

# AG'S CONDUCT UNDER SCRUTINY

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# 2010

- Complaints filed with the Georgia Government Transparency and Campaign Finance Commission (“Ethics Commission”) against Deal for Governor Campaign
- Ethics Commission decides to defer investigation until after November election

# May 3, 2011

- Ethics Commission Executive Secretary Stacey Kalberman
- and her deputy and chief investigator, Sherilyn Streicker
- present to Commisison draft subpoenas to Deal Campaign



# May 2011

**Deal's executive counsel,  
Ryan Teague calls**



**Holly LaBerge to discuss  
applying for Kalberman's job**



June 9, 2011

- Commission Chair Millsaps tells Kalberman
- Streicker's job was being eliminated and
- Kalberman's own salary was to be cut from \$120,000 to \$85,000
  - For budgetary reasons

August 25, 2011

- LaBerge hired to replace Kalberman
- LaBerge rescinds request to issue subpoenas to Deal Campaign

# July 17, 2012 LaBerge Memo

- “Memorandum of Record”
- “On July 16, 2012 at 4:44 CST I received a text message to my personal cell phone from Chris Riley:
  - ... can [we] resolve all DFG [Deal for Governor] issues by Monday?
  - I replied via text at 8:46 CST:
    - A realistic counter by noon tomorrow is the best chance of a resolution.”



## July 17, 2012 LaBerge Memo

- “At 8:50 pm CST Chris Riley responded via text:
  - “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?”



# July 17, 2012 LaBerge Memo

- On July 17 at “1:04 pm CST
- Ryan Teague called my personal cell phone.



## July 17, 2012 LaBerge Memo

- Ryan informed me 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.”

## July 17, 2012 LaBerge Memo

- “I felt it necessary to inform the Chairman of the Commission, Kevin Abernathy, about what had transpired”
- “After 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.”

“Holly LaBerge  
Executive Secretary  
Georgia Government Transparency & Campaign Finance Commission”

July 23, 2012

- Commission dismisses four of the complaints
- Settles three remaining complaints with the payment of \$3,350 in administrative fees for a series of "technical defects."

## Open Records Request to LaBerge

- Atlanta Journal Constitution, July 26, 2012:
- “Access to and copies of all records, including interviews, audits, e-mails, faxes, and any and all documents including case files related to” Deal for Governor cases
- LaBerge does not give AJC access to or a copy of her July 17 memo

## March 26, 2013: Kalberman First Request for Production of Documents to Commission

- “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.”
- AG agrees to produce and gives Kalberman computer disk saying it contains entire investigative file

## April 19, 2013: Kalberman First Request for Production of Documents to LaBerge

- “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”
- AG agrees to produce requested documents

# July 30, 2013 Deposition of John Hair



- In June 2012 “LaBerge ... informed me that dealing with Governor Deal’s case, there’s going to be sensitive information”
- “Documents that she specifically does not want to be sent through the main channels”
- “These documents to be ... scanned ... put on a zip drive ... and then sent to her personal email address”
  - Deposition at p. 31



# July 30, 2013 Deposition of John Hair



- “They had you put these documents on this jump drive so they wouldn’t be put on the main system?”
- Yes.
- Is it your opinion ... that this was a violation of the Open Records Act?”
- “Yes, ma’am.”
  - Deposition at page 32.

# Georgia Open Records Act

- “knowingly and willingly frustrating or attempting to frustrate access to records by intentionally making records difficult to obtain or review” is a misdemeanor" § 50-18-74
- the Attorney General has “authority to bring such actions in his or her discretion as may be appropriate to enforce compliance with this article and to seek either civil or criminal penalties or both” § 50-18-73

# August 2013

- Asst AG Webb meets with LaBerge to discuss allegations of “pressure from Governor’s inner circle”
- LaBerge gives him copy of July 17, 2012 memo
- Webb does not disclose memo in Kalberman or Streicker cases



## 2014

- April 4: Jury awards \$700,000 to Kalberman
  - May 21: settled at \$1.15 million, including atty fees
- June 13: The state agrees to settle the remaining cases against the ethics commission
  - Streicker \$1 million
  - Hair \$410,000
  - Murray-Obertein \$477,500

# July 11, 2014



- LaBerge releases July 17, 2012 memo to the media

# AG Sam Olens: July 15, 2014



- “Let me be clear – I wish that a request had been issued to which the memorandum was responsive.”
- “The lawyers in my office represent the State and its agencies, and have a legal duty to do so zealously.”

# AG Sam Olens: July 15, 2014



- “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.”

August 8, 2014

- Kalberman files Motion for Sanctions in Fulton Superior against
  - Office of the Atty General
  - Ethics Commission
  - Holly LaBerge
- Will donate any sanction amount to State Bar to fund ethics education



# Asst AG Bryan Webb: 8/21/14 Affidavit



- “Abernathy told her that she should write an account of the telephone conversation”
- “She housed the document in a place outside of the official file.”

# Asst AG Bryan Webb: 8/21/14 Affidavit



- “LaBerge had chosen not to make the document part of the official Commission file”
- “Had the document been part of the official investigation file as maintained by the Commission”
- “I would have produced the document.”

# AG Response filed Aug 22, 2014



- “The Ethics Commission and its staffers determine the content of the agency’s investigative files”
- “That is not a decision for their lawyers to make.”

# August 25 Hearing

Judge Ural Glanville hears testimony from LaBerge and



Webb, who says “it’s uncomfortable to be here but just because it’s uncomfortable doesn’t mean I’m going to do something I shouldn’t do.”



## 9/3/14: Judge Glanville Order

- Memorandum, e-mails, and text messages were relevant and “responsive to Plaintiff’s discovery request”
- Failure to comply with basic discovery principles “a flagrant disregard for the basic rules governing litigation and fair resolution of legal disputes in Georgia”
- “also an injustice and an undermining of the confidence imposed by the citizens of the State of Georgia in the legal system”

## 9/3/14: Judge Glanville Order

- Only recourse is “monetary sanctions” of \$20,000 for reasonable litigation expenses of bringing this motion
- Department of Law to pay \$10,000
- LaBerge “in her individual and personal capacity” to pay \$10,000

## 9/3/14: Media Statement from Former Bar Presidents

- “we disagree with the court’s decision”
- “To have produced the memorandum ... would have, in our opinion, constituted malpractice”
- “a decision by a career attorney ... ethically bound to zealously represent his client”
- Jay Cook ‘07, Ben Easterlin ‘97, Jimmy Franklin ‘02, Robert Ingram ‘06, Charles Ruffin ‘14

## Georgia Rule of Professional Conduct 1.2(d)

- A lawyer shall not counsel a client to engage in conduct that the lawyer knows is criminal or fraudulent, nor knowingly assist a client in such conduct,
- but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.



## Georgia Rule of Professional Conduct 3.4(a)

- A lawyer shall not unlawfully obstruct another party's access to evidence
- or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value.
- A lawyer shall not counsel or assist another person to do any such act.

# Georgia Rule of Professional Conduct 1.4

- A lawyer shall ..
- reasonably consult with the client about the means by which the client's objectives are to be accomplished
- keep the client reasonably informed about the status of the matter
- consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.
- A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

## Georgia Rule of Professional Conduct 1.2(a)

- A lawyer shall abide by a client's decisions concerning the scope and objectives of representation
- and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued.

## Georgia Rule of Professional Conduct 5.1(c)

- A lawyer shall be responsible for another lawyer's violation of the Georgia Rules of Professional Conduct if:
  - the lawyer ... has managerial authority ... or direct supervisory authority over the other lawyer,
  - and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

# Georgia Rule of Professional Conduct 5.1

- The maximum penalty for a violation of this Rule is disbarment.
- Comment
  - “lawyers who have managerial authority ... includes members of a partnership ... [and] lawyers having comparable managerial authority in ... a law department of a ... government agency”