

Entered - 10-3-12 sb  
CL 12L0681 - DOL/02 - GWENDOLYN BURNS

CLAIM OF: **HOLLY LOY SMITH  
THROUGH HER ATTORNEY  
S. PAUL SMITH  
SMITH & KATZ, P.C.  
5883 Glenridge Drive, NE  
Suite 160  
Atlanta, Georgia 30328**

For damages alleged to have been sustained from a wrongful termination.

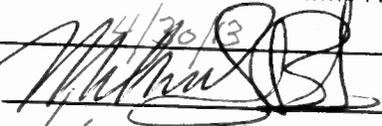
THIS ADVERSED REPORT IS APPROVED

BY:   
ERIC RICHARDSON  
DEPUTY CITY ATTORNEY

### ADVERSE REPORT

PUBLIC SAFETY &  
LEGAL ADMINISTRATION COMMITTEE

DATE: 4/30/13

CHAIR: 

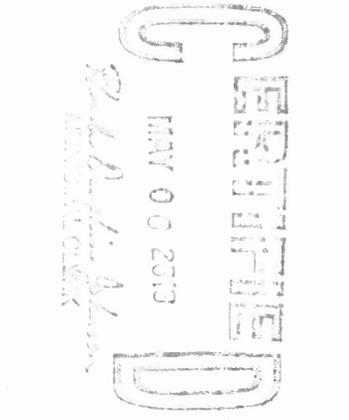












ADVISED BY  
CITY COUNCIL  
MAY 06 2013



CITY OF ATLANTA  
OFFICE OF MUNICIPAL CLERK

RHONDA DAUPHIN JOHNSON, CMC  
MUNICIPAL CLERK

55 TRINITY AVENUE, S.W.  
SUITE 2700  
ATLANTA, GEORGIA 30303  
Main (404) 330-6033  
Fax (404) 658-6103  
Email [municipalclerk@atlantaga.gov](mailto:municipalclerk@atlantaga.gov)

May 13, 2013

Holly Loy Smith  
c/o Attorney S. Paul Smith  
5883 Glendridge Drive, N. E.,  
Suite 160  
Atlanta, Georgia 30328

13-R-3056

Dear Ms. Smith:

I sincerely regret that you have been adversely affected by the circumstances raised in your claim for damages against the City of Atlanta. Your time and patience in this matter has been greatly appreciated.

However, I must notify you that the Atlanta City Council Adopted an Adverse Report on your claim at its regular meeting on May 3, 2013.

In consultation with the City's Law Department, who conducted an investigation of the situation, the Council has determined that the City cannot accept responsibility for this matter and therefore cannot pay this claim.

If you desire any further information, please contact the City Attorney's Office/Claims Division at (404) 330-6400.

Sincerely,

Rhonda Dauphin Johnson, CMC  
Municipal Clerk

cc: Claims Division/Law Department

DEPARTMENT OF LAW - CLAIM INVESTIGATION SUMMARY

Claim No. 12L0681

Date: February 28, 2013

Claimant /Victim HOLLY LOY SMITH
BY: (Atty) (Ins. Co.) S. PAUL SMITH, SMITH & KATZ, P.C.
Address: 5883 Glenridge Drive, Suite 160, Atlanta, Georgia 30328
Subrogation: Claim for Property damage \$ Bodily Injury \$ unspecified
Date of Notice: 9/26/12 Method: Written, Proper X Improper
Conforms to Notice: O.C.G.A. §36-33-5 X Ante Litem (6 Mo.) X
Date of Occurrence 6/25/12 Place: 68 Mitchell Street
Department: LAW Bureau: Office:
Employee involved Disciplinary Action:

NATURE OF CLAIM: Claimant alleges she was wrongfully terminated from her job. The investigation determined the claimant has filed a lawsuit to resolve her claim.

INVESTIGATION:

Statements: City employee X Claimant Others Written Oral X
Pictures Diagrams Reports: Police Dept Report Other
Traffic citations issued: City Driver Claimant Driver
Citation disposition: City Driver Claimant Driver

BASIS OF RECOMMENDATION:

Function: Governmental X Ministerial
Improper Notice More than Six Months Other X Damages reasonable
City not involved Offer rejected Compromise settlement
Repair/replacement by Ins. Co. Repair/replacement by City Forces
Claimant Negligent City Negligent Joint Claim Abandoned

Respectfully submitted,

[Handwritten signature of Gwendolyn Burns]

INVESTIGATOR - GWENDOLYN BURNS

RECOMMENDATION:

Pay \$ Adverse X Account charged: General Fund Water & Sewer Aviation
Claims Director/Manager: CACole Concur/date 3/8/13
Deputy City Attorney: Concur/date
Committee Action: Council Action



**Smith & Katz, P.C**

Attorneys At Law

New York / Georgia / Tennessee

ENTERED - 10-3-12 - SB

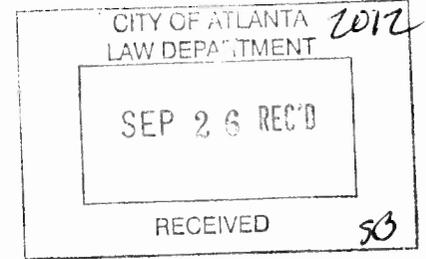
12L0681 - G. BURNS

*Burns*  
*9/28/12*  
*gmb*

August 10, 2012

**VIA HAND DELIVERY AND CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Mayor Kasim Reed  
Council of the City of Atlanta  
55 Trinity Ave  
Atlanta, Georgia 30303



Re: Notice of Claim for Damages Against the City of Atlanta

Mayor Reed and Members of the Council:

This letter will serve as notice pursuant to O.C.G.A. § 36-33-5 by Holly Loy Smith, formerly Assistant City Attorney (hereinafter the "Claimant"), for the retaliatory termination of her employment with the City of Atlanta in violation of O.C.G.A. § 45-1-4 and of her rights under the First Amendment of the U.S. Constitution to speak on matters of public concern. As set forth herein, Claimant was fired because she "blew the whistle" on her supervisors' gross mismanagement and actual malpractice that cost (and continues to cost) the City of Atlanta hundreds of thousands (if not millions) of dollars of wasted taxpayer money in the form of settlements with plaintiffs who had no claim or judgments against the City that could and should have been avoided. The City of Atlanta Law Department's neglect of its duties in the Watershed Management cases was thus a matter of professional, personal, and - in particular - public concern. She was fired for casting a spotlight on those failures.

By way of general background, Claimant was hired as an Assitant City Attorney on July 11, 2011 to assist Senior Assistant City Attorney Torrey Smith with the litigation of matters related to sanitary sewer and storm water damages. Upon her hire, after reviewing the active cases, it became apparent to Claimant that the cases were not being managed or litigated thoroughly and were, in fact, being handled in a manner which could prejudice the interests of the City of Atlanta. Claimant discussed her concerns with Mr. Smith, who took no action. In September 2011, Claimant reported her concerns to her supervisor, Roger Bhandari, Deputy City Attorney for Watershed Management. Mr. Bhandari directed her to meet with the City Attorney, Cathy Hampton, about the matter. In January 2012, Claimant met with Ms. Hampton, who in turn told her to discuss the matter with Eric Richardson, the Deputy City Attorney for Litigation. Despite Claimant's repeated attempts to set up that meeting, Mr. Richardson never responded to her requests. As a result, the Watershed Management cases continued to suffer and cost the City of Atlanta money that it never should have spent.

Between January and March 2012, Claimant was increasingly isolated from communication about the litigation matters for which she was responsible and had to seek Mr. Smith out to get assignments or simply assume work on her own and submit it to him for review, which he usually ignored. While this lack of management skill troubled Claimant, she saw it as simply more evidence that her superiors did not view their jobs as she did. Claimant's concerns regarding the management of litigation within the Watershed Management practice section stemmed from the legal and ethical duties she swore to uphold, including zealous advocacy of the client's – i.e., the City of Atlanta's – interests. Claimant understood that the ethical duties do not distinguish between private clients or representation of a public entity. Her superiors apparently did not understand and share her dedication to this fundamental tenet of the legal profession.

Fearful for her job and not wanting to jeopardize her ability to provide benefits for her family (including her three-year old son), she tried to remain quiet and not make waves. This proved impossible, in light of the egregious waste of money that she witnessed from March to May 2012.

In late March, the City was to try the case of *Adam Reed v. the City of Atlanta*, arising from storm water flooding in Mr. Reed's backyard and his complaint that the City's failure to maintain its storm water drainage system, which ran through his backyard, was responsible for the flooding. The weekend before the parties were to appear for trial, without consulting or even letting Claimant know beforehand, Mr. Smith arranged for the Department of Watershed Management to go to Mr. Reed's property and install a catch basin – the remedial measure Mr. Reed had been requesting for the many years the case was pending. Although this action is a "subsequent remedial measure" which should have been excluded from evidence at trial, Mr. Smith insisted the fact be brought to the jury's attention but asked the Court to forbid Plaintiff from arguing that the installation of the catch basin implied the City's acknowledgement of liability and for the Court to instruct the jury it could not make that inference. The Court, properly, rejected the request. Mr. Smith told Claimant during a recess that the installation of the catch basin had killed the City's chances at trial. Not only did this decision by Mr. Smith "kill the City's chances at trial," it likely bought the City responsibility for any future flooding on this property. The City ultimately settled Mr. Reed's claims for over \$265,000, a matter of public record.

Mr. Smith's actions, so clearly below the standard of professional care, clearly and by his own acknowledgement prejudiced the City and ultimately caused it to spend more in settlement than it would have without his actions. Based upon her information and belief, Eric Richardson agreed upon this strategy with Mr. Smith, and Cathy Hampton was advised of the situation when consulted for settlement authority. As the City was presumably already aware of Mr. Smith's actions, Claimant did not report them yet again.

In May 2012, Claimant argued a motion for summary judgment (drafted by Claimant) on an action brought by three plaintiffs before the Fulton County Superior Court and was directed

by the Court to prepare a proposed Order granting the City's motion *in toto* as to *all* plaintiffs. Claimant prepared the proposed order, complete with exhaustive citations to the record, which would have granted *complete judgment* to the City on *all of the plaintiffs' claims*, and presented it to Mr. Smith for review. Mr. Smith revised the proposed order to abandon judgment for one plaintiff and explicitly conceded that that plaintiff's could proceed to trial. Mr. Smith's actions prejudiced the City's interests by voluntarily requiring the City to incur the expense and potential verdict – or settlement – of that plaintiff's claims when the City was already granted judgment against him. Nonetheless, Mr. Smith directed Claimant to file the proposed order with the Court on May 18.

Such an outrageous and unexplainable decision to actually *choose* to jeopardize the City's interest (and to at least cost the City the expense of a trial) forced Claimant to speak out -- not because Claimant's name was on the case, but because Claimant owed duties to the City of Atlanta to protect the City's interest and to prevent the waste that the Order Mr. Smith edited would guarantee to occur. Accordingly, on the evening of May 18, 2012, Claimant sent an email to Cathy Hampton advising her that Mr. Smith had committed malpractice that severely and necessarily prejudiced the City's interests and was certain to cost the City at a minimum the expense of a needless trial.

Ms. Hampton and Yvonne Cowser-Yancy, Commissioner for Human Resources, met with Claimant on Tuesday, May 22. During that meeting they advised Claimant that outside counsel had been retained to investigate Claimant's concerns, that Claimant would continue to work with Mr. Smith while the investigation was ongoing, and if Claimant should feel uncomfortable at work to call either Ms. Hampton or Ms. Yancy (each gave Claimant their private cell phone numbers). Claimant was directed not to discuss the matter with anyone. Claimant met with outside counsel on May 24 and told him about the Reed trial as well as the proposed order.

Between May 24 and June 25, 2012, Claimant's duties shifted from active litigation to addressing citizen disputes regarding water billing issues. In this capacity, Claimant addressed these citizen concerns until such time as the citizen would file a lawsuit; if a lawsuit was filed, the matter was transferred to Eric Richardson and Claimant would have no part in the lawsuit. During this short period of time, Claimant did not perform any work related to litigation matters aside from approving and signing an answer filed in a magistrate court action. Claimant reported to Renee Shepherd, Senior Assistant City Attorney and Roger Bhandari.

Although Claimant continued to officially work with Torrey Smith, Mr. Smith did not communicate with or assign any tasks to her. Claimant approached Roger Bhandari, Deputy City Attorney for Watershed Management, and asked him if she still was supporting Mr. Smith. Mr. Bhandari told her she was. Claimant advised that Mr. Smith was not giving her any work or direction, to which Mr. Bhandari replied "If he doesn't give you any work, don't do any."

Claimant was uncomfortable with this direction, and per their instructions, attempted to speak with Ms. Yancy and Ms. Hampton in early June. Ms. Yancy never responded to

Claimant's request to speak with her. Ms. Hampton did not respond until June 25, when Claimant was called to her office. Ms. Yancy and Mr. Bhandari were also present. Ms. Hampton told Claimant that the investigation concluded that no malpractice had occurred and that the matter was simply a disagreement about litigation strategy between Claimant, Mr. Smith and Mr. Richardson, and that in light of that disagreement, it was best that Claimant be separated from the Department of Law. Claimant asked if there was any other position within the City of Atlanta to which she could be transferred, and Ms. Hampton told her that she was a litigator, and as such she would always report to Mr. Richardson; thus no position existed for her with the City.

It must be noted that at no time during the year Claimant was employed with the Department of Law did she ever meet with, discuss cases with, or discuss any other matter related to her employment or the execution of her duties with Mr. Richardson, was never reviewed by Mr. Richardson, and that Mr. Richardson was absent from the June 25 meeting. Claimant had been told repeatedly her supervisor was Roger Bhandari, who was present, had met with Mr. Bhandari to discuss cases and matters related to her employment, submitted leave forms to Mr. Bhandari for approval, and took direction directly from Mr. Bhandari.

Additionally, in the month preceding her dismissal, Claimant had been working on matters that did not involve litigation and were not supervised by Mr. Richardson. Indeed, Claimant had been performing the duties in a non-litigation position that had been vacated by another attorney who had transferred. Claimant even expressed her interest in transitioning formally to that position to Mr. Bhandari. For a host of reasons, then, Ms. Hampton's assertion that no other position was available was patently false and nothing more than a poorly disguised excuse to rid the law department of Claimant and her legitimate attempts to spotlight the rampant waste and gross neglect of duty she saw daily.

#### Specification of Claims

VIOATION OF O.C.G.A. § 45-1-4: Claimant reported to her supervisors that Mr. Smith was failing to defend action against the City appropriately or in a manner consistent with the standard of professional care, resulting in the payment of settlements and verdicts which were not justified or warranted and which could be avoided. Mr. Smith's actions violated the Georgia Rules of Professional Conduct and Claimant reported this in accordance with O.C.G.A. § 45-1-4. Claimant was terminated for reporting these violations and for objecting to participating in these violations.

Claimant seeks damages for the City's violation of O.C.G.A. §§ 45-1-4(d)(2) and (3), including but not limited to reinstatement, compensatory damages, and attorneys fees' and costs.

VIOLATION OF 42 U.S.C. § 1983: Claimant's reports to Mr. Bhandari and Ms. Hampton addressed matters of public concern: specifically, that Mr. Smith's and Mr. Richardson's management and litigation of actions against the City were negligent and costing the City unnecessary expense in settlements and verdicts against it squarely addressed a matter of

public concern.<sup>1</sup> It is also without question that but for her protected speech, the City would not have terminated her employment. Claimant seeks all damages to which she is entitled for this violation of her First Amendment rights, including but not limited to compensatory damages and attorneys' fees and costs. In addition, should this matter proceed to lawsuit, Claimant will be filing actions against Mr. Smith, Mr. Bhandari, Mr. Richardson and Ms. Hampton in their official as well as individual capacities, and will seek punitive damages against them.

**INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS:** During her meeting with Ms. Yancy and Ms. Hampton, Claimant expressed her fears in reporting Mr. Smith's actions: as the primary source of regular income for her family, as well as the person whose job provided benefits for her family (including her three year old son), that she may not have a job when the investigation was over, but her concerns compelled her to report. She also expressed these concerns when meeting with the counsel retained to investigate. In addition to understanding the unlawfulness of their actions, and the lack of necessity for them, Ms. Hampton and Ms. Yancy were well aware that termination of Claimant in violation of Georgia and federal law would cause her extreme emotional distress. With deliberate indifference to these concerns, as well as to the legality of their actions, Ms. Yancy and Ms. Hampton acted outrageous and egregiously.

**BAD FAITH:** At all times with respect to Claimant, the City of Atlanta and its officials have acted in deliberate bad faith. Should the City fail to settle her claim short of litigation, Claimant will be seeking attorneys' fees pursuant to O.C.G.A. § 13-6-11.

**VIOLATION OF ATLANTA MUNICIPAL ORDINANCE §3-508(c):** Atlanta Municipal Code, §3-508(c) provides as follows: "Notwithstanding any other local law or ordinance to the contrary, such municipal employer shall not, after receipt of a complaint or information from a municipal employee, disclose the identity of the municipal employee without the written consent of such municipal employee, unless the municipal employer determines such disclosure is necessary and unavoidable during the course of the investigation. In such event, the municipal employee shall be notified in writing at least seven days prior to such disclosure." Neither Ms. Hampton nor Ms. Yancy complied with this provision. Section (d) of the ordinance provides explicitly that "No action against any municipal employee shall be taken or threatened by any municipal employer who has authority to take, direct others to take, recommend, or approve any personnel action as a reprisal for making a complaint or disclosing information to the municipal employer unless the complaint was made or the information was disclosed with the knowledge that it was false or with willful disregard for its truth or falsity." As the information provided by Claimant was neither false nor provided with such willful disregard, the City's termination of Claimant's employment is in direct violation of the ordinance. Claimant seeks such remedies as may be available for the City's willful violation of its own Code of Ordinances.

**OTHER CLAIMS RESERVED:** Claimant reserves the right to pursue all claims (regardless of how denominated) available to her at law or equity based upon the conduct complained of herein. The specification of claims herein shall not be read as a limitation on the claims on which she provides notice herein, and she reserves all rights.

---

<sup>1</sup> In fact, only a month before her termination, Fox 5 Atlanta news reported that excessive settlements by the city were costing taxpayers "millions." <http://www.myfoxatlanta.com/story/18508875/settlements-are-costly-for-atlanta>.

Mayor Kasim Reed  
City Council of Atlanta, Georgia  
August 10, 2012  
Page 6

**Settlement of Claims**

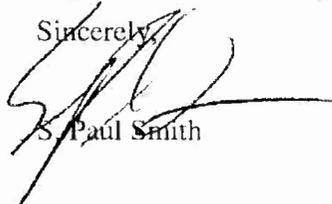
Should the City choose to adjust this claim, Claimant will accept reinstatement to her position, or a comparable position elsewhere with the City of Atlanta, with all benefits to which she would be entitled had her employment not been terminated, plus payment of \$250,000 in full settlement of these claims. Since absent the City's unlawful action Claimant would have remained with the City until her retirement age in 2035, should reinstatement not be possible or proposed, Claimant seeks compensatory damages reflecting the front pay she would have received for the 23 years she would have remained employed, including raises, benefits and retirement contributions, in an amount of \$4,000,000.00. This offer is available to the City up through and including September 10, 2012.

**Retention of Documents**

Finally, on June 26, 2012, Claimant advised the City of Atlanta to preserve "the hard drive on [Claimant's] computer and all email communications on the server that mention or relate to me, including but not limited to those concerning my termination." This letter will serve as additional notice to all Department of the City to preserve any and all communications related to Claimant's employment, communications regarding Claimant, or any other records that are relevant to the claims set forth in this Notice.

Your prompt response is expected. Govern yourselves accordingly,

Sincerely,



S. Paul Smith

cc: Sam Katz, Esq.  
Holly L. Smith, Esq.

RCS# 2666  
5/06/13  
3:23 PM

Atlanta City Council

CONSENT I

CONSENT AGENDA SECTION I; ALL ITEMS  
EXCEPT 13-O-0638  
ADOPT

YEAS: 14  
NAYS: 0  
ABSTENTIONS: 0  
NOT VOTING: 2  
EXCUSED: 0  
ABSENT 0

Y Smith	Y Archibong	Y Moore	Y Bond
Y Hall	Y Wan	Y Martin	NV Watson
Y Young	Y Shook	Y Bottoms	Y Willis
Y Winslow	Y Adrean	Y Sheperd	NV Mitchell

CONSENT I

+

		05-06-13
ITEMS ADOPTED ON CONSENT	ITEMS ADOPTED ON CONSENT	ITEMS ADVERSED ON CONSENT
1. 13-O-0599	40. 13-R-3103	77. 13-R-3043
2. 13-O-0629	41. 13-R-3104	78. 13-R-3044
3. 13-O-0643	42. 13-R-3085	79. 13-R-3045
4. 13-O-0119	43. 13-R-3086	80. 13-R-3046
5. 13-O-0632	44. 13-R-3087	81. 13-R-3047
6. 13-O-0639	45. 13-R-3088	82. 13-R-3048
7. 13-O-0638	46. 13-R-3089	83. 13-R-3049
8. 13-O-0640	47. 13-R-3090	84. 13-R-3050
9. 13-O-0648	48. 13-R-3014	85. 13-R-3051
10. 13-O-0592	49. 13-R-3015	86. 13-R-3052
11. 13-O-0628	50. 13-R-3016	87. 13-R-3053
12. 13-O-0630	51. 13-R-3017	88. 13-R-3054
13. 13-R-3091	52. 13-R-3018	89. 13-R-3055
14. 13-R-3092	53. 13-R-3019	90. 13-R-3056
15. 13-R-3094	54. 13-R-3020	91. 13-R-3057
16. 13-R-3095	55. 13-R-3021	92. 13-R-3058
17. 13-R-3096	56. 13-R-3022	93. 13-R-3059
18. 13-R-3097	57. 13-R-3023	94. 13-R-3060
19. 13-R-3093	58. 13-R-3024	95. 13-R-3061
20. 13-R-3098	59. 13-R-3025	96. 13-R-3062
21. 13-R-3100	60. 13-R-3026	97. 13-R-3063
22. 13-R-3101	61. 13-R-3027	98. 13-R-3064
23. 13-R-3106	62. 13-R-3028	99. 13-R-3065
24. 13-R-3003	63. 13-R-3029	100. 13-R-3066
25. 13-R-3004	64. 13-R-3030	101. 13-R-3067
26. 13-R-3005	65. 13-R-3031	102. 13-R-3068
27. 13-R-3006	66. 13-R-3032	103. 13-R-3069
28. 13-R-3007	67. 13-R-3033	104. 13-R-3070
29. 13-R-3008	<b>ITEMS ADVERSED ON CONSENT</b>	105. 13-R-3071
30. 13-R-3009	68. 13-R-3034	106. 13-R-3072
31. 13-R-3010	69. 13-R-3035	107. 13-R-3073
32. 13-R-3011	70. 13-R-3036	108. 13-R-3074
33. 13-R-3013	71. 13-R-3037	109. 13-R-3075
34. 13-R-3000	72. 13-R-3038	110. 13-R-3076
35. 13-R-3001	73. 13-R-3039	111. 13-R-3077
36. 13-R-3002	74. 13-R-3040	112. 13-R-3078
37. 13-R-3083	75. 13-R-3041	113. 13-R-3079
38. 13-R-3084	76. 13-R-3042	114. 13-R-3080
39. 13-R-3102		115. 13-R-3081
		116. 13-R-3082