved prior to Monday.”

The LaBerge memo concludes with the statement that she “felt it necessary to inform the Chairman of the Commission, Kevin Abernathy, about what had transpired” and that after she relayed “the texts and phone conversation, Kevin [Abernathy] stated that he would be passing this along to the Vice-Chairperson, Hillary Stringfellow and fellow commissioner, Kent Alexander.”

Six days after the July 17, 2012 telephone conversation between LaBerge and Teague, on July 23, 2012, the Commission conducted a formal hearing of the pending complaints against Deal and voted 3-1 to dismiss four of the complaints and to settle the three remaining complaints with the payment of \$3,350 in administrative fees for a series of “technical defects.”

According to the Attorney General’s Statement, his office was given the LaBerge memo in August 2013 but did not disclose its existence or contents to the plaintiffs or to the court during the Kalberman case, which resulted in a jury verdict in April 2014, nor during the Streicker case, which was settled in June 2014. Although not mentioned in the Statement, apparently the existence or contents of the memo were also not disclosed to plaintiff or the court prior to settling John Hair v. Georgia Government Transparency & Campaign Finance Commission in June 2014 or prior to obtaining a pre-litigation release of all claims from an Ethics Commission staff attorney, Elizabeth Murray-Obertein, in June 2014.

Decision not to pursue criminal investigation

According to the Attorney General’s statement, the week that the LaBerge memo was received, it was reviewed by “our chief prosecutor ... to determine if any criminal laws had been violated if the allegations in the memorandum were true.” Mr. Olens states that he was made aware of the memo after the chief prosecutor concluded his review “and determined that the allegations in the memorandum did not constitute crimes under state law.” These statements raise serious questions:

1. Who made the initial determination that the LaBerge memo should be reviewed to decide whether, if true, it contained evidence that one or more crimes had been committed? What statements in the memo raised such concerns?
2. Apparently in determining that no “crimes under state law” had been committed, no investigation was done beyond reading the memo itself. Why, for example, was no inquiry made as to whether representatives of the Governor, including Ryan and Teague, communicated with any of the Commissioners prior to the Commission’s decisions in his favor on July 23, 2012?
3. Who were the potential criminal suspects, and the potential crimes, considered by the chief prosecutor in his review of the memo? Were LaBerge and any of the Commissioners considered as potential suspects, for example, on suspicion that their actions in resolving the complaints against Deal were influenced in violation of the law? If LaBerge or any of the Commissioners were potential suspects, how was a determination made that conflict of interest rules did not prohibit the office of the Attorney General from investigating its own clients in the Kalberman and Streicker cases for potential crimes, especially for conduct closely related to facts at issue in the civil cases? Was appointment of a special prosecutor to review the possibility of criminal investigation considered in light of this conflict of interest?
4. What potential crimes under state law were considered in determining that the “allegations in the memorandum” if true did not provide evidence of such crimes? What elements necessary to find criminal violations were missing from the information provided by the memorandum?
5. The Attorney General’s Statement indicates that the “allegations in the memorandum did not constitute crimes under state law.” Was there consideration of providing the memorandum to federal law enforcement agencies for their independent review of whether the memorandum raised suspicion that any federal law had been violated?

The chief prosecutor was surely acting on his own authority and responsibility to enforce the criminal laws of Georgia in reviewing the LaBerge memo, and not as a lawyer for the Kalberman and Streicker defendants. Therefore any documents he received, reviewed and created in the process of determining that no criminal investigation should take place are not protected by any attorney-client privilege held by those civil defendants. Providing such documents for public review would be an important first step by the office of the Attorney General toward answering the questions listed above.

Decision not to disclose the LaBerge memo in the Streicker case

On June 8, 2012 the plaintiff in the Streicker case sent to each individual Commissioner and to LaBerge the First Requests for Production of Documents. (Attachment 3.)

- Request 10 requested production of “All documents concerning the violation of any law, rule or regulation by Georgia Governor Nathan Deal at any time, including all complaints filed with the Defendants, all files concerning the investigation of such complaints, and all documents obtained as part of such investigations.”
- The Definition section stated that “document” is used to mean “every writing or record of every type and description ... including without limitation ... communications, including intra-agency communications and correspondence ... notes and memoranda ... summaries; minutes and records of telephone conversations ... [and] reports and summaries of negotiations”.
- The word “concerning” was defined as “referring to, reflecting, evidencing, or supporting.”
- Plaintiff stated explicitly that all the Requests were to be deemed “continuing” and “If, after producing documents, you obtain or become aware of any further documents responsive to these Requests, you are required to produce those documents.”

On January 28, 2013 Senior Assistant Attorney General Bryan Webb (who represented the Ethics Commission and LaBerge at the Kalberman trial) served Defendant's Responses and Objections to Plaintiff's First Request for Production of Documents. (Attachment 4). In response to Request 10, Webb stated that “Documents responsive to this request have been produced on the disc accompanying these responses.” Although “General Objections” appear at the beginning, the Response does not ask that Plaintiff clarify or specify what was to be produced in response to Request 10 specifically or indicate that any document that could fall within the description of Request 10 was being withheld on the basis of objection or privilege or any other reason.

In his Statement, the Attorney General says that after receiving the LaBerge memo, “our civil trial team reviewed the memo to determine if it was subject to the pending discovery requests. ... [O]ur civil lawyers determined it was not responsive to the discovery request in the civil litigation.” The Attorney General goes on to refer to discovery requests in both the Streicker and Kalberman cases.

The Attorney General quotes from Request 10 in the Streicker case but then defends the failure to produce the LaBerge memo in that case by saying “The memo was not about violations of law, rule or regulation, it was not a complaint, it was not concerning the investigation of a complaint, and it was not a document obtained as part of an investigation.” He goes on to say: “I recognize that this may seem like a technical response. Let me be clear – I wish that a request had been issued to which the memorandum was responsive.”

The Attorney General and his staff clearly recognized that the LaBerge memo was potentially relevant to the Kalberman and Streicker cases. The theory of both cases was that Governor Deal had worked behind the scenes to remove both Kalberman and Streicker from their positions at the Ethics Commission after they began actively to investigate the complaints against him and then arranged for his own hand-picked candidate, LaBerge, to take over the Commission. It is apparently undisputed that before Kalberman left the Commission Ryan Teague contacted LaBerge to discuss her becoming the new Executive Secretary, the same Ryan Teague described in the LaBerge memo as threatening the Commission if the complaints against his employer, Governor Deal, were not resolved within the next few days. Assistant Attorney General Webb apparently recognized the centrality of this issue when he reportedly said in his opening statement to the Kalberman jury: "Let me make one thing perfectly clear. The defendant in this case is not the governor, governor's office or the governor's counsel ... There were no strings being pulled." (Greg Land, "Opening Arguments are Laid out in Ethics Trial," Fulton County Daily Report, April 1, 2014.)

Given the enormous public interest in the Kalberman and Streicker cases and the potential impact on the outcome of those cases if the LaBerge memo was revealed, presumably the civil trial team at the Attorney General's office conducted a very careful analysis, documented in one or more memos that could be reviewed by Attorney General Olens personally, in recommending that the LaBerge memo not be disclosed. Among the issues that should have been addressed in such a memo are the following:

1. When on January 28, 2013, the Attorney General stated in its response to Request 10 that it had produced "all files concerning the investigation of such complaints [filed with the Ethics Commission concerning Nathan Deal]" what were considered to be "files concerning the investigation"?
2. According to the Ethics Commission website, "after the complaint has been filed" the Commission staff "will conduct an investigation" and "in the course of the investigation" the Commission staff will "make recommendations for case resolution." (<http://ethics.georgia.gov/enforcementcompliance/complaint-resolution-procedure/> Updated 2/12/12) If "files concerning investigation" include staff recommendations for case resolution, would a memo from the Executive Secretary regarding settlement negotiations normally be placed in such a file?
3. According to the same Ethics Commission website, "After the investigation stage the case is scheduled for a preliminary hearing before the Commission." The LaBerge Memo was dated six days before the Commission hearing on the Deal ethics complaints. Were those complaints still in the investigation stage as of the date of that memo, and if not, would a new and different Commission file have been created in which the LaBerge Memo would have been appropriately filed?

4. If the LaBerge Memo was not placed in any of the Commission files that were produced in response to Request 10, but should have been so filed, should the LaBerge Memo be produced when the Attorney General's office subsequently became aware of it, pursuant to Plaintiff's request that "If, after producing documents, you obtain or become aware of any further documents responsive to these Requests, you are required to produce those documents."
5. Why did the first part of Request 10 asking for "all documents concerning the violation of any law, rule or regulation by Georgia Governor Nathan Deal" not apply to the LaBerge memo, particularly since the definition of "documents" included "intra-agency communications and correspondence ... notes and memoranda ... summaries; minutes and records of telephone conversations ... [and] reports and summaries of negotiations"? Would the analysis be different if Request 10 had more clearly stated "all documents concerning any *alleged* violation" of law by Nathan Deal, and if so, is it a good faith interpretation of Request 10 to read it as referring only to documents concerning actual or proven violations of law by Deal? Was the January 28, 2013 production in Response 10 based on reading Request 10 as only applying to documents concerning actual or proven violations of law by Deal?

Decision not to disclose the LaBerge memo in the Kalberman case

On March 26, 2013 the plaintiff in the Kalberman case served the Ethics Commission with its First Request for Production of Documents (Attachment 5). Request 2 stated "Please produce the Commission's entire investigative file concerning Nathan Deal, including all correspondence relating to that investigation into alleged ethical violations committed by his campaign for governor in the 2010 election cycle."

On April 19, 2013 plaintiff in the Kalberman case served Holly LaBerge with its First Request for Production of Documents (Attachment 6). Request 2 stated: "Please produce any and all correspondence, including emails ... concerning any issue relating to this lawsuit filed by Plaintiff, including correspondence pertaining to, without limitation, ... the Commission's investigation into alleged ethics violations by Nathan Deal (the "Deal Investigation"). Request 5 stated: "Please produce any and all correspondence, including emails ... between yourself and any employee or representative of the State of Georgia's Governor's Office, since July 1, 2011."

On June 14, 2013 Senior Assistant Attorney General Bryan Webb served Responses and Objections to Plaintiff's First Request for Production of Documents on behalf of both the Commission and LaBerge. In Response to Request 2 to the Commission for "the entire investigative file," Webb stated that the Commission "will produce such

documents.” (Attachment 7) In Response to Requests 2 and 5 to LaBerge, Webb stated that LaBerge “will produce such documents (Attachment 8).

In his Statement, the Attorney General says that Kalberman “requested ‘correspondence’ between Ms. LaBerge and the Governor’s Office,” apparently referencing Kalberman’s Request 5 to LaBerge but omitting the phrase “including emails.” The Attorney General then goes on to say: “The memo is not correspondence; it is a document written by Ms. LaBerge and retained by her. It did not become correspondence when she gave us a copy 13 months later.”

The decision not to disclose the LaBerge memo in response to the Kalberman discovery should have been carefully documented for the same reasons discussed above in relation to the Streicker case. Such a memo should have addressed at least the following issues:

1. The text messages included in the LaBerge memo were clearly written communications between LaBerge and representatives of the Governor’s Office. Request 5 specifically requested “correspondence, including emails.” Should the text messages not be produced for no other reason than that they were received on LaBerge’s phone through its text messaging software rather than its email software?
2. Were the text messages not to be produced because they were embedded in a document that was a memo to file rather than itself being an item of correspondence?
3. If the text messages were to be produced in response to a request for “correspondence, including emails,” should they produced without also producing the memo in which they were embedded?
4. Was there consideration of whether the LaBerge memo should be produced in response to Request 2 to the Commission for “the entire investigative file”? If not, why not? If production in response to this request was considered, were the same questions about the meaning of “file” considered as discussed above in relation to the Streicker case?

The Attorney General states that his office advised LaBerge in late 2013 that production of her memo would be “responsive” to a federal subpoena issued to her, in contrast to his office’s conclusion that the memo was “not responsive” to the discovery requests in the Kalberman and Streicker cases. Presumably the Attorney General is referring to a subpoena issued to LaBerge by Assistant United States Attorney Christopher Bly dated November 25, 2013 to produce “all documents ... related to Georgia Government Transparency & Campaign Finance Commission Case Numbers 2010-0033(a) - (c)”

which defined documents as including but not limited to “note, correspondence of any form, letters, electronic mail, memorandums ... recorded statements” (Attachment 9). Why was production of the LaBerge memo required in response to this subpoena but not required in response to Streicker Request 10 for production of “All documents concerning the violation of any law, rule or regulation by Georgia Governor Nathan Deal at any time, including all complaints filed with the Defendants, all files concerning the investigation of such complaints, and all documents obtained as part of such investigations”?

Attorney General Duties to Governor Deal

Governor Deal has publicly stated that he was unaware of the LaBerge memo until it was sent to the Commission and released to the media this month.

1. In August 2014 when the Attorney General received the LaBerge memo, was consideration given as to whether the Governor should be notified of its content? Presumably the Governor would have wanted to know that his Chief of Staff and Executive Counsel had been accused by the Commission’s Executive Secretary of attempting to negotiate issues relating to his personal legal matters and, of course, that Teague had allegedly threatened the Commission on his behalf.
2. If the Attorney General’s office considered disclosing the LaBerge memo to the Governor, did it also consider that it needed consent from Holly LaBerge, in her official capacity as Executive Secretary, or from the Commission to do so? If yes, was such consent requested?
3. If consent to disclose the LaBerge memo to the Governor was requested and denied, did the Attorney General’s office consider whether the Commission officials who refused to allow the Governor to be informed were refusing to act in violation of their legal obligations to the Commission and the State of Georgia, such that the Attorney General should “proceed as is reasonably necessary in the best interest of the organization”? Georgia Rule of Professional Conduct 1.13(b).

Attorney General’s Representation of the Governor’s Office in Kalberman

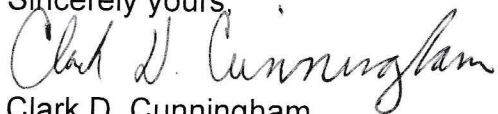
On March 17, 2013 the Attorney General filed a motion on behalf of the Governor’s Office in the Kalberman case in response to subpoenas issued to both Governor Deal and Ryan Teague. (Attachment 10). In footnote 1 to the Brief in Support of Motion to Quash, the Attorney General stated that “the Office of the Governor, of course, adamantly objects [to] Plaintiff soliciting any information from Mr. Teague that could encroach on the attorney-client privilege he shares with the Governor.”

Kathleen Baydala Joyner
Re: Statement of Attorney General
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1. Prior to agreeing to represent the Office of the Governor in the Kalberman case, did the Attorney General consider whether he could continue to withhold from one client, Governor Deal, information of importance to that client obtained from another client, the Commission?
2. The Attorney General's brief argued that "Plaintiff did not endeavor to pursue discovery from any member of the Governor's Office," a point that was relied upon by the Court in ordering that Governor Deal should not be required to testify. (Attachment 11). Did the office of the Attorney General consider the possibility that this argument might appear deliberately deceptive if became known that the Attorney General had withheld evidence that if produced clearly would have led the plaintiff to pursue discovery against the Governor's Office?

In saying in his Statement that "I wish that a request had been issued to which the memorandum was responsive" but in effect his hands were tied by his duty "to work with our clients" and represent them "zealously" the Attorney General seems to be offering an excuse contrary to standards of lawyer professionalism. As the questions above indicate, it was clearly possible in good faith to interpret one or more of the discovery requests in the Kalberman and Streicker cases as applying to the LaBerge memo. The ethical rules allow lawyers use their own professional judgment in deciding to be fair and candid in responding to discovery requests. See, e.g., Georgia Rule of Professional Conduct (GRPC) 1.2(a) and accompanying Comment 1 ("[A] lawyer is not required to ... employ means simply because a client may wish that the lawyer do so. ... [T]he lawyer should assume responsibility for technical and legal tactical issues.") This is especially true for lawyers representing government organizations. The ethical rules encourage government lawyers to question the conduct of the officials they represent and to use their own judgment if necessary for the best interests of the government. See GRPC 1.13(b) and Comment 6.

Sincerely yours,



Clark D. Cunningham
W. Lee Burge Chair in Law & Ethics

cc:
Sam Olens, Attorney General of Georgia
Bryan K. Webb, Senior Assistant Attorney General
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Atlanta, GA 30334-1300
bwebb@law.ga.gov

Memorandum of Record

COPY

July 17, 2012

On July 16, 2012 at 4.44 pm CST I received a text message to my personal cell phone from Chris Riley:

So since you are at the beach, with your feet in the sand and probably something cold to drink. Does this mean we can resolve all DFG issues by Monday? :)

I replied via text at 8.46 pm CST:

Well I am on vacation but it's apparently a "working" one. A realistic counter by noon tomorrow is the best chance of a resolution. Otherwise it will be out of my hands and resolved on Monday.

At 8.50 pm CST Chris Riley responded via text:

That will be difficult, Ryan said two of issues, legal fees and aircraft are not even on the table for discussion. How can we give you a realistic counter when not all issues are ready? My non legal opinion. Have a good vacation. I wouldn't worry about having to work thru it.

I did not respond.

On July 17, 2012 at 6.31 am CST I received a text message to my personal cell phone from Ryan Teague:

Holly – its Ryan. Would like to chat soon when you are in the office. I can walk over. Thanks.

I replied at 6.35 am CST:

Hi Ryan. I'm on vacation this week so if you need to talk before Monday it will need to be by phone. I apologize for the inconvenience.

He replied at 6.36 am CST:

Ok. Let's talk by phone then. Are u free this afternoon?

I replied at 6.38 am CST:

I will be on the beach but if you can give me an approximate time I will be near my phone.

He replied at 6.41 am CST:

1 pm?

I replied at 6.42 am CST:

Sounds good. I will wait to hear from you then.

COPY

At 1.04 pm CST, Ryan Teague called my personal cell phone. He proceeded to let me know how he was only acting as an intermediary to try to come to a resolution on the Deal complaints ahead of Monday's Commission meeting. He made an offer of \$1,500 settlement, no admission of violations and everything else to be dismissed. I explained that we offered Ben Vinson \$5,400 the day before for the CCDR and PFD complaint technical defects and violations which was 75% off the initial consent order amount. Ryan informed me that that amount was more than Perdue (former Governor) had paid for a much worse violation. I tried to explain that the fine amount was based on the number of violations. I also tried to explain that the legal fees and aircraft complaints were not included in these consent orders because we were still awaiting the Commission's vote on the AO's and that this had been previously discussed at length with Randy Evans. Ryan informed me that it was not in the agency's best interest for these cases to go to a hearing Monday; nor was it in their best political interest either and that our rule making authority may not happen if the complaints were not resolved prior to Monday. I responded by expressing my surprise that the threat of rule making being withheld was being used to make the complaints go away.

The conversation continued with his lack of regard for my vacation that was planned months prior to the Commission meeting date being set for July 23rd. I informed Ryan that I would respond to voicemails and texts but I would not continue to carry my phone in my hand all day while on vacation and surely he didn't expect me to do so. This was met with the remark that he was still required to be in contact when he was on vacation. I replied that I was in contact with my staff regarding issues that needed to be addressed prior to my return but that the current scenario was not my emergency in light of the fact that we (the agency) had been waiting for a month for the Respondent to negotiate on the consent order.

Due to the nature of the contact from Chris Riley and then Ryan Teague, I felt it necessary to inform the Chairman of the Commission, Kevin Abernethy, about what had transpired since our phone conversation the day before with the staff attorney (Elisabeth Murray-Obertein) and the Respondent's counsel (Ben Vinson). After relaying the texts and phone conversation, Kevin stated that he would be passing this along to the Vice-Chairperson, Hillary Stringfellow and fellow commissioner, Kent Alexander.

Holly LaBerge
Executive Secretary
Georgia Government Transparency & Campaign Finance Commission



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For immediate release:

July 15, 2014

Statement by Attorney General Olens on Ethics Commission Matters

My office has received a number of questions regarding the news this week about the Ethics Commission and Holly LaBerge's Memorandum of Record. I want to address as many of them as I can now.

From the outset, though, I want to make clear that many of those questions relate directly to the legal representation this office has provided Ms. LaBerge and the Ethics Commission in the context of litigation. This office is still in an attorney-client relationship with Ms. LaBerge in her official capacity, and that means the full answer to some of the questions you have would require the disclosure of attorney-client privileged information. Yesterday, we formally requested that she waive that privilege so that we could set the record straight, but to date we have not received that waiver. Unless and until that privilege is waived, I am severely limited in the extent to which I can fully answer some questions.

I know this is frustrating to you; I can assure you, I find it even more frustrating.

Ms. LaBerge's memo is dated July 17, 2012. After our office was given the memo in August 2013, our civil trial team reviewed the memo to determine if it was subject to the pending discovery requests. Our chief prosecutor also reviewed it the week we received it to determine if any criminal laws had been violated if the allegations in the memorandum were true. I was made aware of the memo after our chief prosecutor concluded his review and determined that the allegations in the memorandum did not constitute crimes under state law. In addition, our civil lawyers determined it was not responsive to the discovery request in the civil litigation.

In late 2013, federal subpoenas were issued to current and former employees of the Commission. Our office explained to Ms. LaBerge that we did not represent her with respect to responding to the subpoena and explained to her and her private lawyer that the only thing we could tell her is to cooperate fully, and that the memo was responsive.

There have been several questions about the responsiveness of the memo to certain specific discovery requests:

- Ms. Kalberman requested “correspondence” between Ms. LaBerge and the Governor’s Office. The memo is not correspondence; it is a document written by Ms. LaBerge and retained by her. It did not become correspondence when she gave us a copy 13 months later.
- Ms. Streicker requested documents “concerning the violation of any law, rule, or regulation” by Governor Deal, “including all complaints filed with the Defendant, all files concerning the investigation of such complaints, and all documents obtained as part of such investigations.” The memo was not about violations of law, rule, or regulation, it was not a complaint, it was not concerning the investigation of a complaint, and it was not a document obtained as part of an investigation.

I recognize that this may seem like a technical response. Let me be clear – I wish that a request had been issued to which the memorandum was responsive. That would have been easier for the office. But the lawyers in my office represent the State and its agencies, and have a legal duty to do so zealously. Their obligation is to work with our clients to produce all documents responsive to a plaintiff’s request; it is not their obligation to produce documents that plaintiffs haven’t asked for. I also recognize that plaintiffs’ counsel may disagree with our office’s position on this. I am not surprised. Lawyers can and often do disagree about almost anything.

I will say this – it is in the public record that these matters were testified to in some detail by Ms. Murray-Oberte in her deposition (excerpt attached). Following Ms. Murray-Oberte’s testimony, Plaintiffs’ lawyers chose not to ask Ms. LaBerge any questions about this issue either in discovery or at trial.

The news reports of the last day may well have uncovered a different discovery-related problem, however. During the interview of Ms. LaBerge on Fox 5 last night, Ms. LaBerge said that she forwarded text messages from the Governor’s Office to her personal email – and an image of one of those messages was then shown on the screen. That concerns me, because no one in my office was aware that such emails exist. After an agreement with Plaintiffs to produce all work-related emails from Ms. LaBerge’s personal email account, our office turned over to plaintiffs every personal email that Ms. LaBerge provided to us. The text messages in Ms. LaBerge’s email account shown in the interview last night would almost certainly have been responsive and should have been produced. My office is taking immediate steps to learn why we never received the emails.

We have been asked a number of questions about how our office prepared Ms. LaBerge for her testimony with regard to the memo. Any suggestion that any employee of our office advised anyone to testify less than truthfully in any way is categorically false. As much as I want to respond more specifically on this point, attorney-client privilege prevents me from doing so.

I am aware of renewed requests to appoint some sort of independent attorney to investigate these matters. As I have previously stated, two other investigations – one federal, one state – are currently pending. This office has been representing Ms. LaBerge and the Ethics Commission in

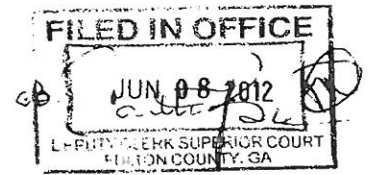
related matters. The only reasons to interject this office into the investigations at this point are political.

Xxx

Lauren Kane
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RCM

SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA



SHERRY ELLEN STREICKER,)
)
 Plaintiff,)
)
 v.)
)
 GEORGIA GOVERNMENT)
 TRANSPARENCY AND)
 CAMPAIGN FINANCE)
 COMMISSION,)
)
 Defendant.)

CIVIL ACTION
FILE NO.: 2612CV21657
JURY TRIAL DEMANDED

**PLAINTIFF'S FIRST REQUESTS FOR PRODUCTION
OF DOCUMENTS**

Pursuant to O.C.G.A. § 9-11-34, Plaintiff hereby submits the following Requests for Production of Documents. Plaintiff requests that Defendant produce the following documents for inspection and copying at the offices of Plaintiffs' counsel, within the time provided by law.

INTRODUCTION AND DEFINITIONS

1. Each of the following Requests seeks all documents available to Defendant, Defendant's attorneys or agents, and any other person acting on Defendant's behalf. In lieu of producing materials that are in Defendant's custody and control but are not actually in Defendant's possession or in the possession of Defendant's counsel, Defendant may, where appropriate, execute an authorization or authorizations enabling Plaintiff to obtain copies of the materials at their own expense.
2. As used in these Requests, "person" shall mean an individual, firm, partnership, corporation, proprietorship, association or any other organization or entity.

Plaintiff's First Request for Production of Documents

3. As used in these requests, "Defendant" shall mean Defendant Georgia Government Transparency and Campaign Finance Commission and its predecessor agency, the Georgia Ethics Commission.
4. As used in these Requests, "document" is used in its customary broad sense to mean every writing or record of every type and description that is in the possession, control, or custody of Defendant, including without limitation, the following items, whether printed, taped or recorded, filmed, reproduced by any process, written or produced by hand, and whether an original, master or copy, namely: agreements, communications, including intra-agency communications and correspondence; cablegrams, radiograms, and telegrams; email; notes and memoranda; computer printouts; summaries; minutes and records of telephone conversations, meetings and conferences, including lists of persons attending meetings or conferences; summaries and records of personal conversations or interviews; books, manuals, publications and diaries; charts; financial records and/or summaries of financial records of any kind; photographs; reports and/or summaries of investigations and/or surveys; opinions and reports of consultants; reports and summaries of negotiations; drafts of originals or preliminary notes on, and marginal comments appearing on, any document; other reports and records; any other paper or physical thing containing writing; every copy of such writing or record where the original is not in the possession, custody, or control of the Defendant, and every copy of every such writing or record where such copy contains any commentary or notation whatsoever that does not appear on the original.
5. If any documents identified in these Requests cannot be produced in full, produce them to the extent possible, specifying the reasons for your inability to produce the remainder and

Plaintiff's First Request for Production of Documents

stating whatever information, knowledge, or belief you have concerning the non-produced portion.

6. If in response to any Request you do not produce any document because of a claim of privilege or work product, please produce a privilege log describing any such documents by stating its date, author, and the name of the present custodian, and describe the substance or content of the document and the basis for the claim of privilege with sufficient detail to permit evaluation of the claim. Produce the document requested to the extent to that it is not subject to the objection or privilege.
7. These Requests are deemed continuing to the extent provided for by law. If, after producing documents, you obtain or become aware of any further documents responsive to these Requests, you are requested to produce those documents.
8. As used in these requests, "concerning" means referring to, reflecting, evidencing, or supporting.
9. As used in these requests, "subject matter of this action" refers to the claims made by Plaintiffs in the Complaint and the underlying facts, as well as the defenses asserted by Defendant Morley and the underlying facts.

DOCUMENT REQUESTS

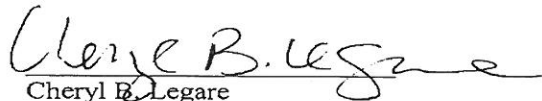
1. All documents concerning the employment of Sherry Ellen Streicker with Defendant, including:
 - (a) Ms. Streicker's personnel file;
 - (b) A job description for her position of Deputy Executive Secretary;

Plaintiff's First Request for Production of Documents

- (c) All performance appraisals, reviews, notes, meeting minutes, memoranda, and correspondence between anyone concerning Plaintiff's performance of the duties of her position, and all other documents concerning her job performance;
 - (d) All documents concerning Ms. Streicker's work assignments;
 - (e) All documents concerning the decision to terminate her employment.
2. All documents concerning the budget of the Defendant, including all reports, analyses, compilations, spreadsheets, charts, projections, or other documents reflecting the funding of the Defendant and its expenditures, between the fiscal year that includes January 1, 2009 through the present;
 3. All documents constituting communications between any employees of the Defendant and anyone else concerning the Defendant's budget or fiscal expenditures between January 1, 2009 and the present;
 4. All documents that the Defendant contends support the Defendant's purported need in June of 2011 to reduce the salary of Stacey Kalberman and terminate the employment of Sherry Ellen Streicker;
 5. All documents concerning the reduction of Stacey Kalberman's salary and/or the termination of Sherry Ellen Streicker's employment, including notes, meeting minutes, memoranda, and correspondence between anyone concerning the reduction of Stacey Kalberman's salary and/or the termination of Sherry Ellen Streicker's employment;
 6. All documents concerning the decision by the Defendant to create and fill the position of Staff Attorney that was ultimately filled by Elisabeth Murray-Obertein, including all notes, memoranda, and communications between anyone concerning the need for the position and the ability to fund its salary;

Plaintiff's First Request for Production of Documents

7. All documents concerning all applicants for the position of Staff Attorney with the Defendant that was ultimately filled by Elisabeth Murray-Obertein, including all applications, all notes or memoranda concerning all applicants, and all communications between anyone concerning all applicants;
8. All documents concerning the Defendant's decision not to interview Sherry Ellen Streicker for the position of Staff Attorney that was ultimately filled by Elisabeth Murray-Obertein, including all notes or memoranda concerning Ms. Streicker's application for the position and all communications between anyone concerning Ms. Streicker's application;
9. All documents concerning the Defendant's decision to hire Elisabeth Murray-Obertein for the position of Staff Attorney, including all notes or memoranda concerning her application, interview(s), or submission of materials in connection with application, and all communications between anyone concerning the same;
10. All documents concerning the violation of any law, rule, or regulation by Georgia Governor Nathan Deal at any time, including all complaints filed with the Defendant, all files concerning the investigation of such complaints, and all documents obtained as part of such investigations.



Cheryl B. Legare
Georgia Bar No. 038553
cblegare@buckleyklein.com
Brian J. Sutherland
Georgia Bar No. 105408
bjsutherland@buckleyklein.com
Edward D. Buckley
Georgia Bar No. 092750
edbuckley@buckleyklein.com

Plaintiff's First Request for Production of Documents

BUCKLEY & KLEIN, LLP
Promenade II, Suite 900
1230 Peachtree Street, NE
Atlanta, Georgia 30309
Telephone: (404) 781-1100
Facsimile: (404) 781-1101

Counsel for Plaintiff Sherry Ellen Streicker

**SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**

SHERRY ELLEN STREICKER,)

Plaintiff,)

v.)

GEORGIA GOVERNMENT)
TRANSPARENCY AND)
CAMPAIGN FINANCE)
COMMISSION,)

Defendant.)

CIVIL ACTION

FILE NO.: _____

CERTIFICATE OF SERVICE

I hereby certify that on June 8, 2012, a true and correct copy of **PLAINTIFF'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS** was served on the Defendant by personal service of process in accordance with O.C.G.A. § 50-21-35, including service on:

Commissioner Kevin Abernethy
Commissioner Kent Alexander
Commissioner Dennis T. Cathey

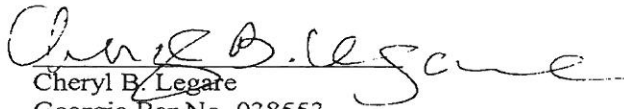
Commissioner Hillary Stringfellow
Commissioner Heath Garrett
Executive Secretary Holly LaBerge

at their regular business address of 200 Piedmont Avenue Southeast, Suite 1416, Atlanta, GA 30334; and

Director Lisa Pratt
Department of Administrative Services
Risk Management Division

at her usual business address of 200 Piedmont Avenue SE, Suite 1804, Atlanta, Georgia 30334.

Plaintiff's First Request for Production of Documents



Cheryl B. Legare

Georgia Bar No. 038553

cblegare@buckleyklein.com

Brian J. Sutherland

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BUCKLEY & KLEIN, LLP

Promenade II, Suite 900

1230 Peachtree Street, NE

Atlanta, Georgia 30309

Telephone: (404) 781-1100

Facsimile: (404) 781-1101

Counsel for Plaintiff Sherry Ellen Streicker

**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**

SHERRY ELLEN STREICKER,

Plaintiff,

vs.

GEORGIA GOVERNMENT
TRANSPARENCY AND
CAMPAIGN FINANCE
COMMISSION,

Defendant.

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*
*
*
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Civil Action No.:
2012CV216254

**DEFENDANT’S RESPONSES AND OBJECTIONS TO PLAINTIFF’S
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS**

COMES NOW, The Georgia Government Transparency and Campaign Finance Commission, Defendant in the above-styled action, by and through its attorney of record, the Attorney General for the State of Georgia, and serves its Responses and Objections to Plaintiff’s First Request for Production of Documents to Defendant as follows.

PRELIMINARY STATEMENT

A. These responses are based upon and therefore, limited by records and information in existence, presently recollected, and thus far discovered in the course of preparing these responses. Defendant reserves the right to make changes

to these responses if it appears at any time that inadvertent errors or omissions have been made or additional or more accurate information has become available.

B. No incidental or implied admission of fact by the Defendant is made by the responses indicated below. The fact that Defendant has produced any document requested herein may not be taken as an admission that Defendant accepts or admits the existence of any fact set forth or assumed by such requests, or that response constitutes admissible evidence. Defendant's response to any request is not intended to, nor shall it be considered as a waiver by Defendant of any objections to any request made by Plaintiff.

C. These responses are based upon the ordinary meaning of words used in the requests.

D. The information supplied in these responses is based upon the knowledge, information and belief of the Defendant, and includes knowledge of the parties, their agents, representatives and attorneys. The work usage and sentence structure may be that of the attorney assisting in the preparation of the responses and thus does not necessarily purport to be the precise language of the Defendant or any of its agents or representatives.

GENERAL OBJECTIONS

Defendant objects generally to these requests on the following grounds:

1.

Defendant objects to the Plaintiff's requests to the extent that they attempt to impose obligations upon Defendant beyond the requirements of the Georgia Rules of Civil Procedure.

2.

Defendant objects to the extent that these requests are not limited by time to the period relevant to this litigation on the grounds that they are overly broad and are not reasonably calculated to lead to the discovery of admissible or relevant evidence.

3.

Defendant objects to the extent that these requests seek to be exhaustive on the grounds that they are overly broad and not reasonably calculated to lead to the discovery of admissible or relevant evidence.

4.

Defendant objects to the Plaintiff's requests to the extent that they call for production of documents not in the custody, control or possession of the Defendant and to the extent that they seek the production of documents that are more than or as readily available to Plaintiff as Defendant.

5.

Defendant objects to Plaintiff's requests to the extent that they seek documents protected by the attorney/client privilege, documents prepared in anticipation of litigation or which are protected by the work product doctrine.

6.

Defendant objects to Plaintiff's requests to the extent that they seek documents which contain information about third-parties and which are protected by confidentiality statutes related to student records and/or the privilege and confidentiality between psychologist and patient.

7.

Defendant objects to the Plaintiff's discovery requests to the extent that they attempt to stipulate words to have definitions other than their ordinary meaning.

RESPONSES TO REQUESTS

Request No. 1

All documents concerning the employment of Sherry Ellen Streicker with Defendant, including:

- (a) Ms. Streicker's personnel file;
- (b) A job description for her position of Deputy Executive Secretary;
- (c) All performance appraisals, reviews, notes, meeting minutes, memoranda, and correspondence between anyone concerning Plaintiff's job performance of the duties of her position, and all other documents concerning her job performance;
- (d) All documents concerning Ms. Streicker's work assignments;
- (e) All documents concerning the decision to terminate her employment.

Response to Request No. 1

Documents responsive to this request have been produced on the disc accompanying these responses and marked as “Documents in response to Plaintiff’s (Sherilyn Streicker) First Request for Production of Documents Produced by: Georgia Government Transparency and Campaign Finance Commission.”

Request No. 2

All documents concerning the budget of the Defendant, including all reports, analyses, compilations, spreadsheets, charts, projections, or other documents reflecting the funding of the Defendant and its expenditures, between the fiscal year that includes January 1, 2009 through the present.

Response to Request No. 2

Documents responsive to this request have been produced on the disc accompanying these responses and marked as “Documents in response to Plaintiff’s (Sherilyn Streicker) First Request for Production of Documents Produced by: Georgia Government Transparency and Campaign Finance Commission.”

Request No. 3

All documents constituting communications between any employees of the Defendant and anyone else concerning the Defendant’s budget or fiscal expenditures between January 1, 2009 and the present.

Response to Request No. 3

Documents responsive to this request have been produced on the disc accompanying these responses and marked as “Documents in response to Plaintiff’s (Sherilyn Streicker) First Request for Production of Documents Produced by: Georgia Government Transparency and Campaign Finance Commission.”

Request No. 4

All documents that the defendant contends support the Defendant’s purported need in June of 2011 to reduce the salary of Stacey Kalberman and terminate the employment of Sherry Ellen Streicker.

Response to Request No. 4

Documents responsive to this request have been produced on the disc accompanying these responses and marked as “Documents in response to Plaintiff’s (Sherilyn Streicker) First Request for Production of Documents Produced by: Georgia Government Transparency and Campaign Finance Commission.”

Request No. 5

All documents concerning the reduction of Stacey Kalberman’s salary and/or the termination of Sherry Ellen Streicker’s employment, including notes, meeting minutes, memoranda, and correspondence between anyone concerning the reduction of Stacey Kalberman’s salary and/or the termination of Sherry Ellen Streicker’s employment.

Response to Request No. 5

Documents responsive to this request have been produced on the disc accompanying these responses and marked as “Documents in response to Plaintiff’s (Sherilyn Streicker) First Request for Production of Documents Produced by: Georgia Government Transparency and Campaign Finance Commission.”

Request No. 6

All documents concerning the decision by the Defendant to create and fill the position of Staff Attorney that was ultimately filled by Elisabeth Murray-Obertein, including all notes, memoranda, and communications between anyone concerning the need for the position and the ability to fund its salary.

Response to Request No. 6

Documents responsive to this request have been produced on the disc accompanying these responses and marked as “Documents in response to Plaintiff’s (Sherilyn Streicker) First Request for Production of Documents Produced by: Georgia Government Transparency and Campaign Finance Commission.”

Request No. 7

All documents concerning all applicants for the position of Staff Attorney with the Defendant that was ultimately filled by Elisabeth Murray-Obertein, including all applications, all notes or memoranda concerning all applicants, and all communications between anyone concerning all applicants.

Response to Request No. 7

Documents responsive to this request have been produced on the disc accompanying these responses and marked as “Documents in response to Plaintiff’s (Sherilyn Streicker) First Request for Production of Documents Produced by: Georgia Government Transparency and Campaign Finance Commission.”

Request No. 8

All documents concerning the Defendant’s decision not to interview Sherry Ellen Streicker for the position of Staff Attorney that was ultimately filled by Elisabeth Murray-Oberlein, including all notes or memoranda concerning Ms. Streicker’s applications for the position and all communications between anyone concerning Ms. Streicker’s application.

Response to Request No. 8

Defendant is not in possession of any documents meeting the description set forth in Request No. 8.

Request No. 9

All documents concerning the Defendant’s decision to hire Elisabeth Murray-Oberlein for the position of Staff Attorney, including all notes or memoranda concerning her application, interview(s), or submission of materials in connection with the application, and all communications between anyone concerning the same.

Response to Request No. 9

Defendant is not in possession of any documents meeting the description set forth in Request No. 9.

Request No. 10

All documents concerning the violation of any law, rule, or regulation by Georgia Governor Nathan Deal at any time, including all complaints filed with the Defendant, all files concerning the investigation of such complaints, and all documents obtained as part of such investigations.

Response to Request No. 10

Documents responsive to this request have been produced on the disc accompanying these responses and marked as “Documents in response to Plaintiff’s (Sherilyn Streicker) First Request for Production of Documents Produced by: Georgia Government Transparency and Campaign Finance Commission.”

Respectfully submitted this 28th day January, 2013.

SAMUEL S. OLENS 551540
Attorney General

DENNIS R. DUNN 234098
Deputy Attorney General


ANNETTE M. COWART 191199
Senior Assistant Attorney General


BRYAN K. WEBB 743580
Senior Assistant Attorney General

PLEASE SERVE:

BRYAN K. WEBB

Senior Assistant Attorney General

40 Capitol Square, S.W.

Atlanta, Georgia 30334-1300

Tele: (404) 656-5331

Fax: (404) 657-9932


Email: bwebb@law.ga.gov

CERTIFICATE OF SERVICE

I hereby certify that on January 28, 2013, I served the foregoing
**DEFENDANT'S RESPONSES AND OBJECTIONS TO PLAINTIFF'S
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS** upon opposing
counsel in this case by sending a copy via the United States Mail with adequate
postage affixed and addressed as follows:

Cheryl B. Legare
Brian J. Sutherland
Edward D. Buckley
Buckley & Klien, LLP
Promenade II, Suite 900
1230 Peachtree Street, NE
Atlanta, Georgia 30309

This 28th day of January, 2013.



Bryan K. Webb
Senior Assistant Attorney General
State Bar No.: 743580
Counsel for Defendant

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

STACEY KALBERMAN,)
)
Plaintiff,)
)
v.)
)
GEORGIA GOVERNMENT)
TRANSPARENCY AND CAMPAIGN)
FINANCE COMMISSION, f/k/a GEORGIA)
STATE ETHICS COMMISSION, HOLLY)
LABERGE, in her Official capacity as)
Executive Secretary of the Georgia)
Government Transparency and Campaign)
Finance Commission, and PATRICK)
MILLSAPS, in his Individual capacity,)
)
Defendants.)

CIVIL ACTION
FILE NO. 2012CV216247

**PLAINTIFF STACEY KALBERMAN'S FIRST REQUEST FOR PRODUCTION OF
DOCUMENTS TO DEFENDANT GEORGIA GOVERNMENT TRANSPARENCY AND
CAMPAIGN FINANCE COMMISSION**

COMES NOW Plaintiff **Stacey Kalberman** ("Ms. Kalberman") by and through her undersigned counsel of record, pursuant to O.C.G.A. §§ 9-11-26 and 9-11-34, and hereby demands that Defendant **Georgia Government Transparency and Campaign Finance Commission** ("the Commission") respond to Plaintiff Stacey Kalberman's First Requests For Production Of Documents To Defendant Georgia Government Transparency And Campaign Finance Commission by producing the requested documents to Plaintiff's counsel of record within thirty (30) days after service hereof at the offices of Plaintiff's counsel, Kimberly A. Worth, Joyce Thrasher Kaiser & Liss, LLC, Suite 2600, Five Concourse Parkway, Atlanta, Georgia 30328.

DEFINITIONS

- a) The terms “document” or “documents” shall mean any written, recorded, filmed, or graphic matter, whether produced, reproduced or on paper, cards, tapes, film, electronic facsimile, computer storage devices, or any other media, including but not limited to, memoranda, notes, minutes, records, employment files, case files, pleadings, photographs, slides, correspondence, telegrams, diaries, bookkeeping entries, financial statements, tax returns, checks, check stubs, reports, studies, charts, graphs, statements, notebooks, handwritten notes, applications, agreements, books, pamphlets, periodicals, appointment calendars, notes, records and recordings of oral conversations, work papers, and also including but not limited to, originals, drafts and all copies which are different in any way from the original whether by interlineations, receipt stamped, notations, indications of copies sent or received, or otherwise.
- b) The term “identify” when used with reference to a document or written communication shall mean to state the type of document or communication (e.g., memorandum, employment application, letter, handwritten notes, etc.) to state its date, to briefly describe its contents, to identify the author (and if different, the originator or signer), and to identify the person (or, if widely distributed, the organization or classes of persons) to whom the document or communication was sent. You may produce the document or written communication in lieu of identifying it.
- c) The “Commission,” “you,” and “your” refers without limitation to Defendant Georgia Government Transparency and Campaign Finance Commission, its attorneys and agents, and all persons acting on its behalf, including without limitation its employees.

- d) The terms “Defendant Millsaps” and “Millsaps” refer without limitation to Defendant Patrick Millsaps, his attorneys and agents, and all persons acting on his behalf.
- e) “Defendants” shall refer to the Commission and Defendant Millsaps.
- f) The conjunctions “and” and “or” shall be interpreted conjunctively and shall not be interpreted disjunctively so as to exclude any information otherwise within the scope of this discovery.
- g) “Involving” and the derivatives thereof, means involving, including, summarizing, recording, containing, listing, pertaining, concerning, comprising, consisting, addressing, describing, mentioning, referring or reflecting.

REQUESTS TO PRODUCE

1.

Please produce any and all documents identified or otherwise referred to in your responses to Plaintiff’s First Continuing Interrogatories to Defendant Georgia Government Transparency and Campaign Finance Commission served concurrently herewith.

2.

Please produce the Commission’s entire investigative file concerning Nathan Deal, including all correspondence relating to that investigation into alleged ethical violations committed by his campaign for governor in the 2010 election cycle. Plaintiff acknowledges the sensitive nature of this request and agrees to the production of the responsive documents subject to a privilege log and offers that the documents will be viewed by counsel and Plaintiff only.

3.

Please produce any and all documents relating to the budget of the Commission from 2009 through 2012.

4.

Please produce any and all calculations or proposals prepared to support the financial necessity of cutting Plaintiff's salary in May to June 2011.

5.

Please produce documentation relating to renovations to the office of the Commission from January 1, 2010 through the present. Responsive materials should include, without limitation, documents evidencing who completed said renovations, the location of the renovations, the date of completion of the renovations, and the cost of the renovations.

6.

Please produce documentation showing the salaries of all Commission employees from 2005 through the present.

7.

Please produce documentation showing all fees and costs paid to outside counsel to the Commission from June 2011 through the present.

8.

Please produce any and all correspondence between Millsaps and any employee of the Commission or the Commissioners since January 1, 2010.

9.

Please produce any and all correspondence between Millsaps and Randolph Evans relating to the Commission's budget, the Commission's investigation into alleged ethics violations by Nathan Deal (the "Deal Investigation"), the employment of Plaintiff, the employment of Sherilyn Streicker, Millsaps' appointment to the Commission, and Millsaps' position with Mr. Gingrich's presidential campaign.

10.

Please produce any and all correspondence between Millsaps and Newt Gingrich and/or Mr. Gingrich's presidential campaign, relating to any issue pertinent to this matter, including the manner in which Millsaps obtained a position with Mr. Gingrich's presidential campaign.

11.

Please produce any and all correspondence between Millsaps and any other person relating to any issue relating to this matter, including the employment of Plaintiff, the employment of Sherilyn Streicker, Millsaps' appointment to the Commission, and the manner in which Millsaps obtained a position with Mr. Gingrich's presidential campaign.

12.

Please produce any and all correspondence between Millsaps and any person at the Commission or any other local, state, or federal authority, since January 1, 2010.

13.

Please produce the Secretary of State's monthly budget analysis for the Commission for Fiscal Year 2011.

14.

Please produce any and all e-mails between Plaintiff and the Commissioners since January 1, 2010.

15.

Please produce any and all e-mails between Plaintiff and Millsaps since January 1, 2010.

16.

Please produce any and all correspondence between Millsaps and the State of Georgia Governor's Office during Millsaps' tenure as a Commissioner.

17.

Please produce all documents showing political contributions made by Millsaps and/or any Commissioners since 2008.

18.

Please produce any and all records, documents, and correspondence relating to the cost and use of postage by the Commission.

19.

Please produce any and all records, documents, and correspondence relating to any supplemental budget request from the Commission from 2009 through the present.

20.

Please produce any and all documents relating to the current fiscal year budget of the Commission.

21.

Produce any and all documents, correspondence, or other records documenting communications since January 1, 2010 between any Commission employee, Commissioner, or Millsaps and a member or representative of the media.

22.

Produce any and all documents, correspondence, or other records consulted or prepared before June 9, 2011, which reflect proposals, draft plans, calculations, conversations, discussions, and/or deliberations regarding the cut to Plaintiff's salary and the termination of Ms. Streicker.

23.

Produce any and all documents, electrically stored information, and tangible things that Defendants intend to rely upon to prove their affirmative defenses.

24.

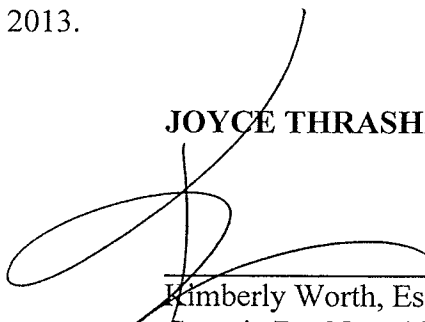
Please produce any and all documents, electrically stored information, and tangible things that Defendants intend to rely upon to prove that their actions were taken for legitimate, non-retaliatory reasons, as alleged in their seventh defense in their Answer.

25.

Please produce all documents, electrically stored information, and tangible things that Defendants may use to support their defenses against Plaintiff's claims.

This 24th day of March, 2013.

JOYCE THRASHER KAISER & LISS, LLC



Kimberly Worth, Esq.
Georgia Bar No. 500790
D. Barton Black, Esq.
Georgia Bar No. 119977

Attorneys for Stacey Kalberman

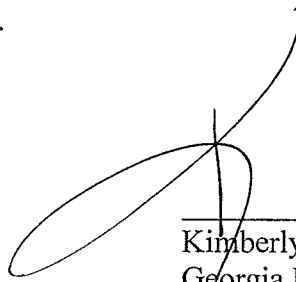
Five Concourse Parkway
Suite 2600
Atlanta, Georgia 30328
Telephone: (404) 760-6000
Facsimile: (404) 760-0225

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the within and foregoing *Plaintiff's First Request for Production of Documents to Defendant Georgia Government Transparency And Campaign Finance Commission* upon all parties to this matter by depositing a true copy of same in the U.S. Mail, proper postage prepaid for delivery, addressed to counsel of record as follows:

Bryan K. Webb
Senior Assistance Attorney General
40 Capitol Square, S.W.
Atlanta, Georgia 30334

This 26th day of March, 2013.



Kimberly Worth, Esq.
Georgia Bar No. 500790
D. Barton Black, Esq.
Georgia Bar No. 119977

JOYCE THRASHER KAISER & LISS, LLC
Five Concourse Parkway
Suite 2600
Atlanta, Georgia 30328
Telephone: (404) 760-6000
Facsimile: (404) 760-0225

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

ORIGINAL

STACEY KALBERMAN,)
)
Plaintiff,)
)
v.)
)
GEORGIA GOVERNMENT)
TRANSPARENCY AND CAMPAIGN)
FINANCE COMMISSION, f/k/a GEORGIA)
STATE ETHICS COMMISSION, HOLLY)
LABERGE, in her Official capacity as)
Executive Secretary of the Georgia)
Government Transparency and Campaign)
Finance Commission, and PATRICK)
MILLSAPS, in his Individual capacity,)
)
Defendants.)

CIVIL ACTION
FILE NO. 2012CV216247

**PLAINTIFF STACEY KALBERMAN'S FIRST REQUEST FOR PRODUCTION
OF DOCUMENTS AND THINGS TO DEFENDANT HOLLY LABERGE**

COMES NOW Plaintiff **Stacey Kalberman** ("Plaintiff" or "Ms. Kalberman") by and through her undersigned counsel of record, pursuant to O.C.G.A. §§ 9-11-26 and 9-11-34, and hereby demands that Defendant **Holly LaBerge**, in her Official capacity as Executive Secretary of the Georgia Government Transparency and Campaign Finance Commission ("Defendant" or "Ms. LaBerge"), respond to Plaintiff Stacey Kalberman's First Requests For Production Of Documents and Things To Defendant Holly LaBerge by producing the requested documents to Plaintiff's counsel of record within thirty (30) days after service hereof at the offices of Plaintiff's counsel, Kimberly A. Worth, Joyce Thrasher Kaiser & Liss, LLC, Suite 2600, Five Concourse Parkway, Atlanta, Georgia 30328.

DEFINITIONS

- a) The terms “document” or “documents” shall mean any written, recorded, filmed, or graphic matter, whether produced, reproduced or on paper, cards, tapes, film, electronic facsimile, computer storage devices, or any other media, including but not limited to, memoranda, notes, minutes, records, employment files, case files, pleadings, photographs, slides, correspondence, telegrams, diaries, bookkeeping entries, financial statements, tax returns, checks, check stubs, reports, studies, charts, graphs, statements, notebooks, handwritten notes, applications, agreements, books, pamphlets, periodicals, appointment calendars, notes, records and recordings of oral conversations, work papers, and also including but not limited to, originals, drafts and all copies which are different in any way from the original whether by interlineations, receipt stamped, notations, indications of copies sent or received, or otherwise.
- b) The term “identify” when used with reference to a document or written communication shall mean to state the type of document or communication (e.g., memorandum, employment application, letter, handwritten notes, etc.) to state its date, to briefly describe its contents, to identify the author (and if different, the originator or signer), and to identify the person (or, if widely distributed, the organization or classes of persons) to whom the document or communication was sent. You may produce the document or written communication in lieu of identifying it.
- c) The terms “you” and “your” refer without limitation to Defendant Holly LaBerge, in her Official capacity as Executive Secretary of the Georgia Government Transparency and Campaign Finance Commission; her attorneys and agents; and all persons acting on her behalf.

- d) The terms “Defendant Commission” and “Commission” refer without limitation to Defendant Georgia Government Transparency and Campaign Finance Commission, its attorneys and agents, and all persons acting on its behalf, including without limitation its employees.
- e) The terms “Defendant Millsaps” and “Millsaps” refer without limitation to Defendant Patrick Millsaps, his attorneys and agents, and all persons acting on his behalf.
- f) “Defendants” shall refer to you, the Commission and Defendant Millsaps.
- g) “Personal E-mail Account” shall refer to any e-mail account that you possess or use (e.g. Gmail, Hotmail, Yahoo!, AOL, etc.) other than the e-mail account assigned to you and maintained by the Commission and/or the State of Georgia.
- h) “Commission E-mail Account” shall refer to any e-mail account assigned to you and maintained by the Commission and/or the State of Georgia.
- i) The conjunctions “and” and “or” shall be interpreted conjunctively and shall not be interpreted disjunctively so as to exclude any information otherwise within the scope of this discovery.
- j) “Involving” and the derivatives thereof, means involving, including, summarizing, recording, containing, listing, pertaining, concerning, comprising, consisting, addressing, describing, mentioning, referring or reflecting.

REQUESTS TO PRODUCE

1.

Please produce any and all documents identified or otherwise referred to in your responses to Plaintiff Stacey Kalberman’s First Continuing Interrogatories to Defendant Holly LaBerge served concurrently herewith.

2.

Please produce any and all correspondence, including e-mails to and from your Personal E-mail Account(s) and/or your Commission E-mail Account(s), between yourself and any other person(s) (e.g., without limitation, Lisa Dentler, Elisabeth Murray-Obertein) and/or entity(ies)/agency(ies)/department(s) of the government of the State of Georgia, concerning any issue relating to this lawsuit filed by Plaintiff, including correspondence pertaining to, without limitation, the Commission's budget, the Commission's investigation into alleged ethics violations by Nathan Deal (the "Deal Investigation"), the employment of Plaintiff and this resulting lawsuit, the employment of Sherilyn Streicker and her resulting lawsuit against Defendants, Defendant Millsaps' appointment to the Commission, Defendant Millsaps' role as Chair of the Commission, Defendant Millsaps' departure from the Commission, the manner in which Defendant Millsaps obtained his position with Mr. Newt Gingrich's presidential campaign, Randolph "Randy" Evans, Todd Markle, the State of Georgia Governor's Office, Deborah Wallace, and/or the Office of the State Inspector General and its investigation into Plaintiff's departure from the Commission.

3.

Please produce any and all correspondence, including e-mails to and from your Personal E-mail Account(s) and/or your Commission E-mail Account(s), between yourself and Elisabeth Murray-Obertein referencing or relating to Ms. Murray-Obertein's application and candidacy, her interviewing, and her subsequent hiring for the position of Staff Attorney at the Commission.

4.

Please produce any and all correspondence, including e-mails to and from your Personal E-mail Account(s) and/or your Commission E-mail Account(s), between yourself and Plaintiff.

5.

Please produce any and all correspondence, including e-mails to and from your Personal E-mail Account(s) and/or your Commission E-mail Account(s), between yourself and any employee or representative of the State of Georgia Governor's Office, since July 1, 2011.

6.

Please produce any and all documents in your possession, custody, or control relating to the budget of the Commission from July 1, 2011 through the present time.

7.

Please produce any and all documents, correspondence, or other records documenting or relating to communications between yourself and any representative of the media or press since July 1, 2011.

8.

Please produce any and all documents in your possession, custody, or control relating to your hiring as Executive Secretary of the Commission, including, without limitation, any and all correspondence between you and any member of the Commission regarding your candidacy for the position, any and all application materials that you submitted for the position, any and all documents and things evidencing, memorializing, or relating to any interviews in which you participated for or regarding the position, any résumé and/or curriculum vitae you submitted to the Commission, and/or any documents you submitted to the Commission evidencing your previous employment history and qualifications for the position of Executive Secretary.

9.

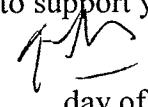
Please produce any and all documents, correspondence, or other records documenting your salary as Executive Secretary of the Commission from your date of hire through the present date.

10.

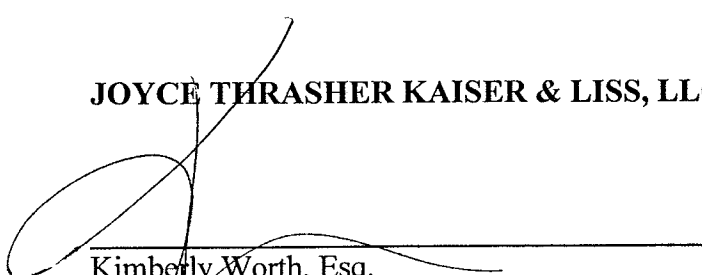
Please produce all documents showing political contributions made by you since 2008.

11.

Please produce all documents, electronically stored information, and tangible things that you may use to support your defense against Plaintiff's claims.

This  day of April, 2013.

JOYCE THRASHER KAISER & LISS, LLC



Kimberly Worth, Esq.
Georgia Bar No. 500790
D. Barton Black, Esq.
Georgia Bar No. 119977

Attorneys for Stacey Kalberman

Five Concourse Parkway
Suite 2600
Atlanta, Georgia 30328
Telephone: (404) 760-6000
Facsimile: (404) 760-0225

Response

To the extent that Defendant is in possession of documents meeting the description of this request which have not already been produced to Plaintiff voluntarily on a disc entitled “Documents in response to Plaintiff’s (Sherilyn Streicker) First Request for Production of Documents Produced by: Georgia Government Transparency and Campaign Finance Commission,” Plaintiff will produce such documents to Plaintiff.

Request No. 2

Please produce the Commission’s entire investigative file concerning Nathan Deal, including all correspondence relating to that investigation into alleged ethical violations committed by his campaign for governor in the 2010 election cycle. Plaintiff acknowledges the sensitive nature of this request and agrees to the production of the responsive documents subject to a privilege log and offers that the document will be viewed by counsel and Plaintiff only.

Response

To the extent that Defendant is in possession of documents meeting the description of this request which have not already been produced to Plaintiff voluntarily on a disc entitled “Documents in response to Plaintiff’s (Sherilyn Streicker) First Request for Production of Documents Produced by: Georgia

Government Transparency and Campaign Finance Commission,” Plaintiff will produce such documents to Plaintiff.

Request No. 3

Please produce any and all documents relating to the budget of the Commission from 2009 through 2012.

Response

To the extent that Defendant is in possession of documents meeting the description of this request which have not already been produced to Plaintiff voluntarily on a disc entitled “Documents in response to Plaintiff’s (Sherilyn Streicker) First Request for Production of Documents Produced by: Georgia Government Transparency and Campaign Finance Commission,” Plaintiff will produce such documents to Plaintiff.

Request No. 4

Please produce any and all calculations or proposals prepared to support the financial necessity of cutting Plaintiff’s salary in May to June 2011.

Response

Defendant has no documents to produce based on its interpretation of Plaintiff’s described requested documents.

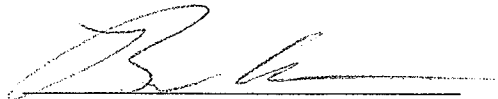
Request No. 5

CERTIFICATE OF SERVICE

I hereby certify that on June 14th, 2013, I served the foregoing
**DEFENDANT GEORGIA GOVERNMENT TRANSPARENCY AND
CAMPAIGN FINANCE COMMISSION'S RESPONSES TO PLAINTIFF'S
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS**, upon opposing
counsel in this case by sending a copy via the United States Mail with adequate
postage affixed and addressed as follows:

Kimberly Worth
Barton Black
JOYCE THRASHER KAISER & LISS, LLC
Five Concourse Parkway
Suite 2600
Atlanta, Georgia 30328

This 14th day of June, 2013.



Bryan K. Webb
Counsel for Defendant
State Bar No.: 743580

Government Transparency and Campaign Finance Commission,” Plaintiff will produce such documents to Plaintiff.

Response to Request No. 2

To the extent that Defendant is in possession of documents meeting the description of this request which have not already been produced to Plaintiff voluntarily on a disc entitled “Documents in response to Plaintiff’s (Sherilyn Streicker) First Request For Production of Documents Produced by: Georgia Government Transparency and Campaign Finance Commission,” Plaintiff will produce such documents to Plaintiff.

Response to Request No. 3

To the extent that Defendant is in possession of documents meeting the description of this request which have not already been produced to Plaintiff voluntarily on a disc entitled “Documents in response to Plaintiff’s (Sherilyn Streicker) First Request For Production of Documents Produced by: Georgia Government Transparency and Campaign Finance Commission,” Plaintiff will produce such documents to Plaintiff.

Response to Request No. 4

To the extent that Defendant is in possession of documents meeting the description of this request which have not already been produced to Plaintiff voluntarily on a disc entitled “Documents in response to Plaintiff’s (Sherilyn

Streicker) First Request for Production of Documents Produced by: Georgia Government Transparency and Campaign Finance Commission,” Plaintiff will produce such documents to Plaintiff.

Response to Request No. 5

To the extent that Defendant is in possession of documents meeting the description of this request which have not already been produced to Plaintiff voluntarily on a disc entitled “Documents in response to Plaintiff’s (Sherilyn Streicker) First Request For Production of Documents Produced by: Georgia Government Transparency and Campaign Finance Commission,” Plaintiff will produce such documents to Plaintiff.

Response to Request No. 6

To the extent that Defendant is in possession of documents meeting the description of this request which have not already been produced to Plaintiff voluntarily on a disc entitled “Documents in response to Plaintiff’s (Sherilyn Streicker) First Request For Production of Documents Produced by: Georgia Government Transparency and Campaign Finance Commission,” Plaintiff will produce such documents to Plaintiff.

Response to Request No. 7

To the extent that Defendant is in possession of documents meeting the description of this request which have not already been produced to Plaintiff

PLEASE SERVE:

BRYAN K. WEBB

Senior Assistant Attorney General

40 Capitol Square, S.W.

Atlanta, Georgia 30334-1300

Tele: (404) 656-5331

Fax: (404) 657-9932

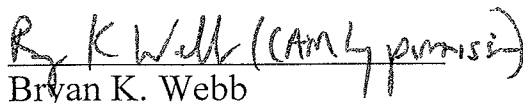
Email: bwebb@law.ga.gov

CERTIFICATE OF SERVICE

I hereby certify that on June 14th, 2013, I served the foregoing
**DEFENDANT HOLLY LABERGE'S RESPONSES TO PLAINTIFF'S
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS** upon opposing
counsel in this case by sending a copy via the United States Mail with adequate
postage affixed and addressed as follows:

Kimberly Worth
Barton Black
JOYCE THRASHER KAISER & LISS, LLC
Five Concourse Parkway
Suite 2600
Atlanta, Georgia 30328

This 14th day of June, 2013.


Bryan K. Webb
Counsel for Defendant
State Bar No.: 743580

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA**

**SUBPOENA TO TESTIFY
BEFORE GRAND JURY**

To: HOLLY LABERGE

SUBPOENA FOR:

PERSON DOCUMENT(S) OR OBJECT(S)

YOU ARE HEREBY COMMANDED to appear and testify before the Grand Jury of the United States District Court at the place, date and time specified below.

<p>PLACE</p> <p>United States Courthouse 75 Spring Street, S.W. Atlanta, GA 30303</p>	<p>COURTROOM Grand Jury # 3-13 Room Number 2037</p> <hr/> <p>DATE AND TIME January 14, 2014 9:00 a.m.</p>
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YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s)*:
PLEASE SEE ATTACHMENT A.

In lieu of personal appearance before the Grand Jury, please return documents to AUSA Christopher C. Bly, 75 Spring Street, SW, Suite 600, Atlanta, GA 30303, telephone number (404) 581-6048.

PLEASE ATTACH A COPY OF THIS SUBPOENA WITH RECORDS PRODUCED.

Please see additional information on reverse

This subpoena shall remain in effect until you are granted leave to depart by the court or by an officer acting on behalf of the court.

<p>CLERK OF COURT JAMES N. HATTEN</p> <p>(By) Deputy Clerk <i>[Signature]</i></p>	<p>DATE 11/25/2013</p>
<p>This subpoena is issued on application of the United States of America</p> <p>United States Attorney</p>	<p>NAME, ADDRESS AND PHONE NUMBER OF ASSISTANT U.S. ATTORNEY CHRISTOPHER BLY <i>CB</i> (404)581-6048 600 Richard Russell Bldg. 75 Spring Street, S.W. Atlanta, GA 30303 2013R01091 / FBI / M.BROSAS</p>

*If not applicable, enter "none"

RETURN OF SERVICE (1)		
RECEIVED BY SERVER	DATE	PLACE
SERVED	DATE	PLACE
SERVED ON (NAME)		
SERVED BY		TITLE
STATEMENT OF SERVICE FEES		
TRAVEL	SERVICES	TOTAL
DECLARATION OF SERVER (2)		
<p>I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.</p> <p>Executed on _____ Date Signature of Server</p> <p style="text-align: center;">_____ Address of Server</p>		
Additional Information		

(1) As to who may serve a subpoena and the manner of its service see Rule 17(d), Federal Rules of Criminal Procedure, or Rule 45(c), Federal Rules of Civil Procedure.

(2) "Fees and mileage need not be tendered to the witness upon service of a subpoena issued on behalf of the United States or an officer or agency thereof (Rule 45(c), Federal Rules of Civil Procedure; Rule 17(d), Federal Rules of Criminal Procedure) or on behalf of certain indigent parties and criminal defendants who are unable to pay such costs (28 USC 1825, Rule 17(b) Federal Rules of Criminal Procedure)".

Grand Jury Subpoena Attachment A

Provide all documents currently in your possession, custody or control, regardless of whether in your personal or professional capacity, related to Georgia Government Transparency and Campaign Finance Commission Case Numbers 2010-0033(a) – (c). "Documents" refer to both hard copy and electronic media and include, but are not limited to, notes, correspondence of any form, letters, electronic mail, memorandums, depositions, transcripts, recorded statements of any form, court filings, and all drafts of such documents.

NORTHERN DISTRICT OF GEORGIA

IN RE 2013R01091 :
: GRAND JURY NO. 3-13
GRAND JURY PROCEEDINGS :

WAIVER OF APPEARANCE
AND
DOCUMENT RECEIPT

I, _____, of _____

_____ have custody and control of the documents requested in the
attached subpoena. I would prefer that:

- () _____
the above-named agent take custody of these documents and present them to the
grand jury;
- () I will mail the requested documents via certified mail to: Grand Jury Clerk, U.S.
Attorney's Office, Suite 600, 75 Spring Street, S.W., Atlanta, Georgia 30303

in lieu of actual appearance by myself before the grand jury. I understand this is voluntary on
my part and I have an absolute right to appear before the grand jury with expenses paid as
provided by federal law. Submission of the requested documents is fully complied with,
this _____ day of _____, 20_____.

SIGNATURE OF PERSON SUBMITTING DOCUMENTS

DATE

SIGNATURE OF PERSON RECEIVING DOCUMENTS

DATE

SIGNATURE OF GRAND JURY FOREPERSON

**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**

STACEY KALBERMAN,

Plaintiff,

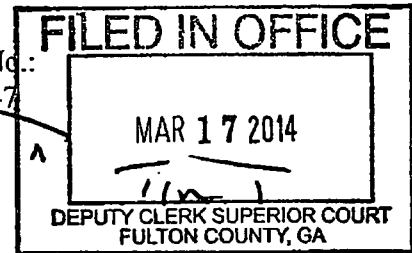
vs.

GEORGIA GOVERNMENT
TRANSPARENCY AND
CAMPAIGN FINANCE
COMMISSION, ET AL.,

Defendants.

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Civil Action No.:
2012CV216247



BRIEF IN SUPPORT OF MOTION TO QUASH

I. INTRODUCTION

On or about March 5, 2014, the Office of the Governor received a subpoena directed toward Governor Nathan Deal.¹ The subpoena ostensibly calls for the Governor personally to attend the trial of this matter on March 31, 2014 and be sworn as a witness. (See Exhibit A hereto). Despite taking discovery from several public officials and deposing numerous former and current Georgia Government Transparency and Campaign Finance Commission (the “Commission”) members, Plaintiff did not endeavor to pursue discovery from any member of the Governor’s Office, and with good reason: the Governor has no direct factual knowledge relevant to the allegations in Plaintiff’s Complaint or Amended Complaint. That Plaintiff is only seeking the Governor’s testimony now, on the eve of a highly publicized and politically charged trial

¹ The Office of the Governor also received a subpoena directed at the Governor’s Executive Counsel, Ryan Teague (the “Teague Subpoena”). Although the Office of the Governor is not formally moving to quash the Teague Subpoena, the Office, of course, adamantly objects Plaintiff soliciting any information from Mr. Teague that could encroach on the attorney-client privilege he shares with the Governor.

underscores the real motivation behind the subpoena: the desire to openly harass the Governor, unfairly dramatize the trial before the media, and leverage Plaintiff's claims with a jury.

This case involves allegations that, reducing the salary of Plaintiff's Executive Director Position in June 2011, the Commission retaliated against her in violation of Georgia's "Whistleblower" statute, O.C.G.A. § 45-1-4. Though the Governor was the subject of complaints made to the Commission in late 2010 and early 2011, the Governor has no direct factual knowledge of the day-to-day functions of the Commission or the information that eventually led the Commission to reduce the salary of Plaintiff's position. Only the Commission members and Commission staff can testify to that information. The Governor thus has no firsthand knowledge of the facts relevant to this action and seeks to quash this subpoena as improper, unreasonable, and patently oppressive. Even the "brief and succinct outline of the case and contentions" section of Plaintiff's Pretrial Order does not allege any direct knowledge on the part of the Governor, in particular.

Because the Governor is not alleged to have any direct factual knowledge relevant to the Complaint or Amended Complaint, and Plaintiff has not sought his testimony sooner, the subpoena is merely an attempt to harass the Governor and unfairly dramatize an already politically charged trial open to the public. Additionally, the subpoena is uniquely improper and burdensome given the Governor's weighty public responsibilities. The subpoena should be quashed.

II. ARGUMENT AND CITATION OF AUTHORITY

Code Section 9-11-45(a)(1) permits quashing a subpoena that is unreasonable and oppressive. *See also* O.C.G.A. § 24-10-22(b); *Washburn v. Sardi's Restaurants*, 191 Ga. App. 307, 310 (1989). The instant subpoena is clearly unreasonable and oppressive because the

Governor has no firsthand knowledge of the relevant facts of this case. Further, the subpoena presents an undue burden on the extremely hectic schedule of Georgia's chief executive officer.

1. The Governor Has No Personal Knowledge of the Relevant Facts, and Any Testimony Would be Immaterial.

The Governor is the head of the executive branch and oversees the day-to-day operation of the State. *See* Ga. Const. Art. V, Sec. I, Para. I; Art. V. Sec. II, Para. I; Art. V. Sec. III, Para. I. Nothing in the Amended Complaint requires or depends on the testimony of the Governor. The Governor is not alleged to have any personal knowledge of the Commission's personnel and budgetary decisions made on or about June 2011. The Governor is not alleged to have been involved in or consulted about the reduction in Plaintiff's salary, the creation of the staff attorney position, or generally how to allocate the Commission's budget during that time period. The allegations, true or false, regarding the conduct of the Commission members and staff depend on the *Commission members and staff* having personal knowledge of those actions, not the Governor. Thus what *de minimis* information the Governor may have on the background of the case, if any, can be supplied by other witnesses and is far outweighed by the burden of having the Governor testify. (*See* Section 2 below.)

If the Governor had information that is crucial enough to require the attendance of the Governor at trial (and he does *not*), there is no reason Plaintiff could not have obtained it earlier through deposition or written discovery. Plaintiff did not do so and only now seeks trial testimony from the Governor in an attempt to publically harass the Governor and unfairly prejudice the Governor as well as the Defendants before a jury. The Governor has no knowledge material enough to warrant his presence at this trial.

2. The Burden on Calling on the Governor to Testify Far Outweighs Any Possible Probative Value of that Testimony.

While any subpoena should be quashed if it is “unreasonable and oppressive,” a subpoena on the Governor of the State of Georgia is exceptionally burdensome. Courts have routinely refused subpoenas on even lower-ranking state officials. For instance, in the case *Irene Stephens v. Georgia Dept. of Transportation*, 1:02-CV-1608-RWS in the United States District Court for the Northern District of Georgia, the Plaintiff tried to subpoena Chief Administrative Law Judge Lois Oakley. (See Exhibit B.) The court rejected the subpoena, quoting prior decisions:

In general, high ranking government officials enjoy limited immunity from being deposed in matters about which they have no personal knowledge. The immunity is warranted because such officials must be allowed the freedom to perform their tasks without the constant interference of the discovery process. [Cits. omitted] Before the involuntary depositions of high ranking government officials will be permitted, the parties seeking the depositions must demonstrate that the particular official's testimony will likely lead to the discovery of admissible evidence and is *essential to that party's case*. [Cits. omitted] In addition, the evidence must not be *available through an alternative source or via less burdensome means*." *Warzon v. Drew*, 155 F.R.D. 183 (E.D. Wis. 1994). See also *In re: United States of America*, 985 F.2d 510 (11th Cir. 1993).

(emphasis added) (Order at p. 3 quoting *Smith v. State of Ga. Dept. of Children & Youth Svcs*, 179 F.R.D. 644, 645-46 (N.D. Ga. 1998)).

The *Smith* decision, quoted by the court in the *Stephens* matter, involved a subpoena on the head of the Georgia Department of Juvenile Justice. 179 F.R.D. at 645. The *Warzon* case, which both *Smith* and *Stephens* cite, involved subpoenas on the Governor of Wisconsin and the Secretary of the Department of Administration of Wisconsin. 155 F.R.d. at 184. *In re: United States of America*, again relied upon by *Smith* and *Stephens*, 985 F.2d, involved a subpoena on Dr. David Kessler, Commissioner of the FDA. 985 F.2d at 511. In all of these cases the

subpoenas were quashed due to the immunity of high ranking governmental officials from such subpoenas.

The Governor is no less immune from such an improper subpoena. Nothing in the Complaint or Amended Complaint suggests that the Governor *must* be called to testify on these issues, or that he is the *only one* with relevant knowledge. Nothing suggests that the extraordinary step of calling a Chief Executive to testify must be exercised. Indeed, the burden imposed on the Governor here is greater than that imposed on the witnesses in the above cases. In short, the burden presented by the subpoena in the present case far outweighs any probative value.²

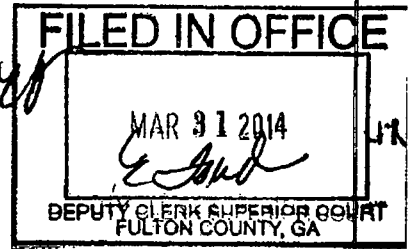
3. Respect for a Co-Equal Branch of Government Counsels in Favor of Quashing The Subpoena.

The Governor is head of the Executive Branch of state government, a branch of government co-equal with the Judicial Branch. The principles of separation of powers are at the foundation of our system of state government, just as they are in our federal system. *See, e.g.,* Ga. Const. Art. 1, Para. 2, Sec. 3. The federal courts have long recognized that subjecting the head of the Executive Branch to all but the most vital discovery – much less compulsory testimony during trial – raises separation of powers concerns. *See, e.g., United States v. Burr*, 25 F. Cas. 187, 192, F. Cas. No. 14694 (No. 14,694) (CC Va 1807) (Chief Justice Marshall sitting as trial judge). Plaintiff's failure to articulate any need at all for the Governor's testimony in this case does not remotely overcome such concerns here.

Because he subpoena should be quashed for the reasons articulated above, however, the Court need not address this thorny issue.

² The burden is especially great given the imminent conclusion of the 2014 Session of the Georgia General Assembly and the magnitude of the Governor's duties immediately after that conclusion. Specifically, the March 31 through April 4, 2014 trial dates would fall directly in the middle of the 40-day window when the Governor must review all bills passed by the General Assembly and determine whether to sign or veto them.

IN THE SUPERIOR COURT OF FULTON COUNTY,
STATE OF GEORGIA



STACEY KALBERMAN,

Plaintiff,

vs.

GEORGIA GOVERNMENT TRANSPARENCY
AND CAMPAIGN FINANCE COMMISSION,
et al.,

Defendants.

Civil Action No. 2012CV216247

Honorable Ural D. Glanville

Motion to Quash Subpoena

ORDER

The above-captioned matter is presently before the Court on the "Motion to Quash Subpoena" filed by the Honorable Nathan Deal, Governor of the State of Georgia.¹ (Doc. no. 133). Plaintiff opposes the instant motion. (Doc. no. 136). For the reasons set forth, *infra*, the instant motion is **GRANTED**. (Doc. no. 133).

I. BACKGROUND

The above-captioned case is scheduled for trial on Monday, March 31, 2014. Governor Deal contends that, on March 5, 2014, the Office of the Governor received a subpoena, calling for Governor Deal to testify in the trial scheduled in the above-captioned case. (Doc. no. 134, Gov. Deal Br., p. 1). Furthermore, Governor Deal argues that he has no personal knowledge of any relevant facts, and thus, his testimony would be immaterial. (*Id.* at 3). As such, Governor Deal maintains that the burden of calling him to testify outweighs the probative value of the testimony. (*Id.* at 3-5).

¹ Because the Clerk of the Court does not furnish copies of filings as directed by Uniform Superior Court Rule 6.1, the parties are **ORDERED** to submit copies of all future filings to the Chambers of the Judge assigned to the above-captioned case.

Finally, Governor Deal concludes that principles of separation of powers also warrant quashing the subpoena. (Id. at 5-6).

Plaintiff counters that Governor Deal has personal and first-hand knowledge of information needed to establish the elements of Plaintiff's claim. (Doc. no. 136, pp. 4-8). Plaintiff also argues that, despite Governor Deal's assertions concerning separation of powers, the fact that Governor Deal is the Governor of Georgia does not preclude his testimony in the above-captioned case. (Id. at 8). Plaintiff concludes that Governor Deal's "office does not place him above the law for purposes of relevant testimony at trial in this Court." (Id. at 4).

II. DISCUSSION OF LAW

As an initial matter, the Court will address the motion to quash based upon the nature and scope of the subject subpoena. O.C.G.A. § 9-11-43 provides, "In all trials[,] the testimony of witnesses shall be taken orally in open court unless otherwise provided by this [C]hapter or by statute." O.C.G.A. § 9-11-43(a). In this regard, O.C.G.A. § 24-13-22 provides, "At the request of any party, subpoenas for attendance at a hearing or trial shall be issued under the authority of the clerk of court in which the hearing or trial is held." O.C.G.A. § 24-13-22. However, upon written motion made promptly before the time specified in the subpoena for compliance therewith, the court may "[q]uash or modify the subpoena if it is unreasonable and oppressive." O.C.G.A. § 24-13-23(b). Although Georgia has recently adopted a new evidence

code, it remains clear that, when a motion to quash is filed, the serving-party has the initial burden of demonstrating that the sought-after evidence is relevant and then the burden shifts to the moving-party to establish that the subpoena is unreasonable and oppressive. E.g., Walker v. State, 323 Ga. App. 558, 568 (2013); Bazemore v. State, 244 Ga. App. 460, 463 (2000). Ultimately, the decision to quash a subpoena depends on the nature and scope of the request. Walker, 323 Ga. App. at 568.

Plaintiff submits,

Plaintiff is charged with proving that she was retaliated against for protected activity under the Georgia Whistleblower Act, and that includes establishing that she disclosed actual violations of law by the Governor. Governor Deal has personal and firsthand knowledge of his violations of Georgia campaign finance law. Additionally, evidence will show that the Governor's Office recruited [Plaintiff's] replacement even before the Commission constructively terminated [Plaintiff].

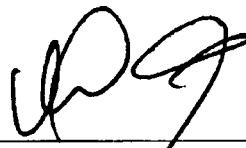
(Doc. no. 136, p. 1 (emphasis added)). Under Georgia's Whistleblower Statute, Plaintiff is required to prove that: (1) Plaintiff was a public employee; (2) Defendant Georgia Government Transparency and Campaign Finance Commission ("Commission") is a public employer; (3) Plaintiff disclosed violation of, or noncompliance with, a law, rule, or regulation to her supervisor or Defendant Commission; (4) Plaintiff's disclosure was not made with reckless disregard for its veracity; and (5) Defendant Commission retaliated against Plaintiff based upon the disclosure. O.C.G.A. § 45-1-4(d)(2); Colon v. Fulton County, 294 Ga. 93, 95 (2013). In this regard, Plaintiff need not prove or establish that Governor

Deal actually violated any campaign finance law. Rather, Plaintiff essentially must prove that she disclosed a purported violation to the Commission, resulting in retaliation. Indeed, it is unclear whether Governor Deal can offer any relevant testimony. As it relates to the issue of retaliation, it would appear that, as an employee of the Commission, the best source of any information or testimony concerning the basis of Plaintiff's purported termination would be the members of the Commission, not Governor Deal. Nothing in the record, save Plaintiff's assertions, suggests that Governor Deal was involved in the decisions related to Plaintiff's employment. Certainly, Governor Deal cannot be expected to testify in every purported employment matter involving the State of Georgia, even those purportedly related to an investigation into his campaign. Finally, the Court is left with one salient question. If Governor Deal's testimony is crucial to Plaintiff's case, why was Governor Deal not deposed or otherwise served with discovery requests prior to the eve of trial? Simply put, the Court finds that Plaintiff has failed to demonstrate that Governor Deal's testimony is relevant or that the sought-after information cannot be obtained from other, less burdensome sources. As such, the Court need not address Governor Deal's remaining arguments concerning separation of powers or the importance of the Governor's Office.

III. CONCLUSION

For the reasons stated, *supra*, the instant motion is **GRANTED**. (Doc. no. 133). Accordingly, the subject subpoena served upon Governor Deal is **HERBY QUASHED**. However, the Court may re-visit the instant motion and this Order based upon the issues and testimony proffered during the course of the trial in the above-captioned case.

SO ORDERED this 30th day of March, 2014, at Atlanta, Georgia.



Ural D. Glanville, Judge
Fulton County Superior Court
Atlanta Judicial Circuit

Copies to:

BRYAN K. WEBB
40 Capital Square, SW
Atlanta, Georgia 30334

KIMBERLY A. WORTH
Five Concourse Pkwy, NE, Suite 2600
Atlanta, Georgia 303028