



ALABAMA STATE BAR

OFFICE OF THE PRESIDENT

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November 14, 2008

VIA HAND DELIVERY

Hon. Troy King
Attorney General
State of Alabama
600 Dexter Avenue
Montgomery, Alabama 36130

RE: Supreme Court Election 2008

Dear General King:

I have purposely waited until after the General Election of 2008 to contact you and request that your office investigate certain conduct that occurred in the state Supreme Court race. I have received numerous complaints from members of the Alabama State Bar that merit consideration. I categorized these complaints as follows:

1. A number of people, including some members of the Alabama State Bar, were subjected to telephone calls of the type commonly known as "push polls." In those calls, the Alabama State Bar was identified as having given a grade or rating to a particular judicial candidate. This is, of course, false and the Alabama State Bar was ethically bound to respond. The Alabama State Bar cannot and does not participate in political campaigns. In an effort to place the citizens of Alabama on notice that any representation that the Alabama State Bar graded or evaluated judicial candidates was totally false, the Alabama State Bar publicly disseminated information by press release confirming the falsity of the material. I am aware that at least one of the calls originated from the number (703) 263-2155. A computer search discloses that this number is the source of numerous similar complaints from citizens throughout the country. It appears that this number belongs to



Americans in Contact PAC in Herndon, Virginia. I have been unable to locate any indication that Americans in Contact PAC is a registered PAC in the state of Alabama. This political activity was directed towards Alabama citizens and falsely communicated information about the Alabama State Bar in an obvious effort to affect the outcome of a political campaign. I urge you to immediately conduct an investigation into the facts and circumstances concerning this conduct.

2. Notwithstanding public announcements by the Alabama State Bar and the Administrative Office of Courts (copies enclosed) to the contrary, paid advertising continued to run throughout the campaigns, up to and including election day, exploiting the name of the Alabama State Bar and representing or suggesting that the Bar did in fact grade or evaluate judicial candidates. The radio commercials, which I personally heard on Election Day, disclosed that they were paid advertising by the Alabama Voters Against Lawsuit Abuse ("AVALA"). I understand that some radio stations when confronted with the falsity of the ads refused to continue to air these ads. However, AVALA continued to disseminate the false information on other stations, notwithstanding the fact that AVALA was advised that the information was false.
3. It is my understanding that AVALA claims it has not engaged in political conduct. However, based on the materials it has disseminated throughout the state, I urge you to investigate whether it has violated the laws of the State of Alabama, including the Fair Campaign Practices Act.
4. I have also received complaints from citizens and members of our association concerning the conduct of the Center for Individual Freedom, Inc., which purchased and broadcast a large number of television ads in this election cycle. I understand this organization claims that it is not a political organization and that it does not endorse candidates. The complaints I have received are that this organization did in fact endorse a candidate in the Alabama Supreme Court race.

I have been unable to locate any disclosure by any of the entities listed in this letter detailing the membership or the source or amounts of contributions made to the

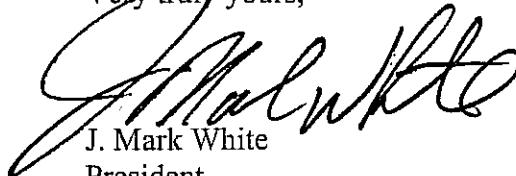
Hon. Troy King
November 14, 2008
Page 3

organizations or expended in the recent Alabama judicial campaign. A primary focus of the Bar is to serve the public. As President of the Bar, I am making a formal request and demand that you investigate these matters to determine whether the laws of Alabama have been violated.

Be assured that no one recognizes and values the protections afforded to political speech by the United States Constitution more than the Bar. However, it is misleading at best when organizations claim the protection of political speech in disseminating false information against one candidate while at the same time taking the position that they are not involved on behalf of a particular candidate in a political contest. As you know, the campaign laws of Alabama exist for the purpose of preventing this type of hypocrisy. To the extent your office has any questions or requires additional information from the Alabama State Bar, I welcome your inquiry. I have designated our general counsel, J. Anthony "Tony" McLain, as our contact for purposes of this request.

Thank you for considering this matter and for the service you render to this state and its citizens.

Very truly yours,



J. Mark White
President

JMW/cgs
Enclosures

cc: J. Anthony "Tony" McLain, Esq.



ALABAMA STATE BAR NEWS RELEASE

Release: Immediate
Contact: Brad Carr, Director of Communications
Phone: (334) 517-2128 or (334) 430-0998
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**STATE BAR PRESIDENT RESPONDS TO ‘SWIFT BOAT TACTICS’
USED IN SUPREME COURT RACE**

Montgomery, Ala., October 9, 2008 – Alabama State Bar officials have been made aware of a telephone campaign being waged by an out-of-state special interest group to spread misinformation and disinformation about one of the candidates running for a seat on the state Supreme Court.

Voters in Alabama have been targeted to receive a “push poll” phone call claiming the state bar has conducted a judicial evaluation poll that gave one candidate an “F” grade and that the bar’s membership is primarily affiliated with the Democratic Party.

State Bar President J. Mark White of Birmingham (White Arnold & Dowd P.C.) said, “Let me make this very clear: the state bar does not conduct an evaluation poll of any judicial candidates and the state bar has no way of knowing the political affiliations of its members. These falsehoods and misrepresentations are nothing short of reprehensible.”

White also said that today he has communicated with both candidates about this matter and shared the bar’s concern with the Judicial Oversight Committee.

He noted there is no evidence to suggest that one of the candidates is aware of or condones these tactics. “Judges Paseur and Shaw are to be commended for adhering to the highest standards of judicial campaign conduct,” he said.

White said Alabama’s voters should not be misled by special interest groups who use lies and distortion to attack judges. Such attacks are examples of how far third party support groups are willing to go to win. “It is unfortunate that civility and intelligence have been replaced by a mean-spirited and misleading approach to the judicial election process that is truly unconscionable,” he said.

From a historical perspective, interest group involvement usually spikes as Election Day nears. Today, in states like Alabama that use elections to select judges, campaign costs have risen exponentially, television advertising has become a predominant feature in many campaigns, and special interest groups have begun to actively campaign for or against specific candidates. With increasing frequency, special interest groups are playing an active role in judicial elections.

He said voters who have questions about judicial campaign conduct should contact retired Circuit Court Judge William R. Gordon of Montgomery who co-chairs the Judicial Campaign Oversight Committee.

The 15,756-member Alabama State Bar is dedicated to promoting the professional responsibility, competence and satisfaction of its members; improving the administration of justice and increasing public understanding and respect for the law.



PRESS RELEASE

Page 1 of 2

Administrative Office of Courts Callie T. Dietz, Administrative Director

FOR IMMEDIATE RELEASE
October 24, 2008

For Further Information, contact:
Griffin Sikes, AOC Legal Director (334) 954-5052

The Administrative Office of the Courts has been asked to confirm or deny the accuracy of certain statements made in a recent radio advertisement being run by a private interest group, AVALA, concerning Judge Deborah Bell Paseur, a candidate for the Alabama Supreme Court; and, also, to clarify and put into context certain other statements made in this advertisement.

In a portion of the ad in question, a woman's voice states:

Judge Paseur claims she never received an "F" rating from the Bar Association. The truth? Official court documents show Paseur did, in fact, receive an "F" rating from the Administrative Office of the Courts.

Judge Paseur's statement that she never received an "F" rating from the Bar Association is truthful and correct.

The Alabama State Bar Association ("the bar association") is a private, non-governmental organization whose membership is composed of the state's lawyers. The Administrative Office of Courts ("the AOC") is a governmental office or agency which advises and assists the state's courts. The bar association's president has confirmed to the AOC that the bar association does not make ratings of state court judges and accordingly, has not given or assigned any rating to Judge Paseur or any other judge in the state.

Regarding the second quoted statement in the ad regarding a rating assigned to Judge Paseur by the AOC, this statement, in the context in which it was made in the ad, is misleading, at least to the extent that it implies that the AOC made some judgment about the overall judicial performance of Judge Paseur. No such judgment has ever been made or reported by the AOC about Judge Paseur or any other state court judge.

In early 1989, the Administrative Office of Courts compiled a report on one aspect of the performance of the district courts in the state. That report was on "case currency," which was an attempt to measure how rapidly the different district courts in the state had disposed of or reached a resolution of their cases during 1988.

In this 1989 report, all Alabama district courts were classified into one of 7 categories – either A, B, C, D, E, F or G. The District Court for Lauderdale County, in which Judge Paseur served, was in the F category. Had that court been more current, it would have been in the E category, and alternatively, had it been less current, the Lauderdale District Court would have been in the G category.

There can be a wide variety of factors that influence a court’s “case currency.” One of the most significant of these is how heavy the particular court’s case load is. That is, whether more or fewer cases were being filed in that court is something that can and usually will affect how quickly a court can dispose of its cases.

As the cited “case currency” report states, an above average number of cases per judge were filed during the period of the report in Lauderdale District Court. Further, in the almost twenty years following this 1989 report, the AOC has discovered that this and other such reports were based upon case disposition data whose reporting was, in many instances, significantly flawed.

Finally, “case currency” is, of course, only one of a very large number of measures of a judge’s or court’s performance, many of the most important of which cannot be statistically measured.

To the extent that this 1989 report is attempted to be portrayed as a judgment of any kind regarding the quality of the judicial work performed by Judge Paseur in 1989, that portrayal would also be misleading and inaccurate.

(END OF PRESS RELEASE)