

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

STACEY KALBERMAN,

Plaintiff,

vs.

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
Transparency and Campaign
Finance Commission,

Defendants

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Civil Action No.:
2012CV216247

AFFIDAVIT OF BENJAMIN F. EASTERLIN IV

After being properly sworn, Benjamin F. Easterlin IV testifies as follows:

1.

My name is Benjamin F. Easterlin IV. I am competent in age and mind to give the testimony in this affidavit, and I present this affidavit for use in the above-styled case on behalf of the Office of the Attorney General in response to Plaintiff's Motion for Sanctions currently pending before this Court.

2.

I have a J.D. from the University of Georgia School of Law. I have practiced law as a member of the State Bar of Georgia for over 40 years. My practice has included extensive experience in litigation and has focused almost exclusively on litigation over the past twenty years. I am a partner in the Business Litigation Practice Group of King & Spalding LLP.

3.

I served as President of the State Bar of Georgia from 1996 to 1997. I have also served in a variety of other key leadership roles in the Georgia legal community, including as a member of the Chief Justice's Commission on Professionalism, the Judicial Nominating Commission, the Judicial Qualifications Commission (past Chair), the Commission on Continuing Legal Competency, the Board of Trustees of the Georgia Bar Foundation, the Board of the Institute of Continuing Judicial Education, the Board of Trustees for the Institute of Continuing Legal Education (past Chair), the Board of Trustees of the Lawyers Foundation of Georgia (past Chair), and the American Law Institute.

4.

I have reviewed (1) Plaintiff's Requests for Production and Defendants' responses in *Kalberman v. Ga. Gov't Transparency*, No. 2012CV216247 (Fulton

Superior Court), and (2) a “Memorandum of Record” dated July 17, 2012 by Holly LaBerge.

5.

Based on that review, and my over 40 years of trial practice in this state, it is my professional opinion that the Attorney General’s Office acted appropriately and consistent with its professional and legal obligations to opposing counsel, the Court, and its client in determining that the Memorandum was not responsive to plaintiff’s discovery requests and, accordingly, not producing that document in discovery.

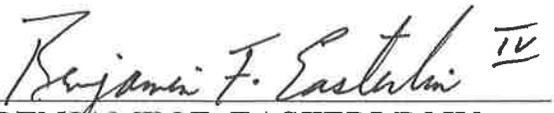
6.

The broadest request for documents from the *Kalberman* lawsuit was request number 2 from *Plaintiff’s First Request for Production of Documents and Things to Defendant Holly LaBerge*, which sought “correspondence” between Ms. LaBerge “and any other person(s) . . . and/or entity(ies)/agency(ies)/department(s) of the government of the State of Georgia, concerning any issue related to this lawsuit” The term “correspondence” has an unambiguous and well-known meaning. Webster’s New World Dictionary, Second College Edition, 1970, defines correspondence as “a communication by exchange of letters”. While today’s technology would expand the mode of communication beyond letters, the definition necessarily requires an exchange between two or more people. The

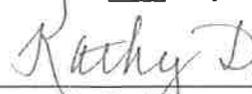
“Memorandum of Record” was a note to herself by Ms. LaBerge and not a communication to anyone else. Thus, the Memorandum is not correspondence according to the plain meaning of that term. In addition, although several of the other requests for production asked generally for any and all “documents relating to” various topics, request number 2 was not framed that broadly; instead, it was limited to “correspondence” between Ms. LaBerge and others. Because the request was narrowly framed as seeking “correspondence,” the Memorandum of Record was clearly not responsive.

To have produced the Memorandum in this case without a request covering its production would have, in my opinion, constituted malpractice. Rule 1.3 of the Georgia Rules of Professional Conduct requires counsel to represent a client with “zeal in advocacy upon the client’s behalf.” This means that while counsel are required to respond fully and accurately to document requests and other discovery sought by the opposing party, they are not required, expected, or even permitted to produce every potentially relevant document not asked for by opposing counsel.

Further AFFIANT SAYETH NOT.


BENJAMIN F. EASTERLIN IV

Sworn and subscribed before me this 5th day of August, 2014.


Notary Public
My commission expires 2015

