

State to pay \$1.8 million to settle ethics cases

By Aaron Gould Sheinin - The Atlanta Journal-Constitution

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The state of Georgia on Friday agreed to pay more than \$1.8 million to settle two lawsuits against its ethics commission and one that had yet to be filed.

The decision to pay, and avoid trial, brings to nearly \$3 million the cost to taxpayers to end a series of legal battles that have dogged the commission and Gov. Nathan Deal for two years.

In agreements signed Friday, former commission deputy director Sherilyn Streicker will be paid \$1 million and the agency's computer specialist, John Hair, will receive \$410,000. Former commission attorney Elisabeth Murray-Obertein, who had threatened to sue, will receive \$477,500.

The settlements come two months after a Fulton County jury awarded former commission director Stacey Kalberman \$700,000 plus attorneys fees — \$1.15 million in all — after a week-long trial.

The payments will come out of an insurance fund the state maintains with taxpayer dollars.

Attorney Kim Worth, who represented both Kalberman and Hair, said the verdict and the settlements end a painful period for the plaintiffs.

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“Four families lives were turned upside down by the wrongful actions of people in power,” Worth said. “We hope that this serves as a wake-up call that the abuse of ethics cannot be tolerated. This waste of taxpayer funds should not happen again.”

The settlements cap a saga that began in May 2011 when Kalberman and Streicker asked ethics commissioners to approve subpoenas asking for records related to their investigation of Deal’s 2010 campaign. The investigation was based on a series of complaints that alleged Deal improperly used campaign funds to pay for attorney’s fees and the use of an airplane for campaigning.

Shortly after presenting the draft subpoenas, Kalberman was told her salary would be cut deeply and Streicker’s job eliminated. Both soon left the agency and filed separate lawsuits. The subpoenas were never issued and in 2012 the commission, under the leadership of Kalberman successor Holly LaBerge, cleared Deal of major violations. The governor agreed to pay \$3,350 in fees for technical defects in campaign filings.

But, as the lawsuits inched their way forward, Murray-Obertein claimed in sworn testimony that LaBerge bragged that the governor “owed” her for scuttling the commission’s case against him. Hair, meanwhile, claimed that he was fired after he refused an order from LaBerge to alter or destroy commission records related to the Deal investigation and Kalberman’s lawsuit.

LaBerge has denied the accusations from Murray-Obertein and Hair. Deal has maintained that the lawsuits had nothing to do with him and that he did not know LaBerge, much less owe her anything.

Murray-Obertein was fired in January after a Capitol police officer reported that she smelled of alcohol at work.

Efforts to reach Murray-Obertein were unsuccessful.

Edward Buckley, whose law firm represented Murray-Obertein and Streicker, said in a statement that the settlement vindicates his clients' rights under the Georgia Whistleblower Act.

Streicker, was "working in good faith to protect the integrity of the election system in Georgia" when she was let go.

Murray-Obertein "was in the process of removing files from her computer pursuant to a subpoena from the FBI at the time she was told to leave her office," the statement said. "The swirl of allegations disparaging her character that followed, were unfair and created unnecessary distress to her and her family."

Hair also described the settlement as "vindication" for his actions.

His firing, he said, "was retaliation. It was to force me out of there for initially standing up and doing the right thing."

Kevin Abernethy, chairman of the commission — formally known as the Government Transparency and Campaign Finance Commission — said the settlements will help the agency move on.

"We're pleased to put these matters behind us and look forward to proceeding in a positive direction with the work of the commission," Abernethy said.

In the years since Kalberman and Streicker left, the commission has been mired in intra-office scandal, and left with a depleted staff and lack of progress on cases even as new duties were piled on its plate. Now, LaBerge remains as director as other actors in the soap opera have been fired or left. That's not changing, Abernethy said.

"Holly LaBerge is and remains the executive director of the agency," he said.

The settlements might end the legal battles of the commission, but they are unlikely to end the political challenge for Deal, who faces re-election in November.

Deal was never accused of being personally involved in any of the alleged misdeeds, but his staff members played roles in the drama. His executive counsel, Ryan Teague, helped recruit LaBerge before Kalberman was forced from office. Teague and Chris Riley, the governor's chief of staff, also met privately with LaBerge to discuss the ethics complaints against Deal.

Deal's opponent, Sen. Jason Carter, D-Atlanta, has pounded Deal over the lawsuits and costs to the state.

After the Kalberman verdict, Deal labeled the ethics commission "ineffective" and called for a major restructuring of the board that would expand its membership, an overhaul he said was probably "overdue." In May, Deal questioned whether state law should be changed to strip whistleblower protections from state employees who investigate other state agencies or workers.

Deal spokesman Brian Robinson on Friday did not back away from that idea and said the settlements show "once again the utter dysfunction of the campaign finance commission, which is supposed to enforce our campaign and lobbying laws in a quick and efficient manner. That's not happening."

Robinson said Deal has asked his Senate liaison, Sen. Charlie Bethel, R-Dalton, to sponsor legislation next year to implement the governor's plan to revamp the commission.

Carter said the commission's dysfunction is directly related to Deal's allies' efforts to quash the investigation.

"As a taxpayer, I'm outraged, and as a citizen, I'm embarrassed," Carter said. "I'm outraged that we're now on the hook for \$3 million, and I'm embarrassed that this is happening in our state."

Carter continues to question whether the original complaints against Deal were fully investigated once Kalberman and Streicker were gone and has called for the investigation to be re-opened.

It's also ironic, Carter said, that Deal is now calling for changes to the commission.

"I fought in the state Senate for a strong and truly independent ethics commission," Carter said. "Governor Deal and his allies have blocked this reform at every turn."

Kennesaw State University political scientist Ralph Durham said settling the cases in June is better for Deal than having trials spread out through the fall. Still, the governor had better be ready for more of that kind of rhetoric from Carter and the Democrats.

"If I were in the Carter camp I'd be wanting to emphasize that this is a persistent cloud that follows Deal around," Durham said. "He has just always sort of been hounded by accusations and can't seem to get away from it."

Staff writer Greg Bluestein contributed.

Digging deeper

The Atlanta Journal-Constitution began following the infighting, funding lapses and legal challenges plaguing the state's ethics commission before the departure of chief Stacey Kalberman in June 2011 by reviewing documents and conducting interviews with staff.

TIMELINE

2010

Nov. 2: Republican Nathan Deal is elected governor.

2011

January-May: The top two staff members of the state ethics commission, executive director Stacey Kalberman and her deputy, Sherilyn Streicker, open an investigation into the Deal campaign. They meet with federal prosecutors and the FBI concerning their inquiry. The two draw up subpoenas for Deal and others and prepare to serve them.

June: Kalberman and Streicker are gone from their jobs. Streicker's job is eliminated. Kalberman's salary is cut from \$120,000 to \$85,000, and she resigns. The chairman of the ethics commission, Patrick Millsaps, says he needed to cut costs.

August: Holly LaBerge is hired as the commission's new director.

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June: Kalberman and Streicker file separate whistleblower lawsuits against the state.

July 23: The state ethics commission clears Deal of major ethics violations while finding he made "technical defects" in a series of personal financial and campaign finance reports. Deal agrees to pay fees totaling \$3,350.

Sept. 1: The AJC reports that Kalberman and Streicker held several meetings with federal public corruption authorities to discuss the ethics commission's investigation into Deal. The U.S. Attorney's Office would not confirm nor deny that there had been a federal investigation into Deal. Referring to the meetings, Deal lawyer Randy Evans said "there was never anything to it."

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September: The AJC reports that two staff members of the state ethics commission accused LaBerge of improperly intervening in the probe of Deal. Staff attorney Elisabeth Murray-Oberlein and information technology specialist John Hair made the accusations in sworn testimony taken as part of Kalberman's and Streicker's whistleblower suits. Hair said LaBerge ordered him to destroy documents in the Deal file. Murray-Oberlein said LaBerge bragged that Deal "owed" her for making his legal troubles go away. LaBerge denied those accusations in her own testimony. Deal also denied any wrongdoing.

Oct. 10: The AJC reports that the FBI had interviewed Murray-Oberlein.

Oct. 22: The state ethics commission votes to have the state auditor investigate the beleaguered agency.

Dec. 11: Federal investigators issue subpoenas to at least five current and former ethics commission staff members seeking documents to present to a grand jury.

Dec. 19: The ethics commission votes unanimously to hire veteran lawyer Robert Constantine to oversee operations from January to May.

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Jan. 6: Relying on personnel files obtained through an open records request, the AJC reports that Constantine was fired in August 2013 as a judge on the state Board of Workers' Compensation for "failure to meet performance expectations."

February: Deal and two top aides are subpoenaed by Streicker and could testify in her lawsuit. The ethics commission cuts ties to Constantine, voting to conclude his services while agreeing to pay the full \$16,000 of his original agreement.

March: The ethics commission faces a third whistleblower suit – this one filed by Hair, the agency's former IT specialist. Hair claims he was fired after refusing orders from LaBerge to alter or remove documents related to the Deal investigation.

April 4: A Fulton County jury awards \$700,000 to Kalberman in her suit claiming she was forced out as executive director of the commission for investigating Deal's campaign too vigorously.

April 7: Deal proposes an overhaul of the ethics commission, calling for 12 members who would be appointed by the executive, legislative and judicial branches.

May 21: The final amount in Kalberman's case is set at \$1.15 million, with Kalberman receiving \$725,111.79 and the law firm Thrasher Liss & Smith being paid \$424,881.21. The state Department of Administrative Services will pay the costs through its self-funded insurance program.

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Key players

Nathan Deal

The governor faced complaints that he personally profited from his campaign's aircraft rentals from a company he partly owned, that he illegally used state campaign funds for legal bills related to a federal ethics investigation when he was a member of Congress and that he accepted campaign contributions that exceeded limits. The state ethics commission cleared Deal of major ethics violations in July 2012 while finding he made "technical defects" in a series of personal financial and campaign finance reports. Deal agreed to pay fees totaling \$3,350.

Holly LaBerge

Before her appointment as executive director of the state ethics commission in August 2011, she was a lobbyist for the state Public Defenders Standards Council. She took the job after the governor's counsel, Ryan Teague, contacted her about replacing Stacey Kalberman before Kalberman's salary was cut and her top aide was dismissed. Staffers testified in Kalberman's and Streicker's whistleblower lawsuits that LaBerge said the governor owed her after the commission cleared him of major ethics violations in July 2012. LaBerge denied the claims in her own testimony. During the trial in Kalberman's whistleblower suit against the commission, LaBerge testified that she found no budget crisis when she took over following Kalberman's departure.

Stacey Kalberman

The former executive director of the state ethics commission was awarded \$700,000 when jurors decided April 4 that she had been forced out of her position in 2011 for vigorously investigating ethics complaints against Gov. Nathan Deal's 2010 campaign. Kalberman filed her whistleblower lawsuit in June 2012, about a year after she resigned following the commission decision, citing a budget crisis, to cut her salary by \$35,000, or 30 percent. The move came about a month after she and her top deputy, Sherilyn Streicker, asked the commission to issue subpoenas in the Deal investigation. Kalberman said she twice asked the commission's chairman, Patrick Millsaps, to sign subpoenas in the investigation.

Sherilyn Streicker

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Patrick Millsaps

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