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Governor Fights Subpoena for Ethics Whistleblower Trial

Greg Land, Daily Report

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Gov. Nathan Deal has asked a judge to toss a subpoena seeking his testimony for an upcoming trial concerning allegations by the former head of the state's ethics panel that she was fired in retaliation for looking into Deal's campaign finances.

According to a motion to quash filed Monday by the office of Attorney General Sam Olens, Deal was subpoenaed on March 5 to appear and be ready to testify when trial begins March 31 in the case, which was brought by Stacey Kalberman, the former executive director of what was then known as the State Ethics Commission.

Kalberman claims that she and her former deputy, Sherilyn Streicker, were forced out in 2011 after they asked the panel to authorize subpoenas to investigate allegations that Deal had misused funds for his 2010 gubernatorial campaign. Both Kalberman and Streicker subsequently filed separate suits under Georgia's whistleblower law claiming they had been the subjects of illegal retaliation; a third former staffer, John Hair, filed his own whistleblower suit last month.

In February, Deal told the Atlanta Journal-Constitution that he had been notified that he might be called to testify. "If they call me, then I'll certainly appear and I'll testify," the governor said, according to the newspaper.

The governor's motion to quash the subpoena asserts that Deal has no "direct factual knowledge relevant to allegations" in Kalberman's case.

Kalberman has had ample time to obtain any testimony Deal might have to offer, the motion said. That she is "only seeking the Governor's testimony now, on the eve of a highly publicized and politically charged trial, underscores the real motivation behind the subpoena: the desire to openly harass the Governor, unfairly dramatize the trial before the media, and leverage [Kalberman's] claims with a jury."

The motion cites previous cases in which Georgia and other courts have rejected subpoenas against high-ranking government officials. It also says the subpoena "presents an undue

burden on the extremely hectic schedule of Georgia's chief executive officer."

The motion also says that forcing Deal to appear would raise separation of powers concerns, since Deal is "head of the Executive Branch of state government, a branch of government co-equal with the Judicial Branch."

Deal spokesman Brian Robinson said the matter is "an issue for the AG, not us." A spokeswoman for Olens said there would be no comment on the motion.

Deal and two staff members were first subpoenaed early last month for the trial, which was postponed because of the ice storm. The March 5 subpoena was reissued out of an abundance of caution, said Kalberman's lawyer, Thrasher Liss & Smith partner Kimberly Worth.

Worth had not seen the motion to quash when contacted by the Daily Report.

Deal's private attorney, McKenna Long & Aldridge partner Randy Evans, has also been subpoenaed. On March 4 he also filed a motion to quash, citing attorney-client privilege.

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