

January 25, 2005

Office of Chief Disciplinary Counsel
State Bar of Texas
La Costa Center
6300 La Calma Dr.,
Suite 300
Austin, TX 78752

BY FAX: 512-453-5535

Re: Complaint against Attorney Alberto R. Gonzales

Dear Sir or Madam:

As a member of the District of Columbia Bar, I believe it is my duty, pursuant to the Rules of Professional Conduct requiring lawyers to inform appropriate authorities when another lawyer has committed a violation of those rules, to inform you that Mr. Alberto Gonzales may have violated the Texas Rules of Disciplinary Procedure prohibiting professional misconduct. Specifically, Mr. Gonzales may have violated two rules: Rule 8.04(a)(2), which states that a lawyer shall not “commit a serious crime or commit any other criminal act that reflects adversely on the lawyers honest, trustworthiness or fitness as a lawyer in other respects;” and Rule 8.04(a)(3), which provides that a lawyer shall not “engage in conduct involving dishonesty, fraud, deceit or misrepresentation.”

It appears that Mr. Gonzales, the White House Counsel, may have engaged in such misconduct by misrepresenting to the Senate Judiciary Committee, which is considering his nomination for Attorney General of the United States, the facts regarding a 1996 or 1997 incident in which President George W. Bush, who was then serving as the Governor of the state of Texas, was called for jury duty. Mr. Gonzales, who served as counsel to the Governor, accompanied Mr. Bush to court.

In a response to a written question posed by Senator Patrick Leahy, the Ranking Member of the Senate Judiciary Committee, regarding Mr. Gonzales’ appearance in court on behalf of President Bush, Mr. Gonzales explained:

I appeared in Texas state court in 1997 in connection with a jury summons received by Governor Bush which potentially implicated his official duties. The Governor asked me to accompany him as he went to court prepared to serve on a jury. During my appearance in court, I recall that I observed the defense counsel make a motion to strike the Governor from the jury panel, to which the prosecutor did not object. I was asked by the Judge whether the Governor had any views on this and recall stating that he did not.

Responses of Alberto R. Gonzales, Nominee to be Attorney General, to the Written Questions of Senator Patrick Leahy, p. 14 (attached as Exhibit A).

In contrast to Mr. Gonzales's version of events, the defense lawyer, the prosecutor and the judge involved in the case all recall the incident quite differently. *Newsweek* reporter Michael Isikoff has written that according to Travis County Judge David Crain, defense lawyer David Wahlberg, and prosecutor John Lastovica, before the case began, Mr. Gonzales asked to have an off-the-record conference in the judge's chamber. Mr. Isikoff reports:

Gonzales then asked Crain to "consider" striking Bush from the jury, making the novel "conflict of interest" argument that the Texas governor might one day be asked pardon the defendant (who worked at an Austin nightclub called Sugar's), the judge said. "He [Gonzales] raised the issue," Crain said. Crain said he found Gonzales's argument surprising since it was "extremely unlikely" that a drunken-driving conviction would ever lead to a pardon petition to Bush. But "out of deference" to the governor, Crain said, the other lawyers went along. Wahlberg said he agreed to make the motion striking Bush because he didn't want the hard-line governor on his jury anyway. But there was little doubt among the participants as to what was going on. "In public, they were making a big show of how he was prepared to serve," said Crain. "In the backroom, they were trying to get him off."

Michael Isikoff, [Gonzales: Did he Help Bush Keep his DUI Quiet?](#), *Newsweek*, January 31, 2005 (attached as Exhibit B).

Based on this account, it appears that Mr. Gonzales's response to Senator Leahy's question is untrue. As a result, it may well violate 18 U.S.C. §1001, which prohibits false statements made to the executive, legislative or judicial branch of the Government. Specifically, §1001 provides that anyone who knowingly and willfully makes any "materially false, fictitious, or fraudulent statement or representation" during the course of "any investigation or review, conducted pursuant to the authority of any committee . . . of Congress, consistent with the rules of the House or Senate," "shall be fined under this title or imprisoned not more than 5 years, or both."

Mr. Gonzales' misrepresentation of the facts regarding his appearance before Judge Crain in response to a written question asked by Senator Leahy pursuant to the Senator's role in considering Mr. Gonzales' nomination to the position of the United States Attorney General may violate 18 U.S.C. §1001 and, accordingly, violates Texas Rule of Disciplinary Procedure 8.04(a)(2), which prohibits lawyers from engaging in criminal acts that reflect adversely on the lawyers honesty or trustworthiness.

Moreover, even if the Office of Disciplinary Counsel is not convinced that Mr. Gonzales has violated 18 U.S.C. §1001, he has still violated the rule prohibiting lawyers from engaging in conduct involving "dishonest, fraud, deceit or misrepresentation." Providing a disingenuous answer regarding a serious issue related to Mr. Gonzales's record to the Senate committee

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considering his fitness for the position of Attorney General undoubtedly involves the type of dishonesty, deceit and misrepresentation covered by the disciplinary rules.

Finally, the Comments to Rule 8.04(a)(2) and 8.04(a)(3) state that “[l]awyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer’s abuse of public office can suggest an inability to fulfill the professional role of attorney.” Given that Mr. Gonzales made misrepresentations to the Senate Judiciary Committee while employed as the White House Counsel, his conduct should be beyond reproach.

Given that Mr. Gonzales’s conduct appears to violate the Texas Rules of Disciplinary Procedure, I respectfully request that the Office of the Chief Disciplinary Counsel investigate this matter to see if Mr. Gonzales should be subject to sanctions for his actions.

If I can be of any further service, please do not hesitate to contact me.

Sincerely,

Melanie Sloan
Executive Director

Encls.