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9:04 PM TUE JULY 15, 2014

Attorney General Rejects Claims He Withheld Deal Ethics Memo; One Plaintiff's Attorney Responds

By [DENIS O'HAYER](#) ([PEOPLE/DENIS-OHAYER](#))

On Tuesday, July 15, 2014, Georgia Attorney General Sam Olens issued a statement responding to questions about whether his office withheld a 2012 memo written by the Holly LaBerge, the current head of the state ethics commission. In the document, which was entitled "[Memorandum of Record](#),"



<http://mediad.publicbroadcasting.net/p/wabe/files/201407/Olens2014Shot-StateAttorneyGeneralsOffice.jpg>

Attorney General Sam Olens (R-Georgia)
Credit Georgia Attorney General's Office

http://mediad.publicbroadcasting.net/p/wabe/files/memo_of_record_20140714140521.pdf

LaBerge gave her version of conversations with Governor Nathan Deal's chief counsel Ryan Teague, and his chief of staff, Chris Riley. LaBerge claimed Teague had threatened her and her agency, if they did not resolve an ethics complaint involving the Governor's 2010 campaign.

The LaBerge memo did not come up in the 2014 wrongful termination lawsuits brought by LaBerge's predecessor, Stacey Kalberman, and two of her staffers.

Kalberman won a jury verdict; the state settled the other two lawsuits. But their attorneys now say the LaBerge memo should have been made available to them under the rules of evidence. They say they suspect state attorneys, possibly including Attorney General Olens, deliberately withheld the memo because it would have helped their clients' cases against the state.



<http://mediad.publicbroadcasting.net/p/wabe/files/201407/KimberlyWorthHeadShot-ThrasherLissAndSmith.jpg>

What follows are two statements issued the afternoon of July 15, 2014. The first

is from Attorney General Olens; the second is from Kimberly Worth, an attorney for former ethics commission chief Stacey Kalberman.

Kimberly Worth, an attorney for former state ethics commission chief Stacey Kalberman.
Credit Thrasher, Liss & Smith

Statement from Georgia Attorney General Sam Olens

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-Oberteiri in her deposition (excerpt attached). Following Ms. Murray-Oberteiri'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.

Statement from Kimberly Worth, an attorney for former ethics commission chief Stacey Kalberman

We are shocked and disappointed to learn the Attorney General's office did not believe it was under any legal obligation to produce the materials recently identified by Holly LaBerge. These materials go to the heart of Ms. Kalberman's claim in her lawsuit that she was terminated for investigating the Deal campaign and then replaced with a

person that the Governor's office apparently believed it could influence.

The Attorney General's office has asserted that a memorandum recently identified by Ms. LaBerge was not "responsive" to any of Ms. Kalberman's discovery requests. To the contrary, Ms. Kalberman requested the "entire Deal Investigation file," which should have included the LaBerge memorandum. Certainly, if the Governor was under investigation for alleged ethics violations, a memo which includes purported threats from his attorney should be part of that file. There is no legal justification for alienating this damaging memorandum from the Deal Investigation file, especially as the file that was produced during litigation contained numerous other memoranda drafted by Commission staff.

In addition, Ms. Kalberman requested all correspondence between Ms. LaBerge and anyone from the Governor's office, which would necessarily include any text messages Ms. LaBerge received from the Governor's counsel and chief of staff. Ms. LaBerge quoted in her memorandum particular text messages with the Governor's counsel and chief of staff, unquestionably putting the Attorney General's office on notice that responsive correspondence existed and should be produced, and in fact rendering the memorandum itself responsive to Ms. Kalberman's request for correspondence. Today, however, the Attorney General's office has attempted to deflect attention to Ms. LaBerge for allegedly withholding emails containing these text messages, all the while ignoring its own discovery obligations under the law, which include, without limitation, contacting Ms. LaBerge upon receipt of the memorandum and asking for the text messages that she received from the Governor's office.

Finally, and even more disturbing, Ms. Kalberman made an Open Records Request in July 2013 seeking any and all e-mails to and from Ms. LaBerge's personal email account concerning (among other things) the Deal investigation. As we now know, these text messages were sent by Ms. LaBerge to her personal email account, yet those emails were not produced either in discovery or in response to our office's open records request. The text messages, emails, and the memorandum itself were subject to production by the Attorney General's office both during and after discovery, as attorneys have a legal obligation to continually supplement our discovery responses when new information is obtained.

Notably, at trial, the Attorney General's office moved to exclude all evidence related to the resolution of the Deal Complaints.

At this time, Ms. Kalberman is exploring her legal remedies.

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