

**STATE ETHICS COMMISSION  
MEMORANDUM**

TO: The Commissioners  
FROM: Tom Plank, Commission Attorney  
DATE: July 21, 2010  
RE: Response to the Archer Report

---

SUMMARY OF RESPONSE

The following is my response to the report by Liz Archer ("Report") of the Inspector General's office ("IG"), ostensibly dated July 14, 2010. I would have responded earlier but I have been waiting for Archer to comply with my Open Records Request for the records she accumulated during her investigation. Although I am still waiting to review these documents, I do not want to delay sending you my response any longer. In the interests of the reader's time, this is not intended to be an exhaustive response to the Report's misrepresentations and inaccuracies but merely serves to inform the reader of the main facts that Archer either deliberately excluded or incompetently omitted. Below is a bullet-point summary of the main points of my response:

1. Archer informed the Commission that she was investigating an allegation of nongovernmental law work on state time; not the use of Sick Leave ("SL").
2. Archer found no evidence that I used SL for nongovernmental work.
3. Archer did not give me notice that SL was at issue, nor was SL abused.
  - a. I am a permanently service-connected disabled-veteran as a result of my service as a Light Infantryman in the US Army, stationed at Ft. Benning, Georgia and the Republic of Panama. As such, I have regular appointments at the Department of Veterans Affairs Hospital.
  - b. I used SL when my wife had our second baby.
  - c. I used SL when an immediate family member had surgery.
4. Had Archer notified me that SL was at issue, I would have easily provided this exculpatory information, which is probably why she never notified me in the first place.
5. Archer took a forensic, magnetic image of everything I have ever done on my work computer and all she has to show for it are some run-of-the-mill LexisNexis searches. Such searches did not cost the State a single cent. In addition, they were made in accordance with the agency's "reasonable use" IT policy that I signed when I started working for the Commission.
6. Archer's and Secretary of State ("SOS") employee John Jurkiewicz's statements that I violated the State Personnel Board Rules because I did not get prior permission for outside employment contradicts SPB Rule 478-1-.07(1)(a) and Georgia Supreme Court precedent. In addition, Archer's own Report says that Yasha Heidari and I discussed outside employment with the agency head at the time, which satisfies SPB Rule 478-1-.07(1).
  - a. Archer's admitted reliance on the opinion of an SOS staff member in order to justify her flimsy after-the-fact Conclusion is unprecedented, methodologically unsound and patently unfair.
7. Archer omits from her Report the important fact that I have done nearly all of my nongovernmental legal work on a *pro bono* basis, in part to comply with State Bar Rule 6.1. Comment 2 of State Bar Rule 6.1 specifically states that government attorneys have an obligation to do *pro bono* work.
8. Archer's Summary and Conclusion were cleverly written to generate maximum media exposure and is consistent with Archer's previous leaks to the media in this matter. Several people have

informed me that Archer regularly feeds confidential information concerning on-going investigations to one particular reporter in order to bolster her standing.

9. People have stated that Archer told them that she blames me personally for the filing of an Ethics Commission complaint against her that alleged she failed to file required Personal Financial Disclosure Reports and failed to properly register as a Lobbyist and file the required Lobbyist Disclosure Reports. Basic ethics dictates that Archer should have recused herself from this investigation, as I recused myself from the Commission's investigation of Archer.
10. Archer's Summary and Conclusion are designed to justify the taking of nearly a year to write a report that contains no significant findings and only recommends minor policy adoptions.
11. The bottom line is that the facts show that I did not use government time or equipment for outside employment and did not abuse leave.

## I. INTRODUCTION

In the spring of 2009 the Commission employed three attorneys: Kay Baker, Yasha Heidari, and myself. Kay Baker was the agency's Deputy Executive Secretary. In early 2009 Heidari and I were informed that we may be let go due to the State's pending financial crisis and resulting budget cuts. In order to make ourselves more attractive to potential employers and gain some non-government/non-financial law experience, and after having done due diligence research to ensure it was allowed, we decided to try to do some nongovernmental cases and registered an LLC. I personally informed HR employee Jennifer Ward of this fact in the spring of 2009 and Heidari and I also discussed it with Executive Secretary Rick Thompson. Although we registered the LLC in March 2009, neither Heidari nor I had any clients for several months. In the meantime, the number of agency employees decreased from 21 to 11. We currently have only 10 employees.

On October 15, 2009, I was named the Acting Executive Secretary. Even though I was now the agency head, I did not request a raise in my salary of \$66,800 because of the Commission's budget woes. Indeed, I often spent my own money on office supplies, certified mailings, etc., in consideration of our budget. A month later, I was forced to terminate Ward on November 16, 2009, for fraud, waste and abuse. That evening, Ward emailed Archer alleging that I did nongovernmental work on government time and equipment. Inexcusably, Archer neglects to cite Ward's email in her Report or acknowledge that she started her investigation based on Ward's email. Archer Report Summary, p. 1.

On November 18, two days after Ward's termination, Archer came to my office and requested that she be allowed to take a forensic, magnetic image of my work computer. I readily agreed and provided her my computer and everything else that she asked for. I even allowed Archer to audio-record our interview because I believed her when she said that she would conduct an impartial and professional investigation.

Alas, Archer has failed to accurately present the facts of this matter in her Report; has inaccurately stated the Rules of the State Personnel Board ("SPB") and has erroneously applied them to the facts at hand; has deliberately dismissed testimony from staff exonerating me; has, even after having taken a forensic, magnetic image of all activities of my work computer over the last several years, erroneously stated that I violated SPB Rules and policies in the use of office computers; and has failed to give notice of any issue concerning SL, to which I could have easily responded.

Furthermore, as many people in State government have pointed out to me, and as Archer's own testimony before the Appropriations General Sub-Committee shows, Archer is desperate to justify the very existence of her agency to State legislators. As evidence of this, I have included a link to her

testimony on February 24, 2010, before the Appropriations General Sub-Committee, in which (1) the committee members grill Archer on her budget, workload and purpose, and (2) Archer states that she has already found an agency head to have violated the State's Rules based on a case initiated in 2009. See <http://ethics.ga.gov/temp/video.wmv> for a recording of her testimony before the Appropriations General Sub-Committee. (My testimony before the Appropriations General Sub-Committee begins at 9:48 into the video.) It is clear from her testimony that the agency head she is referring to is me, as I am sitting right in front of her but off-camera. This is also confirmed by a review of Archer's website, where there are no IG reports from 2009 involving an agency head, and by my Open Record Requests to the IG's office asking for documents concerning Archer's findings against said agency head, to which her office responded that there were no such documents or if there were, Archer was referring in her February 24<sup>th</sup> testimony to a non-agency head employee of the GDOT. I have attached this email for your own review. **[Exhibit 1: email from the IG regarding Archer's Feb. 24 testimony.]**

Archer's February 24 testimony raises the question: Was Archer either lying to the Appropriations General Sub-Committee by stating she has found an agency head to have violated State Rules in 2009, or had she already decided I was in violation of SPB Rules back in February 2010? I remind the reader that Archer did not issue her Report until July 2010 and right in the heat of ongoing controversy regarding the Commission, two regulated entities, 10 Alabama-based Political Action Committees and a candidate for Governor.

Moreover, several members of the media have told me that Archer blames me personally for the Ethics complaint filed against her for failing to file Personal Financial Disclosure Statements and for failing to properly register as a Lobbyist and file the required Lobbyist Disclosure Reports. As Archer has herself stated that she blames me personally for the filing of this complaint, why did she not recuse herself from this investigation, as I recused myself from the investigation of the Ethics complaint against Archer? If she had recused herself, as basic ethics would require, then she would not have been able to spike the Report's Summary and Conclusion to serve her own self-interests.

Finally, Archer informed the Commission that her office was investigating Jennifer Ward's activities while employed with the Commission. **[Exhibit 2: Archer's letter dated December 21, 2010.]** However, Archer's Report fails to address any of the issues regarding my accuser, Jennifer Ward, and uncritically presents Ward's statements to the reader without the fundamental context that Archer was ostensibly investigating Ward for fraud, waste and abuse at the same time.

## II. ARCHER FAILED TO GIVE ME NOTICE THAT LEAVE WAS AT ISSUE, NOR WAS LEAVE ABUSED

Archer did not give me notice that SL was at issue. I am a service-connected disabled veteran due to my service as a Light Infantryman in the US Army at Ft. Benning, Georgia and the Republic of Panama, receive regular treatment from the Department of Veterans Affairs ("VA"), and the VA has told me that I will continue to suffer permanent medical complications. **[Exhibit 3: photocopy of my VA ID with my SSN and DOB redacted, which states "Service Connected"]** The VA has recommended that I undergo yet another invasive surgery. Additionally, I ran down my SL balance when my wife had our second child and when an immediate family member had a subsequent surgery. (I am glad to discuss my service-connected disabilities and reasons for my recurring visits to the VA Hospital in detail with the Commissioners but refrain from doing so in writing. In the event that this document becomes public, I would rather maintain some level of privacy in these matters.) Regardless, my use of SL has been consistent throughout the last decade and well before I started with the Commission. It is notable that there is not one shred of documentary evidence that Ward or anyone else believed I was

abusing SL until Archer asked Ward about it after I fired her.

Archer concludes in her Report that I violated the State's Sick Leave Abuse policy. She lists the SPB's factors of Sick Leave Abuse, which are not included in the SPB's Rules, as: frequently using more than 17 hours of sick leave within a 30-day period; requesting sick leave for an absence for which annual leave has been denied; frequently using sick leave in connection with holidays, weekends, schedules days off, or paydays; frequently using sick leave when you are scheduled for undesirable, temporary shifts or assignments, or during periods of peak workloads; frequently leaving work during the day due to illness; and using peculiar or improbable excuses. Archer Report, pp. 19 & 20.

However, at no point in her Report does Archer provide any evidence that my use of SL violated any of the above factors. I did not frequently use more than 17 hours of SL within a 30-day period, nor does Archer say that I did. I did not use SL after being denied Annual Leave, nor does Archer say that I did. I did not use SL in connection with holidays, etc., nor does Archer say I did. I did not use SL to avoid undesirable or peak work days, nor does Archer say I did. I did not leave work frequently during the day due to illness, nor does Archer say I did. I did not use peculiar or improbable excuses to take SL, nor does Archer say I did. As previously explained, I have regular medical appointments at the VA and a permanent service-connected disability. Is Archer now saying that regular use of SL due to ongoing medical conditions violates State policy? Such an unreasonable standard would be news to all employees.

Archer seeks to bolster her flimsy evidence with the use of two graphs. As Benjamin Disraeli is reported to have said, "[t]here are three kinds of lies: lies, damn lies, and statistics." In that vein, Archer designed two graphs that begin in 2009 and end in June 2010, which by their very construction show the use of SL ever-increasing during the course of the graph. Archer presents my ever-increasing statistic of used SL as if it were proof of abuse. Archer Report, pp. 16 & 17.

However, Archer's Report fails to note that with the passage of time, all employees' use of SL hours would increase considerably on her graphs. As several members of the media have admitted to me, they simply concluded that the graphs' rising lines were evidence of wrongdoing, without realizing that with the passage of time it is a mathematical certainty that the lines will rise for any employee. Additionally, the graphs do not show use of SL before 2009 and thereby deprive the reader of essential context. On the other hand, one of the graphs shows that Heidari's use of SL was mostly flat while I was Acting Executive Secretary, yet Archer fails to mention this.

Archer also cites the fact that my personnel file did not contain descriptions of my medical conditions as evidence against me. Contrary to what Archer alleges, there is no State Rule or policy mandating that I include in my personnel file descriptions of service-connected disabilities. SPB Rule 478-1-.01 *et seq.* Why does Archer claim otherwise? Furthermore, Archer states that I violated the SPB Rules because my employment file did not contain a form authorizing three consecutive days of SL. First, I have never missed three days for sick leave except for the birth of my second child, which occurred before I became the Acting Executive Secretary. Second, neither Ward nor anyone else required me to submit a form due to my wife's childbirth. Third, Heidari did not take three consecutive days of SL while I was the Acting Executive Secretary. Why does Archer not state these facts in her Report? How can Archer therefore conclude that I violated the SPB Rules by failing to maintain such a form in my employment file?

Archer states in footnote 69 of her Report that I never provided her with any email regarding Heidari's furlough leave on December 18, 2009. However, Heidari had provided Archer with a copy of

the email he sent to me and Secretary Kali Schlieder notifying us that he was taking furlough on December 18. Furthermore, I informed Archer that it was Schlieder who was responsible for following-up to ensure the Heidari's and another employee's furlough hours were properly deducted for the pay-period at issue and she told me several times that she had done so. Why did Archer omit these crucial facts from her Report?

Archer's Report cites Schlieder, who was not a manager, as saying I was "frequently out of the office" and that I "never recorded my scheduled absences." Archer Report, p.16. (The Commissioners who are familiar with Schlieder will understand why I did not choose to apprise her of all aspects of the Commission's operations.) Archer omits that the time period when Schlieder states I was frequently out of the office was during the 2010 Legislative Session, which the Commissioners well know was one of the busiest Sessions for me and Commission staff in institutional memory. Moreover, Archer and I discussed this and she stated that she herself was frequently out of the office during Session. It is patently false that I never recorded anticipated leave, whether Business Leave or otherwise, as a review of the agency's calendar clearly shows, yet Archer does not include this evidence in her Report. It is deliberately misleading and fundamentally unfair that Archer does not even mention the 2010 Legislative Session in her Report.

Archer also fails to include anything about what the Commission's 10 other staff members had to say about this or anything else regarding my work hours. I am sure their testimony would exonerate me and is that is why Archer chose not to include their statements.

As I normally worked 60+ hour workweeks even when SL was taken, Archer now attempts to use my scrupulous recording of leave against me. My work hours are evidenced by the press, commissioners, legislators, and opposing counsel who have interacted with me in the early morning, nighttime, on the weekend and even on the rare one or two days off. Indeed, some nights I was at the Capitol until 10pm.

Finally, I reiterate that Archer did not give me notice that use of SL was an issue. Had she done so, I would have easily provided explanations that would have made this a non-issue, which is perhaps why she never notified me that this would be covered in her Report in the first place. As Archer failed to inform me that SL was at issue, I was deprived of my right to provide any feedback on this matter. The first time I heard that Archer disapproved of my SL was when I read it in the Report that I downloaded off of her website. I am regulated to this written response to clear my name.

### III. I DID NOT VIOLATE THE SPB RULES REGARDING OUTSIDE EMPLOYMENT. OUTSIDE LEGAL EMPLOYMENT IS ALLOWED UNDER THE SPB'S RULES AND SUPREME COURT PRECEDENT

In her Report, Archer sets forth Ward's allegation that I violated State policy by failing to notify my supervisor of my practice of non-governmental law. Archer Report, p. 3. Archer cites the relevant SPB Rule regarding outside employment, which states:

Employees *engaged* in outside employment, including consultant relationships, must *inform* their supervisor of the nature of the additional work and their corresponding work hours. Employees must also disclose actual or potential conflicts of interest related to their outside employment activities, and/or relationships as soon as they become aware of them. [Emphasis added.]

SPB Rule 478-1-.07(1)(a); Archer Report, p. 2. Archer goes on to describe how former Executive

Secretary Thompson informed her that he had discussed with me my nongovernmental legal work. Inexplicably, Archer neglects to include in her Report the fact that I personally informed Ward of my nongovernmental legal work. I told Archer this before and during our interview yet she fails to cite it, although she cites other portions of the transcript of our interview throughout the Report. Archer Report, p. 5.

Although Archer earlier cites Rule 478-1-.07(1)(a), which states “[e]mployees *engaged* in outside employment[...] must *inform* their supervisor of the nature of the additional work[...]” [emphasis added], and the facts show that I spoke with Thompson and Ward about my desire to do nongovernmental legal work, Archer’s conclusion nonetheless is that I “violated state policy on outside employment by failing to seek *prior approval* from [my] supervisor *before* establishing [my] own law firm” [emphasis added]. Archer Report, p. 5. As the reader can see, Archer adds the words “prior approval” and “before” into her conclusion, which is not justified by a plain reading of SPB Rule 478-1-.07(1)(a) because said Rule says nothing about “prior approval.” In fact, Archer’s own Report states that Thompson, the agency head, was informed of my desire to engage in outside employment, and I also I personally told Ward of this desire. Therefore, I did not violate the SPB’s Rules and Archer committed malpractice by saying that I did.

Archer goes on to say,

In order to determine whether Heidari and Plank’s failure to seek prior approval from Thompson to engage in outside employment violated SPB Rule 7, 478-1-07 “Outside Employment,” the OIG interviewed SOS’s Human Resources Director, John Jurkiewicz. According to Jurkiewicz, state employees must seek approval from their supervisors before taking any affirmative steps to engage in outside employment.

Archer Report, p. 5. It is interesting that Archer would seek to use Jurkiewicz’s opinion in an attempt to justify her erroneous finding that I violated the SPB’s Rules. Jurkiewicz is not an attorney; he is an employee of the Secretary of State’s Office (a different agency than the Commission) who was not in my chain-of-command and was not involved in these matters. He is not authorized to issue opinions on behalf of the SPB or to set Commission policy. Jurkiewicz’s interpretation that SPB Rule 478-1-.07 requires “prior approval” is simply wrong, as I show above that SPB Rule 478-1-.07(1)(a) does not require that permission be sought before outside employment may be commenced.

In fact, SPB Rule 478-1-.07(1) explicitly authorizes outside employment. “Employees may seek employment and engage in a variety of activities outside of their work for the State.” The standard set by SPB Rule 478-1-.07(1)(a) was met when Heidari and I discussed our outside employment with Thompson and Ward in the spring of 2009. Even based on Archer’s own standard, I did not violate SPB Rule 478-1-.07(1)(a) because simply registering an LLC is not an act of outside employment. As stated in Archer’s Report, neither Heidari nor I had any clients before we discussed outside employment with Thompson and Ward.

Archer’s erroneous Conclusion that I violated SPB Rule 478-1-.07 when her own Report presents facts showing otherwise is either due to malice or incompetence. Furthermore, Archer’s tactic of employing unwritten, off-the-cuff and erroneous opinions of personnel from different agencies to justify her finding that a violation of the Rules occurred in an actual investigation fails to meet basic standards of investigative fairness, soundness and objectivity.

#### IV. ARCHER'S OWN FINDINGS SHOW THAT OUTSIDE EMPLOYMENT WORK WAS NOT DONE ON STATE TIME OR EQUIPMENT

Archer states that she "reviewed time sheets, parking and building access records, official personnel files, policies and procedures, [and] correspondence" in order to determine whether I did nongovernmental work on State time or equipment. Archer Report Summary, p. 1. Additionally, Archer took a forensic, magnetic image of my computer.

Even after examining my computer's magnetic image, which includes everything I have ever done on that computer, whether subsequently deleted or erased, Archer is left with presenting 10 LexisNexis searches as supposed evidence of an "appearance" that I may have done nongovernmental work on State time or equipment. Archer's Report concludes that I violated the SPB Rules because I made these 10 LexisNexis searches over a time period of more than a year. However, Archer inexplicably fails to disclose that the Commission's IT policy has a "reasonable use" standard. 10 searches over a multi-year period is reasonable use. See the Commission's "Acceptable Computer, E-mail, and Internet Use Policy." My computer use was entirely in accordance with SPB Rules and agency policy.

Inexplicably, Archer's Report fails to mention the fact that at no time while I was the Acting Executive Secretary did the Commission have a LexisNexis subscription. Finally, Archer fails to cite the testimony of the Commission's 10 other staff members, which, I am confident, would exonerate me and therefore was not included.

#### V. ARCHER'S CONCLUSION OF PROBLEMS WITH AGENCY ATTORNEYS PRACTICING LAW OUTSIDE THE AGENCY CONTRADICTS SUPREME COURT PRECEDENT AND THE BAR RULES

I wish I did not need to mention this again but the persistent untruths and inaccuracies in Archer's Report require that it be reiterated: there is no statute, rule, case law or policy prohibiting an agency attorney from doing legal work on their own time. In fact, such work is specifically allowed. *Hudson v. State*, 250 Ga. 479, 299 S.E.2d 531 (Ga. 1983); SPB Rule 478-1-.07(1). For Archer to say that such work is problematic is irresponsible and beyond her authority, as no statute, rule or policy is violated by such activity.

It is doubly irresponsible of Archer due to the fact that my part-time outside legal work as been almost exclusively *pro bono*. Archer fails to include my *pro bono* service in her Report even though I discussed it with her at length. Archer's Report says, "The investigation also reveals that engaging in the private practice of law while also serving in a legal capacity for a state agency raises additional concerns." Was the Bar of Georgia concerned when it promulgated Bar Rule 6.1, "Voluntary Pro Bono Public Service," and its accompanying Comment 2, which states that it is the duty of government attorneys to do *pro bono* legal work? Was the Georgia Supreme Court concerned when it issued its opinion in *Hudson v. State*? By Archer's dubious logic and hubristic declarations of after-the-fact policy judgments, all government attorneys who have followed Supreme Court precedent in this matter or have complied with their professional responsibilities under Bar Rule 6.1 are violators of the SPB Rules and State policy as interpreted by Archer.

#### VI. CONCLUSION

I have been under a microscope for more than 10 months with Archer examining everything I

have ever done on my work computer, whether deleted or not; every time I have used my access badge to enter or leave the building or the parking garage; my leave records in their entirety; and has interviewed every member of staff. Ultimately Archer is forced to ambush me on the issue of SL, to which I was never given notice; to construct a Summary and Conclusion that are based on cherry-picked or outright false facts; to blatantly misstate the State's Rules and agency policies, and dishonestly attempt to apply the State's Rules and policies to the facts at hand. This whole exercise was an attempt to justify her agency's activities over the past year and as a method to settle personal scores she has with me.

I hope that the Commissioners will take this response into consideration. As always, if the Commissioners have any questions or concerns, please contact me to discuss them.



**Plank, Tom**

---

**From:** Tom Plank [teplank@gmail.com]  
**Sent:** Wednesday, July 21, 2010 10:47 PM  
**To:** Plank, Tom  
**Subject:** Fwd: FW: RE: OIG Open Records Request - DOCUMENTS 1

----- Forwarded message -----

**From:** Pangburn, Kisa <kpangburn@oig.ga.gov>  
**Date:** Tue, Mar 23, 2010 at 9:46 AM  
**Subject:** RE: FW: RE: OIG Open Records Request - DOCUMENTS 1  
**To:** Open Records Request <recordsact@gmail.com>

Mr. Plank,

IG Archer informed me that she was referring to an adverse finding concerning upper management, hence her reference to former GDOT Treasurer Earl Mahfuz. This investigation was self initiated upon review of a DOAA audit.

Kisa D. Pangburn, Esq.

Deputy Inspector General

Office of the State Inspector General

2 Martin Luther King, Jr. Drive SW

1102 West Tower

Atlanta, Georgia 30334

Office: 404-651-7477

Fax: 404-657-9716

---

**From:** Open Records Request [mailto:recordsact@gmail.com]  
**Sent:** Monday, March 22, 2010 10:17 PM  
**To:** Pangburn, Kisa  
**Subject:** Re: FW: RE: OIG Open Records Request - DOCUMENTS 1



Thank you very much for your response, Ms. Pangburn. There was a lot of material and I appreciate you getting it to me electronically.

Regarding the testimony of IG Archer, would you please ask her to which investigation of an agency head she was referring to in her testimony before the Joint Appropriations Subcommittee on February 24, 2010? The GDOT case did not involve the GDOT agency head, but the agency Treasurer, who I believe was several levels below the agency head. Or am I mistaken?

Please provide the complaint or the internally generated initiating document, whichever was used to start the investigation, in the case that IG Archer referred to in her February 24, 2010 Joint Appropriations Subcommittee Hearing testimony.

Thank you,

Tom



## OFFICE OF THE STATE INSPECTOR GENERAL

**SONNY PERDUE**  
Governor

**ELIZABETH P. ARCHER**  
State Inspector General

December 21, 2009

James C. Gatewood  
Chairman  
State Ethics Commission  
200 Piedmont Avenue  
Suite 1402 – West Tower  
Atlanta, Georgia 30334



Reference: Fraud Examination

Dear Chairman Gatewood:

As you are aware, the Office of the State Inspector General is currently conducting an investigation in response to an allegation that state resources were misused by State Ethics Commission (SEC) employees. During the course of this investigation, it was brought to our attention that fraudulent activity may be occurring within SEC's inventory, budget, and payroll functions. Pursuant to the authority established by our executive order, we will conduct a separate fraud examination of the aforementioned allegations concurrent with our current administrative investigation.

Our examination will be conducted in accordance with lawful fraud examination techniques, which include but are not limited to:

- Examination of books and records;
- Voluntary interviews of appropriate personnel; and
- Other such evidence gathering procedures as necessary under the circumstances.

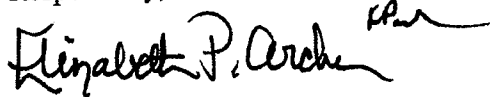
In addition to our examination, we will perform a review of SEC's policies and procedures designed to detect and deter fraud. If any weaknesses are identified, we will provide recommendations to strengthen SEC's policies and procedures.



Chairman Gatewood  
December 21, 2009  
Page 2

If you have any questions or require additional information, please feel free to contact me.  
Thank you in advance for your assistance with this matter.

Respectfully,

A handwritten signature in cursive script that reads "Elizabeth P. Archer". To the right of the signature, there is a small, stylized mark that appears to be the initials "EPA".

Elizabeth P. Archer

EPA: bd  
Cc: Thomas E. Plank, Jr., Executive Secretary



EXHIBIT  
3