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2008 DEC 19 P 3:42

December 18, 2008

Jeff S. Jordan, Esq.
Supervising Attorney
Complaints Examination & Legal Administration
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 6127 / Saul Ewing LLP

Dear Mr. Jordan:

We are writing on behalf of Saul Ewing LLP ("Saul Ewing") in response to your letter of November 10, 2008. We previously submitted a Statement of Designation of Counsel and requested and received an extension to respond. Copies of those documents are attached.

The complaint filed by the California Republican Party makes various allegations against a variety of parties. Only Part III of the complaint concerns Saul Ewing, a regional mid-Atlantic law firm with offices in five states and the District of Columbia. The complaint alleges that Saul Ewing intended to make an excessive contribution to Obama for America ("OFA") by providing lawyers for training and election day tasks and by providing pro bono credit for engaging in voter protection work for OFA.

The allegations, based solely on a misreading of a newspaper article, are without merit. Saul Ewing has not made a contribution or provided anything of value to any federal candidate or committee.

The article cited by the California Republican Party appeared in the *New York Times* on October 28, 2008. A copy is attached. The focus of the article was the role of lawyers in voter protection efforts in connection with the 2008 presidential election. The references to Saul Ewing are somewhat misleading, and some background on the reporter's inquiries to Saul Ewing may help explain the confusion.

After learning that Saul Ewing lawyers were involved in voter protection efforts, the *New York Times* reporter contacted the firm in mid-October, 2008 and spoke with the firm's Director of Communications, Leslie Gross. The reporter asked Ms. Gross for assistance on two aspects of

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her story. First, the reporter wanted to know if the presidential campaigns were recruiting attorneys differently this election cycle. Second, the reporter asked if Saul Ewing was participating in election protection work and, if so, whether firm attorneys would receive pro bono credit for such work.

In response to the first question, Ms. Gross referred the reporter to Orian Johnson, a partner in the firm's Washington, D.C. office whom Ms. Gross knew was active in the Obama campaign. Ms. Gross told the reporter that Mr. Johnson would be a good resource regarding the activities of the Obama campaign.

In response to the second question, Ms. Gross, after consulting with Saul Ewing's pro bono counsel about the firm's involvement in voter protection efforts, confirmed for the reporter, as the article suggests, that Saul Ewing attorneys doing such work would be entitled to pro bono credit.

When Mr. Johnson spoke with the reporter, he understood her questions to concern his personal role in the Obama campaign, not Saul Ewing's practices with regard to voter protection activities or pro bono credit. In his discussion with the reporter, Mr. Johnson described, in general terms, the Obama campaign's plans for poll watching. He did not address Saul Ewing's involvement in voter protection work.

The ensuing article conflated the two aspects of the story about which the reporter spoke to Saul Ewing personnel. In one paragraph, the reporter noted that firms like Saul Ewing would grant pro bono credit to attorneys working at the polls and participating in election training. In the following paragraphs, without clarifying the context in which she spoke to Mr. Johnson, the reporter quoted Mr. Johnson about the Obama campaign's voter protection efforts.

In its complaint, the California Republican Party links these two issues which are, in fact, unrelated.

Saul Ewing did participate in the nonpartisan voter protection effort known as Election Protection. The program was led nationally by the Lawyers' Committee for Civil Rights Under Law, and more than 70 law firms and 10,000 legal volunteers participated. In the cities where Saul Ewing has offices, Election Protection efforts were sponsored by partners such as the Committee of Seventy, Common Cause Pennsylvania, the ACLU of Maryland, and the Dauphin County (PA) Bar Association. Saul Ewing attorneys who participated in efforts associated with the nonpartisan Election Protection effort will receive pro bono credit for such work, and the firm has taken steps to ensure that those who engaged in such activities on behalf of political candidates or committees are not granted pro bono credit. This approach is consistent with

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guidance from the American Bar Association, the Alliance for Justice, and the Pro Bono Institute.

Mr. Johnson, by contrast, was quoted describing not the firm's nonpartisan efforts but the independent activities of the Obama campaign in which he was involved as a volunteer. Contrary to the complaint's interpretation of the article, Mr. Johnson's quoted description of "our lawyers" was a reference to the Obama campaign's volunteer attorneys, not his colleagues at Saul Ewing.

To be clear, neither Mr. Johnson nor any other Saul Ewing attorneys were directed to participate in partisan political activity for any candidate or political committee nor will those who engaged in such activity as volunteers receive pro bono credit from the firm.

We believe that no action should be taken against Saul Ewing in this matter. The firm did not make a contribution of money or anything of value to OFA or any other candidate or committee.

Should you have any additional questions regarding this matter, please do not hesitate to contact us.

Respectfully submitted,

DLA Piper US LLP

A handwritten signature in black ink, appearing to read 'W. H. Minor'.

William H. Minor
Partner

dlapiper.com

A handwritten signature in black ink, appearing to read 'P. R. Zeidenberg'.

Peter R. Zeidenberg
Partner

[@dlapiper.com](http://dlapiper.com)

Attachments

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October 28, 2008

Party Lawyers Ready to Keep an Eye on the Polls

By **LESLIE WAYNE**

With heavy voter turnout expected on Election Day, both parties are amassing thousands and thousands of lawyers to keep an eye on the polls.

Senator Barack Obama's campaign is expected to send at least 5,000 lawyers to Florida alone. The first recruitment e-mail message the campaign sent out nationally received 6,000 responses from lawyers willing to volunteer. Meanwhile, Senator John McCain's campaign has lined up "Lawyers for McCain" to spread out at polling places in closely contested states as advocates for the ticket.

Both campaigns plan to use the lawyers to protect their supporters at the polls, help untangle ballot problems and run to court should litigation be necessary. Given the heated ballot challenges in the 2000 and 2004 elections, getting legal talent on the ground on Election Day is becoming as common a tool for the campaigns as advertising and polling.

"Both sides are assembling literally thousands of lawyers at the state level," said Kenneth Gross, a campaign finance lawyer at Skadden, Arps in Washington who represents both parties. "We're not talking about Laurence Tribe or David Boies, but there will be no shortage of lawyers looking for any kind of imperfection in the process."

"There's been a tremendous mobilization effort," Mr. Gross said.

The role of lawyers, especially at polling places, has grown since the 2000 election. For the Obama campaign, the recruitment of lawyers began the moment it set up field offices and is part of its long-term strategy to make voting easier.

Already, lawyers for Mr. Obama have been talking to county election officials and boards of election to increase the number of early voting sites, to encourage early voting and to make sure that there will be sufficient number of voting machines.

"We have a selective, but ferocious legal strategy," said Jenny Backus, a spokeswoman for the Obama campaign's legal program. "Rather than waiting for Election Day, we've had lawyers

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working from the beginning. We've used them for a massive voter education program, so that people know their rights and what to do on Election Day."

This comes on top of an effort the Democratic National Committee began after the 2000 election. The committee set up a National Lawyers Council to work on ballot issues, established a voter protection hot line and surveyed 1,300 state and local election officials to flag potential Election Day problems in advance.

So far, over 10,000 lawyers have signed up over the committee's Web site. "We want to assist voters in real time to make sure they will be able to vote," said Joe Sandler, general counsel for the committee, "and to advocate for them with local election officials."

Alan C. Kessler, a partner at Wolf Block in Philadelphia who recently hosted a \$6 million fundraiser for Mr. Obama, said he had already received four calls from Obama volunteers asking him to work on Election Day. Mr. Kessler said the 2000 election had caused many lawyers to want to become more active.

"Lawyers have always written checks," Mr. Kessler said. "Now we are taking it to the next level in assuring that there will be no issues on Election Day. We are learning from the last two elections and we now have the credo 'Never again.' If we lose, we lose. But we don't want it because of something that took place in the polling place."

Some firms, like Saul Ewing in Philadelphia, are allowing their lawyers to receive pro-bono credit for voter protection work on Nov. 4. Saul Ewing, with 250 lawyers and offices in the mid-Atlantic region, says that lawyers from nearly all of its nine offices will work at the polls and that the firm's Harrisburg office had been used for election training.

"Our lawyers are willing to go mano-a-mano if necessary," said Orlan Johnson, a partner at Saul Ewing and a member of the Obama national finance committee. All volunteers must undergo a training session either in person or online with the Obama campaign.

"We're going to have lawyers at the polls and in close proximity to the court houses," Mr. Johnson said. As an example, he said lawyers could be helpful in keeping the polls open when lines became extremely long.

The McCain campaign and the Republican National Committee declined to say how many lawyers they had enlisted. Sean Cairncross, the committee's chief counsel, said: "We will have enough lawyers to respond to any contingency. We have a great nationwide volunteer core of lawyers ready to help. On Election Day, we will be engaged at every level."

Mr. Cairncross said Republican lawyers would be on the lookout for voter fraud, and would work to halt such previous stunts as having busloads of voters show up to keep polls open beyond their statutory closing time.

Mr. Cairncross said that "lots of times," Republicans had been "cast as leading a massive voter-suppression effort and trying to keep people from voting."

The reality, he said, is that "we are civic-minded citizens who are taking the better part of the day and who have been through an Election Day training course."

Democrats say their lawyers have already had an impact. In Montana, a federal judge upheld a Democratic challenge to a Republican attempt to purge 6,000 voters from the rolls. And in Detroit, a court settlement was reached over allegations that Republicans were going to use home foreclosure lists to challenge voters.

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