

PHELPS DUNBAR LLP
— COUNSELORS AT LAW —

New Orleans, LA

Baton Rouge, LA

Houston, TX

London, England

111 East Capitol Street • Suite 600
Jackson, Mississippi 39201-2122
P. O. Box 23066
Jackson, Mississippi 39225-3066
(601) 352-2300 • Fax (601) 360-9777

Jackson, MS

Tupelo, MS

Gulfport, MS

Tampa, FL

www.phelpsdunbar.com

FRED L. BANKS, JR.
Partner
Admitted in Mississippi
Direct (601) 360-9466
banksf@phelps.com

August 24, 2009

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FILED

AUG 25 2009

OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

Ms. Kathy Gillis
Clerk
Mississippi Supreme Court
P.O. Box 249
Jackson, MS 39205

Re: Final Report of the 2008 Special Committee on Judicial Election Campaign
Intervention

Dear Ms. Gillis:

Enclosed for filing is a copy of the Final Report of the 2008 Special Committee on
Judicial Election Campaign Intervention with exhibits. While this report was previously filed by
Brant Brantley, the exhibits were not attached.

Please feel free to contact me if you have any questions regarding this matter.

Sincerely yours,

PHELPS DUNBAR LLP



Fred L. Banks, Jr.

FLBjr:fsw

Enclosure

cc: Beverly Pettigrew Kraft

RECEIVED
AUG 26 2009

COURT ADMINISTRATION

PD 1914237.1

FILED

AUG 25 2009

OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

**FINAL REPORT OF THE 2008 SPECIAL COMMITTEE
ON JUDICIAL ELECTION CAMPAIGN INTERVENTION**

2002 M 993

Pursuant to Canon 5F of the Code of Judicial Conduct of Mississippi Judges, as adopted by the Mississippi Supreme Court on April 4, 2002, a Special Committee on Judicial Campaign Intervention was established and appointed to serve during the 2008 judicial elections. The Special Committee was comprised of Fred L. Banks, Jr., Esquire of Jackson, Chairman (appointed by the Senior Presiding Justice of the Supreme Court); Michael Wallace, Jr., Esquire (appointed by the Governor); Tim Ford, Esquire of Jackson, (appointed by the Lt. Governor); Ronald D. Michael, Esquire of Booneville (appointed by the Speaker of the House of Representatives) and Lisa M. Ross, Esquire (appointed by the Chairman of the Mississippi Commission on Judicial Performance).

The Special Committee received one (1) written complaint regarding advertising material circulated by a third party, *Mississippians for Economic Progress*, which attempted to impact a Supreme Court race. The material singled out "trial lawyers." The Special Committee issued a public statement condemning this material. A copy of the public statement is attached hereto as Appendix I.

The Special Committee, upon its own initiative, issued a public statement regarding television ads attributed to another third party, the Law Enforcement Alliance for America. (LEAA) The ads attacked a Supreme Court Justice for his votes in a criminal case as not "protecting" families; the Special Committee found the ads urge a biased rather than impartial court system. A copy of the public statement is attached hereto as Appendix II. The candidate who was the subject of these attack ads then made a public statement that the Special Committee had found that the LEAA ads appeared to be "coordinated" with his opponent's campaign, which was not true. By letter the Special Committee directed the candidate to issue an immediate retraction and released its letter to the press. A copy of that letter is attached hereto as Appendix III.

The Special Committee received two (2) e-mail complaints shortly before the election regarding a judicial candidate endorsing a candidate for public office in violation of Canon 5A(1)(b) of the Code of Judicial Conduct. Due to the proximity to the election the Committee forwarded the complaints to the appropriate disciplinary authority.

The Special Committee has also distributed copies of all information and all proceedings relating thereto to the Mississippi Commission on Judicial Performance as set forth in Canon 5F(6).

During the 2008 elections, a major focus of the Special Committee was dealing with independent, third party organizations. Individual members of the Special Committee raised concerns about the application of the substantive standards of Canon 5 to "an independent person, committee or organization" as set forth in Canon 5F(3). One member questioned the Special Committee, operating as an agent of the State of Mississippi, taking any action against private citizens for exercise of First Amendment rights. Another believed that the State has a legitimate interest in protecting the interest of a fair and impartial judiciary through this type of action, using free speech to criticize the content of free speech exercised by private third party actions.

**SPECIAL COMMITTEE ON JUDICIAL ELECTION CAMPAIGN INTERVENTION
ISSUES PUBLIC STATEMENT**

October 29, 2008

The Special Committee on Judicial Election Campaign Intervention issued a public statement today regarding advertising material circulated by Mississippians for Economic Progress which attempt to impact the race for the Supreme Court in the Southern District of Mississippi.

The Special Committee said:

Print material circulated by an organization calling itself, Mississippians for Economic Progress, in support of the candidacy of Judge Pierce in his race against Justice Diaz, has been brought to the attention of the Special Committee. The material in question singles out "trial lawyers" which is a common reference to lawyers who represent individual plaintiffs in lawsuits for damages. It is the view of the Special Committee that this material is inappropriate to judicial elections in that it urges partiality rather than impartiality in the judicial function. Accordingly, the use of material which speaks of "trial lawyers" pejoratively and which seeks to impact the election of judges is condemned.

Committee member Michael Wallace would not have found that these materials violate the Code of Judicial Conduct.

The Mississippi Supreme Court created the Special Committee on Judicial Election Campaign Intervention in its 2002 revisions to the Code of Judicial Conduct. The five-member Special Committee investigates allegations of campaign misconduct. If the Special Committee finds evidence of some campaigning impropriety, it may issue a confidential cease-and-desist request to the candidate. If a cease-and-desist request is disregarded, the committee may issue a public statement about violations. In the last 10 days of an election, the Special Committee is authorized to take into account the exigencies of the circumstances.

Former Supreme Court Justice Fred L. Banks Jr. of Jackson is chairman of the Special Committee on Judicial Election Campaign Intervention. Other members of the Special Committee are Jackson attorneys Michael Wallace, Lisa Ross and Tim Ford, and Booneville attorney Ronald Michael. Members are appointed by the Chief Justice of the Supreme Court, the Governor, the Lieutenant Governor, the Speaker of the House of Representatives and the Chair of the Commission on Judicial Performance.

Questions about the Public Statement should be directed to Commission on Judicial Performance Executive Director Luther T. Brantley III at 601-359-1273, or to a member of the Special Committee.

**SPECIAL COMMITTEE ON JUDICIAL ELECTION CAMPAIGN INTERVENTION
ISSUES PUBLIC STATEMENT**

October 29, 2008

The Special Committee on Judicial Election Campaign Intervention issued a public statement today regarding television ads attributed to Law Enforcement Alliance for America which attempt to impact the race for the Supreme Court in the Southern District of Mississippi.

The Special Committee said:

TV ads attacking a justice for his votes in criminal cases accusing him of not "protecting" families have been brought to the attention of the Special Committee. These ads violate the Code of Judicial Conduct with respect to judicial elections in that they urge a course of action which is not in keeping with the duty of a justice of the Supreme Court to decide the legal issues on an impartial basis. A judge is sworn to uphold the law and adjudicate cases in accordance with law, and not ignore the law based upon the popularity or infamy of those who appear before the court or the heinousness of the crime of which they are accused.

Accordingly, the Special Committee condemns these ads as they urge a biased rather than an impartial court system.

Committee member Michael Wallace was not available to participate in deliberations regarding this television ad.

The Mississippi Supreme Court created the Special Committee on Judicial Election Campaign Intervention in its 2002 revisions to the Code of Judicial Conduct. The five-member Special Committee investigates allegations of campaign misconduct. If the Special Committee finds evidence of some campaigning impropriety, it may issue a confidential cease-and-desist request to the candidate. If a cease-and-desist request is disregarded, the committee may issue a public statement about violations. In the last 10 days of an election, the Special Committee is authorized to take into account the exigencies of the circumstances.

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FRED L. BANKS, JR.
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Admitted in Mississippi
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banksf@phelps.com

October 31, 2008

VIA E-MAIL AND FACSIMILE

Justice Oliver E. Diaz, Jr.
Supreme Court Justice
Mississippi Supreme Court
P.O. Box 117
Jackson, MS 39205-0117

Re: WLOX Statement

Dear Justice Diaz:

The quote attributed to you in a news report on the website to the effect that the committee had found that the LEAA ads appeared to be "coordinated" with the Pierce campaign is untrue. The Special Committee has not found nor intimated any such coordination. The suggestion that it did so is false and misleading. You should issue an immediate retraction if the quote was accurately attributed or request a correction if it was not. Because of the immediacy of the election, this letter to you will be released by the Special Committee to the press.

Sincerely yours,

PHELPS DUNBAR LLP



Fred L. Banks, Jr.

FLBjr:fsw

cc: Jeff Rimes, Esq., Attorney for the Pierce Campaign