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October 26, 2006

Chairperson, Committee on Professional Conduct
Arkansas Supreme Court
c/o Stark Ligon, Executive Director
625 Marshall Street, Justice Building
Little Rock, AR 72201

VIA E-MAIL ATTACHMENT AND REGULAR MAIL

RE: Bar Complaint Against Kathy L. Hall, Case #T-2004-718, 731

Mr. Chairman / Madame Chairwoman:

Pursuant to Section 5.C(5) of the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law, I request a review of Executive Director Stark Ligon's decision, set forth in a letter dated October 6, 2006, in which he declined to bring a formal complaint against Kathy L. Hall. Pursuant to Section 3.C(5) of the Procedures, I ask the Committee to remove Mr. Ligon from this case and appoint an acting executive director to handle this matter and related matters.

In my complaint dated October 11, 2004, I wrote that Ms. Hall appeared to be in violation of Rule 1.7 of the Model Rules of Professional Conduct that were then in effect. I noted that Ms. Hall was defending the state's policy prohibiting homosexuals from serving as foster parents in *Howard v. Child Welfare Agency Review Board*, a case in which Leslie Cooper of the ACLU was opposing counsel. I further noted that Ms. Hall and Ms. Cooper had served as co-counsel for the ACLU in a gay rights case in Arkansas within the previous year, *McLaughlin v. Pulaski County Special School District*, thus it appeared that Ms. Hall may have been both defending against and representing the ACLU at the same time and on a closely related subject matter. Finally, I reported evidence that Ms. Hall may have deliberately sabotaged her client's case in *Howard*. Shortly thereafter, Dr. George Rekers, the state's expert witness, filed a complaint against Ms. Hall and Ms. Cooper.

On March 9, 2005, I forwarded to Mr. Ligon via e-mail (a copy is enclosed) an article in which James Balcom, chairman of the Child Welfare Agency Review Board, stated that the Board was not informed of Ms. Hall's conflict of interest. One year later, on March 5, 2006, I forwarded to Mr. Ligon an e-mail (a copy is enclosed) in which Mr. Balcom said the Board felt it had been "sold out" but "we have no funds available to hire our own attorney." In forwarding the e-mail, I informed Mr. Ligon that Mr. Balcom stated Kathy Hall had not disclosed her conflict to the Board. I further wrote to Mr. Ligon, "If you haven't spoken with Mr. Balcom, he is a great source of information."

As of October 6, 2006, when Mr. Ligon decided there was no basis for a formal complaint against Ms. Hall, Mr. Ligon had never contacted Mr. Balcom. Moreover, Mr. Ligon had never contacted Dr. Rekers, the expert witness who discovered Ms. Hall's conflict of interest and reported that she was sabotaging the state's case. On the other hand, Mr. Ligon contacted Joseph Self, Dr. Rekers's attorney in Fort Smith, on September 15, 2006 to inquire about a federal lawsuit that Dr. Rekers filed against Kathy Hall, among others. According to Mr. Self, Mr. Ligon raised with him the similarity between my complaint against Ms. Hall and Dr. Rekers's complaint against her. It is troubling that Mr. Ligon found time to delve into such an irrelevant matter, yet he could not find time to contact Mr. Balcom and Mr. Rekers, the two most important witnesses against Ms. Hall and Ms. Cooper.

In his form letter dated October 6, 2006, Mr. Ligon wrote that there did not "appear to be a sufficient basis for a formal complaint under the Committee's limited authority." In the wording of the third paragraph of the letter, it is unclear whether Mr. Ligon believed the issue was outside the Committee's authority, whether there was insufficient evidence, or both. However, in a letter to James Balcom dated October 7, 2006 (a copy is enclosed), Mr. Ligon wrote that he investigated my complaint and that evidence from "multiple sources" indicated "Ms. Hall lawyered hard and well..."

First, Mr. Ligon conveniently sidesteps a key element of my complaint, namely, that Ms. Hall had a conflict that she did not disclose to the Board, her client. In a letter to Mr. Ligon dated October 4, 2006, Mr. Balcom confirms that Ms. Hall never disclosed her conflict (ergo she could not have sought or received a waiver of the conflict). This is a straightforward violation of Model Rule 1.7 that Mr. Ligon seeks to avoid by focusing on the *quality* of Ms. Hall's legal work.

Second, Mr. Ligon's analysis of Ms. Hall's performance is suspect. I refer you to my original complaint and that of Dr. Rekers. Mr. Ligon made no reasonable inquiry into these allegations, as he never spoke to Dr. Rekers. If, for example, Ms. Hall was deliberately excluding evidence that benefitted her client's position, then clearly she was obstructing justice. I respectfully suggest that the panel consult with the attorneys who defended Florida's prohibition on gay adoption in *Lofton v. Butterworth*. Arkansas's policy was very similar to the Florida policy, and Dr. Rekers served as the expert witness for Florida. The U.S. Court of Appeals for the 11th Circuit upheld Florida's policy and the U.S. Supreme Court declined to hear further appeals. According to Dr. Rekers, when he tried to submit the same evidence in Arkansas that he used in Florida, Ms. Hall refused to allow the evidence. Thus it is no wonder that Ms. Hall's client lost in Arkansas, and Mr. Ligon's suggestion in his October 7 letter that Ms. Hall "lawyered hard and well" is dubious. His reliance on the fact that Ms. Hall's client prevailed on certain arguments ignores the fact that she failed to make other key arguments and thereby lost the case.

I should also note that Mr. Ligon brought a formal complaint against me that was directly related to this case. That complaint was dismissed without a hearing by the chairman of the hearing panel. I encourage you to review that file, as well as my judicial complaint (a copy is enclosed) against Judge Timothy Fox, the trial judge in *Howard*. It is reasonable to ask why Mr. Ligon would vigorously pursue a complaint that is facially absurd, yet decline to investigate the

evidence against Ms. Hall. Mr. Ligon led me to believe that he had no choice but to pursue the complaint against me since it was referred by Judge Fox. I have since learned, however, that no policy required Mr. Ligon to pursue a case that he believed to be meritless. If Mr. Ligon did not know the meaning of “ex parte”, or was unable or unwilling to look the term up in a legal dictionary, then my criticisms of Judge Fox would apply equally to Mr. Ligon.

Finally, I wish to expand the scope of my original complaint to include the following individuals:


(1) Lee Thalheimer, former chief counsel of the Department of Human Services. As indicated in Mr. Balcom’s October 4 letter, Mr. Thalheimer told the Board that he knew about Ms. Hall’s conflict, but he failed to notify the Board, much less seek waiver. Moreover, after Dr. Rekers filed his complain, he and Ms. Hall retaliated against him by refusing to pay Dr. Rekers for his services.

(2) James Esseks, staff attorney for the ACLU. Like Ms. Cooper, Mr. Esseks opposed Ms. Hall in *Howard* but served as co-counsel in *McLaughlin*. It appears that he may have failed to report Ms. Hall’s misconduct, as required by Rule 8.3. I ask that the panel investigate whether he and Ms. Cooper conspired with Ms. Hall to sabotage the state’s case.

(3) Matthew Coles, Director, Lesbian and Gay Rights Project, ACLU. Mr. Coles served as co-counsel with Ms. Hall in *McLaughlin*, but I have not found evidence that he entered an appearance in *Howard*. Nonetheless, as supervisor of Ms. Cooper and Ms. Esseks, it is likely that he would have been aware of any shenanigans involving Ms. Hall.

(4) Richard B. Dahlgren, attorney for the Department of Human Services. According to Dr. Rekers, Mr. Dahlgren provided him with a document that proposed paying Dr. Rekers for his services in exchange for Dr. Rekers’s agreement to refuse to testify against Ms. Hall and to withdraw his complaint against her. If true, it appears that Mr. Dahlgren violated Rule 8.4(d).

Thank you for your attention to this matter. Please contact me if you have any questions.

Sincerely,

Ty Clevenger

cc: Mr. Thomas J. Cahill, Chief Council
Departmental Disciplinary Committee for the First Department
State Bar of New York

Mr. James A. Badami, Executive Director
Arkansas Judicial Discipline and Disability Commission

From: Stark Ligon
To: Ty Clevenger
Date: Thursday, March 10, 2005 10:10:12 AM
Cc: Stark Ligon
Subject: RE: article RE: Kathy Hall

I have placed a copy of this message in the Hall file here. Stark Ligon

-----Original Message-----

From: Ty Clevenger [mailto:tyclevenger@yahoo.com]
Sent: Wednesday, March 09, 2005 11:44 PM
To: Stark Ligon
Subject: article RE: Kathy Hall

Mr. Ligon,

You may already have seen this article (below) that appeared in the American Spectator, but I thought the quote from James Balcom might be of interest. As you know, he chaired the Child Welfare Agency Review Board, and he says Kathy Hall never sought a conflict-of-interest waiver from the board, nor did she inform the board that she had worked for the ACLU.

On another note, Judge Fox apparently never inquired about whether Kathy Hall had a conflict of interest. I sent him the same letter that I sent you and, unless there was an in camera proceeding, he never asked any questions.

Ty Clevenger

http://www.spectator.org/dsp_article.asp?art_id=7826

Atrociously Conflicted

By Clinton W. Taylor

Published 3/1/2005 12:07:21 AM

Bill Moyers got it exactly right.

You don't see that statement often in these pages, so allow me to clarify: Bill Moyers nailed it when he said, "Ideologues embrace a worldview that cannot be changed because they admit no evidence to the contrary."

Moyers wasn't thinking of the ACLU when he said that. However, when it comes to the ideologue advancing the ACLU's gay-rights agenda, it is literally true. An ethics complaint alleges that an ACLU attorney violated conflict of interest rules in two Arkansas gay-rights cases, and suggests that the attorney "actively sabotaged" her client's case by refusing to admit evidence that might call the ACLU's agenda into question.

The ACLU's Lesbian and Gay Rights Project has a strategy of bringing what it calls "impact" lawsuits around the country, with the ultimate goal of "changing the way people think," or as it summarizes on its [website](#): "Don't Just Sue the Bastards--Do Something Useful." That notion encapsulates its con-

for traditional values pretty well; in its world, any opposition to its agenda is "manufactured by a s but powerful group of anti-gay extremists. Wrapping themselves in cloaks of 'family' and 'values,' groups are spending tens of millions of dollars to confuse, distort and subvert the public debate."

Unfortunately, the ACLU project's disdain for the Bastards it is suing -- in these cases, Arkansas -- led the ACLU's attorneys right off the deep end. They have forgotten fundamental rules of legal et and they have smeared an expert witness as a religious fanatic in an effort to suppress the evidence were afraid he might present.

CONFLICT OF INTEREST RULES are pretty basic elements of lawyering. You can't represent opposing parties unless both of them give you written consent, and maybe not even then. As with decision to secretly collect information on its donors, this is behavior that the ACLU would conde less *enlightened* institutions. Just a suggestion of conflict attached to Justice Scalia's duck hunting with Dick Cheney was enough to start the Left's hounds baying for weeks. But Arkansas attorney ACLU member Kathy Hall stands accused of far more egregious offense.

According to the ethics complaint, at the same time Hall defended the Arkansas Child Welfare Ag Review Board (CWARB) *against* an ACLU lawsuit in the case of *Howard v. CWARB*, she also se as co-counsel *for* the ACLU in a case against an Arkansas school board -- *McLaughlin v. Pulaski School District*.

The two cases were not unrelated. In *McLaughlin*, Hall worked on behalf of the ACLU to sue a sc district for restricting a gay teenager's freedom to speak about his homosexuality. In *Howard*, Hall opposed the ACLU, defending the CWARB's policy of not allowing gay couples to serve as foster parents.

Whether Ms. Hall liked CWARB's policy or not, her duty was to defend her client and to disclose conflicts of interest. (James Balcom, chairman of CWARB, confirmed that he didn't learn of Hall's representation of the ACLU until the trial was nearly over, and only then from a witness rather than from Ms. Hall.)

Here is Ms. Hall's response to my inquiry about the complaint and the suit against her:

As an attorney, my job is to argue for my client. I firmly believe that every one, both sides to a case, has a right to zealous representation. When I present a case for my client, I represent the client's interest to best of my ability-regardless of my personal opinions.

Why didn't the ACLU speak up about Ms. Hall's likely conflict of interest, as it ought to have done not like its top brass didn't know who she was. Two of the ACLU's lawyers opposing Ms. Hall and CWARB were James Esseks, the litigation director of the ACLU's national Lesbian and Gay Right Project, and Leslie Cooper, a staff attorney for the ACLU's Lesbian and Gay Rights Project.

Their silence is especially curious, since Ms. Hall's ACLU co-counsel on the *McLaughlin* case were...*Leslie Cooper and James Esseks, of the ACLU's Lesbian and Gay Rights Project. (Scroll to bottom.)*

NOW IMAGINE THE KERFUFFLE had a *conservative* lawyer, say a member of the Federalist Society, not only kept quiet about a conflict of interest, but then refused to ask her sole expert with few important questions that could have affected the trial's outcome -- and then lost the trial. The lawyer would be all over her like pink on a pig.

Sure, lawyers have some discretion in how they'll question a witness. But rarely are experts so shocked at an attorney's questions that they sue her. That's exactly what Kathy Hall's expert witness, Dr. G. Rekens, has done.

Dr. Rekens, a founder of the conservative Family Research Council, is admittedly a controversial figure. In fact Ms. Hall's friends and/or adversaries at the ACLU have compiled a quite uncomplimentary "fact sheet" on Dr. Rekens which accuses him of such sundry perfidies as being a pedophile, a child molester, a pedophile, avert your eyes -- an *ordained Southern Baptist minister*.

Dr. Rekens is especially dangerous to the ACLU's agenda not primarily because of his faith, but because he is also a tenured professor of Neuropsychiatry and Behavioral Science at the University of South Carolina School of Medicine, and author of several peer-reviewed articles and books on child psychology. He told Ms. Hall he was prepared to testify about several scientific studies that could support CWARB's policy. (I have seen the notes Dr. Rekens prepared for trial, and they consist of pages summarizing scientific articles -- a purely clinical tract, and not a religious one.)

However, this evidence was never introduced, both because Kathy Hall mysteriously chose not to introduce it during direct examination, and because a pre-trial motion barred much of it from being introduced.

That motion was filed not by the ACLU, but by the *CWARB's own attorney*, Kathy Hall. According to an e-mail sent from Dr. Rekens to his university colleagues, Hall

never entered any of the actual research studies into evidence and she never handed me any of the articles on the stand. Instead, (although she was supposed to represent the state's regulation) she made several motions before I got on the stand to prohibit the entering of four or five areas of evidence I had gathered in support of the state regulation!

Meanwhile, the ACLU attorney cross-examined Dr. Rekens by grilling him about his personal religious beliefs about sex and marriage.

The CWARB lost *Howard*. Judge Timothy Fox was not impressed with Dr. Rekens' testimony, not in his decision that

[I]t was apparent ... [Dr. Rekens] was there primarily to promote his own personal ideology. If the furtherance of such ideology meant providing the court with only partial information or selectively analyzing study results that was acceptable to Dr. Rekens.

Given their failure to bring relevant testimony before the court, and their smear of Dr. Rekens with out addressing the substance of his evidence, it looks like Judge Fox's harsh words about putting ideology before the evidence better describe the lawyers of the ACLU's Lesbian and Gay Rights Project.

One concern about the ACLU's aggressive attempts to discredit Dr. Rekers' testimony is the implication that people of strong religious faith would never be allowed to testify on their subjects of professional expertise. They alleged a fundamental conflict between Dr. Rekers' private religious beliefs and his ability to tell the truth in court on subjects of religious significance. The irony is pretty staggering: as the ACLU made this argument, it knew (I suppose I should say *or should have known*) quite well that one of the lawyers in the courtroom shouldn't have been there because of a glaringly apparent conflict, and it did nothing about it. Who are the real zealots here?

Gay adoption and foster parenting are divisive issues, but this story isn't ultimately about gay adoption or even legal ethics. It's about the ACLU putting its agenda above the rules, something even parties on both sides ought to condemn.

Arkansas' CWARB has appealed the *Howard* decision, and it sounds like it has grounds for a new one to be granted. I would be fairly optimistic, except that the attorney handling its appeal is...

Why, of course: Kathy Hall.

Clinton W. Taylor (Clinton_w_taylor@hotmail.com) is a lawyer and a Ph.D. candidate in Political Science at Stanford, and a commentator for KZSU, Stanford's radio station.

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From: Ty Clevenger
To: Stark.Ligon@arkansas.gov
Date: Sunday, March 5, 2006 2:36:28 PM
Subject: your phone call, etc.

Mr. Ligon,

Thank you for calling on Friday -- it made my weekend. I have included below an e-mail I received last year from James Balcom, chairman of the Child Welfare Agency Review Board. Mr. Balcom told me that Kathy Hall had not disclosed her work for the ACLU. He later told me the board wanted to fire her and he asked my advice about finding another attorney. If you haven't spoken with Mr. Balcom, he is a great source of information. There is some suspicion that Lee Thalheimer knew about Kathy Hall's work with the ACLU, but he did not inform the board either.

Ty Clevenger

James Balcom <jamesbal@grnco.net> wrote:

From: "James Balcom" <jamesbal@grnco.net>
To: "Ty Clevenger" <tyclevenger@yahoo.com>
Subject: Re: Fw: We need the help of saints from PVCC on this legislation in the Senate Judiciary committee! Contact info. below.
Date: Fri, 18 Feb 2005 15:29:50 -0600

Ty,

At this point the CWARB feels like we have been sold out but we have no funds available to hire our own attorney. I am sending information on to one board member who has input into the Governor. It is very frustrating and that is why I have spent so much time on trying to get legislation that would handle the homosexual issue.

I remember the church at 65th. I think there was a preacher there in the 60's named Baker. They have since closed and merged with other congregations. I am a member at 7th and Mueller in Paragould whose elders have served at the board of directors of Children's Homes, Inc. for 50 years. I am trying to help Clint and George get together for his article.

I am also trying to help George get paid for his work in defending CWARB.

James Balcom
1202 Spring Grove Road
Paragould, AR 72450
870 239-5085 Home
870 239-4031 Work
870 239-0802 FAX
www.childrenshomes.org

----- Original Message -----

From: [Ty Clevenger](#)

To: [James Balcom](#)

Sent: Friday, February 18, 2005 3:11 PM

Subject: Re: Fw: We need the help of saints from PVCC on this legislation in the Senate Judiciary committee! Contact info. below.

Mr. Balcom,

Clint Taylor told me you're a member of a church of Christ? Which one? I was a member at W. 65th Street when I lived in Little Rock.

Unrelated question: is the CWARB going to let Kathy Hall work on the appeal or get its own attorney? There's a strong argument for a mistrial based on her apparent conflict of interest, but she's obviously not going to seek a mistrial based on her own misconduct.

Ty

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