

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

**KELVIN J. COCHRAN,**

Plaintiff,

v.

**CITY OF ATLANTA, GEORGIA;  
and MAYOR KASIM REED, IN HIS  
INDIVIDUAL CAPACITY,**

Defendants.

Case No. 1:15-cv-00477-LMM

**DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

COME NOW Defendants City of Atlanta and Mayor Kasim Reed, and hereby file this Motion for Summary Judgment, seeking the entry of summary judgment on all of Plaintiff's claims pursuant to Fed. R. Civ. P. 56. Defendants have filed a Brief in Support of this Motion, as well as a Statement of Material Undisputed Facts concurrently herewith.

Respectfully submitted this 27th day of April, 2017.

*s/Kathryn J. Hinton*

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**CERTIFICATE OF COMPLIANCE**

Undersigned counsel certifies the foregoing document has been prepared with one of the font and point selections (Times New Roman, 14 point) approved by the Court in local rule 5.1(C) and 7.1(D).

This 27th day of April, 2017.

*s/ Kathryn Hinton*  
Kathryn J. Hinton  
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**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of the foregoing *Defendants' Motion for Summary Judgment* via the Court's ECF filing notification which will automatically send an electronic copy of the foregoing to the following attorney of record for Plaintiff:

Kevin Theriot, Esq.  
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This 27th day of April, 2017.

s/ Kathryn Hinton  
Kathryn J. Hinton  
GA Bar No. 542930



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Case No. 1:15-cv-00477-LMM

**DEFENDANTS' BRIEF IN SUPPORT OF  
THEIR MOTION FOR SUMMARY JUDGMENT**

Plaintiff Kelvin Cochran brings a multitude of Constitutional claims against Defendants City of Atlanta (the "City") and Mayor Kasim Reed ("Reed" or the "Mayor") arising from the suspension and ultimate termination of his employment as the City's Fire Chief. Plaintiff's allegations are founded on an inflammatory, but baseless, narrative that the City persecuted him because of the religious beliefs he expressed in his self-published book entitled *Who Told You That You Were Naked?*. In fact, the City suspended Plaintiff for failing to gain approval from its Ethics Office and to investigate whether Plaintiff had improperly imposed his religious views in the workplace. It later fired Plaintiff after he violated the terms of his suspension by

publicly asserting that he was suspended for his religious beliefs, which irreparably damaged his relationship with the Mayor, and because Plaintiff's publication and distribution of his book had demonstrably eroded his subordinates' trust in his ability to lead the Atlanta Fire Rescue Department ("AFRD") in an even-handed manner. For these reasons, summary judgment is warranted on each and all of Plaintiff's claims.

## I. **FACTUAL BACKGROUND**

Plaintiff first served as Fire Chief of AFRD under former Mayor Shirley Franklin in 2008-2009. (KCT,<sup>1</sup> relevant portions attached as **Ex. A**, at 17:3-8, Exs. 1-2). Mayor Reed later appointed Plaintiff to reprise his role as Fire Chief in his administration in 2010. (KRT, relevant portions attached as **Ex. B**, 19:23-24; 62:6-15; KCT, Ex. 6). In this capacity, Plaintiff served as an at-will employee at the Mayor's pleasure. (KCT, 17:9-17; 83:16-84, Ex. 15, at p. 2).

AFRD provides fire and rescue, homeland security, and emergency medical services for the City of Atlanta. (KCT, 51:10-20; 52:4-24). As Fire Chief, Plaintiff was responsible for overseeing and ensuring AFRD's successful operation. (KRT, 63:2-6; KCT, 42:1-4, Ex. 8). Plaintiff reported to the City's Chief Operating Officer,

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<sup>1</sup> All source materials referred to as defined in Defendant's Statement of Material Facts.

Michael Geisler, who in turn reported directly to the Mayor. (KCT, 21:13-16; KRT, 18:23-19:10). Plaintiff was a member of the Mayor's Cabinet, which includes the heads of all major departments within the City and the Mayor's senior policy advisors. (KRT, 18:20-19:5).

**A. Plaintiff Was Subject to the City's Facially Neutral Conflict-of-Interest Rules.**

Under the City's Code of Ordinances, all employees, regardless of position, are required to obtain the approval of their department head prior to accepting additional paid outside employment to ensure that no conflict of interest exists with their City employment. (City Code, § 114-436; KCT, 19:11-24, 20:7-12; NHT, relevant portions attached as **Ex. C**, 54:11-55:15).<sup>2</sup> Plaintiff fully subscribed to this requirement as a department head, as he was charged with reviewing outside employment requests submitted by subordinate firefighters. (KCT, 63:3-20).

City employees are also subject to the City's Ethics Code, which is interpreted and enforced by the City's Ethics Office.<sup>3</sup> Given Plaintiff's high-level position, this ordinance required him to also obtain written approval from the City's Board of Ethics

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<sup>2</sup> This requirement is reflected in the City's Ethics Pledge, which Plaintiff signed and agreed to abide by at the commencement of his 2010 employment. (KCT, 72:1-3, 72:22-73:5, Ex. 12, at ¶ 7).

<sup>3</sup> During the relevant period, the Ethics Office was led by Ethics Officer Nina Hickson, who reported to a seven-member Board of Ethics. (NHT, 15:3-20).

("the Board") before engaging in any outside employment for remuneration. (KCT, 23:12-24:8, Ex. 4; 55:18-23; 56:8-57:10, Ex. 10 at § 2-820(d)).

**B. As Fire Chief, Plaintiff Authored *Who Told You That You Were Naked?***

Plaintiff describes himself as a well-known, devout evangelical Christian. (KCT, 34:3-20; 206:8-17). Indeed, Reed hired Plaintiff with full knowledge of Plaintiff's strong religious faith.<sup>4</sup> (KCT, 31:4-32:1).

In January 2013, Plaintiff decided to turn his bible study materials into a book. (KCT, 115:1-12). In May 2013, he contacted a publisher about self-publishing a book, which he titled *Who Told You That You Were Naked?*, (KCT, Ex. 25), and selling it via outlets such as Barnes and Noble and Amazon. (*Id.*, 122:1-25, Ex. 25, at ¶ IV). In or around November/December 2013, Plaintiff submitted his book for publication. (KCT, 138:6-11; 139:5-10).

Plaintiff targeted his book to Christian men struggling with overcoming condemnation. (KCT, 108:15-109:11; 143:1-3). Therein, Plaintiff presents the dichotomy of the words "naked" and "clothed" as used throughout the Bible. (KCT, 172:15-19). According to Plaintiff, a "naked" man is one who lacks a working relationship with God. Conversely, a "clothed" man is one who enjoys a working

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<sup>4</sup> Plaintiff also highlighted his evangelical faith on the resume he submitted to Reed. (See KCT 29:14-22; 30:2-11, Ex. 5, at p. 7).

relationship with God because he has accepted Jesus Christ as his Lord and Savior. (KCT, 173:3-174:8). To be clothed, a man must be a born-again Christian. (KCT, 174:9-10). Those who are clothed are righteous; those who are naked are sinners. (KCT, 176:2-4). Further, no gradations or degrees of nakedness exist -- every person, if naked, is equally sinful. (KCT, 176:5-9).

Based on this framework, Plaintiff identifies broad categories of people he considers naked. This list includes homosexuals, murderers, rapists, pedophiles, those who have sex outside of marriage, those who engage in bestiality, and all non-Christians. (KCT, 191:11-22; 193:2-4, Ex. 36, at 82; 195:12-15; 196:17-24; 197:1-10). Plaintiff characterizes these individuals as "wicked," "un-Godly," "deceitful," "loathsome," and "evildoer[s]," (KCT, 176:24-177:5; 178:18-23), and writes that there will be "celebration" when they perish. (KCT, 177:6-178:17).

Plaintiff's book also presents his view on women, including his belief that mankind would never have fallen from grace if Eve had consulted with Adam before eating the forbidden fruit. (KCT, 183:17-24; 186:20-187:4; 182:15-183:4). Positive examples of women are conspicuously absent. (KCT, 188:18-190:2).

Plaintiff also identifies himself as AFRD's Fire Chief throughout his book. In the "About the Author" Section, Plaintiff states that he "is currently serving as Fire Chief of the City of Atlanta Fire Rescue Department (GA)." (KCT, 171: 2-6, Ex. 34).

Plaintiff also asserts that his religious beliefs govern the manner in which he leads AFRD: "My job description as a fire chief of Atlanta Fire Rescue Department is [t]o cultivate its culture for the glory of God." (KCT, 180:2-10, Ex. 35 at p. 76).

Notwithstanding the clear language of the aforementioned ordinances, Plaintiff never sought or received written permission from the Ethics Board to sell his book. (KCT, 76:3-13). Plaintiff also never discussed his plan to sell his book with Geisler or Reed. (KCT, 152:11-14; MGT, relevant portions attached as **Ex. D**, at 27:17-23; 28:21-23). Plaintiff contends instead that he obtained verbal approval from Ethics Officer Hickson; Hickson denies this. (KCT 110:9-18; NHT, 45:14-18). This discrepancy is immaterial, however, as it is undisputed that Hickson lacked the authority to grant Plaintiff approval from the Ethics Board for his book, and that she never did so in writing. (KCT, 110:9-18, Ex. 10 at §2-820(d)).

**C. Plaintiff Distributed Copies of His Book To His Work Subordinates, While Actively Marketing and Selling It to the Public.**

Plaintiff distributed copies of his book to between nine and twelve of his subordinates, including all of his direct reports (deputy chiefs) and four of the six assistant chiefs who reported to them. (KCT, 139:16-20; 142:8-11; 216:21-217:18). Plaintiff contends that several of these individuals requested a copy, but he admits that

he handed out at least three unsolicited copies as well. (KCT, 140:2-141:15; 142:8-11; 216:21-217:18).<sup>5</sup>

By mid-2014, Plaintiff was actively selling his book for a profit, as well as incorporating the sale of his book into paid and unpaid speaking engagements. In all of these venues, Plaintiff discussed his book and its contents while identifying himself as AFRD's Fire Chief. (KCT, 149:18-25, 150:1-2, 151:6-23, 152:11-16, 153:17-155:6, 156:3-158:6, Ex. 30).

**D. One of Plaintiff's Subordinates Raised Concerns about the Content of His Book.**

In or around late October 2014, Assistant Chief Wessels, one of Plaintiff's subordinates, brought Plaintiff's book to the attention of Stephen Borders, president of the firefighters' union. (SBT, relevant portions attached as **Ex. E**, at 54:5-11, 55:5-7; KCT, 142:2-4; 217:6-15). Wessels informed Borders that Plaintiff gave him a copy "during a work event," and that he found that the book contained statements related to homosexuality that concerned him, particularly in light of the fact that Plaintiff had also "very clearly and explicitly" identified himself as AFRD's Fire Chief in the book. (SBT, 55:17-20; SBT, 62:2-9; 63:21-64:2).

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<sup>5</sup> Plaintiff gave one of those unsolicited copies to Stephen Hill, a then-battalion chief, at the conclusion of Hill's annual one-on-one counseling discussion at which Hill's career and opportunities for advancement within AFRD were discussed. (KCT, 211:12-213:19).

Borders, in turn, brought Wessels' complaint and a copy of Plaintiff's book to the attention of Atlanta City Councilman Alex Wan. (SBT, 60:9-12, 64:25-65:16, 65:17-25; AWT, relevant portions attached as **Ex. F**, at 46:3-11). Councilman Wan concluded that the book constituted a Human Resources ("HR") matter and took the book to Yvonne Yancy, the City's HR Commissioner. (AWT, 51:22-52:2).

Yancy read Plaintiff's book, informed Geisler and the Mayor of its existence, and asked if either knew about or had approved its publication. Neither did. (YYT, relevant portions attached as **Ex. G**, at 22:10-18; 26:1-6, 26:11-27:2). Yancy informed Reed that she was concerned that Plaintiff had referenced his position with the City without permission, and that she personally found parts of the book offensive, especially those related to women, as well as members of the Jewish and LGBT communities. (YYT, 26:11-27:2; KRT, 93:13-15; 94:18-21).

Yancy also expressed concern that Plaintiff's decision to distribute his book in the workplace could create a hostile work environment under Title VII of the Civil Rights Act and local law. (YYT, 87:9-13, 94:7-19, 97:15-20). In response, Reed asked Yancy to investigate whether Plaintiff had received the Ethics Board's written approval to sell the book, and to forward her concerns to City Attorney Cathy Hampton. (YYT, 32:21-33:7; KRT, 99:1-2, 16-23).

Several days later, Yancy informed Reed that Plaintiff had published his book during his administration; that Plaintiff's book was for sale on Amazon; and that she did not believe Plaintiff had obtained the required written consent from the Board of Ethics to sell his book. (YYT, 42:15-43:18; 45:20-24; 47:2-4; 49:2-7). Yancy further confirmed that Plaintiff explicitly identified himself as the AFRD Fire Chief in his book and that he had distributed copies of his book to City employees. (KRT, 100:2-11). Yancy recommended terminating Plaintiff's employment, but the Mayor declined to do so. (YYT, 47:4-6; KRT, 101:6-9).

Instead, Reed opted to suspend Plaintiff for thirty days without pay in order to discipline Plaintiff for selling his book without providing the requisite notice or obtaining written approval, and to investigate AFRD's potential Title VII liability. (KRT, 102:19-103:1; 104:12-13; YYT, 47:9-16, 48:17-50:10; KRT, 119:2-9, 119:17-21, 119:21-120:1, 121:10-14).

Yancy, Chief of Staff Candace Byrd, and Chief Counsel Bob Godfrey then met with Plaintiff to inform him of his suspension. (YYT, 74:17-23; 75:22-76:2; 76:3-7; 93:13-94:1). Byrd also conveyed to Plaintiff that the Mayor instructed that he not publicly comment on his suspension during his leave. (YYT, 76:22-25; CBT, relevant portions attached as **Ex. H**, at 40:7-11, 43:1-3, 43:20-44:2; KRT, 105:3-7; KCT, 222:13-223:2).

**E. Rather Than Comply with the Mayor's Instruction, Cochran Publicly Portrayed Himself As a Religious Martyr, Spurring a Public Relations Campaign Against His Employer.**

Almost immediately, Plaintiff ignored the Mayor's directive. He responded to emails of public support with statements such as: "I am grateful for this divine opportunity **to suffer this for Christ** and rejoicing every day," and "The Lord [is] with me during **this time of spiritual warfare.**" (KCT, 247:12-24, 248:14-17, Exs. 46-47) (emphasis added).

Plaintiff also spoke at the Georgia Baptist Convention's ("GBC") executive committee meeting consisting of approximately 200 pastors. (KCT, 255:3-19). During his speech, Plaintiff referenced his suspension at least once. (KCT, 259:24-260:6). The following week, Plaintiff enlisted the GBC's assistance in creating a comprehensive public relations "**battle plan**" to fight his suspension, including the publication of a web-based editorial criticizing his suspension, which Plaintiff reviewed and approved; an online petition linked to a forum on which to purchase Plaintiff's book; a social media campaign directed at pressuring the Mayor to reconsider Plaintiff's suspension; and the posting of a recording of Plaintiff's GBC speech to the GBC website. (KCT, 251:21-252:18; 257:16-18; 261:22-262:14; 264:16-24, Exs. 49, 50 at PL 001902).

(*See also* GBC Mission Board, "Help Us Defend Religious Liberty!", available at <https://gabaptist.org/petition/>, last visited April 17, 2017, attached as **Ex. I**).<sup>6</sup>

In mid-December, Plaintiff approved yet another public relations "**offensive fire attack**" against the City, which included a social media campaign calling on the public to contact the Mayor and demand that he apologize to Plaintiff for violating his First Amendment rights. (KCT, 268:10-18, 269:12-270:15, Ex. 51). Plaintiff also spoke to the congregations of two churches, arguing once again that the Mayor suspended him solely because of his religious beliefs. (KCT, 274:13-22).<sup>7</sup>

As a result, the Mayor became the recipient of more than 17,000 angry emails, phone calls to his home, and even death threats. Among other things, Plaintiff's supporters called him a "nigger", a "terrorist", and the "anti-Christ". (KRT, 136:17-137:24; 151:18-22; 138:20-139:5).

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<sup>6</sup> *See also* December 15, 2014 Georgia Baptist Convention Press Release, available at [https://gabaptist.org/wp-content/uploads/2014/12/GBC\\_News\\_Religious\\_Liberty\\_12-15-14.pdf](https://gabaptist.org/wp-content/uploads/2014/12/GBC_News_Religious_Liberty_12-15-14.pdf) (last visited April 19, 2017), attached as **Ex. J**.

<sup>7</sup> In one of his speeches, Plaintiff stated:

In the book I deal with sexuality as God intended it. God intended for a man and a woman to be married and to have children to populate the earth, and that any sex outside of marriage and outside of a man and a woman, outside of holy matrimony is against the word of God, and *for that stand, I've been laid off for 30 days without pay.*

(KCT, 275:15-277:15) (emphasis added).

**F. Plaintiff's Conduct During His Suspension, as Well as the Law Department's Investigation, Led to His Termination.**

Meanwhile, the City's Law Department conducted a Title VII investigation, the results of which were compiled in an investigative summary. (KRT, Ex. 13). It concluded that Plaintiff had not obtained the Ethics Board's written authorization prior to selling his book, in violation of Section 2-820(d) of the City's Ethics Code. (KRT, Ex. 13, at p.2). It also concluded that although there was no evidence that Plaintiff had engaged in any unlawful discrimination, "[t]here ... is general agreement the contents of the book have eroded trust and have compromised the ability of the chief to provide leadership in the future." (KRT, Ex. 13, at pp. 3-4).

After learning of Plaintiff's speeches and suspecting his involvement in the orchestration of the PR campaigns during his suspension, and upon reviewing the Law Department's findings, Reed decided to terminate Plaintiff's employment given his lack of trust and confidence in Plaintiff and his belief that Plaintiff "could not continue with the support of the people that worked for him." (KRT,136:17-137:24;151:18-22;169:8-20).

## **II. ARGUMENT AND CITATION TO AUTHORITY**

### **A. Standard of Review.**

Summary judgment is proper when the moving party shows that "there is an absence of evidence to support the nonmoving party's case." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Once this burden is met, the burden shifts to the non-movant to come forward with evidence raising a triable issue of fact. *Id.* Summary judgment must be granted when the non-movant lacks evidence to meet his burden of proof with respect to any essential element of his case. *Celotex*, 477 U.S. at 322.

### **B. Plaintiff's Retaliation Claim Fails on Several Grounds.**

To establish a First Amendment retaliation claim, Plaintiff must show that:

(1) []he was speaking as a citizen on a matter of public concern; (2) h[is] interests as a citizen outweighed the interests of the State as an employer; (3) the speech played a substantial or motivating role in the adverse employment action.

*Leslie v. Hancock Cnty. Bd. of Educ.*, 720 F.3d 1338, 1346 (11th Cir. 2013) (quoting *Vila v. Padron*, 484 F.3d 1334, 1339 (11th Cir. 2007)). "If the plaintiff establishes these elements, the burden shifts to the defendant to prove it would have made the same adverse employment decision absent the employee's speech." *Id.* (quoting *Vila*, 484 F.3d at 1339).

## **1. The City's Interests as Plaintiff's Employer Vastly Outweigh Plaintiff's Limited First Amendment Rights.**

The second element of Plaintiff's retaliation claim calls on the Court to scrutinize "whether an employee's interest as a citizen outweighed the interests of the state as an employer." *Leslie*, 720 F.3d at 1346. To do so, this Court must apply the *Pickering* balancing test, which "seeks 'to arrive at a balance between the interests of the public employee, as a citizen, in commenting upon matters of public concern and the interest of the State, as an employer, in promoting the efficiency of public services it performs through its employees.'" *Id.* (quoting *Pickering v. Bd. of Educ.*, 391 U.S. 563, 568 (1968)). "'The manner, time, and place of the employee's expression' and the 'context in which the dispute arose' are relevant to" this analysis. *Id.* (quoting *Rankin v. McPherson*, 483 U.S. 378, 388 (1987)).

Other relevant considerations at this stage include:

whether the statement impairs discipline by superiors or harmony among co-workers, has a detrimental impact on close working relationships for which personal loyalty and confidence are necessary, or impedes the performance of the speaker's duties or interferes with the regular operation of the enterprise.

*Leslie*, 720 F.3d at 1346 (quoting *Rankin*, 483 U.S. at 388). The nature and scope of the employee's position with his employer is another key factor in this equation. *Bates v. Hunt*, 3 F.3d 374, 378 (11th Cir. 1993). Further, fire departments in particular

"have a strong interest in the promotion of camaraderie and efficiency' as well as 'internal harmony and trust,' and therefore [courts] accord 'substantial weight' to a fire department's interest in limiting dissension and discord." *Grutzmacher v. Howard Cnty.*, 851 F.3d 332, 345 (4th Cir. 2017) (quoting *Goldstein v. Chestnut Ridge Volunteer Fire Co.*, 218 F.3d 337, 352-53 (4th Cir. 2000)).

AFRD's mission is to provide fire and rescue, homeland security, and emergency medical services to the City of Atlanta. Plaintiff's responsibility was to ensure that AFRD was successful in its mission. (KCT, 51:10-20; 52:4-24). To do so, a key component of Plaintiff's job was to attract and retain an inclusive and diverse workforce necessary to garner the trust and respect of Atlanta's diverse community. (KCT, 47:25-48:6). According to Plaintiff, this requires AFRD to be "ism free," or free of racism, sexism, favoritism, and all forms of prejudice and discrimination, including that based on religious identity, sexual orientation, and/or marital status. (KCT, 47:2-20; 85:10-20; 130:22-25). Plaintiff testified that absent a positive relationship with the community, AFRD's core mission is threatened. (KCT, 49:13-20).

For this reason, AFRD closely guards its public perception. By way of example, in August 2012, an AFRD firefighter posted a comment on a Facebook photo of AFRD firefighters, dressed in uniform, in which he used the word "fags." (KCT, 293:14-294:2, 294:25-295:5). A member of the public saw the posting and submitted a

complaint to Plaintiff, explaining that the comment made him question the firefighter's -- and AFRD's -- ability to serve the LGBT community. (Aug. 2, 2012 S. Deaderick Email to K. Cochran, attached as **Ex. K**). Plaintiff promptly responded to this complaint by suspending the perpetrating AFRD employee for thirty days without pay. (KCT, 300:21-24).

Like that firefighter's use of the word "fags," Plaintiff's condemnation of non-Christians, the LGBT community, and others threatened AFRD's ability to operate effectively and risked destroying the public's trust in the Department. As AFRD Chief, he conveyed the message that there will be "celebration" when those who do not follow his religious beliefs *perish*. The First Amendment does not protect such behavior. *See Lumpkin v. Brown*, 109 F.3d 1498, 1500 (9th Cir. 1997), (upholding termination of state human rights commissioner fired after making public statements as a reverend condemning homosexuality as a sin; the First Amendment does not assure him job security when he preaches homophobia while serving as a City official charged with the responsibility of 'eliminating prejudice and discrimination.'); *McMullen v. Carson*, 754 F.2d 936, 939 (11th Cir. 1985) (affirming termination of clerical employee in sheriff's office after publicly identifying himself as KKK member; even as a low-level employee, association of sheriff's office with KKK endangered the public's trust in the police as a whole); *Grutzmacher*, 851 F.3d at 346 (upholding

termination of battalion chief for Facebook postings; "the expressive activities of a highly placed supervisory employee will be more disruptive to the operation of the workplace than similar activity by a low level employee with little authority and discretion") (quoting *McEvoy v. Spencer*, 124 F.3d 92, 103 (2d Cir. 1997)). Because Plaintiff fails the *Pickering* balancing test, his claim should be dismissed.

**2. Plaintiff's Beliefs Played No Role in the Mayor's Decision to Suspend and Then Terminate His Employment.**

To advance his retaliation claim, Plaintiff must also prove that his speech "played a substantial or motivating role in the adverse employment action." *Leslie*, 720 F.3d at 1346. This he cannot do.

**a. Plaintiff Violated the City's Ethics Code and Risked Title VII Liability For the City.**

Pursuant to the City Code, Plaintiff, like all City employees, was required to obtain his supervisor's approval before accepting paid outside employment. The City's Ethics Code also required Plaintiff to obtain written approval from the Board of Ethics prior to engaging in any outside employment for which he received remuneration. Plaintiff fulfilled neither of these requirements prior to selling his book for profit. While Plaintiff may dispute whether Ethics Officer Hickson gave him verbal permission to do so, that is immaterial, as Hickson lacked such authority. She never provided written approval in any event.

Further, Plaintiff's book contains language denigrating and demeaning wide swathes of people based on characteristics protected by federal and local discrimination laws, including gender, religion, and sexual orientation; and the book explicitly associates such views with Plaintiff's role as Fire Chief of AFRD. Plaintiff then disseminated his book to his subordinates at work, one of whom raised concerns about the book and the lawfulness of Plaintiff's conduct.

Plaintiff cannot dispute that each of these legitimate, non-retaliatory reasons unrelated to his personal beliefs were before the Mayor when he suspended Plaintiff. (KRT, 102:19-103:1, 104:2-13, 119:17-21) (YYT, 47:9-16, 48:17-50:10; CBT, 32:22-33:1; 33:20-24; Deposition Transcript of Robin Shahar ("RST"), relevant portions attached as **Ex. L**, at 44:22-45:6). Accordingly, Plaintiff cannot establish that his suspension was due to his religious beliefs; and his retaliation claim fails. *See Thaeter v. Palm Beach Cnty. Sheriff's Off.*, 449 F.3d 1342, 1357 (11th Cir. 2006) (deputy sheriffs' First Amendment claim failed when terminated for violating rule requiring prior written approval for off-duty employment).

**b. The Law Department's Findings, as well as Plaintiff's Misconduct During his Suspension, Led to His Termination.**

Nor can Plaintiff show that the Mayor fired him because of his religious beliefs. Instead: (1) Plaintiff's decision to ignore the Mayor's instruction and speak repeatedly

and publicly about his suspension;<sup>8</sup> (2) the Mayor's (correct) suspicion that Plaintiff helped orchestrate a public relations campaign challenging his suspension; and (3) the Law Department's conclusion that AFRD subordinates lacked faith in Plaintiff's continued leadership, led the Mayor to that outcome.

One can hardly posit a more combative response to his suspension than Plaintiff's, which saw him endorse a public relations "battle plan" and "offensive fire attack" premised on an inflammatory narrative that his boss was engaging in "spiritual warfare" designed to undermine Christians' religious freedoms.<sup>9</sup> This reckless course of action led to the Mayor receiving thousands of angry emails, hateful phone calls to his home, and even death threats. Indeed, given the ferocity of his response, it is

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<sup>8</sup> While Plaintiff insists that Byrd only advised him not to hold any press conferences or respond to any requests for interviews, he admits that the intent behind Byrd's directive was clear: "she didn't want me to publicly disclose my side of the story." (KCT, 257:4-13).

<sup>9</sup> As Yancy testified, in discussing the circumstances leading to Plaintiff's termination:

[T]o suggest that the City was impugning upon his freedom of religion and that he was in this trial by God because of how he espoused his views was just -- not just offensive, but false. And so we found ourselves explaining that to people continuously when we shouldn't have had to talk about it at all.

(YYT, 115:7-22).

difficult to fathom how, after unleashing this public attack on his supervisor, Plaintiff could possibly have intended to return to his job. (MGT, 87:13-24; YYT, 115:7-22).<sup>10</sup>

### **C. Plaintiff's Viewpoint Discrimination Claim Also Lacks Merit.**

Plaintiff also alleges that the City engaged in viewpoint discrimination by firing him for his opposition to same-sex marriage and homosexuality while allowing employees with supportive views on these topics to keep their jobs. As a threshold matter, Plaintiff can point to no other public safety head who ignored the City's Ethics Code, distributed unauthorized materials to work subordinates, ignored the Mayor's directive during his suspension, and sacrificed his subordinates' trust as he did yet was allowed to remain employed due to his support of LGBT rights. On this count alone, Plaintiff's claim fails. *Moss v. U.S. Secret Serv.*, 572 F.3d 962, 971 (9th Cir. 2009) (viewpoint discrimination claims fail where plaintiff claims disparate treatment as compared to a party that is not similarly situated); *Pine v. City of West Palm Beach, Fla.*, No. 13-80577-CIV, 2013 WL 5817651, at \*7 (S.D. Fla. Oct. 29, 2013)

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<sup>10</sup> Even if Plaintiff could establish the *prima facie* elements of his retaliation claim, the evidentiary burden would have shifted to Defendant "to prove that it would have terminated Plaintiff even in the absence of his speech." *Moss v. City of Pembroke Pines*, 782 F.3d 613, 618 (11th Cir. 2015). As outlined above, Plaintiff's violation of the Ethics Code, the erosion of trust in him as a leader, and his inflammatory and insubordinate conduct during his suspension caused his termination. Accordingly, the same legal result would be reached.

(plaintiff's viewpoint discrimination claim failed where he could not show any disparate treatment).

Plaintiff's Free Speech claim also fails because the City has the right to speak for itself, and select "the messages it wishes to convey." *Walker v. Tex. Div., Sons of Confederate Vets., Inc.*, 135 S. Ct. 2239, 2246 (2015). Accordingly, "When government speaks, it is not barred by the Free Speech Clause from determining the content of what it says." *Walker*, at 2245. Thus, "government statements (and government *actions* and programs that take the form of speech) do not normally trigger the First Amendment rules designed to protect the marketplace of ideas." *Walker*, 135 S. Ct. at 2245 (emphasis added); *Pleasant Grove City, Ut. v. Summum*, ("A government entity has the right to speak for itself. It is entitled to say what it wishes, and to select the views that it wants to express.") (internal citations omitted).

The Atlanta City Council, acting as the legislative arm of the City, has long supported LGBT equality by passing comprehensive laws barring discrimination in a variety of contexts on the basis of sexual orientation, gender identity, and domestic relationship status. (*See, e.g.*, City Code, § 94-111 *et seq.*, § 94-91 *et seq.*, § 94-68, *et seq.*). In December 2014, the City Council adopted a resolution in support of same-sex marriage. (AWT, 32:21-33:2). Reed, as the Mayor of Atlanta, is an avowed advocate of LGBT equality. (KRT, 143:17-145:8; RST, 21:19-25, 120:6-16; AWT, 32:15-20).

The City is entitled to express its own social views, and it has consistently done so with respect to LGBT equality. Plaintiff, while purporting to represent the City as Fire Chief, expressed views antithetical to the City's. If the City terminated Plaintiff as a result, such was a lawful act of free expression. *See Walker*, 135 S. Ct. at 2246 (DMV did not engage in viewpoint discrimination when it denied request for specialty license plate featuring Confederate battle flag where license plate was a form of government expression; *Summum*, 555 U.S. at 472-73 (as monuments in public park represented government speech, government had right to select which viewpoints it wished to express through grant or denial of monument placement requests without scrutiny under Free Speech Clause)).

#### **D. Plaintiff's Challenge of the City's Pre-Approval Rules Fails.**

Plaintiff next contends that the City's pre-approval requirements -- Sec. 2-820(d) and Sec. 114-436-7 of the City Code (the "Pre-Approval Requirements") -- constitute an overbroad prior restraint on public speech, both facially and as applied.<sup>11</sup> Plaintiff does not dispute that he violated these ordinances, nor that, as Fire Chief, he understood and approved of their purpose. Now, however, he challenges their very constitutionality. As with all of Plaintiff's claims, this one, too, fails.

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<sup>11</sup> In this context, the analysis of facial and as-applied challenges is essentially the same. Accordingly, Defendants will consider the two challenges as one. *See Sanjour v. EPA*, 56 F.3d 85, 92 (D.C. Cir. 1995).

As in the First Amendment retaliation context:

[r]estraints on the speech of government employees on 'matters of public concern' are governed by a balancing test; they are permissible where the government interest in 'promoting the efficiency of the public services it performs through its employees' outweighs the interests of prospective speakers and their audiences in free dissemination of the speakers' views.

*Weaver v. U.S. Info. Agency*, 87 F.3d 1429, 1439 (D.C. Cir. 1996) (quoting *United States v. Nat'l Treasury Emps. Union ("NTEU")*, 115 S.Ct. 1003, 1012-14 (1995)).

"Where a restraint is accomplished through a generally applicable statute or regulation ... the regulation's sweep [must be] reasonably necessary to protect the efficiency of the public service." *Id.* (quoting *NTEU*, 115 S.Ct. at 1017). This analysis is known as the *Pickering/NTEU* test. *Sanjour v. E.P.A.*, 56 F.3d 85, 91 (D.C. Cir. 1995). In applying this analysis, courts consider several factors, including the extent to which protected employee speech is burdened; the risk of government utilizing unbridled discretion to engage in viewpoint discrimination under the challenged policy; the legitimacy of the government's interests underlying the challenged policy; and the extent to which the challenged policy is narrowly tailored to protect those interests.

*See Sanjour*, 56 F.3d at 94-98.

## **1. The Pre-Approval Requirements Are Reasonably Tailored to Legitimate Government Interests.**

The challenged ordinances require that all City employees obtain prior approval from their department heads before engaging in paid outside employment, and that high-level employees obtain written approval from the Board of Ethics prior to doing so. City Code, §§ 114-436-37, 2-820(d). As such, they allow the City to ensure that its employees do not have conflicts of interest or otherwise engage in outside activities that could improperly influence or interfere with their official City duties (or even appear to).<sup>12</sup> These are important goals of any governmental entity long recognized by the courts. *See, e.g., Wolfe v. Barnhart*, 446 F.3d 1096 (10th Cir. 2006) ("The importance of the government's interest in avoiding impropriety or the appearance thereof among its employees is well established. ... Underlying this concern is the

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<sup>12</sup> The introductory provision of the City's Ethics Code -- in which Sec. 2-820(d) is found -- explains:

It is the purpose of this division to promote the objective of protecting the integrity of the government of the city by prohibiting any official or employee from engaging in any business, employment or transactions, from rendering services or from having contractual, financial, or personal interests, direct or indirect, which are in conflict with or would create the justifiable impression in the public of conflict with the proper discharge of the official or employee's official duties or the best interest of the city or which would tend to impair independence or objectivity of judgment or action in the performance of official duties.

(City Code, § 2-802).

'legitimate interest in maintaining the public's confidence in the integrity of the [public] service, which in turn contributes to the government's effectiveness.'") (quoting *Crandon v. United States*, 494 U.S. 152, 164 (1990)). Even Plaintiff admits that he believed these requirements were necessary to prevent conflicts of interest and work that might distract from AFRD duties. (KCT, 64:25-65:14).

Accordingly, pre-approval requirements such as these are routinely upheld as a reasonable way of pursuing these legitimate government interests. *See, e.g., Gibson v. Office of Atty. Gen., State of Ca.*, 561 F.3d 920, 928 (9th Cir. 2009) (state OAG's requirement that its attorneys obtain approval prior to engaging in private practice of law reasonably related to OAG's "legitimate interest" in avoiding conflicts of interest and ensuring that its employees were devoting their full attention to its business); *Williams v. IRS*, 919 F.2d 745, 746-7 (D.C. Cir. 1990) (requirement that IRS employees obtain written permission from agency before engaging in outside employment or business activities was "tailored to the government's interest in efficiency and avoiding the appearance of impropriety"); *Reichelderfer v. Ihrie*, 59 F.2d 873 (D.C. Cir. 1932) (total ban on outside remunerative employment by DC firemen upheld "to prevent firemen from dividing their strength as well as their interest and attention between their departmental duties and outside pursuits").

## **2. Employee Speech Is Neither Targeted Nor Burdened by the Pre-Approval Requirements.**

Further, neither of these ordinances specifically targets expressive activities, let alone protected public speech. Sec. 114-437 merely requires employees to obtain approval from their department heads prior to engaging in paid outside employment, while Sec. 2-820(d) requires a select group of high-level City employees to obtain written approval from the Board of Ethics prior to doing so. Employees remain free to speak, write, or otherwise express whatever they choose without seeking approval pursuant to these provisions so long as they do not receive compensation for doing so. Moreover, Sec. 2-820(d) *excepts* "single speaking engagements" and "participation in conferences or on professional panels" from its purview. No evidence exists that the Pre-Approval Requirements have ever been used to prohibit employee speech, and Plaintiff himself admits he never interpreted Sec. 2-820(d) as governing expressive activity. (KCT, 58:1-15, 159:10-19).

This is a far cry from the types of regulations typically found unconstitutionally burdensome pursuant to the *Pickering/NTEU* test, which specifically target employee speech and operate as either an outright ban on such speech or strongly discourage it. *See, e.g., NTEU*, 513 U.S. 454 (striking down complete ban on lower-level federal employees accepting compensation, including honoraria, for making speeches or

writing articles); *Sanjour*, 56 F.3d 85 (striking down EPA's ethics regulation prohibiting expense reimbursements for unofficial speaking or writing activities relating to official duties); *Harman v. City of N.Y.*, 140 F.3d 111, 117-18 (2d Cir. 1998) (striking down social service agency's policies requiring employees to obtain permission prior to speaking with media about anything to do with the agency's operations; "These regulations clearly aim at speech that is of considerable importance to the public.").

**3. The Pre-Approval Requirements Do Not Grant the City Unbridled Discretion to Engage in Viewpoint Discrimination.**

Government regulations that "vest[] essentially unbridled discretion in the agency to make ... determination[s] on the basis of the viewpoint expressed by the employee" are often held unconstitutional. *See Sanjour*, 56 F.3d at 96 (striking down regulation in part because it allowed "official approval only for speech that is 'within the mission of the agency'").

Approval of these requests is based solely on whether the outside employment creates a conflict of interest or otherwise interferes with the employee's City employment. Sec. 114-436 outlines the specific elements an outside employment request must satisfy to be approved under Sec. 114-437, including that it does not: "interfere with or affect the performance of the employee's duties;" "involve a conflict

of interest or a conflict with the employee's duties;" "involve the performance of duties which the employee should perform as part of such employee's employment with the city;" or "involve the use of records or equipment of the city." As a department head, Plaintiff based his decisions on outside business requests on these considerations. (KCT, 64:25-65:12).

Sec. 2-820(d) reflects a similar focus, providing that:

City employment shall remain the first priority of the employee, and if at any time the outside employment interferes with the city job requirements or performance, the official or employee shall be required to modify the conditions of the outside employment or terminate either the outside employment or the city employment.

(*See also* Declaration of Nina Hickson ("Hickson Dec."), attached as **Ex. M**, at ¶¶ 5-6).

Accordingly, the reach of the Pre-Approval Requirements is sufficiently limited to pass Constitutional muster. *See Gibson*, 561 F.3d at 927 (requirement that OAG attorneys obtain prior approval before engaging in private practice of law was not unlawful prior restraint under First Amendment; policy was reasonably tailored to allow AG to evaluate whether outside work would create a conflict of interest or adversely affect employees' job performance); *Williams*, 919 F.2d at 747 (upholding IRS's prior approval requirement for outside employment under First Amendment).

**E. Nor Can Plaintiff Establish a Violation of His Right to Freely Exercise His Religion, or the Existence of an Unlawful Religious Test.**

Plaintiff next alleges that his suspension and termination based on the Pre-Approval Requirements violated his right to freely exercise his religion. Plaintiff asserts that these policies created an unconstitutional religious test for City employment that excludes those who hold and profess historical Christian beliefs about marriage and sexuality. Nothing could be further from the truth.

**1. Plaintiff Cannot Show Any Unlawful Burden on the Exercise of His Religious Beliefs.**

To plead a valid free exercise claim, Plaintiff must show that the City has impermissibly burdened one of his "sincerely held religious beliefs." *Watts v. Fla. Intern. Univ.*, 495 F.3d 1289, 1294 (11th Cir. 2007). Plaintiff alleges that his faith "requires that he believe, profess, and teach others about historical Christian teachings regarding the one-man-one-woman nature of marriage and the sinfulness of sexual conduct outside of that union." (Compl., ¶ 283).

Of course, the City's Pre-Approval Requirements had no bearing on Plaintiff's ability to believe, profess, or teach whatever he chooses. Plaintiff freely admits as much at pages 158-160 of his deposition transcript. The only limitation placed on Plaintiff was that he obtain approval to engage in outside employment *for which he received remuneration*. As the Pre-Approval Requirements "neither caused [Plaintiff]

to do anything that compromised [his] religious beliefs nor prevented [him] from doing anything essential to [his] exercise of religion," *Braswell v. Bd. of Regents*, 369 F. Supp. 2d 1362, 1367-68 (N.D. Ga. 2005) (Thrash, J), his claim fails.

**2. Plaintiff's Claim Also Fails in Light of the Neutrality of These Pre-Approval Requirements.**

"The prevailing constitutional standard under the Free Exercise Clause mandates that 'a law that is neutral and of general applicability need not be justified by a compelling governmental interest even if the law has the incidental effect of burdening a particular religious practice.'" *Keeton v. Anderson-Wiley*, 733 F. Supp. 2d 1368, 1380 (11th Cir. 2010) (quoting *First Vagabonds Church of God v. City of Orlando*, 610 F.3d 1274, 1285 (11th Cir. 2010)). "Such a law need only have a rational basis, and is presumed to be constitutional." *Id.*

"A law is neutral unless 'the object of the law is to infringe upon or restrict practices because of their religious motivation,' and "a law is generally applicable if it does not 'in a selective manner impose burdens only on conduct motivated by a religious belief.'" *Eternal Word Tel. Network, Inc. v. Sec. of U.S. Dept. of Health and Human Servs.*, 818 F.3d 1122, 1164 (11th Cir. 2016) (quoting *Church of Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 533, 543 (1993)). Here, the City simply requires pre-approval for paid outside employment. They are neutral -- they do not

target religious beliefs or single out religious speech. As written, they are aimed only at “any private employment [and] any services for private interests for remuneration,” (City Code, § 2-820(d)), and “any paid employment of an employee … in addition to such employee’s employment with the city.” (City Code, § 114-436).

They are also generally applicable, as Sec. 114-436 applies to all City employees who wish to engage in outside employment for pay, and Sec. 2-820(d) applies to all high-level City employees who wish to do so, without regard to whether that employment has a religious aspect or the employee holds a particular religious belief. *See Hall*, 2013 WL 2484089, at \*11 (finding employee policy generally applicable because it “applies equally to all … employees, regardless of religion”).

#### **F. Plaintiff's Freedom of Association Claim Cannot Succeed.**

Plaintiff further alleges that the City retaliated against him for exercising his right to associate with his church by suspending and then terminating him based on the beliefs he expressed in his book. To succeed on this claim, Plaintiff must first establish that he “engag[ed] in associative activity” protected by the First Amendment. *Caruana v. Columbia Cnty. Bd. of Educ.*, No. CV 110–036, 2012 WL 1067969, at \*6 (S.D. Ga. Mar. 29, 2012), *aff’d* 493 F. App’x 34 (11th Cir. 2012). Plaintiff cannot meet this threshold requirement.

While Plaintiff alleges that in publishing his book, he “acted as an extension of his church and participated in the church’s efforts to proclaim a religious message about marriage and sexuality,” (Compl., ¶ 303), the evidence contradicts this assertion. Plaintiff’s church did not finance Plaintiff’s book, ask him to publish it, or even encourage him to do so. (KCT, 305:21-306:8). No evidence exists that anyone other than Plaintiff and his publisher (who had no affiliation with Plaintiff’s church), had any role in the book’s creation. Plaintiff’s claim is further undercut by the fact that his alleged “associational activity” -- the self-publication of his book -- was undertaken for profit. *See Rivers v. Campbell*, 791 F.2d 837, 840 (11th Cir. 1986) (“While the first amendment protects the right to associate with others in pursuing a wide variety of social, political, educational, and economic ends, the more commercial the associational interest involved the less likely first amendment protection attaches.”). As Plaintiff cannot establish that his book constitutes an associative activity within the meaning of the First Amendment, his claim fails outright.

Further, as outlined fully above, Plaintiff cannot show that the beliefs expressed in his book were the basis for the City’s adverse employment decisions, (*see* Section B(2), *supra*), yet another requirement he must satisfy to succeed on this claim. *See Douglas v. DeKalb Cnty., Ga.*, No. 1:06-CV-0584-TWT, 2007 WL 4373970, at \*3 (N.D. Ga. Dec. 11, 2007) (freedom of association claim failed where “Defendants have

presented compelling evidence showing that the Plaintiffs were not disciplined for being members of a union, [but for] violating Dekalb County policies."). Finally, Plaintiff's freedom of association retaliation claim, like his free speech claim, must survive application of the *Pickering* balancing test. *Id.* at \*2-3. The City has already established that Plaintiff's First Amendment interests in his book do not outweigh the City's interest in ensuring the efficiency of its operations. (*See* Section B(1), *supra*). As such, these claims fail together.

#### **G. Plaintiff's Procedural Due Process Claim Lacks All Merit.**

Finally, Plaintiff alleges that Defendants violated his right to procedural due process, in violation of 42 U.S.C. § 1983, by failing to provide him with notice of the charges against him and a meaningful opportunity to present his side of the story, both before he was suspended and terminated. However, it is well-settled that "[a] public employee's claim that an employer violated his or her procedural due process rights must fail unless the employee had a protected interest in his or her employment." *City of St. Mary's v. Brinko*, 324 Ga. App. 417, 419 (2013). Further,

[u]nder Georgia law, a public employee has a property interest in employment when that employee can be fired only for cause. In the absence of a contractual or statutory 'for cause' requirement, however, the employee serves 'at will' and may be discharged at any time for any reason or no reason, with no cause of action for wrongful termination under state law. Such 'at-will' employees have no legitimate claim of

entitlement to continued employment and, thus, have no property interest protected by the due process clause.

*Id.* (quoting *Wilson v. City of Sardis*, 264 Ga. App. 178, 179 (2003)).

Plaintiff was an "unclassified" employee who was employed at-will and could be fired for any reason. (KCT, 37:2-7; 60:22-61:14; 17:9-17; 83:16-84:1, Ex. 15, at p. 2). Unclassified employees have no due process rights with respect to their employment, and Plaintiff freely admits as much. (KCT, 39:25-40:11; KCT, 61:10-24, Ex. 11, at §§ 9.1-9.2). Accordingly, Plaintiff had no property interest in his employment. *See Sykes v. City of Atl.*, 235 Ga. App. 345, 347 (1998) (unclassified employee had no property interest in her employment with the City, and thus no due process claim); *Harris v. City of Atl.*, No. 2015CV264583, at \*7 (Ga. Sup. Ct. Apr. 12, 2017), attached hereto as **Ex. N** (same).

Plaintiff instead argues that he had a property interest in his employment because the City Code provides that "[n]o employee shall be dismissed from employment or otherwise adversely affected as to compensation or employment status except for cause." (City Code, § 114-528(a)). As that section is not expressly limited to classified employees, Plaintiff argues, it must apply to all employees, including him.

Plaintiff's reliance on this Code section is misplaced, as the City Charter expressly provides that Plaintiff's position is at-will. (City of Atl. Charter, §§ 3-305(a)

and 3-301(c)) (AFRD Chief "may be removed at the pleasure of the Mayor"). In the event of a discrepancy between the City Code and the City Charter, the Charter controls. *See* O.C.G.A. § 36-35-3(a) (granting municipalities the power to adopt ordinances "for which no provision has been made by general law and which are not inconsistent with the Constitution or any charter provision applicable thereto"). Plaintiff's claim also fails because he cannot show that he sought a writ of mandamus prior to bringing suit, a procedural prerequisite for bringing a due process claim. *See Bradford v. City of Roswell*, No. 1:11-cv-0787-JEC, 2014 WL 3767794, \*5 (N.D. Ga. Jul. 31, 2014) (quoting *Goodman v. City of Cape Coral*, 581 Fed. Appx. 736 (11th Cir. 2014)); *Joiner v. Glenn*, 288 Ga. 208, 210 (2010); *Harris*, No. 2015CV264583, at \*9.

### **III. CONCLUSION**

In light of the foregoing, Defendants respectfully request that the Court grant this Motion, enter summary judgment in their favor, and dismiss all of Plaintiff's claims, in their entirety and with prejudice.

Respectfully submitted this 27th day of April, 2017.

s/Kathryn J. Hinton  
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**CERTIFICATE OF COMPLIANCE**

Undersigned counsel certifies the foregoing document has been prepared with one of the font and point selections (Times New Roman, 14 point) approved by the Court in local rule 5.1(C) and 7.1(D).

This 27th day of April, 2017.

*s/ Kathryn Hinton*  
Kathryn J. Hinton  
GA Bar No. 542930

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of the foregoing *Defendants' Brief in Support of Their Motion for Summary Judgment* via the Court's ECF filing notification which will automatically send an electronic copy of the foregoing to the following attorney of record for Plaintiff:

Kevin Theriot, Esq.  
Jeana Hallock, Esq.  
Ken Connelly, Esq.  
Alliance Defending Freedom  
1000 Hurricane Shoals Road, NE  
Suite D-1100  
Lawrenceville, Georgia 30043

This 27th day of April, 2017.

s/ Kathryn Hinton  
Kathryn J. Hinton  
GA Bar No. 542930

**Defendant's Brief in Support of Their Motion for Summary Judgment**

Exhibit A

Deposition Transcript  
of Kelvin Cochran  
& its exhibits

(relevant portions attached)

**KELVIN J. COCHRAN vs. CITY OF ATLANTA, ET AL.**  
**Kelvin J. Cochran on 02/10/2017**

10 [\[link\]](#) [\[link\]](#) [\[link\]](#)

11

12 VIDEOTAPED DEPOSITION OF  
KELVIN J. COCHRAN

13 FEBRUARY 10, 2017  
14 8:53 A.M.

15 ALLIANCE DEFENDING FREEDOM  
1000 HURRICANE SHOALS ROAD, N.E.  
16 SUITE D-1100  
LAWRENCEVILLE, GEORGIA

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1 specifically I'll refer to them by the number on the  
2 sticker that I attach to them.

3 I'm going to show you Exhibit 1, and all  
4 I'm trying to do is confirm that this is the  
5 selection letter that you received and signed for  
6 from the then mayor or her administration,  
7 Shirley Franklin?

8 A. That's correct.

9 Q. As fire chief did you understand that that  
10 position was an appointed position?

11 A. Yes.

12 Q. What's your understanding of that phrase?

13 A. It is an appointed position by the mayor  
14 of the City of Atlanta.

15 Q. Do you serve at -- did you understand that  
16 you served at the mayor's leisure?

17 A. Yes.

18 Q. And so during this first term of your  
19 employment, did you understand that Mayor Franklin  
20 had the right to terminate your employment?

21 A. Yes.

22 Q. At any time?

23 A. Yes.

24 Q. For any reason?

25 A. Yes.

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1 A. No.

2 (Exhibit 3 was marked for  
3 identification.)

4 BY MR. GEVERTZ:

5 Q. I'm going to hand you Exhibit 3. You have  
6 seen this document, correct?

7 A. Yes.

8 Q. And that's your signature in the middle of  
9 the page; is that right?

10 A. Yes.

11 Q. What was your purpose in completing this  
12 document; do you recall?

13 A. I understood it at the time to be just a  
14 standard within the City of Atlanta for all  
15 employees.

16 Q. For all employees or for employees of a  
17 certain rank?

18 A. To my knowledge, for all employees.

19 Q. Okay. And what was your -- did you have  
20 any understanding as to why all the employees  
21 allegedly were asked to complete this document?

22 A. As I recall, it was that the City would be  
23 aware of any outside employment by any of its  
24 employees.

25 Q. Do you -- did you find that request to be

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1      improper?

2            A.       No.

3            Q.       Did you find it in any way to be  
4            burdensome?

5            A.       No.

6            Q.       You completed this, and at the time you  
7            certified that you were holding no outside job,  
8            correct?

9            A.       That's correct.

10          Q.       And that was the truth, correct?

11          A.       That's correct.

12          Q.       How did you learn that you were obliged to  
13            complete a document such as this?

14          A.       I cannot recall in what setting or venue  
15            this was presented to me.

16          Q.       Briefly remind me, please, of your  
17            educational background.

18          A.       I have a bachelor's degree in  
19            organizational management, a master's degree in  
20            industrial and organizational psychology, and I'm  
21            currently a student at Creighton University in a  
22            doctoral program for interdisciplinary leadership.

23          Q.       Is Creighton online classes or in person?

24          A.       Yes.

25          Q.       Online. Would you consider yourself

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1 someone who has a good command of the English  
2 language?

3 A. I do.

4 Q. Would you consider yourself to be a good  
5 and careful reader?

6 A. Yes.

7 Q. And I take it then that you would have  
8 seen the bold language above your signature, that  
9 among other things said that you had to file a  
10 written request with your department head before  
11 performing outside employment?

12 A. Yes.

13 Q. Who did you understand was your department  
14 head if you were the chief of the Atlanta Fire Rescue  
15 Department?

16 A. The chief operating officer.

17 Q. And at the time, do you recall who that  
18 was?

19 A. Greg -- I can't remember Greg's last name.

20 MR. GEVERTZ: That's all right.

21 Thank you, sir.

22 (Exhibit 4 was marked for  
23 identification.)

24 BY MR. GEVERTZ:

25 Q. I'm next going to show you Defendants'

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1       they were seeking a new job or not?

2           A.     That is correct.

3           Q.     And did you ever have occasion where you  
4     had to chase after requests that people turn them in  
5     because they hadn't turned them in in a timely  
6     fashion?

7           A.     From time to time.

8           Q.     Did you find anything inappropriate about  
9     asking your subordinates to complete and submit a  
10    document like Exhibit 3 to you?

11          A.     No.

12          Q.     So we're back to Exhibit 4. Let me give  
13    you some context for this document. At this point  
14    you had been hired, and my understanding is that you  
15    had already committed to certain speeches, and you  
16    wanted to ensure that you disclosed those speeches  
17    and received permission to honor the commitments that  
18    you had made; is that accurate?

19          A.     That's correct.

20          Q.     Okay. And consequently, you then sought  
21    and received permission from the COO, correct?

22          A.     That's correct.

23          Q.     And then you also submitted this written  
24    request to attend these three training symposiums or  
25    speeches, correct?

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1 A. That's correct.

2 Q. So if we turn to Exhibit -- excuse me, the  
3 third page of this exhibit then, there's a reference  
4 to tentative approval via e-mail. Did you in fact  
5 receive approval one way or the other in order to  
6 attend and speak at these conferences?

7 A. I believe I did. I couldn't recall how I  
8 received it.

9 Q. Do you recall anybody asking, anyone  
10 within the City of Atlanta asking to review a copy of  
11 your speech or a PowerPoint or any of the comments  
12 that you intended to make before approving you to  
13 attend these commitments?

14 A. No.

15 Q. Did anyone orally ask you what you'd be  
16 talking about at any of these commitments?

17 A. As I recall, yes. That would have  
18 been -- that was explained to Greg Giornelli and the  
19 ethics officer, Ms. Looney.

20 Q. And what did you tell them, if you recall?

21 A. Just that the nature of the training had  
22 to do with leadership, organizational management of  
23 fire department organizations.

24 Q. Did you provide or did they request any  
25 more detail than that?

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1 A. Yes, sir.

2 Q. Thank you.

3 The information that you put in your  
4 ri sumi  would otherwise have been truthful and  
5 correct, to the best of your knowledge, correct?

6 A. That's correct.

7 Q. And I take it that you would have been the  
8 sole contributor to your ri sumi ?

9 A. That's correct.

10 Q. One quick question about the last page of  
11 your ri sumi , if you would. You listed in here your  
12 community -- sorry. Ready?

13 A. Yes.

14 Q. You listed in here your community  
15 involvement, and you listed the Billy Graham  
16 Association both as an executive chairman for a  
17 festival and on the board for a subsequent festival.  
18 What is the Billy Graham Association?

19 A. The Billy Graham Evangelistic Association  
20 is just what it says in its name, an evangelistic  
21 association. Billy Graham is the founder of the  
22 association.

23 Q. And Mr. Graham, for anyone who might be  
24 unfamiliar, or Reverend Graham, with him, could you  
25 share briefly what your understanding is of his

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1 position within the evangelical community?

2 A. He is one of the most renowned evangelical  
3 leaders really in the Body of Christ. That's all.

4 Q. Is it your understanding and anticipation  
5 that the Billy Graham Association is a well-known  
6 association?

7 A. Yes.

8 Q. And obviously you prominently disclosed  
9 your relationship with that association on your  
10 rï¿½sumï¿½, correct?

11 A. Yes.

12 Q. At any point in time with the mayor,  
13 either before he became mayor or subsequent to his  
14 election, did you ever have occasion to talk with him  
15 about personal matters of any sort, meaning  
16 non-fire-department-related issues?

17 A. What would be the timeframe again?

18 Q. Over the course of your relationship with  
19 the mayor, did y'all ever get to know one another  
20 outside of the strict bounds of professional  
21 relations and reporting relationships?

22 A. There were times when we would have  
23 casual, personal conversations. Not very many, but  
24 there were times.

25 Q. Did the mayor ever discuss religion with

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1 you or religious faith?

2 A. You know, one on one, not that I can  
3 recall.

4 Q. Well, if we expand beyond one on one, in  
5 off-the-record conversations, did you become aware at  
6 any point in time of his religious identity?

7 A. Yes. There have been several occasions  
8 where the mayor and I were in the same worship  
9 service.

10 One occasion, I was in a worship service,  
11 and Mayor Reed actually brought the sermonic message  
12 during the worship service. The mayor hosted  
13 quarterly, I believe, meetings with faith-based  
14 leaders of the City of Atlanta, and during his  
15 comments he would often refer to his faith.

16 And most of those contexts and worship  
17 services, they were in Christian churches. And, you  
18 know, he would be, as I would be, an active  
19 participant in every aspect of the worship service.  
20 And so it is in those settings that I came to know  
21 and hear Mayor Reed himself express his confession to  
22 faith and Christianity.

23 Q. Were these services in churches?

24 A. Yes.

25 Q. Private places of worship?

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1           A.       Yes.

2           Q.       And were you present as a member of the  
3     congregation or as a representative of the City, if  
4     you can make that distinction?

5           A.       In some cases I was there because the  
6     mayor was there. I mean, I supported Mayor Reed.  
7     Anytime I had a chance to be visible somewhere where  
8     the mayor was just to support him and so that he can  
9     visibly see members of his team that were there in  
10    support of him, I thought that was significant. It  
11    was not a requirement of the mayor, so it was  
12    voluntary on my part. But those that involved  
13    churches, it was also the opportunity for me to  
14    worship, and so that was another part of it.

15              I do recall, as I speak, the first year  
16    upon my return, at the beginning of the first year --  
17    I came back in June of 2010. In January of 2010, I  
18    have a practice, a spiritual discipline of beginning  
19    the year with fasting.

20              And that particular time of the year, I  
21    had talked to Peter Aman, the COO; George Turner, the  
22    police chief; Patrick Labat, the chief of  
23    corrections; and Mayor Reed as to how would they feel  
24    about fasting for -- starting off the year fasting  
25    for our leadership over the City of Atlanta, and all

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1 Q. It was implicit and understood?

2 A. Yes, sir.

3 Q. And on a related note, I base this both on  
4 your religion as well as what I've read about you,  
5 would it be fair to say that you're not someone who  
6 hides or in any way camouflages his faith?

7 A. Yes. From the standpoint of the whole  
8 principle of living out your faith, letting your  
9 light shine means that the best sermon you'll ever  
10 preach is the way you live your life every day. And  
11 it is from that perspective that I have lived out my  
12 faith in my life to the extent to where the  
13 personality and character that I exude publicly is to  
14 the best of my ability to reflect the personality and  
15 character of Christ.

16 In the workplace if anybody becomes  
17 curious enough to know why it is that I do what I do  
18 or say what I say or act like I act or respond like I  
19 respond, then my answer is my relationship with  
20 Christ.

21 Q. Thank you, sir.

22 So you began your second round of  
23 employment with the City, I believe, in July 19th of  
24 2010. Does that sound about right?

25 A. Yes.

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1 A. Yes.

2 Q. Can you give me some names or job titles?

3 A. I believe that from the rank of battalion  
4 chief and above were unclassified.

5 Q. So let's take a battalion chief. By the  
6 way, what's immediately below a battalion chief?

7 A. A captain.

8 Q. So I'm just going to draw on the  
9 distinction between the two for a moment. If a  
10 captain was terminated from his or her employment, do  
11 you understand whether or not they had any grievance  
12 or administrative rights to appeal that decision?

13 A. Yes.

14 Q. What's your understanding of what rights  
15 that person would have?

16 A. Well, there are -- there's a due process  
17 within the civil service laws and ordinances that  
18 governs that.

19 Q. So there's civil service policies and  
20 procedures that would apply to someone in this  
21 hypothetical, a captain who is being terminated, if  
22 they wanted to appeal or grieve that decision?

23 A. Yes.

24 Q. By contrast, if we took a battalion chief  
25 and he or she was going to be terminated, would that

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1 A. A captain, yes.

2 Q. Now, how about an assistant chief in that  
3 occasion? Were there rights or remedies that the  
4 assistant chief could follow through the civil  
5 service process to appeal that decision?

6 A. Yeah, I think there are. You know, again,  
7 I'm to the best of my recollection trying to recall  
8 it, and to be quite honest, I'm not absolutely sure  
9 about whether the same rights and privileges afforded  
10 to captains and below would be afforded to battalion  
11 chiefs, assistant chiefs, or deputy chiefs.

12 Q. So let me see if I can fairly characterize  
13 your understanding. At a captain or below, there are  
14 civil service remedies that set out somewhere.  
15 You're generally familiar with them?

16 A. Yes.

17 Q. Above that, there may or may not be  
18 certain rights or remedies, but you're unclear as to  
19 what they are and where they might be ensconced?

20 A. That's correct.

21 Q. Did you as the chief understand that you  
22 had any rights or remedies to grieve a decision to  
23 monetarily penalize you?

24 A. Please restate the question.

25 Q. Sure. You're the chief. If the COO or

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1 the mayor said, I don't like what you did and you are  
2 suspended from work for a week, did you understand  
3 that you had any sort of grievance right or  
4 administrative appeal right to that decision?

5 A. No, not if it was -- not if it was handed  
6 down from the mayor.

7 Q. Same question about a termination. If the  
8 mayor were to terminate you, did you understand that  
9 you had any sort of grievance right or administrative  
10 appeal right if the mayor made that decision?

11 A. No.

12 Q. Thank you. I'm done with this document.

13 By the way, let me reiterate, I'm a camel.  
14 I go all day, so don't wait on me if you need a  
15 break.

16 A. I'm good.

17 (Exhibit 7 was marked for  
18 identification.)

19 MR. GEVERTZ:

20 Q. Okay. Exhibit 7, I'm simply going to ask  
21 if you can confirm that this was a letter  
22 congratulating you on your selection, and informing  
23 you that you still needed city council authorization?

24 A. Yes.

25 Q. And that's your signature at the bottom, I

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1           Q.     And would it have applied to you  
2     throughout your last tenure as chief of the Atlanta  
3     Fire Rescue Department?

4           A.     Yes.

5           Q.     I'm going to paraphrase. You're welcome  
6     to look at the document. I don't know if you need  
7     to.

8                         Did you understand yourself to be the most  
9     visible spokesperson for the Atlanta Fire Rescue  
10   Department in the City of Atlanta?

11          A.     Yes.

12          Q.     Did you understand that part of your job  
13   as the chief of the Atlanta Fire Department included  
14   your people skills with respect to being able to lead  
15   and motivate the firefighters who worked for you?

16          A.     Yes.

17          Q.     Did you also understand that your job  
18   duties as a fire chief extended into the community by  
19   allowing you to create a good rapport with  
20   stakeholders within the community?

21          A.     Yes.

22          Q.     Can you tell me for a moment as a  
23   layperson why it was important for you to have a good  
24   relationship with the community in order to fight  
25   fires and prevent fires?

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1 together through a process, a long process of several  
2 meetings, we developed a vision for the department  
3 that we developed for ourselves, a mission statement  
4 for the department that that group actually  
5 developed, and a set of core values, one of which was  
6 ism-free.

7                   The reason we settled on ism-free is  
8 because that group of people -- we had several isms  
9 that were plastered on flip charts around the room.  
10 We took 84, as I recall, specific items and reduced  
11 it down to about six or seven: Predictable,  
12 excellence, accountable, competent, honesty,  
13 integrity, and ism-free.

14                   Ism-free came from the fact that there was  
15 favoritism on the wall, nepotism on the wall, racism,  
16 sexism, territorialism, cronyism, and everybody was  
17 passionate about their ism being on the list. Well,  
18 we couldn't list all of them on the list, and so we  
19 just summarized it into saying we just want to be  
20 ism-free.

21                  Q. This you said was reduced to writing, this  
22 philosophy or core value system; what was it called?

23                  A. It was called the Atlanta Fire Rescue  
24 Doctrine.

25                  Q. One other thing about what you told me

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1       that undergirded your philosophy towards AFRD  
2       leadership, and that was striking an alliance -- and  
3       these are my words -- striking an alliance with the  
4       community that you served. Was that a fair  
5       characterization?

6           A.       Yes.

7           Q.       And you had mentioned from the  
8       firefighters' perspective that they need to  
9       demonstrate love. At any point in time, they may be  
10      asked to put themselves in harm's way or even  
11      potentially be injured or killed in the line of duty.  
12      From the community's perspective, can you share with  
13      me your view as to why it was important to have an  
14      alliance with the fire department?

15       A.       Well, the community needed to know that  
16      they had an organization of men and woman who cared  
17      about them and who embraced their lives, their  
18      property as valuable, and were committed to  
19      protecting their lives and their property.

20       Q.       Why? I'm digging deeper.

21       A.       Because at any moment we can invade their  
22      personal space. It could not just be a structure  
23      fire. It could be a person having a heart attack.  
24      It could be delivering a baby. It could be a  
25      homeless person who's overdosed. There are an array

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1       of life circumstances that impact the citizens of  
2       Atlanta that we have to have compassionate men and  
3       women who can empathize, who can relate, who can  
4       demonstrate compassion and love in the most trying  
5       circumstances of people's lives. Whether they lived  
6       in Bankhead or Buckhead, our compassion had to be  
7       consistent across all people groups.

8           Q.     Would you agree with this premise, that if  
9       the fire department was not successful in creating an  
10      alliance with stakeholders in the citizenry that that  
11      could make a firefighter's job tougher?

12          A.     Yes.

13          Q.     That it could cause a member of the  
14      community to delay or fail to seek assistance when it  
15      was necessary?

16          A.     Yes.

17          Q.     And that it could ultimately tear away at  
18      the fabric of the cohesive body of firefighters that  
19      you were trying to mold?

20          A.     Yes.

21          Q.     Now, this leadership style that you  
22      described, did you have any sense as to whether or  
23      not it was consistent with the mayor's leadership  
24      style? Let me be more specific. Did you have any  
25      sense that the view that the mayor had with respect

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1 it verbatim, was that alignment of your philosophy of  
2 leadership and the mayor's philosophy of leadership  
3 discussed in your meeting in Washington, D.C. before  
4 you came back?

5 A. It could have been. I can't recall any  
6 specifics.

7 (Exhibit 9 was marked for  
8 identification.)

9 BY MR. GEVERTZ:

10 Q. I'm next going to show you Defendants'  
11 Exhibit 9. This is obviously, as you can see at the  
12 top, an overview for fiscal year 2011. Are you  
13 familiar with this sort of document or what this  
14 document --

15 A. Yes.

16 Q. Would it be fair to say that this  
17 generally outlines the different -- the different  
18 tentacles that the Atlanta Fire Rescue Department had  
19 in the community, organizationally and otherwise?

20 A. Yes.

21 Q. And so there was the -- as I understand  
22 it, the fire department was divided up into five  
23 major operating units, the first of which was the  
24 office of the fire chief, your office?

25 A. Yes.

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1 Q. And that was responsible for setting  
2 policy and effective and consistent procedure?

3 A. Yes.

4 Q. And then the second organizational unit  
5 was the office of support services; is that right?

6 A. Yes.

7 Q. And that would help respond to homeland  
8 security issues and training issues; is that  
9 accurate?

10 A. Yes.

11 Q. And then the third major area was the  
12 office of field operations. And this was, as I  
13 understand it, an entire community service  
14 outreach --

15 A. Yes.

16 Q. -- in the fire department. And it would  
17 deal with helping the fire suppression activities and  
18 providing emergency medical services and technical  
19 rescues, correct?

20 A. Yes.

21 Q. And then there was a separate airport  
22 division that obviously would deal with all these  
23 things, but specific to the Atlanta airport?

24 A. That is correct.

25 Q. Did I miss any of the major components of

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1 Q. I'll ask that after every break.

2 A. Sure.

3 (Exhibit 10 was marked for  
4 identification.)

5 BY MR. GEVERTZ:

6 Q. Okay. The next document I'm going to show  
7 you is Exhibit 10, and I specifically want to draw  
8 your attention -- this is a part of the Atlanta's  
9 ordinances, and it's part of this litigation. I'm  
10 going to ask you -- you're free to review this to  
11 your heart's content, but I'm only going to ask you  
12 about a part of page 19, and specifically subsection  
13 D, which is towards the middle of the page. With me?

14 A. Yes, sir.

15 Q. Have you had occasion to review this  
16 ordinance or this portion of the ordinance before?

17 A. Yes, sir.

18 Q. A couple of questions to ask you. As the  
19 Atlanta fire chief, were you a commissioner?

20 A. Yes.

21 Q. And you were also a department head,  
22 correct?

23 A. Well, yes.

24 Q. Were you a bureau director?

25 A. Well, the terms, as I understand it,

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1 commissioner and department head was used  
2 interchangeably within the City of Atlanta.

3 Q. Okay. What about bureau director? Did  
4 you understand you were --

5 A. That would have been a lower level.

6 Q. A lower level than you were?

7 A. Yes.

8 Q. Having reviewed this portion of this  
9 ordinance before, did you understand that this  
10 applied to you?

11 A. Yes.

12 Q. Did you understand this ordinance to  
13 prevent you from engaging in private employment for  
14 money unless you met certain requirements?

15 A. Yes, to my understanding; and this is the  
16 clause that actually provides for speaking  
17 engagements. And there was also a requirement that  
18 at the end of the year, the ethics department would  
19 send out this notice for all employees who had -- I  
20 forget what it was called -- that if you had received  
21 any compensation, that you just cite the agencies,  
22 not the dollar amount.

23 Q. Okay.

24 A. And I complied with that every year.

25 Q. Yes, sir. So in short, since it sounds as

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1 if you're familiar with this, let me ask you if this  
2 was your understanding, and tell me yes or no. That  
3 you were not allowed to engage in private employment  
4 for money, but if you got prior written approval from  
5 the board of ethics, you could. However, this didn't  
6 apply to specific speaking engagements or  
7 participation in conferences or professional panels  
8 so long as you financially disclosed any money that  
9 you received from them?

10 A. That's correct.

11 Q. Did I misstate any of that, to the best of  
12 your understanding?

13 A. To the best of my understanding, no.

14 Q. How did this ordinance and its application  
15 to you -- strike that.

16 How did you first come to understand that  
17 this ordinance applied to you?

18 A. It would have been under Mayor Shirley  
19 Franklin, and in further conversations with  
20 Ms. Looney and Greg Giornelli. I recall actually  
21 discussing with them that this is, you know, ongoing  
22 that I get these requests for conferences. And my  
23 understanding of their response is as long as it is  
24 related to speaking engagement and training --  
25 training, then it's permissible.

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1           Q.     Did you understand this ordinance, just  
2     Section D, to in any way prevent you from making  
3     certain comments or speaking on certain topics?

4           A.     No.

5           Q.     Did you understand this section in any way  
6     to prevent you from speaking to certain groups?

7           A.     No.

8           Q.     Did you understood this section in any way  
9     to encourage you to speak on certain topics or make  
10    certain comments?

11          A.     No.

12          Q.     In short, did you understand this section  
13    in any way to apply to the things that you wrote or  
14    came out of your mouth?

15          A.     No.

16                   (Exhibit 11 was marked for  
17    identification.)

18    BY MR. GEVERTZ:

19          Q.     Let me set this section aside. The next  
20    document I'd like to show you is a big one, but I  
21    promise not to take you through all of it. It's  
22    Exhibit 11.

23                   This states that it is the second edition  
24    of the Atlanta Fire Rescue Disciplinary Procedure  
25    Manual, and it has your name towards the bottom.

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1       this page, it talks about how a classified employee,  
2       assuming that they have completed their probationary  
3       period, could appeal nonadverse disciplinary actions,  
4       meaning oral counseling or written counseling. Was  
5       that your understanding as well?

6           A.     Yes.

7           Q.     Further on in that section, it says that  
8       unclassified employees do not have the right to file  
9       grievances against nonadverse disciplinary actions.  
10      In other words, if you were unclassified, you  
11     couldn't contest verbal or written counseling. Was  
12     that your understanding as well?

13          A.     Yes.

14          Q.     Now, I'm on the Section 9.2. A classified  
15       employee, again, assuming that they had completed  
16       probation, could appeal an adverse disciplinary  
17       action, meaning something more serious, suspension,  
18       termination, things of that nature. Is it your  
19       understanding that that was the procedure in place  
20       for classified employees within the fire department?

21          A.     Yes.

22          Q.     Unclassified employees did not have the  
23       right to appeal adverse actions to the Atlanta Civil  
24       Service Board. Instead, officers above the rank of  
25       captain were considered to hold discretionary

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1 positions. Did you understand that provision to mean  
2 that if you were at captain or above, you didn't have  
3 any appeal rights with respect to adverse  
4 disciplinary actions?

5 A. According to as it is written, it would  
6 have begun at the battalion chief level. It says  
7 above the rank of captain.

8 Q. Above the rank of captain. I apologize.  
9 So let me rephrase the question.

10 Was it your understanding and your  
11 practice within the fire department that the  
12 battalion chief level and above, you did not have a  
13 right to appeal adverse decisions?

14 A. Yes.

15 Q. So if I string all that together, would  
16 you agree with me that within the fire department, at  
17 least during your tenure, that unclassified employees  
18 did not have any appellant rights either with respect  
19 to nonadverse disciplinary actions or adverse  
20 disciplinary actions?

21 A. That's correct.

22 Q. Instead, they were discretionary, as you  
23 previously defined them?

24 A. Yes.

25 Q. Serving at the will or leisure of the

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1 you know why this section exists in the fire  
2 department procedure manual?

3 A. My understanding of it is that we just  
4 need to be informed of any outside employment that  
5 could potentially impact their employment with the  
6 fire department.

7 Q. Well, let me be clear. You needed to be  
8 informed about any outside employment by your  
9 subordinates regardless of whether they thought it  
10 would impact their fire department job, true?

11 A. Yes.

12 Q. Okay. And did your subordinates in fact  
13 have to report to you, outside jobs when they were  
14 thinking about taking them on?

15 A. They had to fill out the form that we  
16 talked about earlier.

17 Q. And then was it up to you to determine  
18 whether or not that individual could accept that  
19 employment?

20 A. Yes.

21 Q. Did you use any specific standards to  
22 determine what might conflict with their fire  
23 department job and what wouldn't?

24 A. Not that I recall.

25 Q. Did you ever deny a request for outside

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1 employment from any of your subordinates while you  
2 were at the City of Atlanta?

3 A. Not that I remember.

4 Q. Can you approximate for me, roughly, how  
5 many times one of your subordinates brought to your  
6 attention an outside employment opportunity for you  
7 to consider?

8 A. Most of them were reoccurring. I hardly  
9 can remember, if any, any new employment. I am sure  
10 that may have happened, but I recall mostly  
11 reoccurring, where someone had already been approved  
12 and they were just submitting it for the next year  
13 for reapproval.

14 Q. And what sorts of outside employment do  
15 you recall those concerns?

16 A. Just a vast array of different types.

17 Q. Did you understand that these requirements  
18 would apply to someone if they were undertaking a job  
19 but they weren't being paid for it?

20 A. No.

21 Q. So if I worked for you and I had a  
22 volunteer position, even though it was time  
23 consuming, did I have to clear that through you?

24 A. No.

25 Q. Did you think that having this requirement

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1       within the fire department was a good idea?

2           A.     Yes.

3           Q.     Why?

4           A.     Well, it helps us to really assess whether  
5       their employment actually is in conflict with laws,  
6       codes, and ordinances that may govern that sort of  
7       behavior outside of work, or if it conflicts with  
8       their work schedules.

9           Q.     Let me take it a step further. I just  
10      asked you if you thought this was a good idea. Did  
11      you think that this was a necessary requirement?

12        A.     Yes.

13        Q.     For the same reasons you just described?

14        A.     Yes.

15        Q.     Would you turn to page 97, please. At the  
16      bottom of this page, Rule 4.08 concerns electronic  
17      communications, and I'll paraphrase. This basically  
18      says that if the Atlanta Fire Rescue Department  
19      provides you with e-mail or Internet access or a  
20      phone, that it's to be used for city business only;  
21      it wasn't to be used for personal gain or to advocate  
22      for non-city-related businesses. Did you approve of  
23      this requirement?

24        A.     Yes.

25        Q.     Did you think it was appropriate?

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1 Q. Do you recall having reviewed and signed  
2 this around the time that you started work in 2010?

3 A. Yes.

4 Q. And in looking at the first part, topic  
5 one, do you see with me the second sentence, "When  
6 uncertain about the right thing to do, I will seek  
7 guidance from my supervisor, the ethics office, or  
8 the board of ethics."?

9 A. Yes.

10 Q. Remind me. I apologize. Who did you  
11 understand your supervisor to be as the chief of the  
12 Atlanta Fire Rescue Department?

13 A. Mike Geisler.

14 Q. The person who was the COO, correct?

15 A. Yes.

16 Q. And we've discussed the ethics --

17 A. It shifted three times during my tenure  
18 with Mayor Reed, but the COO, yeah.

19 Q. And then number seven, were you familiar  
20 with this requirement as part of the ethics pledge?

21 A. Yes.

22 Q. And did you understand based on the second  
23 sentence of this Section 7 that you are required to  
24 seek permission from your department head for any  
25 extra job --

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1 A. Yes.

2 Q. -- that you had? Okay. So this second  
3 sentence doesn't make a distinction as between paid  
4 or unpaid, correct?

5 A. That's correct.

6 Q. Okay. And I take it that as a good and  
7 careful reader that you reviewed this document before  
8 you signed it, correct?

9 A. Yes.

10 MR. GEVERTZ: Thank you, sir.

11 (Exhibit 13 was marked for  
12 identification.)

13 BY MR. GEVERTZ:

14 Q. We talked before about how as the fire  
15 chief, that Section 5.01 obliged your subordinates to  
16 seek your permission before they sought outside  
17 employment. I'd like to share with you Exhibit 13  
18 and ask if you recall Bill May as a firefighter  
19 within your department. Do you recall Bill May as  
20 being a firefighter within your department?

21 A. Yes.

22 Q. Did he hold a specific rank?

23 A. I believe he retired as a captain.

24 Q. Is that what you recall his position would  
25 have been in October of 2014?

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1 book?

2 A. No, not to the mayor.

3 Q. Did you ever make it to a member of the  
4 board of ethics?

5 A. No. I made it to the director of the  
6 ethics department.

7 Q. And who was that?

8 A. Nina Hickson.

9 Q. Did you do so in writing?

10 A. No.

11 Q. Is that the only person who you sought any  
12 sort of preapproval or preclearance from?

13 A. Yes.

14 Q. How many times did you interact with  
15 Ms. Hickson about your book?

16 A. About the book itself, twice.

17 Q. Okay. And I'm -- you answered that in a  
18 very careful way, so I'm not trying to limit you. I  
19 don't want to know if you talked about the Super  
20 Bowl, but did you have any conversations with  
21 Ms. Hickson about anything having to do with  
22 publication of your book?

23 A. Yes.

24 Q. And was it on more than two occasions?

25 A. It was on two occasions.

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1 at-will employee --

2 A. Yes.

3 Q. -- during the time you worked as the fire  
4 chief for the City of Atlanta?

5 A. Yes.

6 Q. To belabor the point, would you turn to  
7 page 25. There's a section towards the bottom  
8 entitled Dismissal, and the last sentence in so many  
9 words says that unclassified employees can be fired  
10 for any reason so long as it doesn't break the law.  
11 Did you understand that that was a term of your  
12 employment while you were the fire chief of the City  
13 of Atlanta?

14 A. Yes.

15 Q. You had told me before that you and I  
16 believe it was somewhere around 30 something members  
17 of the fire department created the AFRD doctrine?

18 A. Yes, sir.

19 (Exhibit 16 was marked for  
20 identification.)

21 BY MR. GEVERTZ:

22 Q. And is that Exhibit 16?

23 A. Yes.

24 Q. So you would have been an active  
25 participant in this document's creation and

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1 publication, correct?

2 A. Yes.

3 Q. And consequently, you would have signed  
4 off on the content of this document, correct?

5 A. Yes.

6 Q. And did you also understand that this  
7 document, the doctrine, applied to you as well as  
8 your subordinates?

9 A. Yes.

10 Q. If we look at page three, letter F, this  
11 is the ism-free part that we previously discussed,  
12 and it references a climate devoid of racism, sexism,  
13 favoritism, nepotism, and territorialism. Would you  
14 also include in that category any sort of preference  
15 or harm based on religious identity?

16 A. Yes.

17 Q. Based on sexual orientation?

18 A. Yes.

19 Q. Based on marital status?

20 A. Yes.

21 Q. And were these -- these philosophy -- this  
22 philosophy, I guess, as captured in these seven  
23 points, again, I think you told me that you found  
24 these to be critical to the creation and functioning  
25 of a well-running fire department, correct?

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1           A.     I would say that that would be pretty  
2 close to when we talked.

3           Q.     Now, what she writes, "Advise regarding  
4 non-city-related book he is authoring. Will check  
5 back with me in about six months."

6                   Do you recall any of the content of your  
7 conversation with Ms. Hickson on October 31st of  
8 2012?

9           A.     Yes.

10          Q.     What can you tell me?

11          A.     I can tell you that I called her. I  
12 initiated the call, and I asked Ms. Hickson was it  
13 appropriate and allowable for a currently sitting  
14 city official to write a faith-based book that has  
15 nothing to do with my job or city government. She  
16 asked me what the book was about. I explained to her  
17 pretty much, as I just explained to you the e-mail of  
18 how the research that I did and what the book was  
19 about.

20          Q.     Well, I'm going to ask you if you can give  
21 me with as much verbatim detail of what you told her  
22 as possible.

23          A.     I just know that I told her the theme of  
24 the book, that it was regarding this whole issue of  
25 what God asked Adam in the Garden of Eden, that there

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1       are too many Christian men who still feel that they  
2       are condemned and deprived, which is what that word  
3       "naked" -- I probably went into explaining to her  
4       what I discovered about what that word "naked" meant,  
5       condemned and deprived, and what I discovered that  
6       "clothed" meant, redeemed and restored, and that  
7       there are many Christian men who are saved, clothed  
8       men, who are still acting like naked men, and that we  
9       can't be the husbands and fathers and leaders we've  
10      been called to be. And that was pretty much the  
11      theme of the book, overcoming condemnation.

12                  When I finished the explanation, she said,  
13        "I would like to get a copy of that book when you are  
14       finished." I do remember that.

15                  The reference to six months later, I don't  
16       recall, but what I do recall is when I was finishing  
17       the book was the second time that we talked about the  
18       book. I explained to her that I was almost done --

19                  Q.     Well, we'll get to that. I've got  
20       another -- I've got another note to talk to you  
21       about.

22                  Have you now given me your best and  
23       fullest recollection of everything that you and  
24       Ms. Hickson said during that first conversation about  
25       your book?

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1 A. Yes.

2 Q. And when I'm looking at what she said, it  
3 sounds as if she asked you what the book was about  
4 and asked to see a copy of the book when you were  
5 done.

6 A. She wanted her personal copy --

7 Q. Yes.

8 A. -- not to see a copy.

9 Q. Okay. She wanted a copy of your book?

10 A. Yes.

11 Q. And she asked you what the book was about.  
12 Did she ask or say anything else during that  
13 conversation?

14 A. Yes. She did specifically point out that  
15 as long as it doesn't have to do with subject matter  
16 pertaining to my job as fire chief or my role in city  
17 government, based on the description that I gave her,  
18 that it was permissible.

19 Q. Do you have any notes of your conversation  
20 with Ms. Hickson?

21 A. No, sir.

22 Q. Ms. Hickson did not ask you anything else?

23 A. Not that I can recall.

24 Q. And certainly she did not say anything to  
25 the effect that you could not write a book about

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1     Am I correct in understanding that as of January 2013  
2     you had concluded that you wished to turn this  
3     exercise into a book? And here's why I ask. If you  
4     look in the second paragraph about four lines down,  
5     the sentence is "Ultimately, it is my desire to  
6     expand the content in certain areas and publish it as  
7     a book."

8                 A.     Yes.

9                 Q.     So fair to say that as of January 15th of  
10    2013, you had a goal of publishing some version of  
11    this document in the form of a book, correct?

12                A.     Yes.

13                Q.     Now, you also mention something called  
14    "The Quest for Authentic Manhood." What is that?

15                A.     That is a small group of men's Bible study  
16    that I was facilitating for the group of men in my  
17    church. One of the lessons in "The Quest for  
18    Authentic Manhood" actually involved God's purpose  
19    for man, and it's where this question, "Who told you  
20    that you were naked," actually came from.

21                Q.     So "The Quest for Authentic Manhood" is a  
22    study group, it's not a writing of some sort?

23                A.     No, it's a document. It is a -- it's a  
24    prepared set of CDs and booklets that's used  
25    specifically for men's Bible study.

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1 A. Yes.

2 Q. Is she affiliated with 3G Publishers?

3 A. Yes.

4 Q. Is she the owner?

5 A. Yes.

6 Q. She provided you with a contract in May of  
7 2013. Did you sign this contract?

8 A. Yes.

9 Q. Okay. Was it -- here's why I ask. I want  
10 to make sure that your answer's correct.

11 In the third -- in the second -- the third  
12 page of the document, the second page of the  
13 contract, it also talks about her serving or someone  
14 serving as a ghost writer.

15 A. Yes.

16 Q. Did you invoke the use of a ghost writer?

17 A. In the context -- in the context of what  
18 is stipulated in A and B for proofing, which --

19 Q. I see.

20 A. Yeah, for proofing and editing, not for  
21 content purposes.

22 Q. So you signed this document. Do you  
23 recall when you signed it, if you had received it?

24 A. I don't recall. I know it was not long  
25 after I received it.

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1 A. Yes, I do.

2 Q. And that, consequently, the fire  
3 department, whether it's in the City of Atlanta or  
4 anywhere else, needs to create a positive and lasting  
5 image and work hard to maintain it?

6 A. Absolutely, yes.

7 Q. Would you agree with the assertion that  
8 the City of Atlanta's Fire Department's reputation  
9 for delivering compassionate services is vital to its  
10 image?

11 A. Absolutely. And under my leadership,  
12 that's exactly what we conveyed.

13 Q. And that all citizens in your care should  
14 be treated with the utmost level of dignity and  
15 respect by the fire department?

16 A. Yes, sir, and we lived that out every day.

17 Q. Did you also believe there to be a clear  
18 connection between the way that the fire department  
19 treated one another, the people within it, and the  
20 way that they treated the public?

21 A. Yes, sir.

22 Q. Did you believe that as fire chief that it  
23 was incumbent on you to create an atmosphere where  
24 racism, sexism, isms were eliminated?

25 A. Yes, sir.

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1 Q. Did Ms. Napper, to your knowledge, join  
2 the Elizabeth Baptist Church before she was hired?

3 A. Yes.

4 Q. Your book, do you recall when it was  
5 finally ready to be printed?

6 A. Not the final version. I would say it  
7 would have to be some point at the latter part of  
8 2013.

9 Q. If I were to suggest November, would that  
10 sound about right?

11 A. That sounds about right.

12 (Exhibit 29 was marked for  
13 identification.)

14 BY MR. GEVERTZ:

15 Q. I'm showing you Defendants' Exhibit 29.  
16 March 9th of 2013 was a Monday. At 3:33 in the  
17 afternoon of that day, you sent your publisher from  
18 your e-mail address, it looks like at the City, the  
19 final galley of your comments?

20 A. Yes.

21 MR. THERIOT: Objection. I think you  
22 said March 9th.

23 MR. GEVERTZ: I apologize. Let me  
24 try that again.

25 MR. THERIOT: Not really an

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1 objection.

2 MR. GEVERTZ: Too much information in  
3 one question.

4 BY MR. GEVERTZ:

5 Q. December 9th of 2013, was a Monday. At  
6 3:33 on a Monday afternoon in December, you provided  
7 your publisher from your City of Atlanta account the  
8 final galley of your manuscript for your book with  
9 edits, correct?

10 A. Yes.

11 Q. But it is your testimony that this did not  
12 in any way interfere with the performance of your  
13 duties as the fire chief, correct?

14 A. That's correct.

15 Q. Thank you.

16 Do you recall when you first began  
17 distributing copies of your book to people within the  
18 fire department?

19 A. It would have been soon after receiving an  
20 initial order of books.

21 Q. And who within the fire department --  
22 strike that.

23 Ideally you could do this in order, but I  
24 won't test your memory to that extent. Who within  
25 the fire department do you recall distributing a copy

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1 of your book to?

2 A. There are essentially three categories as  
3 I like to keep it organized in my head of  
4 distribution. There were some Christian men. First  
5 of all, all of them were Christian men who had -- who  
6 I had established a prior conversation or  
7 relationship with as Christians. The first group was  
8 a group of Christian men that we were so close in our  
9 understanding and connection with one another  
10 interpersonally, they knew I was writing a copy of  
11 the book, and before it was finished, they said, when  
12 you finish, I want a copy of it.

13 The second group was a group of men, who  
14 when they found out that I wrote a book, requested a  
15 copy. There was about three, as I can recall, who  
16 because we had a prior connection and established a  
17 relationship or an understanding of our  
18 like-mindedness in our faith, I actually gave them a  
19 copy.

20 Q. I'm sorry. So there are three categories?

21 A. Yes.

22 Q. Category one was men who you were close to  
23 and knew their Christian affiliation, thoughts,  
24 philosophy was in sync with yours?

25 A. Right, who knew I was writing a book, who

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1 requested a copy.

2 Q. Okay. And they requested it. And the  
3 second group was people once they heard about the  
4 book, requested a copy, and you distributed it to  
5 them?

6 A. Yes.

7 Q. Help me with the third category again?

8 A. There were, and I think it was  
9 approximately three men, who we knew each other as  
10 Christians, but they neither knew I wrote a book and  
11 requested a copy, or knew I was writing a book and  
12 asked for a copy, but just in the context of our  
13 relationship that we had prior established as  
14 Christians, you know, I gave them a copy of the book  
15 as a gift.

16 Q. So who was in the first group?

17 A. As best as I can recall, Joe Baker,  
18 Randall Slaughter.

19 Q. I'm sorry, last name is?

20 A. Slaughter.

21 Q. Yes, sir.

22 A. Wilman Meadows, Bernard Coxton. I'm  
23 really struggling with the names.

24 In the second category, I think it would  
25 be Chad Jones. I can't -- I know it was at least

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1 three in that group.

2 And then in that last group, the three  
3 that I recall were Stephen Hill, Chris Wessels, and  
4 William Collier.

5 I just recalled another name in that  
6 middle group. Michael Simmons was another name in  
7 that middle group.

8 Q. Approximately how many total people within  
9 the fire department do you recall giving a copy of  
10 your book to?

11 A. I'd say nine to 12.

12 Q. And your department had how many people  
13 working?

14 A. Eleven hundred.

15 Q. Chaplain Miller, was he among the people  
16 you --

17 A. Yes.

18 Q. Would he be in the first, second, or third  
19 group?

20 A. That middle group.

21 Q. In each case I think you described the  
22 categories of groups as consisting of Christian men?

23 A. Yes.

24 Q. Why did you not offer your book to  
25 non-Christians?

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1           A.     Because the motive and the intent behind  
2     the book in the first place was Christian men. A  
3     Christian man wrote a book for Christian men. And so  
4     these are men, Christian men, who I established a  
5     connection with as Christians, and that's the context  
6     of giving them a book as a gift.

7           Q.     So they were not -- would it be fair to  
8     say that non-Christians were not part of your target  
9     audience?

10          A.     No, they were not.

11          Q.     Similar question. Why did you only give  
12     it to men and not women?

13          A.     Because it was again, a book written for  
14     Christian men.

15          Q.     Were you concerned that your book, if  
16     given by you to a non-Christian, might offend them?

17          A.     It never crossed my mind to even give a  
18     book to a person that I had not already established  
19     some relationship with as a Christian man. It just  
20     never crossed my mind.

21          Q.     It didn't cross your mind because that  
22     wasn't your target audience or because you thought  
23     that would be a bad thing?

24          A.     It was they were not the target audience,  
25     and I would not give the book to a person that I had

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1 Q. Thank you.

2 Now, the cost of the book --

3 MR. THERIOT: Just object as to form  
4 as to that last question.

5 (Exhibit 31 was marked for  
6 identification.)

7 BY MR. GEVERTZ:

8 Q. Here's Exhibit 31. The cost of the book  
9 was \$4.00, excluding shipping and handling; is that  
10 correct?

11 A. No, that's -- yes. Yes, it is.

12 Q. So when you ordered the hundred books,  
13 this was the invoice for them, correct?

14 A. It looks like it, yes.

15 Q. When you brought the books to Shreveport,  
16 did you sell them?

17 A. Yes.

18 Q. How much did you sell them for?

19 A. Ten dollars.

20 Q. And under the terms of your agreement,  
21 were you -- how much of that \$10.00 were you able to  
22 keep?

23 A. The \$6.00.

24 Q. So all the profit?

25 A. Yes.

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1 Q. And did you sell out in Shreveport?

2 A. I don't remember. I probably did.

3 MR. GEVERTZ: Thank you.

4 (Exhibit 32 was marked for  
5 identification.)

6 BY MR. GEVERTZ:

7 Q. This is Exhibit 32, and these are two  
8 e-mails that occur on the same day. The first is  
9 from Ms. Gale to you on a Monday afternoon at 2:10,  
10 and she provided you with the updated galley. What's  
11 a galley?

12 A. It's the complete document.

13 Q. And she was asking you I guess to review  
14 it and ensure that it was in order so that she could  
15 proceed with preordering your books?

16 A. Yes.

17 Q. And an hour and 37 minutes later, you  
18 e-mail her back on that Monday from your work  
19 computer telling her that everything looks fine,  
20 right?

21 A. Yes.

22 Q. Meaning please proceed, right?

23 A. Yes.

24 Q. I take it then that you reviewed the  
25 galley, and it met with your approval in that

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1 intervening hour and 37 minutes, correct?

2 A. Yes.

3 Q. But this did not interfere with your  
4 ability to perform your job duties?

5 A. No, sir.

6 Q. Did you discuss your book or its  
7 principles on the radio in July of 2014?

8 A. Not that I can recall.

9 Q. Okay. Specifically with a Pastor Hollins  
10 on a show entitled Have Faith in God?

11 A. Yes. Yes.

12 Q. Where is that broadcast out of?

13 A. That's in Shreveport. That was -- that  
14 would have been on my trip to Shreveport.

15 Q. AM frequency? FM frequency?

16 A. AM.

17 Q. Is that an hour long show?

18 A. About 30 minutes as I recall.

19 Q. Were you the sole guest for that  
20 30 minutes?

21 A. Yes.

22 Q. And did you talk about your book?

23 A. Yes.

24 Q. Was it in interview format where he asked  
25 you questions and you responded?

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1           A.     Yes. It's a Christian radio show, and it  
2 was talking about the theme of the book, Christian  
3 men overcoming the stronghold of condemnation.

4           Q.     To your knowledge, does that radio station  
5 target a specific denomination within the Christian  
6 church?

7           A.     No, just for the Christian community at  
8 large.

9           Q.     To men in particular as opposed to women?

10          A.     The entire community of faith.

11          Q.     To be clear, there was no point in time  
12 where you ever discussed the publication or  
13 authorship of your book with the mayor, was there?

14          A.     No. My only conversation with the mayor  
15 about the book was after the State of the City  
16 address in 2014 where the previous week or so I left  
17 a copy for him with Ms. Lilly Cunningham and asked  
18 her to give him a copy of it.

19          Q.     And Ms. Cunningham is his executive  
20 assistant?

21          A.     Yes. After the State of the City, I went  
22 to the mayor and congratulated him on the outstanding  
23 speech and asked him had he received a copy of the  
24 book, and he affirmed, yes, I did receive it. And he  
25 said Who Told You You Were Naked? He actually said

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1       the name of it, and he said, I'm going to read it on  
2       my flight. I'm going out of town. I'm going to read  
3       it on my next flight.

4           Q.     Was that the sole extent and full extent  
5       of your conversation with the mayor about your  
6       book --

7           A.     Yes.

8           Q.     -- in the entire time that the two of you  
9       worked together?

10          A.     Yes.

11          Q.     In your radio interview, were you  
12       introduced or did you introduce yourself as being  
13       affiliated with the Atlanta Fire Rescue Department?

14          A.     I'm sure that Minister Holland as the host  
15       probably gave, you know, the historical background of  
16       who I was as the guest.

17          Q.     In September of 2014, did you negotiate to  
18       attend a men's health day seminar and screening?

19          A.     Yes.

20          Q.     And was that to be held in Shreveport?

21          A.     Yes.

22          Q.     And did you also negotiate to have a booth  
23       to sell your book?

24          A.     Yes.

25          Q.     And I gather your primary contact was with

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1 Yolanda Duckworth?

2 A. Yes.

3 Q. So by early September of 2014, you had now  
4 been on the radio and negotiated, I guess, or were in  
5 the process of negotiating this booth?

6 A. Yes.

7 Q. The seminar, can you explain what the  
8 men's health day seminar and screening is?

9 A. Well, it's really to -- it's just what it  
10 is. I mean, it says exactly what it is. It's a day  
11 to focus on men's health issues.

12 Q. Physical health?

13 A. Yeah, physical health and, you know,  
14 health screening for the men who were at the  
15 gathering and -- but also spiritual health. You  
16 know, the atmosphere in that environment and the  
17 culture within the city of Shreveport lends itself to  
18 that kind of engagement, you know. It of course is  
19 my hometown. I grew up there. So, you know, I  
20 always share in these settings about the spiritual  
21 side of manhood in this particular context.

22 Q. Where was it held?

23 A. It was held at a city of Shreveport park,  
24 public park.

25 Q. Is it a large gathering? I'm looking for

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1 a rough approximation.

2 A. It was approximately 150 men.

3 Q. Were you able to sell your book there?

4 A. Yes.

5 Q. Do you recall roughly how many?

6 A. Approximately 100.

7 Q. Thank you.

8 MR. GEVERTZ: Let's go ahead and take  
9 our 12:30 break.

10 THE VIDEOGRAPHER: This concludes  
11 disk two. We're off the record at  
12 12:30 p.m.

13 (A lunch recess was taken.)

14 THE VIDEOGRAPHER: This begins disk  
15 three in the video deposition of Kelvin  
16 Cochran. We're back on the record at  
17 1:07 p.m.

18 BY MR. GEVERTZ:

19 Q. Mr. Cochran, how are you?

20 A. Good, thank you.

21 Q. Feeling all right?

22 A. Yes.

23 Q. Able to continue?

24 A. Yes.

25 Q. If at any point that changes, please let

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1 me know.

2 A. Thank you.

3 Q. Before the break we were talking about  
4 your radio interview with Pastor Hollins. It's my  
5 understanding that he ordered approximately 50 books  
6 from you in or around August of 2014; is that about  
7 right?

8 A. That sounds about right.

9 Q. Did you also have conversations with  
10 Michael Randolph, the CEO of Randolph & Randolph  
11 Management Consulting, about selling your books at an  
12 event in Tallahassee, Florida?

13 A. Yes.

14 Q. What was that event; do you recall?

15 A. It was a men's day at his church, men's  
16 day event at the church.

17 Q. Similar to the men's day health screening  
18 event?

19 A. No. The health screening was a  
20 community-wide event that was a partnership between  
21 the hospital and the City of Shreveport. This men's  
22 day event was at a church, at Michael Randolph's  
23 church.

24 Q. And obviously there was a male theme to  
25 it, but --

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1 A. Yes.

2 Q. -- what else can you tell me about it?

3 A. Men's day is a worship service where men  
4 are in charge. Their men -- men do the choir. It's  
5 an all-male choir. And the theme or topic, you know,  
6 if I'm a guest preacher, which is my role, is to  
7 preach on something that actually ministers to the  
8 spiritual needs of men.

9 Q. So were you appearing as a minister on  
10 that occasion?

11 A. Yes.

12 Q. What was the topic of your sermon?

13 A. Who told you that you were naked.

14 Q. So the philosophies and things that you  
15 wrote about in that book?

16 A. Yes.

17 Q. As well as the word identification that  
18 led you to draft that book?

19 A. The word identification?

20 Q. I think you -- I'm sorry. What was the  
21 phraseology you used, the word search?

22 A. Yes.

23 Q. In the prefatory remarks, did you  
24 introduce yourself, or did anyone introduce you as  
25 being affiliated with the Atlanta Fire Rescue

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1 worshipped?

2 A. No. But that line of questioning is  
3 exactly the reason why, with the permission of  
4 Nina Hickson in the context of faith-based subject  
5 matter, that I felt that was more than adequate.

6 Q. Are you aware of anyone who has ever had a  
7 request to engage in or continue outside employment  
8 have that request denied by the City of Atlanta or  
9 its ethics board?

10 A. Under my leadership, I can never -- I  
11 can't remember a time where a request for an extra  
12 employment was denied.

13 Q. Okay. And I don't just mean requests that  
14 were routed to you by virtue of you being the fire  
15 chief. Are you aware of or did you ever hear of any  
16 City of Atlanta employee whose request to be able to  
17 engage in outside employment to the board of ethics  
18 was ever denied or in any way restricted?

19 A. I don't know of any.

20 Q. Coming back to my prior question, though,  
21 did you find that your ability to think or speak or  
22 worship as you saw fit was in any way impinged upon  
23 by the ordinance that we've been discussing today?

24 A. The ordinance, as I understand it, and  
25 Ms. Hickson 's guidance and really the -- under the

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1 Department?

2 A. Yes, when my bio was given. It's usually  
3 a common practice when you're a guest speaker or  
4 preacher at a church that someone reads your bio, and  
5 a part of that bio is that I was at the time serving  
6 as the chief of Atlanta.

7 Q. Now, you did not seek clearance from  
8 anyone at the City of Atlanta, including its board of  
9 ethics, to give this sermon, did you?

10 A. No.

11 Q. It was not your understanding that you  
12 were required to do so?

13 A. That's correct.

14 Q. Did the existence of this ordinance that  
15 required you to report outside jobs in any way  
16 interfere with your ability to preach at any location  
17 that you wanted to?

18 A. No.

19 Q. Did it affect in any way any of the  
20 sermons that you prepared or delivered?

21 A. No.

22 Q. Did it in any way interfere with your  
23 ability to worship?

24 A. No.

25 Q. Or to choose the company with whom you

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1 experience that I've had over the years, but it's --  
2 especially in the City of Atlanta, gave me the full  
3 confidence that I can live out my Christian faith and  
4 have my job at the same time without adverse  
5 consequences.

6 Q. We had discussed the topic Sex and the  
7 Righteous Man, and I believe you said that you had  
8 something put together that would constitute a  
9 manuscript --

10 A. Yes.

11 Q. -- correct?

12 (Exhibit 33 was marked for  
13 identification.)

14 BY MR. GEVERTZ:

15 Q. I'm going to show you Defendants'  
16 Exhibit 33. Do you recognize this attachment,  
17 especially as it begins at page 2823 --

18 A. Yes.

19 Q. -- as a draft of that manuscript?

20 A. Yes.

21 Q. And do you know just by skimming it  
22 whether or not it's undergone substantial change  
23 since this time?

24 A. No. This is it. It's been in this  
25 particular state for probably eight years or so.

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1 A. Well, I haven't looked at it. Yes.

2 Q. And you identify yourself at the beginning  
3 in the about-the-author section as at the time  
4 currently serving as the fire chief of the City of  
5 Atlanta Fire Rescue Department in Georgia, correct?

6 A. Yes.

7 Q. And I understand from your testimony that  
8 you did so based on what you contend was  
9 Nina Hickson's approval to reference your office in  
10 that fashion?

11 A. Yes.

12 Q. Did you at any point take the additional  
13 step to seek approval from the ethics board?

14 A. No. I was not advised that I needed to do  
15 as such.

16 Q. Is there any other reason that you didn't  
17 seek written permission from the ethics board other  
18 than the fact that nobody told you to do so?

19 A. No. Again, I considered Nina Hickson the  
20 City's subject matter expert on matters of this  
21 nature, as I gave previous examples of other people  
22 in other areas. I used her as a consultant in the  
23 same way that I do the HR, law, or finance. And I  
24 took her word that she, as the expert, had considered  
25 all factors in rendering her decision.

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1 Q. Do you know whether or not Ms. Hickson  
2 served on the board of ethics?

3 A. No. I just knew her as the director of  
4 the board of ethics, of the ethics department.

5 Q. Of the ethics department?

6 A. Yes.

7 Q. Thank you. You can set that part aside,  
8 if you like.

9 I want to see if through my questions and  
10 your answers I can succinctly but efficiently set out  
11 the general principle, as I understand it, of your  
12 book.

13 A. Yes.

14 Q. Please correct me if I'm wrong.

15 There are two diametrically opposed  
16 circumstances that a man may find himself in with  
17 respect to his relationship with God. He may be  
18 naked, or he may be clothed; is that correct?

19 A. Yes.

20 Q. If you are naked, you have rejected God,  
21 correct?

22 A. Not necessarily. You may not have entered  
23 into a relationship with God at all just based on not  
24 having knowledge of God; or it could be an open  
25 rejection of God; or it could be accepting Christ as

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1     Savior, you're not interested in Him being actively  
2     and intimately involved in your life as Lord.

3           Q.     Would it be fair to say that if you are  
4     naked that you do not have a working relationship  
5     with God?

6           A.     Yes.

7           Q.     Now, by contrast, being clothed is being  
8     Godly?

9           A.     The essence of being clothed is accepting  
10    Jesus Christ as Savior and Lord. There is a  
11    Scripture in -- well, first of all, God's solution to  
12    Adam's nakedness in the garden was he took an  
13    innocent lamb and killed it and shed its blood. And  
14    the description says "he clothed them with coats of  
15    skin." Based on my research, that meant he redeemed  
16    and restored them in a relationship with him. That  
17    lamb would be the precursor to Christ, the Lamb of  
18    God, who would come and take away the sins of the  
19    world. In the Book of Galatians, Chapter 3, Verse  
20    27, it says, "Those who have been baptized in Christ  
21    have been clothed with Christ."

22          Q.     So coming back again to the dichotomy, if  
23    nakedness means that you do not have a solid,  
24    functional relationship with God, being clothed is in  
25    a functioning relationship with God?

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1           A.     Yes, and Jesus Christ is both your Savior  
2 and your Lord.

3           Q.     Would you go so far as to say that being  
4 clothed is being Godly --

5           A.     It is --

6           Q.     -- acting in a Godly fashion?

7           A.     It is a devotion of your life to try your  
8 best to live a Godly life.

9           Q.     To become clothed, must you be born again?

10          A.     Yes.

11          Q.     Consequently, if you are not born again,  
12 you are not living a Godly life?

13          A.     According to my understanding of the  
14 scripture, yes.

15          Q.     Further, if you are naked, you are  
16 spiritually dead?

17          A.     You can very well be spiritually dead  
18 from my understanding of Scripture as a person who's  
19 never accepted Christ as Savior. It's possible for a  
20 person to not be spiritually dead and have Christ as  
21 Savior but not allow him to be the Lord of his life.

22          Q.     Would you agree with me that the naked are  
23 spiritually dead?

24          A.     Yes. Some of them are.

25          Q.     You talk about how the naked condition was

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1 A. Yes.

2 Q. Okay. So naked means that you're a  
3 sinner, and clothed means you're righteous?

4 A. Yes.

5 Q. You're one or the other? And further, and  
6 I think we -- I think I understand this part, if  
7 you're naked, you're naked. There are no gradations  
8 of being naked?

9 A. That's correct.

10 Q. And you write, "Similarly, if you are  
11 clothed, you are clothed." There are no gradations  
12 of clothed?

13 A. That's correct. Because according to our  
14 faith, accepting Christ as our Savior and Lord, we  
15 become the righteousness of God in him, that even  
16 though we have issues in our carnal nature, that the  
17 blood of Christ covers our sins, and in him we are  
18 righteous.

19 Q. In your book you have a chapter devoted to  
20 the distinction between the clothed and the naked.  
21 You're still introducing the readers to these  
22 concepts and that they're different from one another.

23 A. Yes.

24 Q. And some of the adjectives you use to  
25 describe naked are "sinner," correct?

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1 A. Yes.

2 Q. Naked -- the naked are wicked?

3 A. Yes.

4 Q. And un-Godly, and evildoers, correct?

5 A. Yes.

6 Q. And then you quote from the different

7 Proverbs and talk about how the naked shall perish.

8 A. Uh-huh.

9 Q. Correct?

10 A. Yes.

11 Q. Sorry. I just need you to articulate.

12 A. Sure.

13 Q. That the naked will not inherit the earth,

14 correct?

15 A. Yes.

16 Q. And that in fact, when the naked perish or

17 die, there is celebration?

18 A. The whole purpose behind -- to put it in

19 the proper context, what you just prefaced before

20 getting to Proverbs, in my research based upon the

21 definitions I discovered of naked and clothed, all of

22 those words can be used synonymously with either

23 naked or clothed, that we don't have to try to figure

24 that out.

25 If you see any one of those words that

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1 fall under clothed, it's talking righteous, good man,  
2 just, all those words. It's talking about one type  
3 of man, a clothed man. If you look at the words that  
4 fall under the heading of naked, wicked, evildoer,  
5 scouter, it's talking about one type of man, the  
6 naked man. And so I use those Psalms to replace  
7 words that fall under those categories to see how  
8 that translates into the Scripture.

9 Q. And you find it translates?

10 A. Yes.

11 Q. And so, for example, in your book you  
12 write that the naked, "When the naked perish, they  
13 are shouting," which I think means that there's joy  
14 and celebration?

15 A. Yes. And the word synonymous to that in  
16 Scripture is when the wicked, so rather than use  
17 wicked, naked.

18 Q. The naked are deceitful, correct?

19 A. Yes.

20 Q. The naked are mischievous?

21 A. Yes.

22 Q. A naked man is loathsome?

23 A. Yes.

24 Q. Thank you.

25 In the book you reference your role in

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1           A.     Yes.

2           Q.     And then you go on and say, "My job  
3     description as a fire chief of the Atlanta Fire  
4     Rescue Department is." And the very first bullet  
5     point you write "to cultivate its culture for the  
6     glory of God," meaning that the first part of your  
7     job description as a fire chief of the City of  
8     Atlanta is to cultivate the culture of the department  
9     for the glory of God; is that correct?

10          A.     That's correct. And this is the context  
11        that -- first of all, this is not subject matter. In  
12        the context of this chapter, I'm comparing why God  
13        created Adam and what Adam's job description was in  
14        the Garden of Eden. I use not just my fire -- my  
15        Atlanta Fire Rescue, I use the fire service.

16                  I even allude to my role as the United  
17        States Fire Administration. God gave me my fire  
18        service land. Eden was a land. I was using land as  
19        a comparison. And in the land that God gives me, he  
20        says I'm created for His purpose. And I have my  
21        career as a calling I feel on my life, and I should  
22        cultivate its culture to glorify God. Which means  
23        that its vision, the vision that we have for the  
24        department, derived participatively and through  
25        inclusion, glorifies God.

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1      in Christ, period, that as a husband, as a father, as  
2      a fire chief, as a preacher, as a deacon. In all of  
3      the stations that I hold, roles that I hold in life,  
4      it's the Christian core to glorify God in all that he  
5      gives you to do.

6            Q.     Does glorifying God mean living up to his  
7      expectations?

8            A.     Yes.

9            Q.     Does it mean being clothed?

10          A.     Yes, being clothed, that's a part of it.

11          Q.     Does it mean helping to bring those who  
12     you encounter into a state of being clothed?

13          A.     Yes, in -- yes, in certain contexts, it  
14     does.

15          Q.     I'm through with this page. Thank you.

16                In the book there's a section entitled,  
17     "You need to talk to my husband." And in it you  
18     begin by asking the hypothetical question what would  
19     have happened if rather than responding to the  
20     serpent to the Garden of Eden, Eve had said instead,  
21     you need to talk to my husband. You with me so far?

22          A.     Yes.

23          Q.     I haven't misinterpreted it so far?

24          A.     No.

25          Q.     And you go on to postulate -- to

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1 hypothesize that if that had happened, then there  
2 would not have been a fall from grace; is that  
3 correct?

4 A. Yes.

5 Q. And am I correct in understanding that the  
6 reason that you don't believe that Adam and Eve would  
7 have been kicked out of the Garden of Eden is because  
8 Adam would have felt empowered and emboldened enough  
9 by Eve referring the conversation to him to serve as  
10 his protector -- as her protector?

11 A. The intent behind that was to demonstrate  
12 that the decision that was made was going to impact  
13 their entire family. At the time, it was just the  
14 two of them, but that the power of collaboration  
15 between Adam and Eve would have put them in a  
16 position to making a better choice.

17 The whole spirit behind, you need to talk  
18 to my husband is, in the role of the family, when  
19 there's a husband and a wife and children, if God  
20 blesses them to have children, on decisions that  
21 impact the entire household, there should be  
22 collaboration between a husband and a wife, but  
23 according to the structure of God and the family, the  
24 husband has a final say.

25 In the book of Ephesians it talks about

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1 taking place before a final decision was made.

2 That's the intent behind that.

3 Q. Even if you disagree with my  
4 interpretation as being reasonable, can we agree that  
5 the concept of collaboration of Eve and Adam jointly  
6 reaching a decision does not appear in your book?

7 A. I can't say that I do, because, you know,  
8 again, I was a Christian man writing this book to  
9 Christian men, who I had the assumption that they  
10 understood the fundamentals of, you know, family from  
11 what took place in the beginning in that whole  
12 Genesis Chapter one, Chapter two context, and that  
13 they would understand Biblical principles of  
14 families, heads of households, wives as the helpmate,  
15 Jesus's analogy that a man should love his wife as  
16 Christ loves the church and gave himself for her. I  
17 drew those conclusions in the context of, you know,  
18 understanding or someone would understand that need  
19 for collaboration.

20 Q. Okay. With that in mind then, let me  
21 follow up on what you've just said. If I am not  
22 clothed, and I am not familiar with the gospel and  
23 teachings, do you believe that you wrote enough in  
24 here for me to conclude that this is about  
25 collaboration as opposed to deference, if I lacked

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1 the context?

2 A. Without the foundation of that Biblical  
3 knowledge and those Biblical principles, you know,  
4 it's quite possibly that you could. But I mean,  
5 that's a hard scenario to just pinpoint on what one  
6 reasonable person, it's just -- it's hard to apply  
7 that to every person, every time in the scenario  
8 you've given.

9 Q. Okay. Let me change my scenario a bit.  
10 Were you aware that your book, or at least portions  
11 of your book, ultimately made its way into the hands  
12 and readership of people who lacked the context of  
13 your target audience?

14 A. Yes.

15 Q. Lacking that context, even though it was  
16 not your intent, can you see how those people  
17 reasonably could have interpreted this section of  
18 your book as talking about deference as opposed to  
19 collaboration?

20 MR. THERIOT: Objection. Asked and  
21 answered.

22 THE WITNESS: So -- and I'm not  
23 trying to be evasive, but in the  
24 generalities that you speak, people that  
25 don't have a foundation for that context

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1           could go either way. I mean, some could,  
2           some could not. I guess that's the most  
3           fairest way I could answer your question.

4     BY MR. GEVERTZ:

5           Q.     Okay. Can we agree that having the  
6        context of a Christian man, someone learned in  
7        Christianity would be necessary to appropriately  
8        interpret what you're writing?

9           A.     They would be best suited to understand  
10      the role of husbands and wives and family to  
11      understand the fact that submitting yourselves to one  
12      another, you know, husbands and wives in the role of  
13      family, what the wife's role and the husband's role,  
14      and that decisions that impact the family should be  
15      discussed among the two.

16           Q.     Separate question.

17           A.     Yes.

18           Q.     Nowhere in your book do I find a positive  
19      reference to a woman as a role model. Do you  
20      disagree with that assertion?

21           A.     I can't recall off the top of my head, but  
22      again, the book was written by a Christian man for  
23      Christian men who struggle with issues of  
24      condemnation. You know, I can't think of one. I'd  
25      have to review the context of the entire book, but I

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1 can't -- in talking about the roles of husbands and  
2 family, which I think I've reached that and certainly  
3 talked about honoring wives and women in the context  
4 of family.

5 Q. Let me be clear. I'm not suggesting that  
6 you are suggesting that women are not germane to  
7 Christianity, but in the examples that you raise in  
8 your book of women, contemporary women, I see  
9 references to women who are temptresses. I see  
10 reference -- or could be. I see references to women  
11 who can lead men astray. I see references to women  
12 who display or are capable of a number of vices, but  
13 I don't see any reference to a virtuous woman or a  
14 woman exercising virtue. Can you -- can you tell me  
15 where that appears in your book?

16 A. Because men are not struggling in those  
17 areas, who have women that are virtuous women, you  
18 know, really are not -- is really not the content or  
19 topic subject matter. Condemnation deals with  
20 categories that men actually wrestle with, and that  
21 there are many Christian men who have women issues,  
22 issues with women. And so it's pointing out those  
23 particular challenges that men have with women.

24 Q. I think what I hear you saying in so many  
25 words is I don't disagree with you, but that's not

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1 the purpose of my book.

2 A. It wasn't the purpose of the book.

3 Q. In order to glorify God, one must be  
4 clothed; do you agree?

5 A. Well, to glorify God is a person who  
6 acknowledges God as God and who acknowledges Jesus  
7 Christ as Savior and Lord and commits their life to  
8 pursuing his principles.

9 Q. Well, I agree -- I understand everything  
10 you've said. So to close the circle then, it seems  
11 as if you must be clothed in order to glorify God.  
12 You can't be naked and glorify God?

13 A. Not being naked. Condemned and deprived  
14 does not glorify God.

15 Q. In fact, if you were naked, you would be  
16 doing the opposite, whatever that is, of glorifying  
17 God, correct?

18 A. Yes.

19 Q. Glorifying the devil perhaps or sin?

20 A. Not necessarily. God has, according to  
21 the Scripture, compassion on the naked. I mean, he  
22 has compassion and desires for all the naked to be  
23 clothed, using the context -- using those terms in  
24 the context of the book, so he's not discompassionate  
25 towards the naked.

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1 Q. No. I'm sorry if I misspoke. That wasn't  
2 my intent. I was instead trying to try see if we  
3 could agree that if you were naked, you were the  
4 opposite of acting in a Godly fashion; that you were  
5 instead celebrating or living in sin.

6           A.       That's one context of that description of  
7       nakedness, yes, sir.

8 (Exhibit 36 was marked for  
9 identification.)

10 BY MR. GEVERTZ:

11 Q. I'm showing you next Exhibit 36, which is  
12 another portion from your book, sir. And I ask you  
13 to turn, please, to page 82. "Uncleanliness," you  
14 write, "is the opposite of purity," and it includes,  
15 among other things, homosexuality, lesbianism -- is  
16 it pederasty?

17 A. Pederasty.

18 Q. Which I understand is a specific type of  
19 pedophilia between a man and a boy?

20 A. Yes. Well, adults and children.

21 Q. Bestiality and all other forms of sexual  
22 perversion. Are naked people unclean?

23 A. You know, you can't take this section of  
24 the book and single out one. This is not -- this was  
25 not written intended to single out one sin or one

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1 that may be affected by these sins.

2 Q. But naked people by their very definition  
3 are unclean, right?

4 A. Well, yes. It just depends on the extent  
5 that -- there can be -- let me just say it this way.  
6 According to the Scripture, there can be a person who  
7 has accepted Christ as their Savior and their Lord  
8 and still have issues with these 17 works of the  
9 flesh.

10 Q. Understood. I'm asking the opposite  
11 question.

12 A. The opposite of that -- I wanted to put  
13 the answer to your question in context. So because  
14 of that, because that's the purpose that Christ came,  
15 to deliver us from our carnal nature, to deliver us  
16 from these works of the flesh, a person who rejects  
17 him or does not accept him to be their covering, to  
18 be their clothing, is naked.

19 Q. Okay. If I understand what you just told  
20 me, clothed people can sin?

21 A. Yes.

22 Q. Clothed people can be unclean?

23 A. Yes.

24 Q. Are naked people necessarily unclean?

25 A. Naked in the context of the definitions

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1 transgression, we have forgiveness from Him.

2                   Naked people are people who may be on this  
3 list who does not know Christ or acknowledge Him as  
4 their Savior and Lord, and that's the distinction  
5 between the two.

6                 Q.     So you can't be an actively practicing  
7 pedophile and still be clothed?

8                 A.     Right. It goes against the principles.

9                 Q.     You have to effectively be recovering, for  
10 lack of a better word?

11                A.     That's a good way to put it.

12                Q.     Similarly, you cannot be a actively  
13 practicing homosexual and be clothed?

14                A.     According to my understanding of the  
15 Scripture.

16                Q.     But if that is your orientation or  
17 proclivity, or whatever word that you want to use,  
18 and you are seeking to change that about yourself,  
19 working, recovering, then you can be clothed?

20                A.     Yes.

21                Q.     Could I say the same thing about alcohol  
22 abuse?

23                A.     Yes.

24                Q.     If I am an alcoholic but seeking through  
25 Alcoholics Anonymous to rid myself of that dependency

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1 or struggle with that dependency, I can be clothed,  
2 but if I'm an unrepentant or continued alcoholic, I  
3 must by that definition be naked?

4 A. Yes.

5 Q. Can I be a murderer and be clothed?

6 A. If the murderer has repented of the murder  
7 and seeks to not murder anymore, has confessed Christ  
8 as his Savior and Lord, he can be clothed. The  
9 challenge with using these singular items on this  
10 list is that multiple of these 17 applies to all of  
11 humanity, and the difference is their confession of  
12 faith --

13 Q. I get it.

14 A. -- and their desire to want to repent,  
15 which is to turn away from those behaviors that's on  
16 this list.

17 Q. By extension, if I am Buddhist or Muslim  
18 or Jewish and I am undergoing religious conversion, I  
19 can -- I can be clothed?

20 A. Yes.

21 Q. But if I am any of those things and am not  
22 seeking to convert, I must by definition be naked?

23 A. According to my understanding of the  
24 Scripture, yes.

25 Q. One more hypothetical to run by you. You

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1 write that "Since God made sex for procreation, he  
2 only intended it to be between a man and a woman,"  
3 correct?

4 A. Yes.

5 Q. And I'm sorry, I'm now on the top of page  
6 85.

7 "Because procreation is a spiritual act,  
8 God intended it only to occur in the institution of  
9 holy matrimony or marriage," correct?

10 A. Yes.

11 Q. Would you agree with me that it is well  
12 known, at least within Atlanta, that the mayor and  
13 his wife conceived their child out of wedlock?

14 A. Well, no. That one gets by me.

15 Q. Well, you know that.

16 A. No, I did not.

17 Q. Notwithstanding all the coverage about  
18 their engagement?

19 A. No, sir.

20 Q. You did not know that?

21 A. No, sir.

22 Q. Well, accept for a moment the truth of  
23 that statement, please. Would that mean that you  
24 were calling the mayor naked?

25 A. No. One act -- one act does not

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1 where we did not actually have a win for him between  
2 the fire chief and the council member. It was only  
3 after he discovered what I had written on my own  
4 time, living out my faith in my private life, that he  
5 became offended. He did not receive a copy of the  
6 book from me, and to my knowledge, he didn't go out  
7 and purchase a copy of the book.

8 Q. Now, in the same way that you understood  
9 in so many words that Councilman Wan was gay, would  
10 it surprise you if he understood that you were a  
11 devout evangelical Christian?

12 A. I had no knowledge if he knew that or not.

13 Q. Would it surprise you if that was your  
14 reputation?

15 A. It would not surprise me.

16 Q. You did nothing to hide it --

17 A. No.

18 Q. -- I think we've discussed. And the two  
19 of you, in light of the fact that you had your  
20 religion and your beliefs, and he had his own beliefs  
21 and life, got along fine until the publication of the  
22 book and his reading of the book?

23 A. Yes.

24 MR. THERIOT: Objection. Assumes  
25 facts not in evidence.

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1           at 2:44 p.m.

2 BY MR. GEVERTZ:

3           Q.     Mr. Cochran, how you feeling?

4           A.     Good.

5           Q.     Able to continue?

6           A.     Yes, sir.

7           Q.     So we were talking about Exhibit 37 before  
8 the break.

9                         Did you have occasion to provide a copy of  
10 your book to a gentleman by the name of Stephen Hill?

11          A.     Yes.

12          Q.     Do you recall the context in which you  
13 gave a copy of that book to Mr. Hill?

14          A.     Yes. It was during a period where I was  
15 having annual one-on-one sessions with battalion  
16 chiefs. He was a battalion chief at the time. At  
17 the end of that session, he took it upon himself to  
18 compliment me about how he admired me living out my  
19 Christian faith and talked about, you know, he  
20 desired to do the same thing in his walk of faith as  
21 a Christian man.

22                         And it was in the context of that  
23 conversation, you know, in my mind, you know, here's  
24 a Christian man talking to another Christian man, who  
25 has a desire to live out his faith. And it crossed

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1 my mind, hey, you know, I've got a gift I want to  
2 give to you, and I gave him a copy.

3 Q. You said that this was, I'm sorry, a  
4 one-on-one meeting?

5 A. Yes.

6 Q. Is that a type of meeting, or did you just  
7 mean it was the two of us sitting --

8 A. No, just it's -- that's what we call them,  
9 one-on-ones. Every year I met one-on-one with the  
10 battalion chiefs just to talk about, you know, the  
11 overall expectations of chief officers. My rule was  
12 I should spend direct time with deputy chiefs and  
13 battalion chiefs mentoring, coaching. Outside of  
14 just getting work done, I should spend time with them  
15 one-on-one to really talk about the job, how things  
16 are going, what can I do to be more supportive of  
17 them, are they meeting expectations at their level.

18 But I expected every other chief to do the  
19 same thing. So since I met with four deputy chiefs,  
20 six assistant chiefs, I think on my schedule with the  
21 deputy chief was constant, almost, you know, once a  
22 week or more. Assistant chiefs, one-on-one, I made a  
23 point to schedule a meeting with them quarterly, but  
24 there's so many battalion chiefs, I established the  
25 frequency of that as once a year.

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1           Q.     And did these serve as sort of verbal  
2     performance evaluations?

3           A.     Not per se. I usually sent out a  
4     questionnaire, you know, saying that these are the  
5     things that we're going to talk about. They would be  
6     Atlanta Fire Rescue doctrine issues. You know, I  
7     would tell them, hey, we're going to talk about the  
8     vision statement, the mission statement, and the core  
9     values, for example, and I would want you to explain  
10    how does that apply to your job.

11               So we always talked about the doctrine.  
12    We always talked about professional development.  
13    What are you doing to advance and prepare yourself  
14    for your current job, and what are you doing to  
15    prepare yourself for the future.

16           Q.     Meaning, potentially promotional  
17    opportunities?

18           A.     Right. And then we would talk about  
19    whatever they wanted to talk about.

20           Q.     And so do you recall anything specific  
21    about the promotional opportunity discussion or the  
22    professional development discussion that you had with  
23    Mr. Hill prior to handing him a copy of your book?

24           A.     It was a common practice for me for -- in  
25    the professional development piece to really talk

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1 professional development. And so those criteria were  
2 used for the final ranking.

3 But I'll state it again, other than  
4 collaboratively putting the process together, there  
5 were others involved in this grading. I received the  
6 final ranking, and I always went according from the  
7 first to the second to the third. I never deviated  
8 from that order.

9 Q. This promotional committee that you  
10 formed, who was on it in the 2013-2014 timeframe?

11 A. You know, it in most cases always involved  
12 the four deputy chiefs, unless the process was for  
13 selecting assistant chiefs. Well, even selecting  
14 assistant chiefs, we would use currently sitting  
15 assistant chiefs. And so it was -- for example, if  
16 we were selecting a deputy chief, then we would only  
17 use deputy chiefs to develop the process. If we were  
18 selecting assistant chiefs and battalion chiefs, we  
19 would use deputy chiefs and assistant chiefs to help  
20 develop the process.

21 Q. Did you provide a copy of your book to any  
22 of the deputy chiefs?

23 A. Yes.

24 Q. How many deputy chiefs did you have?

25 A. Four.

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1 Q. How many of them did you give a book to?

2 A. All four of them. Again, they were  
3 Christian men that we had established a prior  
4 relationship with, and either asked me for a copy of  
5 it or heard that I had written one and wanted a copy.

6 Q. Did you give a copy of your book to any of  
7 the assistant chiefs?

8 A. Yes. Yes.

9 Q. How many of them are there? How many  
10 people hold the title?

11 A. As I recall, there's about six that hold  
12 the title.

13 Q. And how many of them?

14 A. William Collier, Bernard Coxton, Chad  
15 Jones, Chris Wessels.

16 Q. Those are the four of the six who received  
17 a copy of your book?

18 A. Yes.

19 Q. Returning for a moment back to the  
20 suspension letter, did you have any idea that you  
21 were going to be suspended that day?

22 A. No.

23 Q. You walked into this meeting cold without  
24 any heads up or tip?

25 A. Well, I knew something was going on. The

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1       30-day suspension, you know, having the full  
2       expectation of returning to work. After I returned,  
3       they did not present to me any speci -- other than  
4       having a cause of action, any specifics as to, you  
5       know, what work rule or policies that I had violated.

6           Q.     Was there any avenue for you to grieve or  
7       appeal this decision, to your knowledge?

8           A.     No.

9           Q.     Was there a discussion with either  
10      Ms. Yancy, Mr. Godfrey, or Ms. Byrd about how you  
11      ought to conduct yourself during the course of that  
12      30-day suspension?

13          A.     The only guidance I received in that  
14      regard was from Candace Byrd, who said that do not  
15      conduct any media interviews while you're on your  
16      30-day suspension.

17          Q.     Any media interviews on any subject or  
18      about your employment or about the book or --

19          A.     About the entire circumstances regarding  
20      my 30-day suspension in the concept of do not respond  
21      to any -- my interpretation.

22          Q.     Yes, sir.

23          A.     They never gave me a letter or anything.  
24      My interpretation was, don't hold any press  
25      conferences and don't respond to any requests for

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1 interviews. That was the context of the guidance,  
2 and that was the only guidance. My response to that  
3 is I would be honored to do so, no problem. Would  
4 you please send some media advisory out so that they  
5 would understand that and I wouldn't have to continue  
6 to deal with denying requests. And to my knowledge,  
7 that was not done.

8 Q. Let me make sure I've understood  
9 everything you've told me. Ms. Byrd told you in so  
10 many words that during the 30 days, you were not to  
11 hold a press conference or engage the media with  
12 respect to the fact that you were under this  
13 suspension. You requested that they in turn send out  
14 some sort of press release so that people would know  
15 that you were not being rude or unresponsive.

16 A. Yes.

17 Q. I got that right?

18 A. Yes.

19 Q. And to the best of your knowledge, no such  
20 release or dissemination of that information was  
21 provided?

22 A. That's correct.

23 Q. Were there consequently requests to have  
24 you comment on your employment status from the media?

25 A. There were no requests for interviews, and

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1 stood out to me, which was what I sorely needed, was  
2 things that were encouraging me and that they were  
3 praying for me. Other than that, I was not  
4 interested in doing anything but acknowledging their  
5 e-mail and moving forward.

6 Q. You certainly weren't trying to inflame  
7 the situation?

8 A. NO.

9 (Exhibit 46 was marked for  
10 identification.)

11 BY MR. GEVERTZ:

12 Q. Let me show you Defendants' Exhibit 46.  
13 Two days after your suspension in response to an  
14 e-mail from the chaplain at a nearby fire and  
15 emergency services department in which you  
16 characterized your situation as being in the  
17 cross-hairs of spiritual warfare, you responded,  
18 "Thank you for your generous words. I am grateful  
19 for this divine opportunity to suffer this for Christ  
20 and rejoicing every day. Please continue to pray for  
21 me and our city. To God be the glory. Happy  
22 Thanksgiving." Those were your words, I take it,  
23 correct?

24 A. Yes.

25 Q. Did you find your response about how this

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1 was a divine opportunity to suffer to be consistent  
2 with Ms. Byrd's directive that you not discuss  
3 publicly the reasons for your suspension?

4           A.       That was not the directive that I received  
5 from Ms. Byrd. Ms. Byrd's direction was do not do  
6 any media interviews. This was not a media  
7 interview.

8 Q. So her directive wasn't about the content  
9 of what you said, it was about who you said it to?

10 A. That's correct.

11 (Exhibit 47 was marked for

12 identification.)

13 BY MR. GEVERTZ:

14 Q. For that reason, I take it in Defendants' Exhibit 47 you felt comfortable characterizing your  
15 suspension as part of spiritual warfare, correct?  
16

17 A. Yes.

Q. Thank you.

19                   Were you also selling T-shirts related to  
20 your book during this time?

21 A. No, not that I can recall.

22 Q. Do you recall any images that were  
23 discussed about being printed on T-shirts?

24           A.       Yeah. I know I had made plans to do that  
25 at some point.

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1 A. Yes.

2 Q. And you don't believe that that meeting  
3 would have in any way interfered with your ability to  
4 perform the functions of your job, I take it?

5 A. That's correct. It would have been done  
6 on my prescribed personal time and not interfere with  
7 work-related duties.

8 Q. I'm sorry. What do you mean by it would  
9 have been done on your personal time?

10 A. During a work day, there's never a  
11 structured time of taking a break or taking lunch.  
12 Many times I work without taking either a break or a  
13 lunch. From time to time when I had personal  
14 meetings of this nature -- and I would emphasize from  
15 time to time -- I would always schedule them at a  
16 time that did not conflict with work or business  
17 and would use that time as my personal time.

18 (Exhibit 49 was marked for  
19 identification.)

20 BY MR. GEVERTZ:

21 Q. Next I'm going to show you Defendants'  
22 Exhibit 49.

23 Greg Harris at the Christian Index wrote  
24 to you following a telephone conversation, and he was  
25 providing a rough draft of an editorial that he wrote

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1 about your situation. Do you recall that  
2 conversation?

3 A. Yes.

4 Q. And he said he wanted you to give it a  
5 careful look to make sure that you were all right  
6 with it, correct?

7 A. Yes.

8 Q. What is the Christian Index?

9 A. The Christian Index is a component of the  
10 Georgia Baptist Convention. My church is a part of  
11 the Georgia Baptist Convention, and he works for the  
12 Georgia Baptist Convention in their communications  
13 department.

14 Q. So this is a communications branch for the  
15 Georgia Baptist Convention?

16 A. That's correct.

17 Q. And what is the Georgia Baptist  
18 Convention?

19 A. It's the state level of the Southern  
20 Baptist Convention, and it has geographical regions  
21 that churches within the state of Georgia who are  
22 Southern Baptist actually fall under in the state of  
23 Georgia.

24 Q. Is it a large organization?

25 A. Yes.

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1       their own initiative, not upon my request.

2           Q.     I'm sorry. Where was this meeting?

3           A.     The Georgia -- it was at the executive  
4     committee of the Georgia Baptist Convention at the  
5     Georgia Baptist Convention headquarters.

6           Q.     And while you were there, you spoke to how  
7     many folks?

8           A.     There was 200 or so pastors at the  
9     executive committee meeting.

10          Q.     And apparently among the pastors was also  
11     someone in charge of communications for the  
12     convention, correct?

13          A.     Yes.

14          Q.     Were you invited to make this speech prior  
15     to your suspension?

16          A.     Yes.

17          Q.     And when you went and you spoke, what did  
18     you talk about?

19          A.     I shared my testimony.

20          Q.     Yes, sir. What did you talk about?

21          A.     They just wanted to know about how I came  
22     into the knowledge of Christ and about my life and  
23     upbringing, you know, up to that point in my life. I  
24     shared my testimony.

25          Q.     Well, was there any discussion whatsoever

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1       that, that you should not do that before your 30-day  
2       suspension. What I'm saying to you is I never did  
3       any one of those things through my 30-day suspension.

4           Q.     I see. And what did you understand was  
5       her intent in asking you to abide by those  
6       directives?

7                   MR. THERIOT: Objection. Calls for  
8       speculation.

9       BY MR. GEVERTZ:

10          Q.     No. No. What did you understand was her  
11       intent?

12          A.     That she did not want me to publicly  
13       disclose my side of the story.

14          Q.     Were you doing that?

15          A.     No.

16          Q.     Did the article discuss your employment  
17       situation?

18          A.     As I recall it did, but there is nothing  
19       in the article, and I'm sure there's a record of  
20       it --

21          Q.     Yes, sir.

22          A.     -- that could be quoted as having directly  
23       coming from me, and that was not already publicly  
24       disclosed by either the mayor or the communications  
25       director or some other media outlet.

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1 Q. Did people express to you hostility about  
2 the mayor's decision after that editorial was  
3 published?

4 A. Explain your question.

5 Q. Yes, sir. What sort of feedback did you  
6 receive as a result of this editorial?

7 A. I cannot recall. I can't. My  
8 understanding of it is it ended up on the Georgia  
9 Baptist Convention's website. They actually posted  
10 the testimony I gave on the website, but that's the  
11 extent that I can recall.

12 Q. But what about the editorial?

13 A. About the editorial, I --

14 Q. Yeah. In other words, I guess in so many  
15 words I'm asking you this. Did the publication of  
16 that editorial cool down the topic of your  
17 suspension?

18 A. I have no pulse on that. I completely  
19 unplugged myself from actually watching and following  
20 the media because it was having such a distressful  
21 impact on me and my family emotionally, to where we  
22 realized after the second day that it's best for us  
23 to not really follow or look at newscasts whatsoever.

24 Q. In your comments to the Georgia Baptist  
25 Convention, do you recall saying, "Other than the

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1       \$14,000 that I won't get, it's really a good  
2       blessing. Had I gone to Mayor Reed and asked him for  
3       a 30-day vacation, he would have flat out denied me  
4       that opportunity"?

5           A.     I could have possibly said that in my  
6       test -- when I was sharing my testimony.

7           Q.     And to be clear, you understood that this  
8       was being recorded. Your comments were being  
9       recorded for later dissemination, right?

10          A.     I didn't understand that during the  
11       testimony, no. I discovered it afterwards.

12          Q.     Did you do anything to suppress its  
13       distribution?

14          A.     You know, sharing a testimony is not  
15       something that I ever thought should be censored. I  
16       mean, it was in the context of sharing my testimony.  
17       That was the extent. The purpose of my invitation to  
18       that executive committee was to share my testimony,  
19       and that's what I was actually doing was sharing my  
20       testimony, which is a common Christian practice  
21       before a group of Christians, and that was a part of  
22       my testimony.

23          Q.     But this, and specifically the commentary  
24       I just quoted, was about your job status?

25          A.     It was not a press conference, and it was

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1 not a response to a media interview as I was directed  
2 by Candace Beard -- Byrd.

3 (Exhibit 50 was marked for  
4 identification.)

5 BY MR. GEVERTZ:

6 Q. Next I'm going to show you Defendants'  
7 Exhibit 50.

8 You were still on suspension in December  
9 of 2015, correct?

10 A. Yes.

11 Q. Who's Mike Griffin? Excuse me. Who's  
12 Mark Strange?

13 A. Mark Strange. I have --

14 Q. He's on the third page of the document.

15 A. I have no idea.

16 Q. Well, his e-mail signature block holds him  
17 out to be a specialist in communication services --

18 A. I see.

19 Q. -- affiliated with the Georgia Baptist --

20 A. I see that, yes.

21 Q. -- Conference.

22 Do you know who Mike Griffin is?

23 A. Mike Griffin is a member of the staff of  
24 the Georgia Baptist Convention.

25 Q. And what position, to the best of your

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1 knowledge, does he hold?

2 A. He's like their advocate, their  
3 legislative liaison.

4 Q. He sent to you a battle plan, right?

5 A. Yes, that -- this looks like some steps,  
6 yes.

7 Q. And he calls it a battle plan, right?

8 A. Well, I haven't read that part.

9 Q. Bottom of the first page, sir.

10 A. Okay.

11 Q. So while you're on suspension and asked  
12 not to speak with the media, you're presented with a  
13 communication battle plan, correct?

14 A. Yeah, based on his description of it.

15 Q. And it included providing testimony that  
16 was recorded and would be put up on the general  
17 website, correct? Number 2-D.

18 A. Okay, yes.

19 Q. And it included a petition with a web page  
20 and a web address, correct?

21 A. Yes.

22 Q. And it included a release of a press  
23 statement, a press release to be distributed to media  
24 outlets for E, correct?

25 A. Yes.

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1 it along to someone by the name of Ed.

2 A. Ed Elliott, yes.

3 Q. Who is Mr. Elliott?

4 A. He's a fire chief in, somewhere I believe  
5 in Virginia, another Christian fire chief.

6 Q. So other than forwarding along the battle  
7 plan seeking maximum effect to Mr. Elliott, do you  
8 recall any other response that you took?

9 A. Not that I can recall.

10 Q. Did in fact the battle plan get  
11 implemented?

12 A. I'm not sure. I'm familiar with that they  
13 had my testimony on the website; I know the article  
14 in the Christian Index; and I know that there was a  
15 petition that was placed on there.

16 Q. At any point in time did you reach back  
17 out to Mr. Strange and tell him that his battle plan  
18 that was sought to have maximum effect was not a good  
19 idea?

20 A. No.

21 Q. At any point in time, did you tell him  
22 that you thought that this might run contrary to the  
23 terms of your suspension?

24 A. No, I did not.

25 Q. Why not?

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1                    You said that Ed Elliott was a firefighter  
2 colleague in Virginia? Did I hear you correctly?

3                 A.     Yes.

4                 Q.     Did he play some sort of advisory or  
5 consultant role in the communications battle plan  
6 that we were just discussing?

7                 A.     No, sir, not to my knowledge.

8                 Q.     On December 13th of 2014 -- and I'm  
9 referring to the top page -- Mr. Elliott sounds as if  
10 he's acting as your agent or consultant. He writes  
11 that "I have a phone call in this morning with Mike  
12 Griffin of the Georgia Baptist Convention. Awaiting  
13 his return call so we can strategize best with our  
14 support." Did you authorize or allow Mr. Elliott to  
15 be acting on your behalf in this way?

16                A.     As best I recall, Ed Elliott was -- in his  
17 church affiliations was wanting to as a church show  
18 some support. And I indicated to them that Mike  
19 Griffin would be a good resource, to my recollection,  
20 and that they had already done something similar to  
21 what he was wanting to do is the spirit, as I  
22 understand it.

23                Q.     So is it fair to take from that that you  
24 were in fact enlisting his advocacy and support?

25                A.     Not enlisting it.

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1 Q. He's offering it. Did you accept it?

2 A. I didn't deny it.

3 Q. He's just acting on his own, and you're  
4 just a bystander?

5 A. He's acting on his own.

6 Q. But he's not a member, I would imagine by  
7 virtue of his address, of the Georgia Baptist  
8 Convention if he lives in Virginia, is he?

9 A. No.

10 Q. And he writes -- and this is toward the  
11 bottom of the page, "In our lingo this is an" and I  
12 quote, "offensive fire attack, but if anything feels  
13 uncomfortable or too aggressive for you, please let  
14 me know and we will adjust as appropriate."

15 Do you see that?

16 A. Which paragraph is that?

17 Q. Sorry. If I may.

18 A. I see it.

19 Q. And then he goes on to explain what his  
20 proposed offensive fire attack would consist of on  
21 the second page. And among other things, in number  
22 two, wanted to contact Atlanta Mayor Kasim Reed for a  
23 variety of reasons, right?

24 A. Yes.

25 Q. He was enlisting the support of fellow

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1 Christians and pastors to help pressure the mayor to  
2 apologize, correct?

3 A. Yes.

4 Q. And to acknowledge that he had violated  
5 your rights, correct?

6 A. Yes.

7 Q. And in response to the offensive fire  
8 attack when Mr. Elliott was asking you, tell me if  
9 you're uncomfortable, tell me if this is too  
10 aggressive, you wrote back, "This is very  
11 appropriate. Only the mayor's name is Kasim.  
12 Everything else is fine. Thank you, brother. God  
13 bless you."

14 Did I read that correctly?

15 A. Yes.

16 Q. That's you being a bystander?

17 MR. THERIOT: Objection.

18 Argumentative.

19 THE WITNESS: I provided some  
20 feedback on it.

21 BY MR. GEVERTZ:

22 Q. That was the only feedback you provided,  
23 correct?

24 A. To my knowledge.

25 Q. To change an R to a K, but otherwise, it

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1                   THE VIDEOGRAPHER: This begins disk  
2                   number five in the video deposition of  
3                   Kelvin Cochran. We're back on the record  
4                   at 4:21 p.m.

5     BY MR. GEVERTZ:

6       Q.     Mr. Cochran, how are you feeling?

7       A.     Good.

8       Q.     Able to continue?

9       A.     Yes.

10      Q.     The speech to the Georgia Baptist  
11     Convention was not the only public speech that you  
12     gave during the course of your suspension, was it?

13      A.     Actually, I gave testimony I believe on  
14     two other occasions.

15      Q.     When were those other two? Excuse me,  
16     where were those other two?

17      A.     First Baptist Church, Newnan, Georgia, and  
18     I believe it's called Liberty Baptist Church  
19     somewhere in north Georgia.

20      Q.     And those were both during the 30-day  
21     suspension?

22      A.     Yes, sir.

23      Q.     During your speech at the First Bap -- is  
24     the First -- yeah, the First Baptist Church in  
25     Newnan, did you say at the beginning of your

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1 testimony that "The invitation to speak was extended  
2 based on a set of circumstances that I currently find  
3 myself in while serving as fire chief in the City of  
4 Atlanta"?

5 A. Yes.

6 Q. Did you go on to say that you wanted to  
7 tell the congregation a little bit about a book that  
8 you wrote that "Because of some of the content of  
9 that book, I found myself in this situation of being  
10 laid off for 30 days suspension without pay"?

11 A. If that's a part of that transcript, then  
12 I can't deny it.

13 Q. Does it sound consistent with your memory?

14 A. Yes.

15 Q. Towards the end of that same speech,  
16 testimony, did you say, "In the book I deal with  
17 sexuality as God intended it. God intended for a man  
18 and a woman to be married and to have children to  
19 populate the earth, and that any sex outside of  
20 marriage and outside of a man and a woman, outside of  
21 holy matrimony is against the word of God, and for  
22 that stand, I've been laid off for 30 days without  
23 pay"?

24 A. Well, if it's a part of that transcript.  
25 Do you have an additional copy of that? It'd kind of

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1 make this exchange a lot easier.

2 Q. Well, all I'm going to do is show you my  
3 own transcript of what I think you said and my  
4 question is --

5 A. Okay, yeah. And again, and I'm only  
6 asking you that because I can't remember verbatim  
7 what I said, but if that is a transcript of that  
8 speech, then that would help me to recall better.

9 Q. Well, I'm happy to share it with you, but  
10 it doesn't have much evidentiary value.

11 A. Okay.

12 (Exhibits 52 and 53 were marked for  
13 identification.)

14 BY MR. GEVERTZ:

15 Q. So this is Exhibit 52.

16 MR. CORTMAN: For the record, what is  
17 it?

18 BY MR. GEVERTZ:

19 Q. And I'm going to ask you to turn to what's  
20 marked as page six of my transcript, towards the  
21 back.

22 MR. CORTMAN: And this is a  
23 transcript of what?

24 MR. GEVERTZ: Of PL 002487.

25 THE WITNESS: Is this the sermon that

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1 I preached at First Baptist Newnan?

2 BY MR. GEVERTZ:

3 Q. It's the transcript of the audio that you  
4 were provided, yes, sir.

5 A. Okay.

6 Q. And so my question is, if you look at  
7 page six toward the middle of the page, can you  
8 confirm for me that your reference and representation  
9 about the circumstances of your suspension were  
10 accurately transcribed, or at least consistent with  
11 your memory of giving this speech?

12 A. Yes. Can you point me to the specific  
13 line that you had read?

14 Q. Beginning here (indicating).

15 A. Okay. Yes.

16 Q. Thank you.

17 A. And I was simply explaining to them that  
18 this book is not about sex and sexuality. I was  
19 explaining to them what the theme of the book  
20 actually was about.

21 Q. And you went beyond that to say that that  
22 was the reason that you had been laid off for 30 days  
23 without pay, correct?

24 A. Yes, because that's what was told me in  
25 the meeting, the suspension meeting, and that's what

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1 the mayor and Anne Torres had said publicly.

2 Q. Your employment was terminated on  
3 January 6th of 2015; is that correct?

4 A. Yes.

5 Q. Steven Borders, was he the union  
6 president?

7 A. Yes.

8 Q. So the union president had brought a copy  
9 of your book to a city council member at the  
10 inception of this brouhaha?

11 A. As per Bob Godfrey. That's the way I  
12 understand it.

13 Q. To your knowledge, was the speech that you  
14 gave in northern Georgia at Liberty Church or -- at  
15 Liberty Church --

16 A. Yes.

17 Q. -- recorded?

18 A. I have no idea. I don't know.

19 Q. You've not seen a recording of it or --

20 A. No, sir.

21 Q. -- read a transcription of it?

22 A. No, sir.

23 Q. Did you pursue an opportunity with the  
24 Mobile Alabama Fire Rescue Department?

25 A. No, sir.

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1 speeches?

2 A. Yes.

3 Q. And were you provided an honorarium and  
4 travel and lodging expenses for each of them?

5 A. For most of them.

6 Q. It's a pretty packed schedule; would you  
7 agree?

8 A. Yes.

9 Q. And, further, you in 2016 ended up  
10 providing testimony before the House Committee; is  
11 that correct?

12 A. Yes.

13 Q. Thank you.

14 Was there an incident in 2012 involving a  
15 couple of firefighters who went to eat at a  
16 Chick-fil-A?

17 A. Yes.

18 Q. Do you recall their names?

19 A. No.

20 Q. Was the context of this visit shortly  
21 after Dan Cathy had gone public about his views on  
22 gay marriage?

23 A. Yes.

24 Q. Am I correct in understanding that one of  
25 those firefighters took a picture of them eating at

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1 the Chick-Fil-A and posted it on Facebook?

2 A. Yes.

3 Q. And that picture depicted the two of them  
4 in uniform or some aspect of the fire department?

5 A. I don't recall that it was more than two.  
6 They were in uniform, and they were on duty at  
7 Chick-fil-A.

8 Q. You're right. There were two firefighters  
9 who were ultimately disciplined for this event,  
10 though?

11 A. Yes.

12 Q. But how many firefighters do you recall  
13 were involved in the incident?

14 A. As I recall, in the picture it was the  
15 crew, the crew that was there. I can't remember the  
16 crew, but it was the crew that was there. But those  
17 that ended up receiving discipline were two, one of  
18 which was not a part of the crew in the picture, as I  
19 recall.

20 Q. And the posting that was placed on  
21 Facebook originally said words to the effect of our  
22 battalion supports Chick-fil-A?

23 A. I remember the part about "we support  
24 Chick-fil-A."

25 Q. Then there was I guess another firefighter

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1 who took the picture, and I guess reposted or  
2 forwarded it along with words to the effect of glad  
3 to see you all fags are not too bitter. Do you  
4 recall that?

5 A. Yes.

6 Q. And I guess the picture and the commentary  
7 was supposed to imply that the two firefighters in  
8 the picture were supposed to be gay. Is that how you  
9 interpreted it?

10 A. No, sir.

11 Q. "Glad to see you all fags are not too  
12 bitter" with a picture of two firefighters eating at  
13 Chick-fil-A, but you didn't understand that to be the  
14 implication?

15 A. No, I didn't understand that was the  
16 implication from that message.

17 Q. What did you understand the message meant?

18 A. I thought it -- what I honed in on was the  
19 word "fag," and that it was a word that was used that  
20 is offensive to the LGBT community. I didn't see the  
21 statement that was connected to the personnel that  
22 was in the picture.

23 Q. I'm sorry. You said that the word "fag"  
24 is offensive to the LGBT community? Do you find it  
25 offensive to the community or just that --

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1 recommended.

2 Q. I know, but we're talking past each other.

3 I understand that there's a range.

4 A. Right.

5 Q. But ultimately the panel doesn't say,  
6 here's the range because there wouldn't be a need for  
7 a panel if that were that all happened?

8 A. That's not correct.

9 Q. The panel in this case made a specific  
10 recommendation for termination. Do you recall that?

11 A. What I'm saying to you, it's based on our  
12 policy. The panel always submit a range of  
13 discipline, a maximum and a minimum.

14 Q. And in that case, do you believe that they  
15 recommended anything other than the termination of  
16 employment for this gentleman?

17 A. Based upon our practices, I would say they  
18 would have had to recommend a minimum.

19 Q. What was the discipline that you  
20 ultimately handed down to this gentleman?

21 A. To the best of my recollection, it was a  
22 30-day suspension.

23 Q. Thirty days, you said?

24 A. As I can recall.

25 Q. Thirty days for writing the word "fag"?

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1 was said there? Were you present? Did you hear a  
2 tape recording?

3 A. No. A couple of the members that were  
4 participants or who attended that meeting at the time  
5 told me that they were in the meeting and what the  
6 meeting was about.

7 Q. And what was -- what was -- what is your  
8 best and fullest understanding of what was said at  
9 that meeting by them and by the mayor?

10 A. As best I recall, the mayor was explaining  
11 the reasons for the action that he took against me.

12 Q. What did he say, as best you know?

13 A. I cannot -- it would be futile for me to  
14 even try to attempt to explain anything further than  
15 that.

16 Q. Okay.

17 A. I would do it just --

18 Q. We've exhausted your knowledge on that  
19 topic?

20 A. Right.

21 Q. I understand. Did the church, did the  
22 Elizabeth Baptist Church in any way finance the  
23 publication of your book?

24 A. No.

25 Q. Did they in any way provide you with the

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1 money to publish your book?

2 A. No.

3 Q. Did anyone there ask you or direct you to  
4 publish your book?

5 A. No.

6 Q. Did anyone within the leadership of that  
7 organization encourage you to publish that book?

8 A. No.

9 Q. How is it that you came to come to work at  
10 the Elizabeth Baptist Church?

11 A. During my termination, my pastor  
12 approached me and said, Hey, I have a need for a  
13 chief administrative officer. At that time, he was  
14 calling it an administrative pastor, and felt that my  
15 skill sets would be a good fit to fit that -- to meet  
16 that need. And by August of that year, we had worked  
17 out everything to where I actually went to work for  
18 Elizabeth Baptist Church.

19 Q. Had you applied for any jobs anywhere  
20 between the time of your suspension and the time of  
21 that offer?

22 A. Not any other jobs other than Elizabeth  
23 Baptist Church, again, because of the terms that was  
24 publicly conveyed surrounding my suspension and  
25 subsequent termination. Really the impact began from

November 16, 2007

Mr. Kelvin Cochran.  
263 North Common Street  
Shreveport, Louisiana 71101

Dear Mr. Cochran:

Congratulations on being selected as our new Fire Chief. Please accept this letter as a formal offer for the position.

This position is offered at an annualized salary of \$160,000, with benefits as indicated in the attached compensation package. Your employment will begin January 2, 2008, and is contingent upon the successful completion of a background check and a physical examination that includes a drug screening. Please note that your appointment requires the approval of City Council.

I look forward to your joining the City and bringing your public safety expertise to our Department of Fire Rescue. Please feel free to call me if you require other information or assistance during your transition.

If this offer of employment is acceptable to you, please sign a copy of this letter and return it to me within 5 business days.

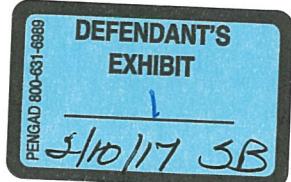
Sincerely,

Benita C. Ransom

Kelvin J. Cochran  
Signature of Candidate

Attachment

C: Shirley Franklin, Mayor  
Greg Giornelli, COO



COA-Cochran 000046



07-C-2508

CITY OF ATLANTA

SHIRLEY FRANKLIN  
MAYOR

55 TRINITY AVENUE, S.W.  
ATLANTA, GEORGIA 30303-0300  
TEL (404) 330-6100

11-19-07  
*[Handwritten signature]*

November 19, 2007

**CONFIRMED BY**  
**DEC 03 2007**  
**COUNCIL**

Ms. Lisa Borders, Council President  
Atlanta City Council  
55 Trinity Avenue, SW, Suite 2900  
Atlanta, Georgia 30303

Re: Nomination of Kelvin Cochran to Fire Chief

Dear Council President Borders and Members of Council:

Pursuant to Section 3-305 (a) of the City Charter, it is with great pleasure that I present to you for confirmation, Kelvin Cochran as my choice for appointment to the position of Fire Chief.

A nationwide search was conducted to identify the best available person for this position. A short list of candidates was presented to me, and interviews were conducted with these individuals. Chief Cochran has a distinguished 26 year career in the Shreveport, Louisiana Fire Department where he has served as Fire Chief since 1999. He also holds the office of First Vice President for the International Association of Fire Chiefs (IAFC).

I am confident that you will concur in my assessment as you go through the confirmation process.

Sincerely,

*Shirley Franklin*  
Shirley Franklin



COA-Cochran 000054



**CITY OF ATLANTA  
FIRE – RESCUE DEPARTMENT**

**SHIRLEY FRANKLIN  
MAYOR**

City Hall East - 675 Ponce de Leon Avenue, NE Suite 2001  
Atlanta, GA 30308-1807  
(404) 853-7000 \* FAX (404) 853-7245/7092  
ICHIFFS ID – ATLFDHQ

**KELVIN J. COCHRAN  
FIRE CHIEF**

COA-Cochran 001620

**M E M O R A N D U M**

**TO:** Virginia Looney, Ethics Officer  
**FROM:** Kelvin J. Cochran, Fire Chief *Kelvin J. Cochran*  
**DATE:** February 27, 2008  
**SUBJECT:** TRAINING CONFERENCES

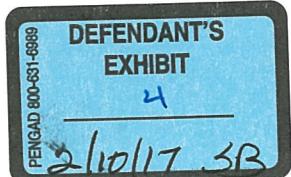
After being appointed fire chief of Atlanta Fire-Rescue, I was informed of Mayor Shirley Franklin's policy of commissioners not engaging in additional work opportunities to generate income. The City of Shreveport, my prior employer allowed for additional employment on a part-time and consulting basis. I had a well established training and professional development practice, speaking at conferences and conducting workshops. Prior to my appointment, I had no indication I would not be able to continue.

Consequently, I accepted the City of Atlanta's policy, but had made three commitments to conduct training prior to my appointment. Chief Operating Officer Mr. Greg Giornelli agreed to allow me to complete those commitments using accrued compensatory time. No further training/consulting commitments would be made.

As such, I am seeking approval from the Board of Ethics for the three commitments made prior to my employment with the City of Atlanta. The dates for the upcoming training conferences are listed below for your information:

Maryland Fire and Rescue Institute: Staff and Command  
 Louisville, KY  
 March 12-13, 2008

Oroville Fire Department: Leadership Symposium  
 Oroville, CA  
 March 17-18, 2008



Case 1:15-cv-00477-LMM Document 105-2 Filed 04/27/17 Page 118 of 207  
Virginia Looney, Ethic Officer  
RE: Training Conferences  
February 27, 2008  
Page 2

Humboldt Fire Department: Leadership Symposium  
Eureka Springs, CA  
April 2-4, 2008

I will be utilizing accrued compensatory time accumulated through work activities beyond normal working hours as we had agreed. Please contact me if you have any questions.

Thank you for your support and consideration in this matter.

KJC/mbt

COA-Cochran 001621



# CITY OF ATLANTA

**BOARD OF ETHICS**  
 John Lewis Jr., Chair  
 Kenyatta Mitchell, Vice-Chair  
 Cathy R. Daniels  
 MaryAnne Gaunt  
 Susan Housen  
 Lawrence S. Levin  
 Jacquee Minor

68 MITCHELL STREET SW, SUITE 3180  
 ATLANTA, GEORGIA 30303-0312  
 (404) 330-6286  
 FAX: (404) 658-7720

**ETHICS OFFICE**  
 Ginny Looney  
 City Ethics Officer  
 glooney@atlantaga.gov

## Request for Outside Employment

Requester	Chief Kelvin J. Cochran
Subject matter	Outside Employment
Date	March 20, 2008 board meeting
Code provisions	2-820(d)
Previous action	Tentative approval via email
Facts	<ul style="list-style-type: none"> <li>-Chief Cochran had three commitments to conduct leadership training to fire departments in other cities prior to accepting his position with the City</li> <li>-After starting employment with the City, he learned that he needed the Board's approval</li> <li>-He requested permission prior to the training</li> <li>-Three board members gave tentative approval</li> <li>-Two of the three training sessions have already occurred.</li> </ul>
Recommendation	Approve request for outside employment.

**City of Atlanta Board of Ethics Meeting  
Minutes of March 20, 2008**

The monthly meeting of the City of Atlanta Board of Ethics was called to order by Chair John Lewis Jr. at 6:16 p.m. in City Council Committee Room 2, 55 Trinity Avenue, Atlanta, Georgia 30303. Attending the meeting were board members Cathy Daniels, MaryAnne Gaunt, and Jacquee Minor. Also present were staff members Ginny Looney and Nasceas Timms. Board member Susan Housen was absent.

**MINUTES**

1. The Board approved the minutes of the February 21, 2008 meeting on a motion by Ms. Daniels and a second by Ms. Gaunt.

**AWARDS CEREMONY**

2. The Board held the Financial Disclosure Awards Ceremony to honor departments with the best filing records. Ms. Daniels moved for the adoption of a resolution on the Transparent Diamond Award recognizing the following recipients: Department of Corrections, Department of Law, Department of Parks, Recreation & Cultural Affairs, Department of Watershed Management, Executive Offices, and Municipal Court. Ms. Gaunt seconded the motion, which the Board adopted unanimously.

**FINANCIAL DISCLOSURE**

3. Ms. Looney delivered the annual report to the Board on persons required to file an annual financial disclosure statement, those who complied with the filing requirements, those who filed late, and those who failed to file in 2008 as required by law. Ms. Looney noted that ninety-nine percent of city officials and employees have filed their 2008 City Financial Disclosure Statement.
4. The Board next considered the Roll of Delinquent Filers that lists 10 persons who have not filed a 2008 City Financial Disclosure Statement and one late filer who filed after the end of the March 3 grace period without reasonable cause. Concerning the two nonfilers who are current employees, Ms. Daniel made a motion that the Board issue a letter of reprimand and that the letter go into the employees' personnel file and be taken into consideration during their performance review. Ms. Gaunt seconded the motion, which the Board adopted unanimously.
5. Regarding seven former city employees who have not filed, Ms. Looney recommended that the nonfiling employees be named to the Roll of Delinquent Filers, they be required to pay a fine when they do file, and the Board send a letter of reprimand to their former department and the Department of Human Resources recommending that they be considered ineligible for rehiring for one year and must comply with the financial disclosure law before being considered for another job. Ms. Gaunt moved to adopt the recommendations for the seven former employees, Ms. Daniels seconded the motion, and the motion carried unanimously.
6. For the one board member who did not file, Ms. Gaunt moved that he be named to the Roll of Delinquent Filers, the Board impose no further financial penalties, and the Board issue a letter of reprimand that the board is disappointed and the City should consider him ineligible for future service on a city board. Ms. Daniel seconded the motion, all members voted in favor, and the motion carried.

Board of Ethics  
Minutes of March 20, 2008

COA-Cochran 001618

7. With respect to the late filer, Ms. Minor moved that the current board member be issued a letter of reprimand for being a delinquent filer and that the ethics officer send copies of the letter to the board chair and the appointing authority. Ms. Gaunt seconded the motion, and the Board adopted it unanimously.

#### FORMAL ADVISORY OPINIONS

8. Ms. Daniels moved to adopt proposed Formal Advisory Opinion 2008-3 on gifts of travel from prohibited sources to the City. Ms. Gaunt seconded the motion, which the Board adopted unanimously. The opinion concludes: "The City may accept gifts of travel from prohibited sources when the gift is donated to the City or one of its agencies, the travel is done in an official capacity on official city business, the travel is approved in advance, the expenses are reasonable, the agency receiving the gift discloses it on an online Gift to the City Report, and officials and employees disclose any travel financed under the travel gift program on an online Expense Reimbursement Report."
9. Ms. Gaunt moved to adopt, with a second by Ms. Minor, Formal Advisory Opinion 2008-4 on use of city property for election campaigns for city pension boards. The opinion states: "City employees may not use city property to advocate the candidacy of any individual to serve on the city's three pension boards. Under the exception for official city business, the City of Atlanta, its agencies, and employees may use city property to conduct the elections of the pension board members under policies and procedures that give all candidates equal access to the property." The Board adopted the opinion unanimously.

#### REQUEST FOR OUTSIDE EMPLOYMENT

10. Ms. Daniels moved to approve a request for outside employment from Fire Chief Kelvin Cochran to conduct leadership training to fire departments in other cities. The Board agreed that he should have the ability to fulfill the commitments that were made prior to his employment by the City. Ms. Minor seconded the motion, which the Board approved unanimously.

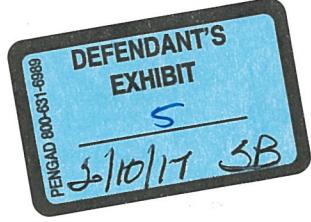
#### RECOGNITION OF BOARD MEMBER'S SERVICE

11. The Board adopted a resolution honoring Jacquee Minor for her board service the past three years as a representative of the Atlanta Business League.

Having no further business, the meeting was adjourned at 7:50 p.m.



Ginny Looney, Ethics Officer  
Approved May 15, 2008



KELVIN J. COCHRAN  
 United States Fire Administrator  
 UNITED STATES FIRE ADMINISTRATION  
 500 C STREET SW  
 WASHINGTON, D.C. 20472  
 Office: 202-646-4223  
 Fax: 202-646-4043  
 Email: kelvin.cochran@dhs.gov

### SUMMARY OF PROFESSIONAL QUALIFICATIONS

Twenty-seven (29) years experience from Firefighter to Assistant Chief Training Officer to Fire Chief of Shreveport, Louisiana (1999) to Fire Chief of Atlanta, Georgia (2008) to U.S. Fire Administrator, Washington, D.C. experienced in leadership and administration in all phases of the fire and emergency services: fire protection services, emergency medical services, hazardous materials, special operations, recruitment, hiring, promotional systems, public education, research and development, discipline, performance management, homeland security, emergency management, with specialization in training, professional development, strategic planning, and facilitation. Experienced in a leadership and administrative capacity with professional associations and non-governmental organizations as 1<sup>st</sup> Vice President of the International Association of Fire Chiefs (IAFC), President of the Metropolitan Fire Chiefs Association, Vice Chairman of Volunteers of America (VOA), and Vice President of Strategic Planning for Norwella Council of Boy Scouts of America (BSA).

### EMPLOYMENT HISTORY

2009 – Present

**U. S. Fire Administrator, United States Fire Administration, Washington, D. C.**

A Presidential Appointed-Senate Confirmed position: Directs administrative and operational activities of 620 career and contract staff of the United States Fire Administration, a directorate within the Federal Emergency Management Agency (FEMA), Department of Homeland Security of the United States Government. The U. S. Fire Administration is comprised of three divisions of labor: Management Operations and Support Services, National Fire Programs and the National Fire Academy. The directorate is responsible for providing programs and services to the American Fire Service to prevent fire and fire losses; provide research, data collection and analysis; training and professional development; facilitating and coordinating emergency preparedness and response of the American fire and emergency services to national disasters; and management of human capital, facilities and technology at the National Emergency Training Center (NETC), Emmitsburg, Maryland.

**KELVIN J. COCHRAN**

2008 – 2009

**Fire Chief, City of Atlanta Fire Rescue Department, Atlanta, Georgia.**

Directed operations of 980 member Accredited Fire Rescue Department which provides fire, rescue and emergency medical services, comprised of 35 fire stations with 3 shifts and 6 battalions, and divisions of labor consisting of: Support Services, Airport Operations and Field Operations to include fire suppression; emergency medical response and; hazardous materials operations, search and rescue; underwater rescue, and a host of public information, public education and public relations programs and services. Responsible for collaboration of homeland security and emergency preparedness initiatives between the City of Atlanta and the Atlanta Fulton County Emergency Management Agency (AFCEMA). Responsible for planning and administration of a 74 million dollar budget.

1999 - 2007

**Fire Chief, City of Shreveport, Fire Department, Shreveport, Louisiana.**

Directed operations of 600 member Class One Fire Department which provided emergency medical services and ALS transport, comprised of 21 stations with 3 shifts and 5 districts, and divisions of labor consisting of: Emergency Medical Services, Fire Prevention, Training, Maintenance, Communications, Aircraft Rescue and Firefighting and Emergency Operations to include fire suppression; emergency medical response and transport; hazardous materials operations, bomb disposal; search and rescue; underwater rescue, and a host of public information, public education and public relations programs and services. Served as Homeland Security Coordinator; facilitates emergency preparedness initiatives within the City of Shreveport. Responsible for planning and administration of a 47 million dollar budget.

1990 - 1999

**Assistant Chief Training Officer, City of Shreveport, Fire Department, Shreveport, Louisiana.**

Supervision of three Training Officers; managing Fire and EMS Training Programs for 550 personnel; Director of Basic Training Programs for recruit firefighters; Coordinator/Lead Instructor for management, leadership, and administrative training programs; Performance rating supervisor for new Training Officers and Recruit Firefighters; Respond to 2<sup>nd</sup> alarm and above fires, hazardous materials emergencies, natural disasters, civil unrest, etc.; Chairman of the Shreveport Fire Department General Planning Team and Executive Planning Team.

## KELVIN J. COCHRAN

1985 - 1990

**Training Officer, City of Shreveport, Fire Department, Shreveport, Louisiana**  
Implemented and conducted Fire and EMS Training Programs; managed the department Probationary Firefighter Training Station Program; Appointed to the Administrative Disciplinary Review Board; Responded to 2<sup>nd</sup> alarm and above fires, hazardous materials emergencies, natural disasters, civil unrest, etc.; Directed recruiting campaigns; Videotographer of audiovisual productions for the department; Fire apparatus operations/emergency vehicle driving instructor/coordinator.

1981 - 1985

**Firefighter, City of Shreveport, Fire Department, Shreveport, Louisiana.**

### EDUCATION

**INDUSTRIAL ORGANIZATIONAL PSYCHOLOGY** (Master of Science), LOUISIANA TECH UNIVERSITY, Barksdale AFB, Bossier City, Louisiana 2004)

**ORGANIZATIONAL MANAGEMENT** (Bachelor of Science Degree) WILEY COLLEGE, Marshall, Texas - 1999.

**GRADUATE WOODLAWN HIGH SCHOOL**, Shreveport, Louisiana - 1978.

### TECHNICAL TRAINING

**DEPARTMENT OF HOMELAND SECURITY (DHS) -FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA)**

2010 **Executive Great Manager Program: Gallup University, Washington, D. C.**  
Selecting: Select for Talent; Setting Expectations: Define the Right Outcomes;  
Motivating: Focus on Strengths; Developing: Find the Right Fit; Sustaining and Building Partnerships; Building a Great Place to Work (March)

**Weapons of Mass Destruction Incident Management: Capabilities, Planning and Response Actions: Center for Domestic Preparedness, Anniston, Alabama: ICS Federal Response; Operational Considerations; Evaluating Terrorist Threats; Identifying and Prioritizing Targets; Measuring Capabilities; Incident Response Planning (January)**

Kelvin J. Cochran 5405 Tuckerman Lane, North Bethesda, MD

Page 3

KELVIN J. COCHRAN

UNITED STATES FIRE ADMINISTRATION - NATIONAL FIRE ACADEMY

- 2007 **Long Term Recovery Planning: Sustainable and Resilience Communities:** Holistic Disaster Recovery; Long-Term Community Recovery Planning (LTRP) Process; Determining Project Recovery Values; Policies for Guiding Planning for Post-Disaster Recovery and Reconstruction; The Planning Process (August)
- American Israel Education Foundation (AIEF)-Israel's Homeland Security Mission:** Participated in a mission to Israel to study strategic approaches to homeland security, preparedness and response to terrorist's incidents: anti-terrorism preparedness, security, military, law enforcement, fire and EMS strategies for response and recovery. (February)
- 2006 **PyroMeeting Czech Republic: Preparedness and Response to National Disasters:** Attended the bi-annual gathering of fire and emergency managers in the Czech Republic where leaders from the European Union presented lessons learned from recent disasters. Presented "*America's Response to Hurricane Katrina*". (November)
- 2005 **Unified Command for Multi-Agency and Catastrophic Incidents:** Pre-incident Planning, Incident Management Teams, and Area Command; Unified Command; Emergency Operations Center; FBI Interface with ICS on Terrorism Incidents (August)
- 2004 **Partnering for Fire Defense and Emergency Services Planning:** The Planning Process; Organize and Prepare to Plan; Conduct a Risk Analysis; Develop Fire Defense and Emergency Services Plan; Implementation; Analysis Techniques and Applying Data; Creating Partnerships; Planning Dynamics (March)
- 2001 **Strategic Management of Change:** Introduction to Change Management; The Change Management Model; Managing Change Using the Change Management Model; Leading Change Using the Change Management Model; Personal Aspects of Change Management (August).
- 2000 **Fire Service Executive Development:** Working As a Team; Professional Development; Research; Managing Creativity; Following and Leading; Labor Relations; Organizational Culture; Ethics; Elected Officials and City Managers; Service Quality/Marketing; Legal Issues (August).
- 1999 **Fire Service Executive Leadership:** The Management Process; Developing Self As A Leader; Managing Multiple Roles; Developing Influence Skills; Fostering Creativity and Innovation; Assessing Organizational Culture; Developing Decision-making Skills; Labor Relations (July).

KELVIN J. COCHRAN

- 1998 **Executive Analysis of Fire Service Operations in Emergency Management:** Emergency Operations; Incident Command System; Community Risk Assessment; Incident Documentation; Capability Assessment; Media Relations; Community Damage Assessment; Emergency Operations Centers; Contemporary Legal Issues for the Fire Service (August).
- 1997 **Organizational Theory in Practice:** Introduction to Organizations; Why Theory?; Planning; The Development of Organizational Theory; Control and Evaluation; Predicting the Future of Your Organization; Leadership and Supervision; Decision-making; Organizational Communication; Project Proposals; Remaining Current (June).
- Managing and Leading Change/Executive Skills Series:** Introduction to Change Management; The Change Management Model; Managing Change Using the Change Management Model; Leading Change Using the Change Management Model.
- 1996 **Training Program Management:** Leadership in Training; Implementing Technologies; Managing the Needs Assessment Process; Financial Management; Evaluation; Personnel Management; Managing Design and Development; Managing Delivery; Marketing for Training;
- 1995 **Executive Planning and Information Management:** Project Leadership; Project Management; Strategic Planning; Analysis; Acquisition; Implementation; Evaluation.
- 1994 **Leadership: Strategies for Company Success:** Decision-making Styles; Problem-Solving I: Identifying Needs and Problems; Problem-Solving II: Solving Problems; Running a Meeting.
- Leadership: Strategies for Supervisory Success:** Situational Leadership; Delegation; Coaching; Discipline.
- Leadership: Strategies for Personal Success:** Managing Multiple Roles for the Fire Officer; Creativity; Enhancing Your Personal Power Base; Ethics.
- 1993 **Fire Service Financial Management:** System Design; Computer Lab; Planning; Budget Preparation; Budget Justification; Budget Administration; Budget Adoption.
- 1992 **Fire Service Leadership and Communication:** Task Oriented Leadership; Relationship Oriented Leadership; SPEECH: Understanding Self and Others; Listening; Personal Image; Anatomy of a Presentation; Delivery of a Presentation; Persuasion; Interviewing; Meetings; Individual Conferences; WRITING: Outlining; Procedural Writing; Correspondence with the Public; Incident Report Writing; Investigation report Writing; Proposals; Job Descriptions; Editing.

## KELVIN J. COCHRAN

**Managing Company Tactical Operations: Preparation:** Roles and responsibilities; Readiness; Communication; Building Construction and Fire Behavior Factors; Pre-incident Preparation.

**Managing Company Tactical Operations: Decision-making:** The Command Sequence; Size-Up; Developing the Action Plan Implementing the Action Plan; The Incident Command System.

- 1990 **Fire Service Course Development:** Needs Assessment; Task Analysis; Course Design; Development of Course Manuals; Audiovisual Support; Course Evaluation; Course Delivery.

### PROFESSIONAL ACHIEVEMENTS, HONORS & MEMBERSHIPS

First Vice President, International Association of Fire Chiefs (2006-2007)

United States Fire Administration: National Fire Academy – Board of Visitors (2007-2009)

Metropolitan Fire Chief's Association - President (2005- 2006)

International Association of Fire Chiefs (IAFC), Program Planning Committee Chair (2004-2005)

IAFC Health, Safety and Survival Section – Member

IAFC Southwestern Division – Member

Georgia Association of Fire Chiefs – Member

Metro Atlanta Fire Chiefs Association – Member

Louisiana Emergency Preparedness Association – Member

Louisiana Fire Chiefs Association – Member

Louisiana Urban Search and Rescue Commission – Commission Member

Louisiana Emergency Preparedness Commission – Commission Member

**KELVIN J. COCHRAN**

**COMMUNITY INVOLVEMENT**

Shreveport Firefighters Museum – Board

Norwella Council Boy Scouts of America – Vice President: Strategic Planning

Volunteers of America – Vice Chairman

Salvation Army – Board

American Society for Training & Development – Member

Alliance for Education – Board

The Strand Theater – Board

Billy Graham Association: Arklatex Franklin Graham Festival 2005 – Executive Chairman

Billy Graham Association: Greater North Atlanta Franklin Graham Festival 2009 – Board

## HR NEW HIRE TURN AROUND DOCUMENT (TAD)

7-110  
book

EFFECTIVE DATE: 06/19/2010 (Rehire)

EMPLOYEE ID NUMBER: 30684 - 2

## PEOPLE DATA

Last Name Cochran  
 First Name Kelvin  
 Middle Name J  
 Title \_\_\_\_\_  
 Prefix \_\_\_\_\_  
 Suffix \_\_\_\_\_

Gender Male  
 SSN [REDACTED]  
 DOB [REDACTED]  
 Ethnic Origin Black  
 Martial Status Married

Address 1255 New Britain Drive,  
 Sw \_\_\_\_\_  
 City Atlanta  
 State GA  
 Zip 30331

Home Ph. 318-797-9238

Other Ph. \_\_\_\_\_

Work Ph. 404-546-7130

Physical Status:  Passed  N/T

Date Physical Passed \_\_\_\_\_

Holiday Pay \_\_\_\_\_

## WORK ASSIGNMENT

Rehire\*: YES  NO 

\*If retiree please attach "Authorization to Re-employ Retiree Form"

People Group:  General  Correction Sworn  Fire Sworn  Police Sworn

Department AFRD

Location Code 17-FC310

Assignment Category:

 Full-time Regular  Full-time Temp  Part-time Regular  Part-time Temp

Temp Person Type: (if applicable)

 Extra Help  Intern  Seasonal

Employee Category:

 Classified  Unclassified

Position# 2420

Job Title Fire Chief

Job Code 312069

Grade 50F Step - (if applicable)

Hourly Rate 82.69 Annual Rate 172,000

Working Hours 40

Supervisor Appointed by Mayor

FOC:  YES  NO

Job Code \_\_\_\_\_ Grade \_\_\_\_\_

Job Title \_\_\_\_\_

## EXTRA INFORMATION TYPE

## KRONOS INFORMATION

## I-9 Information:

Type of ID Provided

Passport

GA Drivers License

## CDL Information:

CDL License # \_\_\_\_\_

License State \_\_\_\_\_

CDL Expiration \_\_\_\_\_

Bar Code 8401205

Approver ID \_\_\_\_\_

Timekeeper ID \_\_\_\_\_

Profile Type (Check One)

 Approver  Timekeeper View Only (Employee)

Employee Lunch (Check one)

 0  30  45  60

Sign-on Method (Check one)

 Desktop  Clock Swipe  Clock Bio  TeleAccess

## GRE INFORMATION: City of Atlanta

Shift:  Day  Evening  Night

## Default Expense Acct

## Labor Schedule

## Labor Schedule (Grant/Project)

## COMMENTS:

Fund: \_\_\_\_\_

Fund: 1001

Project: \_\_\_\_\_

Re-Hire appointed to Fire Chief of AFRD by Mayor Kasim Reed, effective June 19, 2010. (pending physical) bokka 6-28-10

Dept: \_\_\_\_\_

Dept: 230101

Task: \_\_\_\_\_ (3-digits)

Acct: \_\_\_\_\_

Acct: 5111006

Award: \_\_\_\_\_

Funcact: \_\_\_\_\_

Funcact: 1320000

Exp Type: \_\_\_\_\_

Exp Org: City of Atlanta

Allow project task time entry in Kronos:  YES  NO

## Human Resources &amp; Employee Benefits Use Only

## Benefit Info

## Payroll Info

## Pension Fund

 All Benefits No Benefits Health & Life Sick Lv., Vac, Incr. Medicare Pension Health & Life Continuation of Health Benefits Wait 90 days

Grade 50 Step 382.69 Hr/Day/Rate

Standard Gross +172,000.00 Annual Salary

Pension Fund \_\_\_\_\_

Hospital Co. \_\_\_\_\_

Life Company \_\_\_\_\_

Pension Plan \_\_\_\_\_

Mar. Status/Date \_\_\_\_\_

01/02/2009

First City Emp. Date

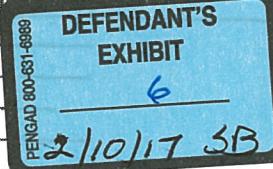
06/19/2010

Current City Emp. Date

2420

Empl Current Position No.

Grade 50 Step -



Reign D. Cochran 16/23/10

Employee Signature/ Date

6/25/10 Immediate Supervisor/Date

Bureau Head/Date

John D. Cochran 6/23/10 Form Completed By/Date

Certified by/Date

16-23-10 Dept. Head/Date

Rec'd HR Date \_\_\_\_\_

To Generalist Date \_\_\_\_\_

Return from Generalist Date 6/28/10

TAD Processed Date COA-Cochran 060913

IN THE NAME OF THE CITY OF ATLANTA  
6/28/10

312069

## CITY OF ATLANTA, GEORGIA CLASSIFICATION SPECIFICATION

**Job Title:** Fire Chief

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### **Purpose of Job**

The purpose of this job is to represent and to stand accountable for an assigned department's actions to those outside the department. Duties include, but are not limited to: supervising staff; managing and coordinating the Administrative, Operational and Technical Services Bureaus; enforcing all city and state fire codes, ordinances, laws and regulations; establishing rules and regulations; developing specifications; preparing plans; and processing paperwork.

### **Essential Duties and Responsibilities**

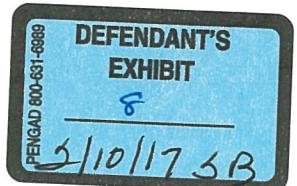
The following duties are normal for this job. These are not to be construed as exclusive or all-inclusive. Other duties may be required and assigned.

#### Work Delegation:

- Supervises, directs and evaluates assigned staff, handling employee concerns and problems, directing work, counseling, referring, disciplining and completing employee performance appraisals.
- Directs, either personally or through subordinate supervisors, the work of Fire Department personnel in firefighting, pre-fire planning, hazardous material emergencies, rescue operations and other related emergencies.
- Responsible for ensuring the efficient and effective management of the operation and maintenance of fire stations and equipment.

#### Administrative Duties:

- Enforces all city fire codes, ordinances and fire laws and regulations of the state in order to protect life and property.
- Designs and attends activities so as to maximize on accomplishing the Fire Department's mission; makes necessary administrative decisions that affect the operations of the department.
- Establishes rules and regulations of the department, and controls and disciplines all officers and members of the department in accordance with established rules and regulations of the city and the department.
- Develops specifications for fire apparatus and equipment utilized by the department and is responsible for the purchase of such equipment upon approval.



Planning and Organizing:

- Prepares and implements a three and five year management plan compiled from project reports from all departments including prevention, rescue/medical, station relocation, etc.
- Responsible for planning operations and activities so as to maximize on accomplishing the Fire Department's mission.
- Prepares, plans, and implements standard operating procedures for the department.
- Responsible for coordinating mutual fire protection plans with surrounding municipalities.

Communication:

- Attends meetings to strategize on how to accomplish Fire Department goals.
- Responsible for ensuring that the Mayor and Chief Operating Officer remain current and abreast of all major policies affecting the administration of the department and/or with other City departments regarding major fire policies, services or business.

Employee Development:

- Directs the development of training programs; establishes testing procedures for the testing of applicants, firefighters and for promotions within the department.
- Establishes goals for employees on a semi-annual basis.
- Supervises and manages an employee performance problem-solving process.

Fiscal Responsibilities:

- Surveys buildings, grounds, and equipment to estimate needs of department in preparation of the departmental budget.
- Responsible for preparing, presenting and administering the annual budget to appropriate City officials.

Quality Assurance:

- Reviews, studies and interprets City ordinances, reference materials and fire codes including National Fire Protection Association Codes, Life Safety Codes and Standard Fire Prevention and Building Codes.
- Attends seminars, conferences, conventions and special educational meetings to stay current with modern techniques involving firefighting, rescue and hazardous material emergencies.
- Evaluates fire prevention and fire control policies by keeping abreast of new methods and conducting studies of departmental operations.

Problem Identification and Solution:

- Determines the staffing needs of the Department and ensures that such needs are consistently met.
- Conducts and directs fire investigations, which involves establishing cause, gathering and securing evidence of suspicious fires, and presents such evidence to a court of law to assist in prosecuting arsonists.

### **Marginal Job Functions**

- Performs other related duties as required.

### **Knowledge of Job**

Has extensive knowledge of the principles, practices and procedures of the City and the Fire Department operations and functions. Has extensive knowledge of public safety, fire science, management, budget and financial practices, policies and procedures as necessary in the completion of daily responsibilities. Is able to develop and administer policies, procedures, plans and activities and to monitor performance of subordinates against measured established goals. Knows how to develop and administer operations and staff plans and objectives for the expedience and effectiveness of specific duties of the City. Is able to develop and implement long-term goals for the department in order to promote effectiveness and efficiency. Has extensive knowledge of all applicable laws, ordinances, policies, standards and regulations pertaining to the specific duties and responsibilities of the job. Knows how to keep abreast of any changes in policy, methods, operations, budgetary and equipment needs, etc. as they pertain to departmental and human resource/personnel operations and activities. Is able to effectively communicate and interact with subordinates, elected officials, management, employees, members of the general public and all other groups involved in the activities of the City as they relate to the department. Is able to assemble information and make written reports and documents in a concise, clear and effective manner. Has good organizational, management, human relations, and technical skills. Is able to use independent judgement and discretion in managing subordinates including the handling of emergency situations, determining and deciding upon procedures to be implemented, setting priorities, maintaining standards, and resolving problems. Has the ability to comprehend, interpret, and apply regulations, procedures, and related information. Has the mathematical ability to handle required calculations. Is knowledgeable and proficient with computers. Is able to read, understand and interpret fire operations and financial reports and related materials.

### **Minimum Training and Experience Required to Perform Essential Job Functions**

Bachelor's degree and one year of graduate study in Business/Public Administration, Fire Science or a related field plus eight years of supervisory experience, five years of which must have been senior supervisory experience in management and administration of fire prevention and protection services; such experience may be in either private employment or government service; or any equivalent combination of education, training, and experience which provides the requisite knowledge, skills, and abilities for the job.

### **(ADA) MINIMUM QUALIFICATIONS OR STANDARDS REQUIRED TO PERFORM ESSENTIAL JOB FUNCTIONS**

**PHYSICAL REQUIREMENTS:** Must be physically able to operate a variety of job related machines and equipment. Must be able to use body members to work, move or carry related objects or materials. Physical demand requirements are at levels of those for sedentary to active work.

**DATA CONCEPTION:** Requires the ability to compare and/or judge the readily observable functional, technical, structural, compositional or identifiable characteristics (whether similar to or divergent from obvious standards) of data, people, or things.

**INTERPERSONAL COMMUNICATION:** Requires the ability to speak and signal to people to convey or exchange professional information.

**LANGUAGE ABILITY:** Requires the ability to read a variety of professional, technical and administrative documentation, directions, instructions, methods and procedures related to fire fighting work. Requires the ability to write reports and essays with proper format, punctuation, spelling and grammar, using all parts of speech. Requires the ability to speak with and before others with poise, voice control, and confidence using correct English and well-modulated voice.

**INTELLIGENCE:** Requires the ability to learn and understand subject matter principles and techniques; to make independent judgments in absence of supervision; to acquire and be able to expound on knowledge of topics related to primary occupation.

**VERBAL APTITUDE:** Require the ability to record and deliver information such as in public speaking situation, to explain procedures, to follow verbal and written instructions.

**NUMERICAL APTITUDE:** Requires the ability to utilize mathematical formulas; add and subtract; multiply and divide totals; determine percentages; determine time and weight; and interpret as may be appropriate.

**FORM/SPATIAL APTITUDE:** Requires the ability to inspect items for proper length, width, and shape.

**MOTOR COORDINATION:** Requires the ability to coordinate body members in utilizing job related equipment.

**COLOR DISCRIMINATION:** May require the ability to differentiate colors and shades of color.

**INTERPERSONAL TEMPERAMENT:** Requires the ability to interact with people (i.e. staff, supervisors, general public and elected officials) beyond giving the receiving instructions. Must be adaptable to performing under minimal stress when confronted with an emergency.

**MANUAL DEXTERITY:** Requires the ability to handle a variety of office/law enforcement equipment items. control knobs, switches, etc. Must have the ability to use one hand of twisting motion or turning motion while coordinating other hand with different activities. Must have eye/hand/foot coordination.

**PHYSICAL COMMUNICATION:** Requires the ability to speak (talking- expressing or exchanging ideas by means of spoken words), hear (hearing-perceiving nature of sounds by ear) and signal (using body members).

## ARTICLE VII. - OFFICERS AND EMPLOYEES<sup>[16]</sup>

Footnotes:

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Charter reference— Civil service, § 3-501 et seq.

Cross reference— Lease of city owned houses to certain public officers, § 2-6; city council staff, § 2-151 et seq.; mayor, § 2-176 et seq.; executive branch offices, § 2-231 et seq.; municipal clerk, § 2-266 et seq.; chief financial officer, § 2-341 et seq.; employee benefits, § 2-841 et seq.; chief procurement officer, § 2-1136 et seq.; municipal court judges, § 62-27; municipal court solicitor and assistants, § 62-28; municipal court public defender and assistants, § 62-29; municipal court clerk, § 62-34; personnel, ch. 114.

## DIVISION 1. - GENERALLY

Sec. 2-781. - Official oath.

The following is the official oath to be assumed by all officials of the city who by law, except the mayor and members of the council, are required to assume an oath of office, except the mayor and members of the council:

GEORGIA

FULTON COUNTY

I, \_\_\_\_\_, do solemnly swear that I will faithfully and impartially perform the duties imposed upon me as during my continuance in office, without fear or favor, reward or the hope thereof, to the best of my ability.

I further swear that I will uphold and support the Ethics Code of the City of Atlanta, so help me God.

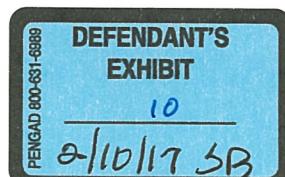
Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_.

	Mayor
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(Code 1977, § 18-4001; Ord. No. 2002-54, §§ 1, 2, 6-20-02)

Sec. 2-782. - Bonds of officials.

- (a) Conditions, form, filing, premium. If official bonds are required, they shall provide that the officials bonded shall account to the city for all articles, goods and moneys coming into their hands by virtue of their offices, including books, papers or other property. The form of these bonds shall be approved by the city attorney and their suretyship by the mayor, and they shall thereafter be filed with the chief financial officer, provided that the chief financial officer's bond shall be filed with the municipal clerk. Surety company bond premiums shall be paid by appointment made therefor in current apportionment sheets.



- (b) Officers disqualified as sureties. No member of the council or the mayor or any other city officer shall become a surety on the bond of any city official or contractor for city work. A violation of this section shall subject the offending city official to dismissal from office, and a new bond shall be made without that officer as surety thereon.
- (c) Requirements of sureties. No individual shall be accepted as personal surety on any bond, official or otherwise, that under the Charter and related state laws or ordinances of the city or under general law is required to be given to the city or to the council or to the mayor or to any officer or department of the city or to any head of any department of the city, unless that person shall own real estate in the state of a value over and above any homestead exemption allowed by law and any incumbrances thereon and that is equal to the full amount of the bond on which the person is tendered as surety.

(Code 1977, § 18-4002)

Sec. 2-783. - Defense in civil litigation.

- (a) Authority. Pursuant to the authority of O.C.G.A. tit. 45, ch. 9, art. 2 (O.C.G.A. § 45-9-20 et seq.), the city adopts a policy establishing the terms and conditions under which the city may provide for the defense of any officer or employee involved in civil litigation arising out of the performance of the official duties of the officer or employee and under which the city may pay part or all of any civil judgment rendered against any officer or employee or of any monetary settlement of pending litigation against any such officer or employee when any such claim or civil judgment arises out of the performance of official duties or is in any way reasonably related thereto and in accordance with this section.
- (b) Immunity of city not waived. Nothing in this section shall be construed to constitute any waiver by the city of the governmental immunity afforded it under the laws and constitution of the state, except as specifically set forth in this section. This section shall not apply to those claims or judgments for damages of \$25,000.00 or less which are authorized pursuant to section 2-4 of this Code and which constitutes a waiver of governmental immunity only up to such amount. Nothing in this section shall be construed in any way to reduce or eliminate the rights of any officer or employee against any other party.
- (c) Defense upon request of officers and employees. Whenever any civil litigation is instituted in or before any court of this state or of any other state or of the United States against any officer or employee in either such officer's or employee's individual or official capacity asserting personal liability for damages arising out of the performance of the official duties of such officer or employee or in any way reasonably related thereto, whether based upon negligence, violation of contract rights or violation of civil, constitutional, common law or other statutory rights, whether federal, state or local, the city, upon the written request of any such officer or employee and as a part of such officer's or employee's compensation and terms of employment, subject to the limitations and exclusions as set forth in this section, may in its discretion undertake to defend the civil action on behalf of any such officer or employee by and through the office of the city attorney.
- (d) Expenditures for defense. The city may expend funds for such purposes, including but not limited to court costs, deposition costs, witness fees and compensation, and all other like costs, expenses and fees.
- (e) Notice to city attorney. This section shall not apply unless the officer or employee or the department head of such officer or employee has given notice in writing of any such pending civil action to the city attorney within ten days after the officer or employee has received notice thereof or has been served with any such summons and complaint.
- (f) Grounds for refusal of defense. The city shall refuse to undertake to defend civil actions brought against any officer or employee if it is determined by the city attorney that:

- (1) The act or omission did not arise out of and in the course of the employment of such officer or employee nor was the act or omission reasonably related to such employment.
  - (2) The officer or employee acted or failed to act because of actual or intentional misconduct, fraud, corruption or malice.
  - (3) The defense of any such civil action by the city would create a conflict of interest between the city and the officer or employee.
  - (4) The litigation is for the purpose of criminal prosecution.
  - (5) Undertaking to defend against any such civil action would not be in the best interest of the city.
  - (6) The officer or employee acted or failed to act as a result of impaired judgment caused by the voluntary consumption of alcohol or by the voluntary illegal use of any controlled substance as defined by the laws of the state.
  - (7) Except in an emergency situation or upon the existence of extenuating circumstances, the officer or employee acted or failed to act directly contrary to the advice of the city attorney.
  - (8) The officer or employee acted or failed to act in such a manner as to constitute a criminal offense involving theft, embezzlement or other like crime with respect to the property or money of or in which the city has an interest.
- (g) Conflict of interest between officers or employees. Nothing in this section shall be construed to prohibit the city from undertaking to defend against any such civil action on behalf of any officer or employee where there exists a conflict of interest with another officer or employee. If, at the initiation of or during the course of any such civil litigation, a conflict of interest arises as to the representation of any officers or employees, the city attorney shall provide representation pursuant to the following:
- (1) As between elected officials and other officers and employees, the city attorney shall represent the elected officials;
  - (2) As between officers and employees, the city attorney shall make the determination, subject to the approval, by resolution duly adopted and approved, of the council and the mayor; and
  - (3) As between elected officials, the determination shall be made by a resolution duly adopted and approved by the council and the mayor.
- Further, where any such conflict of interest exists and a determination has been made as to which officers or employees shall be represented by the city attorney, the city in its discretion may by a resolution duly adopted and approved, authorize those officers or employees not represented by the city attorney to employ counsel at the expense of the city. However, the selection and compensation of such other counsel shall be subject to the prior approval by the city.
- (h) Payment of judgments or monetary settlements. Where the city has undertaken to defend civil actions brought against officers or employees as provided by this section, the city may, in its sole discretion, by resolution duly adopted and approved, pay all or any part of final judgments awarded against officers or employees by courts of competent jurisdiction or any amount payable as a monetary settlement of any such civil action, subject to the limitations and exclusions which follow:
- (1) Payments on behalf of officers or employees in satisfaction of any judgment or as a monetary settlement of any pending litigation, shall not exceed the total amount of \$2,000.00 for any and all civil actions instituted as the result of any single or continuing incident or occurrence.
  - (2) No sum shall be paid pursuant to this section where punitive or exemplary damages have been assessed against any officer or employee by any court of competent jurisdiction.
  - (3) No sum in excess of \$25,000.00 shall be paid pursuant to this section for damages on account of bodily injury, death or property damage arising from the ownership, maintenance, operation or use of any motor vehicle by the city under its management, control or supervision, as provided for in section 2-4.

- (4) No sum shall be paid pursuant to this section when the officer or employee has, without prior authorization, been represented by counsel other than the city attorney.
- (5) No sum shall be paid pursuant to this section unless the claimant unconditionally releases each and every officer and employee and the city from any and all suits, claims, actions, causes of action, demands, damages, costs, expenses and compensation on account of or in any way arising out of or related to any such single or continuing incident or occurrence.
- (i) Disbursements paid from city funds. Any such disbursement as provided in this section shall be deemed to be for public purposes and may be paid from city funds.

(Code 1977, § 7-3017.1; Ord. No. 2000-37, §§ 1, 2, 6-27-00; Ord. No. 2002-7, §§ 1, 2, 3-5-02)

**Editor's note**—Section 3 of Ord. No. 2002-7, approved March 5, 2002, states that the provisions of subsections 2-783(b), (h), and (h)(3) shall become effective Jan. 1, 2003.

Sec. 2-784. - Treatment of employees at hospitals other than Grady Memorial in emergency situations.

- (a) Each department head shall be authorized to permit an employee working under the department head to receive treatment in emergency situations at hospitals other than Grady Hospital when such employee is injured arising out of and in the course of employment by the city and where it is determined by the department head or the person supervising such employee at the time of such injury deems it to be in the best interest of the employee to receive treatment at the hospital nearest to the place where such injury is incurred.
- (b) The chief financial officer is authorized to make payment pursuant to provisions of workers' compensation laws for the cost of such treatment at such hospital without prior approval for such treatment.
- (c) The treatment as provided in this section shall apply only to emergency treatment. All followup and continuing treatment shall be accomplished through Grady Hospital, unless prior permission for treatment elsewhere is obtained from the office of the risk management division.

(Code 1977, § 7-4111)

Secs. 2-785—2-800. - Reserved.

## DIVISION 2. - STANDARDS OF CONDUCT<sup>[17]</sup>

Footnotes:

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**Editor's note**—Ord. No. 2002-27, § 1, approved April 10, 2002, repealed and reenacted §§ 2-801—2-824 to read as herein set out. Formerly, said sections pertained to similar subject matter. See the Code Comparative Table.

**Cross reference**— Ethics in public contracting, § 2-1481 et seq.

Sec. 2-801. - Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Agency means any board, bureau, body, commission, committee, department or office of the city, including any joint board to which the council or the mayor has appointment powers.

Business means any corporation, partnership, proprietorship, organization, self-employed individual and any other entity operated for economic gain, whether professional, industrial or commercial, and entities which for purposes of federal income taxation are treated as nonprofit organizations.

Direct ownership, leasehold or option interest in real property means the holding or possession of good legal or rightful title of property or the holding of real or beneficial use of the property by an official or employee, including any interest owned or held by the spouse of the official or employee if such interest is held jointly or as tenants in common.

Confidential information means information which has been obtained in the course of holding public office, employment, an independent contract or otherwise acting as an official or employee, and which information is not available to members of the public under state law or other law or regulation and which the official or employee is not authorized to disclose.

Filing means delivered to the municipal clerk by the end of the designated business day or, if the designated day is not a business day, the first business day thereafter or depositing in the United States mail, properly addressed, with adequate postage affixed, postmarked by the designated day; or any other method of delivery authorized by the board of ethics.

Financial interest means any interest which shall yield, directly or indirectly, a monetary or other material benefit to the official or employee, other than the duly authorized salary or compensation for the official's or employee's services to the city, or to any person employing or retaining the services of the official or employee or to the official's or employee's immediate family.

Gratuity means anything of value given by or received from a prohibited source; provided, however, that the term "gratuity" within the meaning of this division does not include any of the following:

- (1) Payment by the city of salaries, compensation, expenses, or employee benefits; or payment by an employer or business other than the city of salaries, compensation, expenses, or employee benefits or payment of fees for services rendered pursuant to a contract, when the payment is unrelated to the official's or employee's status with the city and is not made for the purpose of influencing, directly or indirectly, the vote, official action or decision of the official or employee; or
- (2) Campaign or political contributions made and reported in accordance with state law; or
- (3) Reasonable meals or refreshments furnished in connection with an official's or employee's appearance in an official capacity at a public, civic, charitable or non-profit ceremony, event, convention or conference whether the sponsor of the event does or does not do business with the city; or
- (4) Hospitality, or meals, extended for a social, charitable, non-profit, convention, conference, or business purpose unrelated to the official business of the city; or
- (5) Reimbursements from non-city sources of reasonable hosting expenses, including travel, meals, and lodging, provided to an official or employee in connection with speaking engagements, participation on professional or civic panels, teaching, or attendance at conferences in an official capacity; provided, however, that receipt of such reimbursements is subject to the reporting requirements governing disclosure of expense reimbursements found at section 2-815; or
- (6) An award, plaque, certificate, memento, novelty or similar item given in recognition of the recipient's civic, charitable, political, professional, or public service; or
- (7) Nominal gifts or other tokens of recognition presented by representatives of governmental bodies or political subdivisions who are acting in their official capacities; or

- (8) Anything of value when the thing of value is offered to the city, is accepted on behalf of the city, and is to remain the property of the city provided that the recipient complies with the provisions governing solicitation found at section 2-818; or
- (9) Commercially reasonable loans made in the ordinary course of the lender's business in accordance with prevailing rates and terms, and which do not discriminate against or in favor of an official or employee because of such individual's status; or
- (10) Anything of value received as a devise, bequest or inheritance; or
- (11) A gift received from the official's or employee's immediate family or a relative within the third degree of consanguinity under the civil law computation method.

Honorarium means a payment of money or anything of value for any service, including but not limited to an appearance, speech or article, or a series of appearances, speeches, or articles, if the subject matter is related to the official's or employee's official duties or the payment is made because of the official's or employee's status with the city.

Immediate family shall include the spouse, domestic partner registered under section 94-133, mother, father, sister, brother, and natural or adopted children of an official or employee.

Income means any money or item of value in excess of \$5,000.00 received or to be received as a claim on any future services, including but not limited to fees, salaries or commissions.

Official or employee means any person elected or appointed to or employed or retained by the city or any agency, whether paid or unpaid and whether part time or full time. This definition includes retired employees or former city employees during the period of time in which they are later employed or retained by the city or any agency.

Personal interest means any interest arising from relationships with immediate family or from business, partnership or corporate associations, whether or not any financial interest is involved.

Prohibited source means any person, business or entity that an official or employee knows or should know:

- (1) Is seeking official action from the city; or
- (2) Is seeking to do or does business with the city; or
- (3) represents a client who meets the definitions in subparagraphs (1) or (2) above; or
- (4) Has interests that may be substantially affected by performance or non-performance of the official's or employee's official duties; or
- (5) Is a registered lobbyist in accordance with state law.

(Code 1977, § 18-2001; Ord. No. 2002-27, § 1, 4-10-02; Ord. No. 2006-48, § 1, 7-25-06)

**Cross reference— Definitions generally, § 1-2.**

**Sec. 2-802. - Purpose.**

It is the purpose of this division to promote the objective of protecting the integrity of the government of the city by prohibiting any official or employee from engaging in any business, employment or transactions, from rendering services or from having contractual, financial, or personal interests, direct or indirect, which are in conflict with or which would create the justifiable impression in the public of conflict with the proper discharge of the official or employee's official duties or the best interest of the city or which would tend to impair independence or objectivity of judgment or action in the performance of official duties. It is also the purpose of this division to require disclosure of the assets and income of elected officials and certain employees so that the public may review actual and potential conflicts of interest. Finally, it is the purpose of this division to provide for an orderly and fair process for raising and

addressing ethical questions and for disciplining those officials and employees and other persons who violate these standards of conduct.

(Code 1977, § 18-2002; Ord. No. 2002-27, § 1, 4-10-02)

**Sec. 2-803. - Reporting violations.**

Any person who witnesses or becomes aware of a violation of this division may complaint of that violation as follows:

- (1) By appearing before a judge of the municipal court, the city solicitor or the solicitor's assistant and swearing out a complaint for the violation. Upon signing the complaint, under oath, a warrant may be issued by the municipal court for the accused to appear and answer the charges; or
- (2) By communicating with the ethics officer. Where a complaint is communicated anonymously to the ethics officer, such complaint shall be made in good faith, and with veracity and sufficient specificity so as to provide the ethics officer with salient and investigable facts. The ethics officer may require the anonymous complaint to be made in a manner and form that is intended only to obtain relevant facts related to the alleged violation of this division, and that is not designed to reveal the identity of the complainant; or
- (3) By filing a sworn written complaint with the ethics officer or the board of ethics, as described in this division. All written complaints to be considered by the board of ethics and the ethics officer shall contain the following if applicable:
  - a. The name and address of the person or persons who file the complaint.
  - b. The sworn verification and signature of the complainant.
  - c. The name and address of the party or parties against whom the complaint is filed, and if such party is a candidate and the office being sought.
  - d. A clear and concise statement of acts upon which the complaint is based along with an allegation that such facts constitute one or more violations of law under the jurisdiction of the board of ethics.
  - e. A general reference to the statutory provision(s) of the Code within the jurisdiction of the board of ethics allegedly violated.
  - f. Any further information which might support the allegations in the complaint including, but not limited to, the following:
    1. The name and address of all other persons who have firsthand knowledge of the facts alleged in the complaint; and
    2. Any documentary evidence that supports the facts alleged in the complaint.
- (4) Preliminary action on complaint. Upon receipt of a complaint whether by the ethics officer or by the ethics board, the ethics officer or the secretary of the ethics board shall send a written notice to the subject of the complaint by the next business day. Both this notice and any subsequent documents are subject to the Georgia Open Records Act.
- (5) Defective complaint. Upon receipt of a written, non-anonymous complaint which does not conform to the applicable requirements of paragraph (3) of this section, the ethics officer shall by letter acknowledge receipt of the complaint and advise complainant of the defect in the complaint and that the complaint will not be considered by the board of ethics unless the defect is corrected.

(Ord. No. 2002-27, § 1, 4-10-02; Ord. No. 2002-44, § 1, 5-28-02)

Sec. 2-804. - Board of ethics.

- (a) There is hereby continued in existence a board of ethics to consist of seven members, all of whom shall be known for their personal integrity and all of whom shall be residents of and domiciled in the city. It is further urged that the members of the board of ethics shall reflect the diversity of the city with regard to race, color, creed, religion, gender, marital status, parental status, familial status, sexual orientation, national origin, gender identity, age and disability. The new board of ethics shall come into existence as set forth in delayed effect of 2002 amendment found at section 2-824 of this division.
- (b) The members of the board of ethics shall be selected as follows:
  - (1) One member shall be selected by the Atlanta Bar Association, chosen from the attorney members of the association;
  - (2) One member shall be selected by the Gate City Bar Association, chosen from the attorney members of the association;
  - (3) One member shall be selected by the Atlanta Business League, chosen from the organizations that are members of the league, which member shall not be an attorney;
  - (4) One member shall be selected by the Metro Atlanta Chamber of Commerce from the organizations that are members of the chamber, which member shall not be an attorney;
  - (5) One member shall be selected by the Atlanta-Fulton County League of Women Voters, which member shall not be an attorney.
  - (6) One member shall be selected by the Atlanta Planning Advisory Board, which member shall not be an attorney nor an officer of a neighborhood planning unit.
  - (7) One member shall be selected by the six major universities/colleges within the city (Georgia State University, Georgia Institute of Technology, Clark Atlanta University, Morehouse College, Morris Brown College, and Spelman College).
- (c) The members shall each serve for terms of three years; provided, however, that the initial terms of the first Metro Atlanta Chamber of Commerce appointee, the first Atlanta Business League and the first University/College appointee shall be two years, and the initial term of the first Atlanta Planning Advisory Board appointee and Atlanta-Fulton County League of Women Voters appointee shall be one year. Members shall serve without compensation. The members shall elect a chair and develop their own organization internally.
- (d) The position of a member of the board shall be deemed vacated:
  - (1) Upon the expiration of his or her term;
  - (2) Upon the death of a member or the disability or incapacity of a member for more than 90 days;
  - (3) Upon the written resignation of the member, when accepted by the nominating party. A resignation tendered for more than 30 days shall be deemed accepted;
  - (4) By the member ceasing to be a resident of the city; or
  - (5) Upon removal of the member for good cause by a majority vote of the board of ethics;
  - (6) New members shall be identified and their names submitted to the municipal clerk within 30 days of the date on which a vacancy in a board position occurs. The municipal clerk will sound their names at the next regularly scheduled council meeting. Nominees for the board of ethics and ethics officer shall be subject to an education and employment background check as well as a criminal history check. Nominees shall execute all releases necessary for the department of personnel and human resources and the department of police to accomplish the same. If the nominee is determined to have committed a felony, the nomination shall be withdrawn.
- (e) Members shall be prohibited from engaging in city election political activities and from making campaign contributions to candidates in city elections during their terms as board members.

Violations of this subsection may be punished by removal from board membership by a majority vote of the members.

- (f) The board of ethics shall:
  - (1) Elect a chair by majority vote of the serving members. Each chair will serve a one-year term and shall be eligible to serve as chair in successive years.
  - (2) Elect a vice-chair to preside in the absence of the chair. The vice-chair will serve a one-year term and shall be eligible to serve as vice-chair in successive years.
  - (3) Elect a secretary to provide administrative assistance to the board.
  - (4) Hold regular monthly meetings at City Hall. Such meetings shall be televised. All meetings of the board shall be conducted as required by the Georgia Open Meetings Act.
  - (5) Conduct its business only with a quorum. A majority opinion of the members sitting at any hearing shall govern as to decisions of the board. In no event shall a decision of the board be voted upon by fewer than four members.
  - (6) Be free to contract for the services of a competent court reporter to take down statements, testimony and discussions at its meeting or to use in lieu thereof a competent person adept at shorthand reporting and/or mechanical transcribing devices, whichever method is from time to time desired by the board, such services to be paid for by the city.
  - (7) Maintain all records in the office of the ethics officer as required by the Georgia Open Records Act.
  - (8) Report, as appropriate, suspected ethical and criminal violations to state or federal law enforcement agencies.
  - (9) Notify the ethics officer of any report of an alleged violation of the code of ethics received by the board.
  - (10) Establish procedures to notify the subject of any report of an alleged violation of the code of ethics as required by the Georgia Open Records Act.
- (g) The city shall pay all administrative costs, including those specifically stipulated in this section, pertaining to the operation of the board of ethics.
- (h) The board shall have the authority to prescribe rules and regulations pursuant to this division to administer the financial disclosure process and to issue opinions under this division. The board shall prescribe appropriate financial disclosure forms, instructions and methods of disclosure as required to comply with the requirements of disclosure of income and financial interests found at section 2-814.
  - (i) Except as otherwise provided in this division, the meetings of the board will be governed by Robert's Rules of Order.
  - (j) The board shall render an advisory opinion based upon a real or hypothetical set of circumstances, when requested in writing by anyone who is an official or employee of the city or a member of a board, council, committee or commission who is personally involved in a matter requiring interpretation of the ethics code. Any person requesting an opinion in accordance with this section who has made a full and complete disclosure of all relevant facts shall be entitled to rely on the opinion or finding of the board of ethics as a guide to the conduct of such person in the person's relations to and with the city. Compliance with the opinion or finding of the board of ethics shall serve in mitigation in any proceedings against such person for violation of this division. Advisory opinions based upon current law shall be maintained as required by the Georgia Open Records Act.
- (k) The board of ethics shall have the authority to investigate any alleged violation of the code of ethics as follows:
  - (1) Upon a sworn written complaint by any person in a form prescribed by the board;

- (2) Upon the request of the ethics officer; or
- (3) Upon the determination by a majority of the board that any matter should be investigated.

(Ord. No. 2002-27, § 1, 4-10-02; Ord. No. 2002-45, § 1, 5-28-02)

Sec. 2-805. - Ethics officer.

- (a) There is hereby created as a full time salaried position an ethics officer for the city. The city ethics officer must be an active member of the Georgia Bar Association in good standing with five years experience in the practice of law. The ethics officer shall be appointed by a majority of the members of the board of ethics for a period of five years, subject to confirmation by a majority of the council and approval by the mayor. Removal of the ethics officer before the expiration of the designated term shall be for cause by a majority vote of the members of the board of ethics.
- (b) The ethics officer need not be a resident of the city at the time of his or her appointment, but he or she shall reside in the city within six months of such appointment and continue to reside therein throughout such appointment.
- (c) The ethics officer shall not be involved in partisan or nonpartisan political activities or the political affairs of the city.
- (d) The duties of the ethics officer shall include, but not be limited to, the following:
  - (1) Educating and training all city officials and employees to have an awareness and understanding of the mandate for and enforcement of ethical conduct and advising of the provisions of the code of ethics of the city;
  - (2) Maintaining the records of the board of ethics as required by the Georgia Open Records Act;
  - (3) Meeting with the board of ethics;
  - (4) Advising officials and employees regarding disclosure statements and reviewing same to ensure full and complete financial reporting;
  - (5) Urging compliance with the code of ethics by calling to the attention of the board of ethics any failure to comply or any issues, including the furnishing of false or misleading information, that the ethics officer believes should be investigated by the board so that the board may take such action as it deems appropriate;
  - (6) Monitoring, evaluating and acting upon information obtained from an "ethics hotline" which shall be a city telephone number for the receipt of information about ethical violations. Each complaint, as of the time it is reported, whether by telephone or otherwise, shall be deemed to be a separate pending investigation of a complaint against a public officer or employee as provided by the Georgia Open Records Act;
  - (7) Notifying the subject of a report of any alleged violation of the ethics code, whether the report is anonymous, made by an identified individual or is written. Such notice shall be given in writing, by facsimile or hand delivery, to the subject of the complaint at the same time and in the same form that any disclosure of information is required by the Georgia Open Records Act;
  - (8) Notifying the board of ethics of any report of an alleged violation of the ethics code received by the ethics officer.
  - (9) Reporting, as appropriate, suspected ethical violations to the city board of ethics;
  - (10) Reporting, as appropriate, suspected criminal violations to state or federal law enforcement agencies; and
  - (11) Filing with the board, the mayor and the council each January a written report describing the activities of the ethics officer in carrying out the goals of his or her office and the code of ethics and reporting on the ethical health of the city.

(Ord. No. 2002-27, § 1, 4-10-02; Ord. No. 2011-48(11-O-1495), § 1, 11-16-11)

Sec. 2-806. - Investigations and hearings.

The board of ethics shall conduct investigations into alleged violations of the ethics code, hold hearings and issue decisions as prescribed below:

- (1) The proceedings of the board and records shall be open unless otherwise permitted by state law.
- (2) Upon request of the board of ethics, the city attorney, or any attorney representing the city attorney's office, or in the event of a conflict, any attorney who shall be selected by a majority of the board and who will provide pro bono services to the board, shall advise the board of ethics.
- (3)
  - a. Preliminary investigation of complaint. The ethics officer shall conduct a preliminary investigation of any complaint and provide a written report to the board of ethics discussing the ethics officer's findings and recommend to the board of ethics whether there is probable cause for belief that this division has been violated warranting a formal hearing.
  - b. If the board determines after the preliminary investigation of a complaint that there does not exist probable cause for belief that this division has been violated, the board shall so notify the complainant and the subject of the investigation. If the board determines after a preliminary investigation of the complaint that there does exist probable cause for belief that this division has been violated, the board shall give notice to the person involved to attend a hearing to determine whether there has been a violation of this division.
- (4) For use in proceedings under this division, the board shall have the power to issue subpoenas to compel any person to appear, give sworn testimony, or produce documentary or other evidence. Any person who fails to respond to such subpoenas may be subjected to the penalties set forth in section 2-807 of this division.
- (5) All hearings of the board pursuant to this section shall be as follows:
  - a. All testimony shall be under oath, which shall be administered by a member of the board. Any person who appears before the board shall have all of the due process rights, privileges and responsibilities of a witness appearing before the courts of this state. Any person whose name is mentioned during a proceeding of the board and who may be adversely affected thereby may appear personally before the board on such person's own behalf or may file a written sworn statement for incorporation into the record to be made part of all proceedings pursuant to this subsection.
  - b. The board's decision shall be governed by a preponderance of the evidence standard.
  - c. At the conclusion of proceedings concerning an alleged violation, the board shall immediately begin deliberations on the evidence and proceed to determine by a majority vote of members present whether there has been a violation of this division. The findings of the board concerning a violation and the record of the proceedings shall be made public by the board as soon as practicable after the determination has been made.

(Ord. No. 2002-27, § 1, 4-10-02; Ord. No. 2002-44, § 2, 5-28-02)

Sec. 2-807. - Violations; appeals.

- (a) Any intentional violation of this division or the furnishing of false or misleading information to the board of ethics or the ethics officer, or the failure to follow an opinion rendered by the board or the failure to comply with a subpoena issued by the board pursuant to this division shall subject the violator to any one or more of the following:
  - (1) Administrative sanction of not more than \$1,000.00 assessed by the board of ethics;

- (2) Public reprimand by the board of ethics; and
  - (3) Prosecution by the city solicitor in municipal court and, upon conviction, to a fine of up to \$1,000.00 per violation and up to six months imprisonment, whether the official or employee is elected or appointed, paid or unpaid. Nothing in this section shall be interpreted to conflict with state law. An action for violation of this division or the furnishing of false or misleading information or the failure to comply with a subpoena issued by the board must be brought within two years after the violation is discovered.
- (b) With regard to violations by employees, in addition to the remedies in paragraph (a) the board may recommend any one or more of the disciplinary actions set forth in section 114-502.
  - (c) With regard to violations by persons other than officials or employees, in addition to the remedies in paragraph (a) the board may recommend to the purchasing director any one or more of the following:
    - (1) Suspension of a contractor; and
    - (2) Disqualification or debarment from contracting or subcontracting with the city.
  - (d) The decision of the board after a hearing shall be final; provided, however, that such proceeding shall be subject to review by writ of certiorari to the superior court of the county. The board's designee shall be authorized to acknowledge service of any such writ and shall, within the time provided by law, certify and cause to be filed with the clerk of the superior court a record of the proceedings before the board, the decision of the board and the notice of the board's final actions.
  - (e) The value of any gratuity transferred or received in breach of the provisions of this division may be recovered from either the receiving official or employee or the person or entity providing the gratuity, for deposit in the City of Atlanta General Fund.
  - (f) All violations of this division shall be prosecuted in accordance with chapter 62, article II, division 2 of this Code.

(Ord. No. 2002-27, § 1, 4-10-02)

Sec. 2-808. - Representing private interest before agencies.

No official or employee shall appear on behalf of private interests before any agency, except as a matter of public record in a court of law as provided by section 2-809 of this division. Councilmembers may appear on behalf of constituents or in the performance of public or civic obligations before any agency but only without compensation or remuneration of any kind. In no instance shall council members appear before the Zoning Review Board (ZRB) or the Board of Zoning Adjustment (BZA) on behalf of constituents or in the performance of their public or civic obligations; they may, however, appear in their own behalf, in relation to their own property interests.

(Ord. No. 2002-27, § 1, 4-10-02; Ord. No. 2014-46(14-O-1479), § 1, 10-29-14)

Sec. 2-809. - Representing private interest before courts.

No official or employee shall represent any person or private interest in any action or proceeding in conflict with the interests of the city, in any litigation in which the city or any agency of the city is involved or is a party, or any action or proceeding in the municipal courts and traffic courts of the city involving any charges or violations in which the complainant is the city or any agency of the city or any official or employee thereof pertaining to the official's or employee's official duties. However, this section shall not restrict or prohibit any official or employee who is an attorney at law from appearing or participating as an attorney in the representation of a client in any action or proceeding in the municipal courts or the City Courts of Atlanta.

(Ord. No. 2002-27, § 1, 4-10-02; Ord. No. 2002-37, § 1, 5-28-02)

Sec. 2-810. - Representation after separation from employment.

No person who has served as an official or employee shall, for a period of one year after separation from such service or employment, appear before any agency or receive compensation for any services rendered on behalf of any person, business or association in relation to any case, proceeding, or application with respect to which such former official or employee was directly concerned or in which such official or employee personally participated during the period of such official's or employee's service or employment or which was under such official's or employee's active consideration or with respect to which knowledge or information was made available to such official or employee during the period of such official's or employee's service or employment. Nothing in this section shall be construed to preclude a former official or employee from being engaged directly by the city to provide services to or on behalf of the city during this one-year period.

(Ord. No. 2002-27, § 1, 4-10-02)

Sec. 2-811. - Use of property and services.

No official or employee shall request, use or permit the use of any publicly owned or publicly supported property, vehicle, equipment, labor or service for the private advantage of such official or employee or any other person or private entity. However, no official or employee is prohibited from requesting, using or permitting the use of any city-owned or city-supported property, vehicle, equipment, material, labor or service which as a matter of city policy is made available to the public at large or which is provided as a matter of stated public policy for the use of officials and employees in the conduct of official city business.

(Ord. No. 2002-27, § 1, 4-10-02)

Sec. 2-812. - Participation in contracts.

No official or employee, including but not limited to those identified in section 2-813(b), shall participate directly or indirectly through decision making, approval, disapproval, recommendation, the preparation of any part of specifications or requests for proposal, influencing the content of any specification or contract standard, rendering advice, investigating, auditing or reviewing of any proceeding or application, request for ruling or other determination, claim or other matter pertaining to any contract or subcontract and any solicitation or proposal therefore or seek to influence the votes or decisions of others with respect thereto when the official or employee knows or with reasonable investigation should know that there is a financial or personal interest possessed by:

- (1) The official or employee;
- (2) One or more members of the immediate family of the official or employee;
- (3) A business other than a public agency in which the official or employee, or a member of the official's or employee's immediate family, serves as an officer, director, stockholder, creditor, trustee, partner or employee; or
- (4) Any other person or business with whom the official or employee or a member of the official's or employee's immediate family is negotiating or seeking prospective employment or other business or professional relationship.

(Ord. No. 2002-27, § 1, 4-10-02)

**Cross reference—** Ethics in public contracting, § 2-1481 et seq.

**State Law reference—** Voting upon questions by interested councilmembers, O.C.G.A. § 36-30-6; sale of city property to city officer or employee, O.C.G.A. § 16-10-6.

Sec. 2-813. - Disclosure of interests.

- (a) Every official or employee listed in paragraph (b) of this section who knows or with reasonable investigation should know that the official or employee has a financial interest or personal interest, direct or indirect, in any proposed legislation or in any decision pending before that official or employee or the agency of which the official or employee is a member or employee shall not vote for or against, discuss, decide, in any way participate in considering the matter or seek to influence the votes or decisions of others on such matter.
  - (1) Prior to any determination of the matter, the official or employee shall verbally disclose at the meeting, if any, the nature of such interest, and shall have such disclosure placed on the official records of the agency.
  - (2) Should an official or employee be absent from that meeting or a portion of that meeting, the official or employee is required to verbally disclose the nature of the conflict at the next attended meeting and said disclosure shall be placed on the official records of the agency.
  - (3) Further, the official or employee must complete an online Disclosure of Conflicts of Interest form at <https://apps.atlantaga.gov/efile> as maintained by the City of Atlanta Ethics Officer, immediately upon his or her recognition of said conflict.
- (b) The officials and employees covered by this section shall be as follows:
  - (1) Mayor;
  - (2) President of council;
  - (3) Members of council;
  - (4) Municipal and traffic court judges;
  - (5) Chief operating officer and deputy chief operating officers;
  - (6) Chief of staff and deputy chiefs of staff;
  - (7) All employees of the office of the mayor who report directly to the mayor;
  - (8) Commissioners, deputy commissioners, department heads and their equivalents;
  - (9) Bureau directors, assistant bureau directors and managers;
  - (10) Division heads;
  - (11) Executive directors of city boards, commissions, authorities or other similar bodies;
  - (12) Zoning administrator and any assistant zoning administrators;
  - (13) Inspectors of all departments and bureaus;
  - (14) City attorney and deputy, assistant, and associate city attorneys;
  - (15) Director of the office of contract compliance and employees of the office of contract compliance with discretionary or supervisory authority over certification, compliance, monitoring, or auditing;
  - (16) Assistant directors, contracting officers, and buyers in the purchasing bureau;
  - (17) Within the department of finance, assistant directors and all employees who have discretionary or supervisory authority over the investment of city funds or the auditing of city finances or city contracts;
  - (18) City internal auditor and employees of the office of internal auditor with investigative and supervisory authority over audits, the audit process, and audit reports;

- (19) City ethics officer;
- (20) Hearing officers;
- (21) Members, whether paid or unpaid, of all city boards, committees, councils, commissions, authorities and other similar bodies created by state law, Charter ordinance or resolution;
- (22) Members appointed by the mayor and/or council or council president to other public boards, committees, councils, commissions and authorities of the city, county, or state; and
- (23) Officers of neighborhood planning units.

(Ord. No. 2002-27, § 1, 4-10-02; Ord. No. 2006-44, § 1, 6-22-06)

**State Law reference**— Voting upon questions by interested councilmembers, O.C.G.A. § 36-30-6.

Sec. 2-814. - Disclosure of income and financial interests.

- (a) The officials and employees listed in paragraph (b) of this section shall annually file with the municipal clerk statements disclosing the following:
  - (1) All positions of employment held by the official or employee in any business (as defined in section 2-801(b)) for all or any portion of the year, including a description of the type of business and the existence and nature of any business done by the employer entity with the city. Lawyers, accountants, consultants, public relations representatives, and other persons rendering services for financial consideration shall disclose the organization, if any, with which they are connected, the type of services offered by the organization, and any particular segment of such services in which the member specializes;
  - (2) Each and every source of income from any business received by such official or employee in excess of \$5,000.00 derived from any single source in the preceding calendar year. Nothing in this section shall be construed to require reporting of the identity of individual clients, customers or patrons; however, the president of council and members of council shall include the information required to be reported under paragraph (d) of this section;
  - (3) Any benefit, whatever its nature, of such official's or employee's immediate family derived from transactions with the city or an agency, by employment, contract, or otherwise, either directly or through a business in which such immediate family member has a majority or controlling interest;
  - (4) All direct ownership interests in real property held by the official or employee; and
  - (5) All persons listed in subparagraphs (b)(1) through (8) of this section shall also disclose the identity of all stocks, blind trusts, bonds, debentures, and other forms of debt obligations of any corporation or any business or entity collectively in excess of \$10,000.00 held by the official or employee at any time during the year except for mutual funds, personal checking accounts, time deposit accounts, other savings or retirement fund accounts held by any financial institution of the United States government, or any city approved or maintained deferred compensation or pension program.
- (b) The following officials and employees shall be required to file annual disclosure statements as set forth in paragraph (a):
  - (1) Mayor;
  - (2) President of council;
  - (3) Members of council;
  - (4) Municipal and traffic court judges;

- (5) Chief operating officer and deputy chief operating officers;
  - (6) Chief of staff and deputy chiefs of staff;
  - (7) All employees of the office of the mayor who report directly to the mayor;
  - (8) Commissioners, deputy commissioners, department heads and their equivalents;
  - (9) Bureau directors, assistant bureau directors and managers;
  - (10) Division heads;
  - (11) Executive directors of city boards, commissions, authorities or other similar bodies;
  - (12) Zoning administrator and any assistant zoning administrators;
  - (13) Inspectors of all departments and bureaus;
  - (14) City attorney and deputy, assistant, and associate city attorneys;
  - (15) Director of the office of contract compliance and employees of the office of contract compliance with discretionary or supervisory authority over certification, compliance, monitoring, or auditing;
  - (16) Assistant directors, contracting officers, and buyers in the purchasing bureau;
  - (17) Within the department of finance, assistant directors and all employees who have discretionary or supervisory authority over the investment of city funds or the auditing of city finances or city contracts;
  - (18) City internal auditor and employees of the office of internal auditor with investigative and supervisory authority over audits, the audit process, and audit reports;
  - (19) City ethics officer;
  - (20) Hearing officers;
  - (21) Members, whether paid or unpaid, of all city boards, committees, councils, commissions, authorities and other similar bodies created by state law, Charter, ordinance or resolution;
  - (22) Members appointed by the mayor and/or council or council president to other public boards, committees, councils, commissions, authorities of the city, county, or state; and
  - (23) Officers of neighborhood planning units.
- (c) The municipal clerk shall maintain a list of all current members of all city boards, committees, authorities and commissions and all current members appointed by the mayor and council to other public boards, committees, councils, commissions, and authorities of the city, county, or state. The chief operating officer shall provide a complete list of all employees required to submit income disclosure forms as designated in paragraph (b) of this section, including the employee's name, title and department, to the municipal clerk and ethics officer no later than January 5 of each calendar year. The board of ethics shall prescribe the form and method of disclosure statement forms. The ethics officer, in cooperation with the municipal clerk, shall have such forms delivered to each official and employee required to file disclosure statements, by first class mail or by hand delivery, no later than January 15 of each year. The failure of the ethics officer or municipal clerk to cause a disclosure form to be delivered to any official or employee required to file a disclosure statement shall not relieve such official or employee of the obligation to file a disclosure statement. The municipal clerk shall maintain all completed disclosure forms as public documents available for public inspection immediately upon filing.
- (d) With respect to the president of council and members of council, if the official reports income from a business in accordance with paragraph (a)(2), said official shall be required to report the identity (name and address) of individual clients, customers, or patrons of the business when (i) the client, customer, or patron is a prohibited source; (ii) the official has actual knowledge that the client, customer, or patron is a prohibited source; and (iii) the official has actual knowledge that the prohibited source is a client, customer, or patron of the official's business.

- (e) Every official and employee required to file an annual disclosure statement shall do so on or before the close of business on April 1 of each year in which the official or employee holds a position with the city or an agency and for the year following that in which the official or employee leaves such position. Such official or employee shall sign such disclosure statement under penalty of perjury. The failure of any official or employee so required to file an annual disclosure statement by April 1 without reasonable cause shall render such person delinquent and result in an administration sanction of \$50.00 per day for each business day beyond April 1 of such delinquency, provided that the maximum penalty for the first offense shall be \$500.00.
- (f) Within 30 days of the disclosure report filing date, the municipal clerk shall forward all financial disclosure statements received to the ethics officer. The ethics officer shall prepare and forward to the board of ethics a report of all persons required to file under this section, those who have complied with the filing requirements, those who have filed a late or incomplete statement, and those who have failed to file a disclosure statement. The ethics officer shall be responsible for collecting all administrative sanctions levied by the board of ethics under this section for deposit to the City of Atlanta General Fund.
- (g) For the year 2002 only: A list of employees to be provided by the chief operating officer pursuant to paragraph (c) of this section shall be provided within five days after this ordinance is signed by the mayor. Because the board of ethics will not have had sufficient time to prescribe a new financial disclosure form as provided in section 2-804 (h) of this division, copies of the current disclosure form must be distributed as required by paragraph (c) no later than ten days after receipt of the list of employees. Every official and employee required to file an annual disclosure statement must do so within 35 days after this ordinance is signed by the mayor.

(Ord. No. 2002-27, § 1, 4-10-02; Ord. No. 2013-54(13-O-1294), § 1, 10-30-13)

**State Law reference—** Acceptance by public officers of monetary fees or honoraria, O.C.G.A. § 21-5-11.

**Sec. 2-815. - Disclosure of expense reimbursements.**

Within 30 days of receipt of reimbursements authorized to be received under section 2-801 ["gratuity" definition, subsection (5)], any official or employee must report such reimbursements on a form to be developed and provided by the ethics officer. The form shall be filed with the municipal clerk, with a copy sent by the official or employee to the ethics officer. The form shall include the following:

- (1) Name and position of employment with the city;
- (2) Name and address of all persons or entities providing reimbursement;
- (3) Date, location, and subject matter of conference, speaking engagement, or event for which the official or employee received reimbursement; and
- (4) Amount and category (e.g., travel costs, meals, lodging) of each component of the reimbursement.

(Ord. No. 2002-27, § 1, 4-10-02)

**Sec. 2-816. - Passes, tickets and gratuities.**

- (a) No contract or lease with the city may require passes, tickets or gratuities to be given to officials or employees or permit reduced fees to be paid by officials or employees. The contracting party shall not provide gratuities or prerequisites to any official or employee in connection with execution of or performance under the contract or lease.

(b) No official, employee or person appointed to any board, corporation, commission or authority, including the mayor, the president of council, members of council, and judges of the municipal and traffic courts, shall knowingly accept any ticket of admission or other evidence of right of entry to any entertainment event, such as, but not limited to, musical concerts and dramatic productions, or to any athletic events, as a gift or for a value less than the price printed on the ticket, which would not be offered or given to such official or employee if such person were not an official or employee. For purposes of determining whether such ticket would be offered or given by reason of the official's or employee's position with the city, it shall be presumed that the offer of such ticket or right of entry from a member of the official's or employee's immediate family or from a business other than a public agency in which the official or employee, or a member of the official's or employee's immediate family, serves as an officer, director, stockholder, creditor, trustee, partner, or employee, is not made by virtue of that official's or employee's position. For purposes of determining whether such ticket would be offered or given by reason of the official's or employee's position with the city, it shall be presumed that any offer of such ticket or right of entry made by any prohibited source, but not limited to the Atlanta Fulton County Recreation Authority and any professional sports team located in the metro Atlanta area, is given by reason of such official's or employee's position with the city. As used in this section, "entertainment event" shall not include breakfasts, lunches, or dinners.

(1) Any official or employee who is performing an official duty at an entertainment event shall be exempt from this section with regard to that particular entertainment event.

(Ord. No. 2002-27, § 1, 4-10-02)

Sec. 2-817. - Prohibition on giving or receiving gratuities.

- (a) No official or employee shall accept any gratuity as defined in section 2-801(g).
- (b) No person, business, or other entity shall give or convey to any official or employee a gratuity as defined in section 2-801.

(Ord. No. 2002-27, § 1, 4-10-02)

Sec. 2-818. - Solicitation.

No official or employee shall solicit or accept anything of value, in any form whatsoever, calculated to influence a vote, decision, or the exercise of official authority in any manner involving the city; provided, however, nothing in this section shall prohibit any official or employee from accepting a gift on behalf of the city which is properly reported to the board of ethics and the department of administrative services for addition to the inventory of property of the city.

(Ord. No. 2002-27, § 1, 4-10-02)

Sec. 2-819. - Disclosure of confidential information.

No official or employee shall disclose confidential information concerning the property, governing operations, policies or affairs of the city, except when required by state or federal law or by a court order or lawful subpoena, nor shall such official or employee use such confidential information acquired in an official capacity to advance the financial interest or personal interest of the official, employee or others in any instance where such would conflict with the best interest of the city.

(Ord. No. 2002-27, § 1, 4-10-02)

Sec. 2-820. - Incompatible interests.

- (a) No official or employee shall invest or hold any investment, directly or indirectly, in any financial, business, commercial or other private transaction, which creates a conflict with and adversely affects official duties of the official or employee to the detriment of the city.
- (b) No official or employee shall engage in or accept private employment or render services for private interests when such employment or service is adverse to and incompatible with the proper discharge of official duties of the official or employee.
- (c) No official or employee shall own stock in or be employed by or have any business, financial or professional connection with or ownership interest in any business, company or concern which does business with the city, unless such business with the city is conducted through sealed competitive bidding or requests for proposal where such bids are opened and the awards are made at meetings open to the public. Such involvement shall not be considered as doing business with the city so as to cause any conflict of interest; provided, however, that any such person shall remain subject to sections 2-812 and 2-813 governing participation in contracts and disclosure of interests. This section is not intended to apply to ownership of less than ten percent of any publicly traded stock.
- (d) Commissioners, deputy commissioners, department heads, chief operating officer, deputy chief operating officers, chief of staff, deputy chiefs of staff, bureau directors, and employees of the office of the mayor who report directly to the mayor shall not engage in any private employment or render any services for private interests for remuneration, regardless of whether such employment or service is compatible with or adverse to the proper discharge of the official duties of such employee. However, the employees named in this paragraph may engage in private employment or render services for private interests only upon obtaining prior written approval from the board of ethics in accordance with this paragraph. The board of ethics shall review each request individually and provide written approval or disapproval of the notification within 30 days. All requests for approval of outside employment shall state the type and place of employment, the hours of work, and the employer's name and address. City employment shall remain the first priority of the employee, and if at any time the outside employment interferes with city job requirements or performance, the official or employee shall be required to modify the conditions of the outside employment or terminate either the outside employment or the city employment. This paragraph shall not apply to single speaking engagements or to participation in conferences or on professional panels; provided, however, that any expense reimbursements received for such engagements must be reported in accordance with section 2-815.
- (e) The mayor shall not accept honoraria, earned income other than the salary of the mayor, or payments-in-kind in any amount as remuneration for services. This section does not apply to receipt of dividends, interest, passive investment income, or income from a blind trust.
- (f) Officials and employees other than the mayor may not accept honoraria from a prohibited source.

(Ord. No. 2002-27, § 1, 4-10-02)

Sec. 2-821. - Loans.

- (a) It shall be unlawful for any official or employee to lend money to any employee or to charge for obtaining credit for that employee, except that loans of \$2,000.00 or less may be made or credit may be obtained for employees in cases of emergency. When these loans are made in emergencies, if not made voluntarily without charge, they shall be made only at the legal rate of interest on judgments in the state. If this loan or accommodation is made, it shall be unlawful for the official whose duty it is to pay the employee to deduct the amount so lent from the pay of the employee. All such accommodations or advances made, together with the interest thereon, shall be reported by the person making them to the head of his or her department or, if made by the head of the department, shall be reported to the mayor. These reports shall be made monthly and filed with the mayor and the municipal clerk in the public record.
- (b) The mayor shall see that this section is complied with and that no business or practice shall be carried on of making loans by officials or employees to other employees of the city but that only

accommodation loans in emergencies and for legal interest on judgments in the state shall be made or allowed. In no event shall any charge for obtaining credit be made or allowed. Any officer or employee violating this section shall, on conviction, be punished as provided in section 1-8 of this Code and shall also be dismissed from the service of the city.

(Ord. No. 2002-27, § 1, 4-10-02)

Sec. 2-822. - Persons handling city funds becoming surety, guarantor or endorser.

No official or employee who handles or controls any funds of the city shall, during the official's or employee's term or continuance in office, become surety, guarantor or endorser of any bond, note or other obligation for any person employed by the city, excluding a member of the official's or employee's immediate family, an adult child or a parent.

(Ord. No. 2002-27, § 1, 4-10-02)

Sec. 2-823. - Protection for reporting of violations.

Officials and employees are encouraged to report suspected ethical violations to the ethics officer. No official or employee shall use or threaten to use any official authority or influence to discourage, restrain or interfere with any other person for the purpose of preventing such person from acting in good faith to report or otherwise bring to the attention of the board of ethics information relating to an ethics violation or investigation. No official or employee shall use or threaten to use any official authority or influence to effect any action as a reprisal against an official or employee who reports, initiates a complaint, or otherwise brings to the attention of the board of ethics information relating to a board investigation or an ethics violation.

(Ord. No. 2002-27, § 1, 4-10-02)

Sec. 2-824. - Effective date and interim provisions.

The ethics board members serving on June 8, 2002 are authorized to remain office and to administer the ethics code until August 5, 2002, or such other time as the new ethics board is constituted.

(Ord. No. 2002-27, § 1, 4-10-02; Ord. No. 2002-52, § 1, 6-20-02)

Sec. 2-825. - Mandatory ethics training.

- (a) AH part-time, full-time, and contract employees of the offices of council members, council staff, municipal clerk, and council president shall receive a minimum of two hours of training within six months of the effective date of this ordinance and receive additional training at least once every three years after completing the initial training. This includes, but is not limited to, all employees reporting to the director of council staff and the municipal clerk, as well as city council assistants, senior council assistants, special council assistants, and contracted employees of the council member offices. Contract employees covered in this code section shall be persons that receive a 1099 FORM or 1099- MISC FORM from the Internal Revenue Service, pursuant to Section 530 of the Revenue Act of 1978 as extended by section 269(c) of P.L. 97-248, for services offered to a council member, the council President or any office of the council member or council president that amounts to \$600.00 or more per calendar year and work for the department of council for a period of 21 days per calendar year or more.

- (b) The ethics officer, or a designee, and the office of ethics shall be responsible for offering the training at least once a month or more and providing for all the staffing, materials, and all other operations of the training.
- (c) The department of human resources shall be responsible for maintaining and enforcing this code section and ensuring that all the eligible employees meet the minimum requirements set forth in this code section.

(Ord. No. 2014-36(14-O-1369), § 1, 7-30-14)

**Editor's note**— Ord. No. 2002-27, § 1, approved April 10, 2002, did not set out provisions for § 2-825. Formerly said section pertained to registration and disclosure of reports by lobbyists. Subsequently, Ord. No. 2014-36(14-Or-1369), § 1, approved July 30, 2014, added provisions designated as a new § 2-825. See the Code Comparative Table.

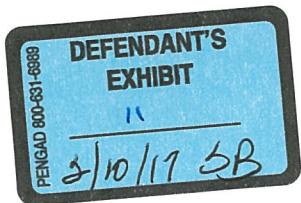
Secs. 2-826—2-840. - Reserved.

# ATLANTA FIRE RESCUE DISCIPLINARY PROCEDURE MANUAL

**2<sup>nd</sup> Edition**



**Atlanta Fire Rescue Department**  
**Kelvin J. Cochran, Fire Chief**  
**2013**



COA-Cochran 001030



# **ATLANTA FIRE RESCUE DEPARTMENT DISCIPLINARY PROCEDURES MANUAL**

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## CITY OF ATLANTA

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**KELVIN J. COCHRAN  
FIRE CHIEF**

July 1, 2013

Atlanta Fire Rescue Department (AFRD) is committed to the attainment of excellence in every aspect of its operations. AFRD's excellence is measured not only by its rapid response to emergency situations but also by its excellence in managing its most important resource... its more than one thousand members. Effective management of AFRD's human resources is the number one priority of our organization.

A progressive leadership culture that is visible, predictable, approachable and accessible is fundamental to the management of a fire / rescue service the size of Atlanta's. Dynamic human resource leadership calls upon us to invoke those principles, not only in complimentary situations, but also from time to time, in situations calling for corrective action.

OPS' Operations Manual fulfills the AFRD's leadership model in the area of such corrective actions. The application of each of its procedures is transparent and **visible** for anyone to read. The manual provides **predictability** as to the outcome of certain frequently violated rules. It's analysis of the investigative process highlights its **approachability** to inject defensive statements and evidence on one's behalf. Finally, and equally important, it provides **accessibility** to the fire chief, for all those charged with adverse actions. Therefore, I am pleased to declare the 2013 Edition of the OPS Operations Manual to be in effect as of this date.

Kelvin J. Cochran, Fire Chief

## ACKNOWLEDGEMENTS

Fire Chief Kelvin J. Cochran wishes to acknowledge the many Atlanta Fire Rescue Department members who contributed to the development of this 2013 OPS Procedures Manual. It was through their guidance and advice that this manual was born. Their diverse expertise acted to insure that occasional incidents of inappropriate behavior by AFRD members will be addressed in a spirit of corrective action. Over one thousand department members can be assured that the procedures contained in this manual will serve to treat each of them equitably. Our thanks go out to the following people:

In alphabetical order

• Arnold, Harold Lieutenant	Technical Advisor
• Baker, Joel G. Deputy Chief	Technical Advisor
• Bohatch, David Lieutenant	Technical Advisor
• Calloway, Jon Fire Advocate	Principal Writer
• Cox Jr, Isaac L. Lieutenant	Technical Advisor
• Daws, Jim (Local 134)	Technical Advisor
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• Heyward, Geneva (PACE)	Technical Advisor
• Hill, Edward (Progressive Firefighters)	Technical Advisor
• Meadows, Wilmond Deputy Chief	Technical Advisor
• City of Atlanta's Law Department	Legal Review
• Atlanta Fire Rescue Department Members	Review

“Special thanks to the Office of Professional Standards of the Atlanta Police Department for sharing their procedural expertise.”

## **SECTION - 1 INTRODUCTION**

### **1.1 PURPOSE**

Unless otherwise stated, this manual is applicable to all classified and unclassified positions in the Atlanta Fire Rescue Department. This manual does not create or provide any rights greater than those contained in the current City of Atlanta Labor Relations Code, Section 114, Labor Management Relations Ordinance which was adopted March 2007 and other applicable ordinances of the City of Atlanta.

This manual is designed as a guide for the management of the complaint, counseling, and discipline functions in the Atlanta Fire Rescue Department. Should a situation arise in which deviation from this manual is required, it must be approved by the section chief of the Office of Professional Standards and / or the fire chief or their designee.

The department encourages the public or city employee to bring inappropriate actions by fire rescue department employees to the attention of the department. Objective reviews and investigations of complaints provide the fire department with a great deal of information regarding the effectiveness and efficiency of its service delivery systems and the competence of its employees.

To guide and control employees' conduct and behavior, the fire department has established employee work rules, (Appendix #1) special orders, and standard operating procedures. These directives, along with other specific job and position requirements and employee evaluations procedures provide the employee with very clear and concise performance expectations.

The Atlanta Fire Rescue Department has very capable and dedicated supervisors who have the responsibility for ensuring that the performance of its employees conforms to these work standards. When performance fails to meet those standards, constructive discipline is given. When an objective review of a complaint sustains an allegation, sanctions are administered.

Accordingly, this procedure delegates to supervisory personnel specific authority and responsibility for discipline. This manual deals with neutral actions such as counseling as well as with adverse disciplinary actions. Therefore, the term “discipline” is intended to modify behavior within the established guidelines of the department. (Appendix #2) reflects a synopsis of the Atlanta Fire Rescue Department’s disciplinary process.

AFRD “*Bill of Rights*” (Appendix #11) is intended to focus attention on the rights of its members when they are called upon to participate in the investigative process.

## 1.2 POLICY

Allegations of employee misconduct will be accepted from any source. The department will provide thorough, impartial investigations of all allegations of employee misconduct and will impose appropriate disciplinary action(s) for all sustained employee work rule or City ordinance violations. The department strives for consistency in its application of discipline, imposes for minor policy infractions, disciplinary actions which are in accordance with the philosophy of progressive discipline, and provides consideration for mitigating and/or aggravating factors. These include, but are not limited to employee intent, past performance, degree of culpability, discipline history, severity of infraction, acceptance of responsibility by the employee and other relevant factors.

## REFERENCES

1. Code of Ordinances, City of Atlanta, Section 114
2. Code of Ordinances, City of Atlanta, Section 11-1002 and Section 11-2001
3. Atlanta Fire Rescue Department Work Rules
4. Atlanta Fire Rescue Department Standard Operating Procedures

## SECTION - 2 DEFINITIONS

### **Citizen Complaint:**

An allegation by anyone not employed by Atlanta Fire Rescue Department that a department employee has engaged in misconduct.

**Complaint:**

An allegation that a department employee has engaged in misconduct. A formal complaint is one that has been received, documented, and numbered.

**Day:**

Unless otherwise specified, a working day for administrative functions is an eight hour period of time Monday through Friday. It may also cover a ten hour per day assignment. For field operations, a day is 0700 hours to 1900 hours or 1900 hours to 0700 hours.

**Disciplinary Review Panel:**

The Disciplinary Review Panel shall be comprised of a thirteen (13) person panel, selected by the fire chief. The panel shall bear the responsibility of reviewing the findings of facts presented to it in cases which have been investigated either in the field or by the Office of Professional Standards (OPS). Their recommendations are then passed on to the fire chief for adverse action; or back to the field in cases warranting only non-adverse actions. The panel should consist of three (3) deputy chiefs, six (6) assistant chiefs, one (1) member of progressive firefighters of Atlanta, one (1) member of PACE, one (1) member of local 134 and one (1) chairperson.

**Disciplinary Range:**

A list of adverse and non-adverse actions that is appropriate to one of the four complaint categories.

**Exceptionally Closed:**

Reasons outside the Department's control prevent it from continuing or completing its investigation of a complaint, and/or from charging and prosecuting an accused employee when sufficient evidence exists to charge the accused employee. Examples may include but are not limited to: the employee resigns, dies, or is no longer employed by the Department.

**Exonerated:**

The incident occurred but the employee's actions were justified, lawful, and proper.

**Garrity:**

A U.S. Supreme Court decision which sets forth the protections afforded to employees when they are compelled by their employer to give a statement which could expose them to criminal liability. It holds that nothing that is disclosed in an internal affairs statement can be used criminally against the employee, except in the case of perjury. Statements can be used in subsequent disciplinary actions.

**Interim Actions:**

Interim actions are actions which require an immediate response prior to other steps in the process. This practice shall include, but are not limited to: assault of any nature; theft of city funds or property, failure to maintain required licenses , actions involving grounds to suspect the use of contraband substances; acts of moral turpitude or other felonious acts.

**Investigator:**

For the purposes of this Directive, an investigator is an employee who is assigned to conduct the investigation of a complaint, regardless of rank or classification.

**Letter of Counseling:**

A letter of counseling is not a disciplinary action. It is a training tool which may be administered by any supervisor in the employee's chain of command. The Letter of Counseling will be given in writing and will communicate a warning of an error or inappropriate behaviors, inform the employee of the appropriate behavior, and offer assistance in correcting the situation.

**Misconduct:**

An action or inaction by an employee of the Department which violates an employee work rule, standard operating procedure, or applicable City ordinance.

**Not Sustained:**

There is insufficient evidence to sustain a finding that the employee committed the violation.

**Notice of Proposed Adverse Action (N.P.A.A.):**

A written statement that the fire chief or their designee proposes to take adverse disciplinary action against the employee.

**Notice of Final Adverse Action (N.F.A.A.):**

A written statement that the fire chief or their designee is taking adverse disciplinary action against an employee.

**Oral Admonishment:**

A verbal discussion by a supervisor with an employee calling attention to the employee's substandard work performance, inappropriate conduct or action, requiring correction.

**Officer in Charge (OIC):**

An employee in charge of a unit, station, section, or division of labor.

**Reckoning Period:**

A defined period of time for which a past sustained work rule violation will be considered in an employee's record of discipline as shown on the employee discipline worksheet. It shall be applicable to violation(s) currently under consideration for disciplinary action. The reckoning period for any violation normally begins on the effective date of action of the disciplinary action for the violation. The length of each reckoning period is set by the associated complaint category.

**Sustained:**

The investigative file provides sufficient evidence to support the findings that the employee committed the violation.

**Type I Complaints:**

Allegations of major misconduct by an employee. Type I complaints are to be investigated by the Office of Professional Standards (OPS). Criteria for Type I complaints are listed below.

1. The complaint is of a serious nature and tends to indicate criminal violations. For example: bribery, gratuity, other illegal compensation, narcotic drug laws, substance abuse, and intoxication.
2. The complaint alleges that an employee of the department caused or threatened serious injury or death to another person by an action or the inaction of the employee, including discharging firearms.
3. The complaint alleges sexual, racial, religious, or discrimination based upon sexual preference, gender or ones national origin.
4. An employee of the department alleges false accusations or a contrived situation involving false evidence within the department.
5. The complaint alleges misconduct by an employee ranking higher than a captain.
6. The complaint alleges that excessive or unnecessary force was used and there is evidence of injury.
7. The complaint alleges false arrest.
8. The complaint involves a firearm discharge, when there are no injuries and the intended target is a human.
9. The complaint is such that it would be impractical for the investigation to be conducted by the respective section.
10. Other acts of a serious nature, as directed by the fire chief or the OPS commander.
11. Truthfulness
12. Citizen Complaint

**Type II Complaints:**

Any complaint not meeting any of the criteria for Type I including allegations that involve a vehicular accident, courtesy, or other lesser misconduct by departmental employees. These complaints will normally be investigated by the unit supervisor or at the battalion level.

**Unfounded:**

Complainant admits to false allegation, the charge is false or not factual, or the accused employee was not involved in the incident.

**Written Reprimand:**

A written disciplinary action to an employee by a supervisor calling attention to the employee's error, substandard work performance or inappropriate behavior, and stating that more serious action will be taken if similar misconduct is repeated by the employee.

## **SECTION - 3 RESPONSIBILITIES**

### **3.1 THE FIRE CHIEF**

The fire chief is responsible for the effective and professional administration of the disciplinary process. Therefore, the chief retains the authority to review, revoke, or modify any disciplinary actions taken by any supervisor in the department.

### **3.2 THE OFFICE OF PROFESSIONAL STANDARDS**

#### **3.2.1 THE OPS CHIEF**

The section chief of the Office of Professional Standards acts on behalf of the fire chief by coordinating and monitoring the receipt of complaints, complaint investigations, and the imposition of discipline throughout the department. The OPS section chief makes recommendations to the fire chief concerning modifications to procedures or training that could affect discipline. The OPS section chief shall not recommend any level of corrective actions to be issued, nor may they change the Disciplinary Review Panel's determination without the approval of the fire chief or their designee.

### 3.2.2 OPS INVESTIGATOR

A member assigned by the section chief of OPS to conduct unbiased investigations of a Type I complaint. An OPS Investigator acts on behalf of the fire chief while conducting an investigation or parts of an investigation.

### 3.2.3 INTERNAL INVESTIGATIONS UNIT

Investigates Type I Complaints (see definitions) and maintains records of all formal complaints made against departmental employees.

### 3.2.4 THE FIRE DEPARTMENT ADVOCATE

The advocate along with the disciplinary review panel advises the fire chief in reaching their determination of the appropriate corrective action. The advocate prepares the Notice of Proposed Adverse Action (N.P.A.A.) and the Notice of Final Adverse Action (N.F.A.A.). The advocate represents the department in both departmental as well as Atlanta Civil Service Board hearings. The advocate may also be called upon to assist city attorneys at civil service hearings.

## 3.3 SUPERVISORS

All supervisors are responsible for enforcing AFRD City Codes, Standard Operating Procedures, Standard Operating Guidelines, and Work Rules.

3.3.1 The fire chief may delegate, in writing, the investigation of a complaint and some of the administrative aspects of the disciplinary process.

3.3.2 Supervisors that observe serious misconduct by any employee shall immediately take appropriate action in response to the misconduct, and shall promptly document and report the incident. Supervisors shall document unsatisfactory work habits and reports of misconduct of employees.

- 3.3.3 Investigative supervisors will provide a copy of all discipline reports pertaining to actions handled at the station or command level to the Office of Professional Standards in a timely manner.
- 3.3.4 A member of the Office of Professional Standards that relieves any Police Officer Standards and Training (P.O.S.T.) Certified member of AFRD from duty is responsible for taking into safekeeping that member's badge, fire department identification, and any weapons carried upon their person at the time they are relieved from duty to ensure the safety of other personnel as well as the public.

#### 3.4 EMPLOYEE RESPONSIBILITIES

All employees must answer questions and/or make available any relevant materials or sworn statements concerning an investigation of employee misconduct when directed to do so by a fire chief or duly appointed investigator. Employees will provide all relevant information and materials and answer all questions honestly, completely, and accurately. An employee's refusal to cooperate and provide sworn statements, answers, or relevant materials during an authorized administrative investigation will result in disciplinary action, up to dismissal.

#### 3.5 EMPLOYEE RESTRICTIONS

Except as authorized, in an investigation into employee misconduct, employees may not:

1. Interfere with the complaint investigation in any manner.
2. Independently participate in the investigation.
3. Be present during any investigative contact with a complainant or any witness involved in the investigation.

Employees may not contact the complainant or witnesses concerning the allegations; or discuss the existence of facts with anyone except designated department authorities conducting the investigation.

This restriction will not be construed to prohibit a member from discussing any aspects of a complaint with their attorney or other representative, or to prevent their attorney or representative from developing information for the members' defense, within the scope of section 3.5.

### 3.6 RIGHT TO REPRESENTATION

Every employee who is required to make a recorded (written or electronic) statement to OPS has the right to have one representative of their choice, subject to certain limited exclusions. Their representative cannot be a party to the case under investigation, nor can their representative be a chief officer.

- 3.6.1 Forty (40) hour AFRD members shall be afforded twenty four hours (eight business hours) to obtain representation, if they so desire. Accordingly, they shall be required to present themselves within twenty four hours of the date / time they receive such notification. Fifty three (53) hour AFRD members shall be required to present themselves to the designated interview site by no later than their next scheduled work shift. The time of that interview on that day shall be determined by OPS.
- 3.6.2 The amount of time that will be allowed to obtain representation for incidents that could lead to alcohol/drug screenings based upon reasonable suspicion shall be no more than two (2) hours.
- 3.6.3 During random alcohol/drug screenings, employees shall have two (2) hours from the time of notification to obtain representation. In all cases, employees must report to the testing laboratory within one hour when directed to do so. Once there, they may use the remainder of the time to wait for their one representative.
- 3.6.4 Employees have the right to have their attorney or representative present during questioning in an administrative investigation.
- 3.6.5 An employee's representative shall be allowed to consult with the employee, but shall not delay or interfere with the questioning process. Any objections to the form or content of the questions shall be noted, but the employee shall still be required to answer fully and completely any and all questions presented during the investigation. An employee must appear at the time that is scheduled for the interview.

## SECTION - 4 ACTIONS

### 4.1 COMPLAINT PROCEDURES

#### 4.1.1 ACCEPTANCE OF COMPLAINTS

4.1.2 Allegations of misconduct against any fire department employee will be accepted from any source at the Office of Professional Standards or by any supervisor at any facility in the department regardless of the location of the alleged occurrence. If the allegation warrants a Type II complaint, the supervisor may put the complainant directly in contact with the employee's supervisor, or may take the complaint to the employee's supervisor.

Once a supervisor receives information that an employee assigned to their command has been accused of violating a law, guideline, procedure, or work rule, that supervisor shall initiate a complaint.

4.1.3 Upon initial review of a complaint, the accepting supervisor may determine that the complaint does not involve an employee work rule violation. When the complaint concerns actions which are appropriate according to departmental policies or procedures, the applicable directives should be explained to the complainant. If the complainant is satisfied with the explanation of procedures and the accepting supervisor determines that no work rule has been violated then no further action is required and no complaint control number need be obtained. If the complainant is prepared to make a sworn statement and insists on filing a complaint, the supervisor shall obtain an OPS control number, prepare a preliminary complaint report, and document the complaint.

4.1.4 When the complainant makes the complaint in person, he or she will be given an opportunity to make a sworn written statement. A copy of the complainant's statement will be given to the complainant.

- 4.1.5 Complaints received by mail will be evaluated and processed in the same manner as other complaints. The complainant should be contacted and asked to make a sworn written statement whenever possible. All written correspondence should be included in the complaint file. A complainant's refusal to cooperate with an administrative investigation does not automatically preclude the Office of Professional Standards from investigating the allegations.
- 4.1.6 When the complainant refuses to identify himself/herself or reports an allegation of misconduct by telephone, the information will be assessed to determine if an investigation is warranted. If the information warrants an investigation, the complainant will be encouraged to make a sworn statement.
- 4.1.7 In a situation in which one party wishes to file a complaint against another person, after learning that the first party has filed a complaint against them, it shall be the practice of the department to conclude its investigation of the first complaint before investigating the counter complaint. It is foreseeable that circumstances may arise in which the findings of a complaint investigation, may indicate that persons other than the accused bear responsibility for their actions. The absence of a complaint against such persons shall not preclude the department from proceeding to institute disciplinary action against them.

## 4.2 COMPLAINT PROCESS

- 4.2.1 If the violation warrants a Type II complaint the completed forms will be forwarded to the Assistant Chief or the Deputy Chief of that section; in which the Assistant Chief or the Deputy Chief of that section will designate a member at or above the rank of Battalion/Section Chief to investigate the complaint(s). The Chief of the Office of Professional Standards will be notified of the designee, in writing.
- 4.2.2 The chief of the Office of Professional Standards will assign an investigator as case manager. The case manager will be in direct contact with the member investigating the type II complaint. The completed investigation (files and forms) will be forwarded to the OPS case manager.

- 4.2.3 If the violation warrants a Type I complaint the chief of OPS will assign an investigator to conduct the investigation. The complaint will be investigated and the investigative file will be forwarded to the chief of OPS.
- 4.2.4 The chief of OPS will review the investigative file for its completeness.
- 4.2.5 If sustained, the chief of OPS will forward the completed file to the Disciplinary Review Panel.
- 4.2.6 Civilian complaints will be investigated as Type I complaints.

#### 4.3 INTERIM ACTIONS

##### 4.3.1 RELIEF FROM DUTY WITH PAY

Section / battalion chiefs and above may relieve an employee from duty with pay to prevent embarrassment, liability, or discredit to the department. Employees in the following situations may be relieved from duty immediately:

Employees who:

- Have been placed under physical arrest;
- Have been formally indicted by a grand jury;
- Display a gross disregard for the rules of the department;
- Exhibit behavior indicative of apparent psychological or emotional impairment;
- Are ordered to submit to a Substance Analysis Tests;
- Are subject to a Force Usage Review Assignment (FURA) in association with the use of a firearm; and
- Officers may be removed from duty with pay, if at the scene of an emergency or in route to an emergency they flagrantly fail to enforce safety procedures.

#### 4.3.2 RELIEF FROM DUTY PROCEDURE

Supervisors who relieve an employee from duty will cause the following to be accomplished:

Immediately contact the Office of Professional Standards and apprise an OPS supervisor of the situation.

Relieve the employee of all Fire Department Property. All items will be logged and secured, for safekeeping.

The employee shall not be allowed to return to any AFRD facility until authorized to do so, in order to ensure the safety of employees, the public, and preservation of city property.

Should the relieving supervisor be from outside the employee's chain of command they should immediately notify the employee's captain, section/battalion chief of the situation.

Prepare a "Relief from Duty" form (see appendix 4) containing the following information:

The Relief from Duty will be with pay.

Briefly describe the reason(s) for the relief from duty.

Identify any departmental property received.

While under relief from duty the employee must make him or herself available to the Office of Professional Standards and to departmental investigative and Employee Assistance Program (EAP) as required, during the hours of 08:00 hours to 17:00 hours, Monday through Friday, or as otherwise directed.

Request the employee's signature. In the event the employee elects not to provide their signature, write "Employee Refused to Sign" in place of their signature. Whenever possible, this should be done in the presence of a witness.

Whenever an AFRD member is relieved from duty for the purpose of a Substance Abuse Analysis Test, based upon Reasonable Suspicion, the relieving supervisor will place the member under close observation and contact the on-call OPS supervisor immediately.

Distribute copies of the Relief from Duty form to the following: the employee, the fire chief, the employee's division command, OPS, and Human Recourses.

Before an employee is approved to have collected equipment returned, the employee's supervisor will contact the OPS section chief and/or the Director of Psychological Services to determine if the equipment may be released.

#### 4.3.3 DOCUMENTING AND PROCESSING ALLEGATIONS

Allegations of employee work rule violations will be recorded on the Preliminary Complaint Form (see Appendix 10). The preliminary complaint report will include a control number obtained from the Office of Professional Standards. The Office of Professional Standards is responsible for maintaining a log of the control numbers. Any sworn statements or other evidence relevant to the allegations will be attached to the Preliminary Complaint Form and included in the Complaint File.

Allegations of serious misconduct are classified as Type I complaints. Type I complaints are defined in section 2.1.4 of this manual. Supervisors must report allegations of Type I misconduct to the Office of Professional Standards immediately. If there is any question about the type of the allegations, the supervisor shall contact an OPS investigator immediately and the Chief of the Office of Professional Standards will determine the proper classification.

- 4.4 Supervisors that discover or receive Type I complaints after 1700 hours, on weekends, and holidays will request that the AFRD Dispatch Supervisor notify the on-call OPS investigator. The on-call OPS investigator will evaluate the seriousness of the complaint by contacting the field supervisor. Unless immediate action from the OPS investigator is deemed appropriate, the OPS investigator will direct the appropriate supervisor to submit the preliminary complaint report and to perform any other appropriate responses that the situation requires.

## **SECTION - 5 INVESTIGATIONS**

### **5.1 INTERVIEW PROCEDURES**

- 5.1.2 All interviews of AFRD members shall originate from a complaint from either an internal or external source. No interviews shall be conducted without the grounds for the investigation being reduced to writing. Such grounds may come through a Preliminary Complaint form generated within AFRD, or it may come from an outside source such as a citizen or a business entity.
- 5.1.3 All AFRD members directed to provide oral and / or written statements before OPS personnel shall be made aware of the right to have one representative present during any and all OPS interviews. However, any employee who is either a potential accused employee or a potential witness in a complaint investigation may not act in the capacity of a representative for any other employee being questioned as the accused or as a witness in that complaint investigation. There shall be only one representative allowed to be present during interviews.
- 5.1.4 All OPS interviews of AFRD members who should understand that every interview is formal. No interview shall be regarded as an informal event.

- 5.1.5 All statements shall be typewritten. Handwritten statements will not be accepted from AFRD members. No unsigned statements shall be permitted to become a part of any investigative file. Interviewees will be given the opportunity to review their written statement for spelling or grammatical, as well as content errors. After such corrections have been made, the interviewee shall be required to sign said document. They shall be provided with a copy of their signed statement for their records. Additionally, interviews may be recorded on audio / video disc. Such recordings may then be later transcribed. Such recordings shall not serve as a substitute for a written statement nor can the issuance of a written statement be delayed beyond the date of the actual OPS interview.
- 5.1.6 Prior to commencing any interview session AFRD members shall be made aware of their rights and responsibilities pursuant to their interview. At the point of discovery, every interviewee shall be made aware of their rights as defined by the U.S. Supreme Court case of Garrity vs. New Jersey, when criminal implications exist. They shall also be made aware that they must cooperate with the interviewer in a timely manner and that untruthful statements shall result in disciplinary action up to and including, termination of their employment. They shall also be made aware that the contents of their statements must be kept confidential, and that such statements may be made known only to their designated representative. Failure to comply with this confidentiality requirement may result in additional disciplinary action up to, and including termination.
- 5.1.7 It shall be the responsibility of the interviewee to respond to questions posed by the interviewer, in a truthful manner. The interviewee shall be afforded an opportunity to confer with his /her representative before responding to any question for which they need consultation. Such consultation may be exchanged through private whispers between the interviewee and their representative. Responses to all questions must be made by the interviewee. Representatives may not speak on behalf of the interviewee in answering questions posed by the interviewer.

- 5.1.8 All statements taken shall provide an opportunity for the interviewee to express their point of view. That opportunity shall be afforded through the inclusion of an open ended question asking "Do you have any information that you would like to provide related to this investigation?" The response of the interviewee must be recorded verbatim. Employees will be afforded a reasonable opportunity to review their statements and make corrective edits to it before being required to sign their statement.
- 5.1.9 Any employee who refuses to comply with the interview procedures contained herein may be subject to disciplinary action, up to and including dismissal for failure to cooperate.
- 5.1.10 At the conclusion of the interview session, OPS will retain a signed and notarized copy of the employee's type written statement. The employee will also be given an exact copy of that same document. Both the interviewer and the person being interviewed have the right to receive a signed copy of the interview immediately after the interview session concludes. Video and audio recordings shall not be used to serve as a substitute for a written statement.

## 5.2 INVESTIGATIVE DOCUMENTATION

- 5.2.1 Supervisors investigating alleged employee misconduct will contact, interview, and obtain written statements from all complainants, witnesses and other employees who are involved in the complaint. Supervisors investigating alleged employee misconduct will also obtain any documents or other materials which are relevant to the alleged incident. Examples include photographs, medical records, fire and accident reports, certified copies of court records or citations, lab results, audio or videotape recordings, or statements, etc.

The fire chief or the OPS section chief can require an employee to be photographed, to participate in a line-up, and/or to submit financial disclosure statements when doing so is directly related and essential to that particular internal affairs investigation which is being conducted by the department.

The investigator will complete an investigative folder containing the relevant paperwork identified during the investigation and the forms listed on the Complaint Investigation Checklist (see appendix #3). If during the course of the investigation the investigating supervisor uncovers evidence of additional allegations or violations, he or she will investigate them also. If any of these allegations or violations are of a Type I nature, he or she shall immediately notify OPS. If after hours, the supervisor will contact Communications and request the on-call OPS investigator.

If a citizen or employee requests to be given a polygraph examination, the investigating supervisor should arrange for the polygraph through the Office of Professional Standards. Polygraph results can be used as investigative tools, but cannot be used as evidence unless both sides agree.

- 5.2.2 Supervisors should maintain a log of complaint files and ensure that no investigation remains overdue without cause.

### 5.3 DISPOSITION OF THE COMPLAINT

Each alleged work rule violation must be supported by a “conclusion of fact” and will be designated under one of the following classifications: Sustained, Not Sustained, Exonerated, Unfounded or Exceptionally Closed.

In an OPS investigation, the OPS section chief is authorized to designate cases as Sustained, Not Sustained, Exonerated, Unfounded or Exceptionally Closed.

In a Type II investigation, the investigating supervisor (or higher authority taking responsibility for the investigation) will recommend the investigative disposition. If there are no sustained charges, the unit chief will send the completed investigative folder to the Office of Professional Standards through the chain of command for review, notification of the complainant, and storage.

If there are sustained charges, the procedure for determining appropriate actions for sustained charges is described in the Disciplinary Matrix found in Section 5.6 of this manual. Before any actions are finalized, the file must be sent to OPS for review.

### 5.3.1 INVESTIGATION TIMEFRAME

All complaints originating within AFRD must be assigned a complaint number within thirty (30) calendar days of the occurrence OR discovery of the violation in question. Any complaint that is filed beyond thirty (30) day timeframe must be approved by the Fire Chief justifying the delay. The thirty (30) day requirement shall not apply for citizens filing complaints against AFRD members.

## 5.4 AJUDICATION

### 5.4.1 DISCIPLINARY REVIEW PANEL

The OPS Section Chief, assisted by the fire advocate will review each sustained complaint disposition prior to the file being sent to the Disciplinary Review Panel (DRP). This shall be done as a quality assurance measure to insure that the file is complete and to avoid duplicity of charges. Once the quality assurance review has been passed, files will be forwarded to the DRP, via its chairperson, for their determinations.

The fire chief reserves the right at his/ her discretion to propose appropriate adverse action without further consultation. Except in cases in which the fire chief intervenes, the file will then be forwarded to the thirteen (13) person Disciplinary Review Panel (Reference #2) to review and to make recommendations.

The thirteen people shall be comprised of diverse members of the AFRD:

- (3) Deputy Fire Chiefs
- (6) Assistant Fire Chiefs
- (1) Representative from Local 134 Labor Union
- (1) Representative from PACE Labor Union
- (1) Representative from Atlanta Progressive Firefighters
- (1) Chairperson

The DRP chairperson shall then convey the panel's recommendations to the fire chief by no later than the last Friday of each month.

They shall review the situation under consideration. After doing so they shall vote on the corrective actions that they intend to recommend.

A quorum of at least six (7) members, including the chairperson must be in attendance at a DRP meeting in order to vote.

They are not bound to arrive at a unanimous vote, only to achieve a simple majority of those present to vote.

The DRP's chairperson will then convey the board's recommendations to the fire chief. Their recommendations may include, returning the investigation to OPS or concurring with the findings. When the DRP concurs with OPS' findings the board shall recommend a range of sanctions for the fire chief to consider. The fire chief then has the option to accept, or to reject the DRP's recommendations.

Their ultimate recommendation by the fire chief is then communicated to the chief of OPS to pass on to the fire department advocate. The advocate shall then be responsible for drafting and executing the appropriate Notice of Proposed Adverse Action, within the framework of the fire chief's schedule and applicable city code provisions.

#### 5.4.1.2 DISCRIPTION OF CATEGORIES

In instances where the disciplinary action for a violation is not clearly defined by Standard Operating Procedure or Guidelines, each sustained work rule violation will be placed in a complaint category ranging from Category "A" to Category "D". Category "A" infractions represent the least egregious kind of misconduct while categories "B", "C", and "D" represent progressively more serious types of misconduct. Each category also lists a type of probationary period referred to as the "reckoning period."

Any repeated violation of the same work rule or of a similar or related work rule during the “reckoning period” shall result in escalation to a progressively higher category. A higher category is also recommended when the employee has three or more past sustained work rule violations unrelated to the work rule violation under consideration, but these three or more must have active reckoning periods. Any combination of violations arising out of separate incidents may be considered jointly and normally will justify a more severe disciplinary action than a violation or violations arising out of a single incident.

#### 5.4.2 DISCIPLINARY RANGES

The purpose of disciplinary ranges is to try to ensure consistency in the majority of disciplinary decisions made in the Atlanta Fire Rescue Department. The disciplinary ranges section of this manual provides a structured model that allows the fire chief to consider similar factors when making a decision on disciplinary actions. It is not the intent of this directive to list every example of misconduct. The listed disciplinary ranges are intended only to provide guidance for decision-makers. Those charged with making disciplinary decisions must examine the inappropriate behavior and reasonably place it in one of the defined categories. The recommended guidelines do not in any way diminish the authority of the fire chief to take whatever disciplinary action he/she deems necessary to protect and preserve the integrity of the Atlanta Fire Rescue Department.

#### 5.5 ESCALATING GRADING CRITERIA

Category “A” Violations: The first occurrence of a minor work rule violation

A minor violation is the first occurrence of a violation which:

- Has no effect of the perception of the department by the public
- Has no affect on other members of the department
- Has no impact on the delivery of service by the department

Any currently sustained Category "A" violation that occurs during the reckoning periods of three or more past violations, related or unrelated, is reclassified as a Category "B" violation. The reckoning period used for subsequent misconduct shall be 12 months from the date of discipline.

The range of discipline for a Category "A" violation shall be:

- Oral Admonishment (OA)
- Written Reprimand (WR)

Proactive corrective actions which may be used for Category "A" violations include:

- Training
- Counseling

Category "B" violations: The occurrence of a more serious work rule violation which has the potential to:

- Affect the perception of the department by the public
- Affect other members of the department
- Have a negative impact on the delivery of service by the department

Any currently sustained Category "B" violation that occurs during the reckoning periods of three or more past violations, related or unrelated, is reclassified as a Category "C" violation.

The reckoning period used for subsequent misconduct shall be 24 months from the date of discipline.

The range of discipline for a Category "B" violation shall be:

- Written Reprimand
- One (1) to Five (4) day suspension

Proactive corrective actions which may be used for Category “B” violations include:

- Training
- Written Counseling
- Employee Assistance Recommendation to Employee

Category “C” violations: The occurrence of a very serious work rule violation which has to a limited degree:

- Brought discredit to the department
- Effected other members of the department
- Had a negative impact on the delivery of service by the department

Any currently sustained Category “C” violation that occurs during the reckoning periods of three or more past violations, related or unrelated, is reclassified as a Category “D” violation. Category “D” violations remain permanently on the record.

The reckoning period used for subsequent misconduct shall be 48 months from the date of discipline.

The range of discipline for a Category “C” violation shall be:

- Five (5) to fifteen (15) days suspension
- Demotion

Proactive corrective actions which may be used for Category “C” violations include:

- Training
- Employee Assistance Referral
- P.O.S.T. Certified Substance Abuse Program

Category "D" violations: The occurrence of a major work rule violation which:

- Brought serious discredit to the department
- Effectively impacted other members of the department
- Had an adverse impact on the delivery of service by the department

The range of discipline for a Category "D" violation shall be:

- Demotion
- Dismissal

Either of the listed impact measurements is grounds. There is no requirement to cover them all

Proactive corrective actions which may be used for Category "D" violations include:

- Training
- Employee Assistance Intervention
- Leave of Absence without pay
- P.O.S.T. Certified substance abuse program



## CHART 5.6

### ESCALATING GRADING CRITERIA

This chart (5.6) is intended to summarize the preceding information.

CATEGORY	CRITERIA	DISCIPLINE RANGE	RECKONING PERIOD
<b>"A" Minor</b>	<ul style="list-style-type: none"> <li>-Has no effect on the perception of AFRD by the public</li> <li>-Has no effect on other members of AFRD</li> <li>-Has no impact on delivery of services by AFRD</li> </ul>	<ul style="list-style-type: none"> <li>- Letter of Counseling</li> <li>- Written Reprimand</li> </ul>	- 12 months from the date of discipline
<b>"B" Serious</b>	<ul style="list-style-type: none"> <li>-Affects the perception of AFRD by the public</li> <li>-Affects other AFRD members</li> <li>-Has a negative impact on services by AFRD</li> </ul>	<ul style="list-style-type: none"> <li>- One (1) to five (4) day suspension</li> </ul>	- 24 months from the date of discipline
<b>"C" Very Serious</b>	<ul style="list-style-type: none"> <li>-Has brought discredit to AFRD</li> <li>-Has effected other members of AFRD</li> <li>-Has had a negative impact on the delivery of services by AFRD</li> </ul>	<ul style="list-style-type: none"> <li>- Six (5) to Fifteen (15) day suspension</li> <li>-Demotion</li> </ul>	- 48 months from the date of discipline
<b>"D" Major Violations</b>	<ul style="list-style-type: none"> <li>-Has brought serious discredit to the department</li> <li>-Has significantly affected other members of AFRD</li> <li>-Has had an adverse impact on the delivery of service by AFRD</li> </ul>	<ul style="list-style-type: none"> <li>- Sixteen (16) to thirty (30) day suspension</li> <li>-Demotion</li> <li>-Dismissal</li> </ul>	-Permanent record

## 5.6 DISCIPLINARY MATRIX

This chart (5.7) illustrates the disciplinary matrix of rule violations and their escalating sanctions. It also covers applicable corrective action options:

### Chart 5.7

Category	Nature of Violation	Reckoning Period	Disciplinary Range	Corrective Action
“A”	Minor	12 months	Oral Admonishment Written Reprimand	Training Counseling
“B”	Serious	36 months	1-4 day Suspension	Training Written Counseling EAP
“C”	Very Serious	48 months	5-14 day suspension 15-30 day suspension Demotion	Training EAP Referral P.O.S.T. Certified Substance Abuse Program
“D”	Major	Permanent Record	Demotion Dismissal	Training EAP Referral P.O.S.T. Certified Substance Abuse Program LWOP

## 5.7 LEVELS OF NON ADVERSE / ADVERSE DISCIPLINARY AUTHORITY

This chart (5.8) illustrates who has authority to impose various levels of corrective action. Adverse actions shall be at the sole discretion of the fire chief.

### Chart 5.8

<b>Position</b>	<b>Level of Supervision</b>	<b>Authorized Level of Disciplinary Action Non Adverse / Adverse</b>
Lieutenant	First	Oral Admonishment, Letter of Counseling
Captain	Second	Oral Admonishment through, Letter of Counseling, Written Reprimand
Battalion / Section Chief	Third	Oral Admonishment, Letter of Counseling, Written Reprimand
Assistant Chief	Fourth	Letter of Counseling, Written Reprimand
Deputy Chief	Fifth	Letter of Counseling, Written Reprimand
Fire Chief	Highest	Adverse actions

## 5.8 CONSIDERING FACTORS THAT MAY BE CONSIDERED WHEN DETERMINING APPROPRIATE DISCIPLINE

To determine the appropriate penalty in each instance, the disciplinary authority may consider additional relevant factors. Additional factors that may be considered include, but are not limited to those listed in the following (Chart 5.9) criteria:

## Chart 5.9

### **DISCIPLINARY CONSIDERATION FACTORS**

- \_\_\_\_\_ (1) The nature and seriousness of the offense, and its relation to the employee's duties, position and responsibilities, including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated;
- \_\_\_\_\_ (2) The employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;
- \_\_\_\_\_ (3) The employee's past disciplinary record;
- \_\_\_\_\_ (4) The employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;
- \_\_\_\_\_ (5) The effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon the supervisor's confidence in the employee's ability to perform assigned duties;
- \_\_\_\_\_ (6) Consistency of the penalty with those imposed upon other employees for the same or similar offenses;
- \_\_\_\_\_ (7) Consistency of the penalty with any applicable agency table of penalties;
- \_\_\_\_\_ (8) The notoriety of the offense or its impact upon the reputation of the agency;
- \_\_\_\_\_ (9) The clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question;
- \_\_\_\_\_ (10) Potential for the employee's rehabilitation;
- \_\_\_\_\_ (11) Mitigating circumstances surrounding the offense such as unusual job tension, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter; and
- \_\_\_\_\_ (12) The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

## 5.9 UTILIZATION OF THE DISCIPLINARY MATRIX

It is the goal of the AFRD to employ consistent and rational factors in reaching disciplinary determinations. The fire chief or his/her designee will never be allowed to let race, religion, national origin, one's gender or their sexual orientation play any role in the disciplinary process. The Fire chief and/or disciplinary review panel is allowed to take other factors into consideration where applicable. AFRD operates under an established set of Standard Operating Procedures (SOP's) as well as a published set of Work Rules. Just as there are justifiable variables in other areas of AFRD's operations, the same is true of the sanctions which can result from violations of SOP's and / or Work Rules. Chart 5.10 provides us with a roadmap of recommended actions which are appropriate for various first offense violations, or for repeat offenders. The fire chief retains the discretion to disregard the disciplinary recommendations contained herein in all circumstances.

## Chart 5.10

### Professional Responsibilities

Work Rule	Title	Category A		Category B		Category C		Category D	
1.00	Appropriate Action Required	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL	
1.01	Cooperation	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL	
1.02	Truthfulness							DISMISSAL	
1.03	Conduct								
	a.			1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL	
	b.			1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL	
	c.			1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL	
1.04	Courtesy								
	a.			1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL	
	b.			1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL	
	c.			1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL	
1.05	Obey the Law			1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL	
1.06	Suspended or Separated Em.	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL	
1.07	Public Criticism	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL	
1.08	Soliciting Gifts,etc.....	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL	
1.09	Acceptance of Gifts,etc....								
	a.	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL	
	b.	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL	
1.10	Acceptance of Rewards	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL	
1.11	Bribery				5-14 DS	15-30 DS	DEMOTION	DISMISSAL	
1.12	Transactions w/Involved Persons			1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL	
1.13	Using Pos. for Personal Gain	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL	
1.14	Confidentiality of Dept. Business		WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL	
1.15	Right to Know	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL	
1.16	Security Matters	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL	
1.17	Personal Debt	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL	
1.18	Personal Problems	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL	
1.19	Providing Phone# and Address	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL	
1.20	Reporting Change of Name Address and or Phone Number								
	a.	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL	
	b.	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL	
1.21	Understanding Directives	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL	
1.22	Conformance to Directives	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL	
1.23	Chain of Command	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL	
1.24	Forwarding Communication	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL	
1.25	Physical and/or Psychological Fitness for Duty								
		OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL	
1.26	Keeping Up to Date								
	a.	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL	
	b.	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL	
1.27	Submitting Reports	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL	
1.28	Identification Cards								
	a.	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL	
	b.	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL	
1.29	Providing Identification	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL	
1.30	Improper Use of Dept. Correspondence	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL	
1.31	Recommending Businesses and/or Services			1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL	

## GENERAL CONDUCT

Work Rule	Title	Category A	Category B	Category C		Category D	
2.00	Responsibilities of a Supervisor						
	a.		WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION DISMISSAL
	b.		WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION DISMISSAL
2.01	Obeying Supervisory Personnel			1-4 DS	5-14 DS	15-30 DS	DEMOTION DISMISSAL
2.02	Manner of Issuing Orders	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION DISMISSAL
2.03	Abuse of Authority			1-4 DS	5-14 DS	15-30 DS	DEMOTION DISMISSAL
2.04	Unlawful Orders			1-4 DS	5-14 DS	15-30 DS	DEMOTION DISMISSAL
2.05	Obedience to Unlawful Orders						
	a.		WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION DISMISSAL
	b.		WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION DISMISSAL
	c.		WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION DISMISSAL
2.06	Reporting Unlawful Orders		WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION DISMISSAL
2.07	Receiving Conflicting Orders						
	a.	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION DISMISSAL
	b.	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION DISMISSAL
	c.	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION DISMISSAL
2.08	Senior Employees in Charge	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION DISMISSAL
2.09	Public Service	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION DISMISSAL
2.10	Use of Substances						
	a.						DISMISSAL
	b.						DISMISSAL
	c.						DISMISSAL
	d.		WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION DISMISSAL
2.11	Threats and/or Violence to an Employee or Citizen						
	a.					15-30 DS	DEMOTION DISMISSAL
	b.					15-30 DS	DEMOTION DISMISSAL
	c.					15-30 DS	DEMOTION DISMISSAL
2.12	Personality Clashes/Conflicts	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION DISMISSAL
2.13	Sexual Harassment Prohibited					15-30 DS	DEMOTION DISMISSAL
2.14	Discrimination			1-4 DS	5-14 DS	15-30 DS	DEMOTION DISMISSAL
2.15	Use of Discriminatory References			1-4 DS	5-14 DS	15-30 DS	DEMOTION DISMISSAL
2.16	Call to Duty	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION DISMISSAL
2.17	Sleeping on Duty	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION DISMISSAL
2.18	Malingering or Pretending	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION DISMISSAL
2.19	Punctuality						
	a.	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION DISMISSAL
	b.	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION DISMISSAL
2.20	Absent without Leave (AWOL)						
	a.		WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION DISMISSAL
	b.		WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION DISMISSAL
2.21	Abandonment of Job				5-14 DS	15-30 DS	DEMOTION DISMISSAL
2.22	Abuse of Leave	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION DISMISSAL
2.23	Job Actions Prohibited			1-4 DS	5-14 DS	15-30 DS	DEMOTION DISMISSAL
2.24	Private Business	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION DISMISSAL
2.25	Outside Employment						
	a.	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION DISMISSAL
	b.	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION DISMISSAL
	c.	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION DISMISSAL

**GENERAL CONDUCT, cont'd**

	d.			1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL
	e.	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL
	f.	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL
	g.			1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL
	h.	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL
	i.	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL
2.26	Conflicts of Interest			1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL
2.27	Peddling and/or Soliciting Prohibited	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL
2.28	Loitering by Public							
	a.	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL
	b.	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL
	c.	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL
2.29	General Appearance							
	a.	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL
	b.	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL
2.30	Wearing of Uniforms and Equip.	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL
2.31	Off-Duty Personnel, in Uniform, in Public			1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL
2.32	Unsatisfactory Performance							
	a.	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL
	b.	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL
	c.			1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL
2.33	Radios/Pagers/Cell phones to Remain On	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL
2.34	Interfering with Radio Communications	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL
2.35	Emergency Situations			1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL
2.36	Mutual Protection/Assistance			1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL
2.37	Cowardice			1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL
2.38	Unnecessary and/or Excessive Force Prohibited	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL
2.39	Reporting Required When Force Used			1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL
2.40	Situations Involving Off-Duty Employees			1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL
2.41	Civil Actions		WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL
2.42	Outside Affiliations	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL
2.43	Indebtedness	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL
2.44	Supervisor-Subordinate Relationships							
	a.	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL
	b.	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL

### Conduct Relating to Judiciary Bodies and Investigative Boards

Work Rule	Title	Category A		Category B		Category C		Category D	
3.00	Conduct and Appearance in Court	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL	
3.01	Arrest and/or Court Actions Involving an Employee			1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL	
3.02	Receipt of Service of Process	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL	
3.03	Employees Subpoenaed as a Defense Witness	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL	
3.04	Claims for Damage and Legal Compromise	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL	

### Department Property and Equipment

Work Rule	Title	Category A		Category B		Category C		Category D	
4.00	Responsibility for Examining and Reporting City-Owned Property								
	a.	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL	
	b.			1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL	
4.01	Operator to be Qualified and Authorized			1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL	
4.02	Assignment and Uses of City-Owned Vehicles			1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL	
4.03	Vehicle Appearance	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL	
4.04	Operation of City-Owned Vehicles								
	a.			1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL	
	b.	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL	
4.05	Safe Driving Techniques								
	a.			1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL	
	b.			1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL	
	c.			1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL	
	d.			1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL	
4.06	Vehicle Maintenance Checklists								
	a.	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL	
	b.	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL	
4.07	Control of Medications, Controlled Substances, and Legend Devices								
	a.	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL	
	b.	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL	
4.08	Electronic Communications								
	a.	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL	
	b.			1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL	
	c.			1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL	
	d.			1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL	
	e.	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL	
	f.			1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL	
	g.	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL	
4.09	Recovered Properties	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL	
4.10	Personal Use of Property	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL	

### Public Activities

Work Rule	Title	Category A	Category B	Category C		Category D	
5.00	Endorsement and Testimonials	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION DISMISSAL
5.01	Publishing Books, Pamphlets, or Articles	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION DISMISSAL
5.02	Improper Organizations				5-14 DS	15-30 DS	DEMOTION DISMISSAL
5.03	Soliciting Advertisement	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION DISMISSAL
5.04	Political Activity						
	a.	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION DISMISSAL
	b.	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION DISMISSAL
	c.	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION DISMISSAL
	d.	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION DISMISSAL
	e.	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION DISMISSAL
	f.	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION DISMISSAL
	g.	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION DISMISSAL
5.05	Employees and Elective Offices	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION DISMISSAL
5.06	Civil Leave						
	a.	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION DISMISSAL
	b.	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION DISMISSAL
	c.	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION DISMISSAL
5.07	Contributions	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION DISMISSAL
5.08	Contact with Elected or Appointed City Officials	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION DISMISSAL

### Firearms Policy

Work Rule	Title	Category A	Category B	Category C		Category D	
6.00	Basic Firearms Approval			1-4 DS	5-14 DS	15-30 DS	DEMOTION DISMISSAL
6.01	Basic Firearms Issue			1-4 DS	5-14 DS	15-30 DS	DEMOTION DISMISSAL
6.02	Inspection of Firearms	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION DISMISSAL
6.03	Ammunition of Firearms			1-4 DS	5-14 DS	15-30 DS	DEMOTION DISMISSAL
6.04	Qualifying with Firearms	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION DISMISSAL
6.05	Carrying of Firearm	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION DISMISSAL
6.06	Display of Firearm	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION DISMISSAL
6.07	Firearms Prohibited in Restricted Areas				1-4 DS	5-14 DS	15-30 DS
						DEMOTION	DISMISSAL
6.08	Carrying a Firearm aboard Commercial Aircraft				1-4 DS	5-14 DS	15-30 DS
						DEMOTION	DISMISSAL
6.09	Safeguard of Firearms				1-4 DS	5-14 DS	15-30 DS
						DEMOTION	DISMISSAL
6.10	Use of Firearms						
	a.						15-30 DS
	b.			1-4 DS	5-14 DS	15-30 DS	DEMOTION DISMISSAL
	c.			1-4 DS	5-14 DS	15-30 DS	DEMOTION DISMISSAL
	d.				5-14 DS	15-30 DS	DEMOTION DISMISSAL
	e.				5-14 DS	15-30 DS	DEMOTION DISMISSAL
	f.			1-4 DS	5-14 DS	15-30 DS	DEMOTION DISMISSAL
6.11	Loss or Theft of Firearms			1-4 DS	5-14 DS	15-30 DS	DEMOTION DISMISSAL
6.12	Maintenance and Repair of Firearms						

<b>Firearms Policy, cont'd</b>								
	a.	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL
	b.	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL
6.13	Altering Firing Mechanism of Firearms							
	a.	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL
	b.	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL
6.14	Reporting Discharge of Firearm	OA	WR	1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL
	a.			1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL
	b.			1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL
6.15	Firearms Discharge Investigation			1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL
6.16	Disposition of Firearms Use							
	Reports			1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL
6.17	Special Weapons and Equipment				5-14 DS	15-30 DS	DEMOTION	DISMISSAL
6.18	Personal Weapons							
	a.			1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL
	b.			1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL
	c.			1-4 DS	5-14 DS	15-30 DS	DEMOTION	DISMISSAL

## **SECTION - 6 NON ADVERSE DISCIPLINARY ACTIONS**

### **6.1 ORAL ADMONISHMENT**

An oral admonishment is the initial step in dispensing non-adverse disciplinary action. It is intended to correct relatively minor first incidents of Category "A" offenses. In such cases, the supervisor is expected to counsel the employee regarding their undesirable behavior or their questionable actions. The employee is not given any written documentation. However the supervisor is required to record the details of the event and of the counseling session, should those details become pertinent in the future. The Atlanta City Code provides that an Oral Admonishment is grievable.

### **6.2 WRITTEN REPRIMAND**

A written reprimand will be issued by a captain or higher authority in the employee's chain of command. The reprimand is a written warning of error or inappropriate behavior and will state that more serious action will be taken if similar misconduct is repeated. The reprimand will be addressed to the employee which, will include the charge, the specific behavior, and the date of occurrence.

The original copy of a written reprimand will be placed in the completed disciplinary complaint file. It shall remain permanently in the employee's file. The employee will receive a copy and the remaining copies will be forwarded to the locations identified on the bottom of the reprimand.

### 6.3 NON ADVERSE DISCIPLINARY ACTION

- 6.3.1 Non adverse disciplinary actions do not result in loss of pay.
- 6.3.2 Once their investigation is concluded, the appropriate chief will make a determination of the complaint. He / she will then notify OPS within three (3) days of making their determination.
- 6.3.3 OPS will notify the affected parties regarding the disposition of the investigation.
- 6.3.4 If the complaint has been sustained OPS will then forward the file to the DRP for their review. The DRP then forwards the file to the fire chief with their recommendations. If the DRP recommends Non-Adverse Action the fire chief should refer the file to the appropriate assistant chief to issue the applicable action. If part of the recommendation calls for adverse action the case will follow the adverse action process (7.0). The fire chief then returns the file to OPS with whatever comments which may be appropriate. OPS will forward any non-adverse actions to appropriate assistant chief to delegate downward.
- 6.3.5 A battalion chief or above (see Chart 5.8) will issue the oral admonishment or the written reprimand.
- 6.3.6 A deputy chief or the fire chief has the option to issue non-adverse actions as well as their subordinates cited in Chart 5.8.

### 6.3.7 NON-ADVERSE ACTIONS: FACTORS TO CONSIDER

- 6.3.7.1 The appropriate section / battalion or assistant chief will review the sustained work rule violation(s) with the employee, review the process used in categorizing individual rule violations, and consider proactive corrective actions in addition to the disciplinary action. The appropriate section / battalion or assistant then decides whether to issue the non-adverse action or to recommend a different action.
- 6.3.7.2 Once an appropriate non-adverse disciplinary action is selected, the employee's supervisor will carry out the discipline as soon as possible. When a supervisor issues non-adverse action to an employee, during the meeting, the supervisor must specify which work rule relates to the non-adverse action on the Supervisor Complaint Investigation Checklist form. The employee's name will be typed on the form and the employee will sign their name. The employee's signature does not constitute an admission of guilt, only of notification of the non-adverse action and receipt of the form. A copy of the signed form must be provided to the employee. The fire chief is responsible for placing a copy of the form in the administrative investigation file. Adverse action procedures are outlined in Section 7.0.
- 6.3.7.3 Once the non-adverse action is taken, the appropriate section / battalion or assistant chief will forward the completed investigation through the chain of command to the Office of Professional Standards within two work shifts after the non-adverse action was given to the employee. The Office of Professional Standards is responsible for maintaining all records of non-adverse action.
- 6.3.7.4 Non adverse actions against classified members of the AFRD may be grievable under the provisions prescribed in Section 6.4 which follows.

#### 6.4 GRIEVANCES ARISING FROM NON-ADVERSE ACTION

Classified AFRD members who receive non adverse actions have the right to file a grievance petitioning for that non adverse action to be reversed. Chart 6.4 reflects a synopsis of that process and its various time sensitive parameters. Every member of the AFRD has the right to expect that their grievance(s) will be moved forward in a timely manner. Supervisors at any level within the grievance process who, without just cause, fail to take appropriate action may face disciplinary action for their negligence.

## ADMINISTRATION OF A GRIEVANCE WITHIN AFRD

Chart 6.4

STAGE	REQUIRED ACTION	RESPONSE TIME FRAME	RESPONSIBLE PARTIE(S)
Triggering Event	Set meeting with grievant's supervisor. Usually a Lt or Captain	Request meeting w/in 3 days of event. Supervisor must schedule w/in 3 days of request	Grievant request meeting. Supervisor must grant request
Post 1 <sup>st</sup> level meeting	1 <sup>st</sup> level supervisor must make a determination	1 <sup>st</sup> level supervisor has 5 work days to respond	Grievant has 3 work days to move it to 2 <sup>nd</sup> level if not pleased
Sect/ Battalion Chief	BC makes a determination	BC has 5 work days to respond	Grievant has 3 work days to move it to 3rd level if not pleased
Assistant Chief	AC makes a determination	AC has 5 work days to respond	Grievant has 3 work days to move it to 4th level if not pleased
Deputy Chief	DC makes a determination	DC has 5 work days to respond	Grievant has 3 work days to move it to fire chief if not pleased
Fire Chief	FC makes a determination	FC has 10 work days to respond	FC's determination is final for sworn AFRD members
Labor Relations	Non-sworn grievants may appeal the FC's determination to COA's Labor Relations office. Their decision is final within COA government	Grievant must file within 3 days of receipt of FC's determination	Available only to non-sworn AFRD members

## **SECTION - 7 ADVERSE DISCPLINARY ACTION**

### **7.1 DISCRITION**

Adverse disciplinary action includes suspension without pay, demotion, and dismissal. Adverse action differs from non-adverse action in that it affects the employee's income. Therefore, additional procedures are required by the Labor-Management Relations Ordinance. Emergency Disciplinary Action (Section 8.8) also leads to adverse disciplinary action, but by different procedures.

### **7.2 SUSPENSION WITHOUT PAY**

- 7.2.1 Suspension without pay must be for cause and for proper disciplinary purposes only.
- 7.2.2 A suspension without pay can only be given by the fire chief or his/her designee.
- 7.2.3 A suspension without pay for disciplinary purposes may not exceed thirty days for charges brought as a result of one incident.
- 7.2.4 An employee who is suspended will relinquish to his or her immediate supervisor the department-issued badge and all identification cards as soon as the suspension becomes effective. These items may be stored in the OPS office. The employee will be given a copy of the property receipt form. All P.O.S.T. Certified members of the AFRD will relinquish their department issued firearm to a member of the Office of Professional Standards.
- 7.2.5 The fire chief reserves the right to deactivate the extra job permit of any employee during the period of their suspension or for whatever period of time the fire chief deems.

### 7.3 DEMOTION OR DISMISSAL

- 7.3.1 No employee will be dismissed from employment or otherwise adversely affected as to present compensation or present employment status except for cause. Cause shall include, but shall not be limited to, violations of employee work rules, other department directives, the Labor-Management Relations Ordinance, and other city ordinances.
- 7.3.2 When the Final Adverse Action is dismissal, the department may relieve the employee from duty with pay during the employee response period and prior to any effective date of the dismissal.
- 7.3.3 Following the issuance of a Notice of Proposed Final Adverse Action any employee who resigns will be considered to have resigned in bad standing.
- 7.3.4 Upon dismissal an employee will be directed to Human Resources for the status of his or her fringe and retirement benefits after dismissal. It shall be solely the employee's responsibility to obtain such information.

### 7.4 EXCEPTIONS

#### Exceptions to Adverse Action Procedures or Cause Requirements

- 7.4.1 Employees in discretionary positions such as battalion/section chiefs and above may be suspended without pay by delivering a memorandum to them notifying them that they are to be suspended without pay for a specific number of days. More severe adverse actions such as dismissals may or may not be preceded by demoting the individual back to their most recent permanent rank, which is usually to the rank of captain. Demotion decisions will be made solely at the discretion of the fire chief. Demotions may not be appealed to the Civil Service Board.

- 7.4.2 An employee may be demoted during a probationary period to the rank held immediately prior to the promotion and such action shall not be subject to these procedures.
- 7.4.3 Newly employed probationary employees may be dismissed and are not subject to these procedures.
- 7.4.4 Employees may be terminated to a reduction in force (RIF), or by reorganization. Classified employees and employees with retained rights who experience a RIF have the right to appeal those actions to the Civil Service Board.

## **SECTION - 8 ADVERSE ACTION PROCEDURES (N.P.A.A.)**

The OPS advocate will complete the N.P.A.A. by adding appropriate dates, scheduling the date and time of an employee response session; including the proposed disciplinary action(s).

- 8.1 The OPS advocate will ensure that the Notice of Proposed Adverse Action (N.P.A.A.) includes the following:
  - a. The proposed disciplinary action to be taken for each sustained work rule violation and the name of the Fire chief who will take the action.
  - b. The date the N.P.A.A. is served and the effective date of the adverse action. There should be at least 10 business days between these two dates unless this is an emergency action. The effective date must fall on a date which corresponds with the employee's shift assignment, where applicable.
  - c. The specific charges and reasons for the adverse action.

- d. The date and time of the Employee Response Session: The employee shall respond to the adverse action verbally and/or in writing within five working days from the date of receipt of the notice of the proposed adverse action, in order to give the employee an opportunity to review the investigative file and obtain legal or other representation.

## 8.2 NOTICE OF PROPOSED ADVERSE ACTION

The OPS advocate will ensure in the case of each 40 hour member that there are at least ten (10) business days between the date the Notice of Proposed Adverse Action (N.P.A.A.) is issued to the employee and the effective date of said action. In the case of 53 hour employees there must be at least fifteen (15) calendar days. The OPS advocate who serves the N.P.A.A. must be prepared to explain it during the ensuing disciplinary process to any party with a right to know.

- 8.2.1 The employee should sign the N.P.A.A. and receive a copy of each page of the N.P.A.A. The employee's signature acknowledges receipt only, not guilt or innocence. However, if the employee refuses to sign the N.P.A.A., the OPS advocate should write, "Refused", have another employee or supervisor witness the refusal, and sign the N.P.A.A. in the appropriate signature blocks.
- 8.2.2 The fire chief will make arrangements to meet with the employee on the scheduled date and time of the Employee Response Session. Prior to the meeting, if the fire chief should need to reschedule the meeting, or should grant the accused employee's request to reschedule the meeting date, consideration needs to be given as to whether and how rescheduling the meeting date changes the effective date of the adverse action.

### 8.3 EMPLOYEE RESPONSE SESSION PROCEDURE

- 8.3.1 The Employee Response Session is an opportunity for the accused employee to appear before the fire chief to respond to the charges and proposed discipline. It is also an opportunity for the fire chief to re-evaluate his/her position on the Proposed Adverse Action. This employee response procedure is created to protect the employee from erroneous, arbitrary adverse action.
- 8.3.2 The meeting is not a judicial hearing nor an appeal nor a full evidentiary hearing. The session shall be non-adversarial. It is intended to afford the accused employee the opportunity to:
  - a. Submit statements or other supporting documents from persons having knowledge of the facts and circumstances;
  - b. Answer questions the fire chief may have; and
  - c. Give his or her explanation of the incident, if not previously given, or of mitigating circumstances.

The accused employee is not required to attend this session or respond in any way to the N.P.A.A. However, if the employee chooses, he or she may respond to the N.P.A.A. in writing, verbally, or both.

- 8.3.3 If the employee chooses to meet with the fire chief, he or she may be accompanied by a representative of his or her choice, at the employee's expense.

### 8.4 EMPLOYEE RESPONSE SESSION

If the employee and his or her representative, if applicable, do respond in person to the N.P.A.A., the fire chief will conduct the Employee Response Session in the following manner:

- 8.4.1 Responses to all proposed adverse actions hearings shall be electronically recorded. Recordings will become part of the complaint file and may be used in subsequent administrative venues.
- 8.4.2 The OPS advocate and/or a City Representative will attend the Employee Response session conducted at the fire chief's level. The fire chief may elect to request the attendance of a member of the Advocacy Unit at either the fire chief's or the Advocate's discretion.
- 8.4.3 The fire chief will provide an opportunity for the employee to respond to the N.P.A.A. At all times prior to, and during the NPAA hearing the fire chief must reserve judgment and keep an open mind. The fire chief shall not reach any pre-determination prior to the conclusion of the employee response session.

#### **8.5 FINAL DETERMINATION OF ADVERSE ACTION**

The fire chief has the responsibility to make a determination of what the final disciplinary action against the employee will be. After the employee's scheduled response period, the fire chief must do the following:

- 8.5.1 The fire chief's decision will be recorded on the Notice of Final Adverse Action form (N.F.A.A.). If the charges must be modified the modification must occur in accordance with Atlanta city code Section 114-531.

#### **8.6 NOTICE OF FINAL ADVERSE ACTION**

- 8.6.1 The fire chief will ensure that the Notice of Final Adverse Action (N.F.A.A.) is issued to the employee no later than three business days after the date of the employee's scheduled response session. The fire chief may determine that additional time is necessary to make a decision. If so, the fire chief may extend the time by signing an "Extension of Time" Form.

8.6.2 The fire chief will ensure that the Notice of Final Adverse Action is complete and contains the following information:

The specific adverse disciplinary action to be taken and the effective date of the action;

The specific charges and reasons for the adverse action;

A statement informing the employee of the Right to Appeal the determination of the Final Adverse Action to the Civil Service Board.

The fire advocate will serve the N.F.A.A. As with the N.P.A.A., the employee's signature acknowledges receipt only, not guilt or innocence, and therefore refusal to sign on the employee's part should be handled in the same manner as the N.P.A.A.

**8.7 SUSPENSION OF EXTRA JOB PERMIT**

The fire chief reserves the right to use his / her discretion to suspend the work permits of AFRD members during any period of their suspension without pay, resulting from disciplinary actions. Members who are suspended without pay, and so designated by the fire chief, shall be required to turn over their extra job permits to OPS immediately prior to the effective dates of their suspension. Their extra job permit may be reinstated by retrieving them from OPS, upon the completion of the period of time, which the member is suspended without pay.

**8.8 EMERGENCY DISCIPLINARY ACTION**

The fire chief or his or her designee may immediately suspend an employee with pay, pending an immediate Emergency N.P.A.A. as specified in section 8.9 upon the determination that either of the following circumstances exist:

- a. There is cause to believe that the employee has committed a crime involving moral turpitude or a felony which is job related or deters the employee from the effective performance of his or her job.
- b. The retention of the employee in active duty status may result in damage to property; or may be disruptive, detrimental, or injurious to the employee, co-workers, subordinates, or the general public; or may be disruptive to the daily operation of the department.

#### 8.9 NOTICE OF EMERGENCY DISCIPLINARY ACTION

Conditions for use - The appointing authority or designee may immediately suspend an employee with pay upon the determination that the following circumstances exist:

- a. There is cause to believe that the employee has committed a crime involving moral turpitude or a felony which is job related or deters the employee from effective performance of the employee's job.
- b. The retention of the employee in active duty status may result in damage to property or may be disruptive, detrimental or injurious to the employee, coworkers, subordinates or the general public or may be disruptive to the daily operation of a city government function.

Notice of emergency action. The appointing authority or designee shall give the employee against whom the emergency action is taken a notice of emergency action in writing, not later than five working days after the effective date of the emergency action. The notice of emergency action shall include a statement of the emergency situation that caused the action to be taken.

Should the action be an adverse action, the notice shall meet the requirements of section 114-530. A copy of such notice shall be sent to the commissioner of human resources.

## **SECTION - 9 APPEALS**

### **9.1 APPEAL OF NON-ADVERSE DISCIPLINARY ACTION**

A classified employee who has completed the probationary period may appeal non-adverse disciplinary actions (oral admonishments and / or written reprimand) by filing a grievance. If the grieving employee is sworn, any decision by the fire chief on the grievance is not subject to any further administrative appeal. However, if the grieving employee is non-sworn, the chief's decision can be appealed to the Department of Human Resources under the Labor-Management Relations Ordinance of the City of Atlanta. (Reference #5). The process has been outlined previously in section 6.2 of this manual. Unclassified employees do not have the right to file grievances against Non-Adverse Disciplinary Actions. They do, however, have the opportunity, in the spirit of good employee relations, to go through their chain of command to schedule a meeting with the fire chief to discuss their concerns.

### **9.2 APPEAL OF ADVERSE DISCIPLINARY ACTIONS**

A classified employee who has completed the probationary period may appeal adverse disciplinary actions to the Atlanta Civil Service Board.

- 9.2.1 Unclassified employees and discretionary employees do not have the right to appeal adverse actions to the Atlanta Civil Service Board. Officers above the rank of captain, which include all chief officers, are considered to hold discretionary positions.
- 9.2.2 An employee who wishes to appeal an adverse disciplinary action must file a written notice of appeal to the commissioner of the Department of Human Resources (Appendix # 6) within the prescribed time limits.

- 9.2.3 Witnesses for both the appellant and the city will be made available should they be at work that day, to give testimony before the Civil Service Board (CSB). They shall be allowed to do so, on the condition that they have been served in advance with a CSB subpoena. This condition does not apply to chief officers.
- 9.2.4 The fire advocate shall have the responsibility and the authority to represent the AFRD before the Atlanta Civil Service Board. That responsibility and authority shall span adverse actions involving one (1) through thirty (30) day suspensions. The fire advocate shall have the authority to speak on behalf of the AFRD and to authorize resolutions, in the absence of a superior officer or if directed to do so by the board.
- 9.2.5 The appeal process will be conducted in accordance with Sections 114-546 through 114-556 of the Labor-Management Relations Ordinance of the City of Atlanta.

### 9.3 REVERSAL OF EMERGENCY ADVERSE ACTION

If on appeal to the Civil Service Board, it is determined that the adverse action was correct, but there was no emergency situation, the Board may take the appropriate steps necessary to remedy the situation by awarding back pay equal to the period required for notification during non-emergency action. Such back payments are subject to the terms of section 9.3.1 shown below.

### 9.4 CIVIL SERVICE BOARD DETERMINATIONS

Appeals brought before the Atlanta Civil Service Board by eligible appellants are resolved, subject to higher judicial review, by either:

- a. A determination in favor of the appellant or;
  - b. A determination in favor of the department.
- 9.4.1 Any determination in favor of the appellant will be reflected on the employee's disciplinary record as having been rescinded. The employee will also be reimbursed for the time in which they were suspended and / or dismissed without pay, less any monies received from outside sources during their absence.

No restitutions will be made by AFRD prior to the affected member producing the required income information. Other offsets may apply as described in AFRD Memorandum #44 (See Appendix #12) dated September 4, 2008.

- 9.4.2 Determinations in favor of the department will result in the action(s) taken against the employee being substantiated and therefore remain as so ordered.

## **SECTION - 10 FIREARMS OFFENSES**

There are positions within the Atlanta Fire Rescue Department which require AFRD members to maintain the status of P.O.S.T. Certified peace officers through the State of Georgia. Those positions are typically within the Fire Investigations section, the Office of Professional Standards (OPS), and the Homeland Security section. As P.O.S.T. Certified peace officers those members of AFRD are authorized to wear firearms on their person. Their on duty, as well as off duty, conduct relative to those firearms is subject to review and sanctions by the Atlanta Fire Rescue Department.

### **10.1 FORCE USAGE REVIEW ASSIGNMENT (FURA)**

FURA is to be used in incidents involving use of force that causes the unwarranted intimidation of another or in serious physical injury or death to a person. The wounding or death of an animal will also initiate FURA. In those cases involving a firearm or injury or death to an animal, the chain of command and OPS will be notified immediately and the supervisor on the scene will inspect the weapon and initiate a firearms discharge investigation. If the employee discharged a firearm during the incident, he or she will surrender the weapon involved in the shooting to a member of OPS if so requested. If any supervisor feels the employee is suffering emotional or psychological impairment he/she may immediately relieve the employee from duty. During FURA the employee will be required to be available to the different investigative units and to the Employee Assistance Program (EAP). The employee's assigned section chief may assign the employee to an administrative assignment or order the employee to be on-call. On-call employees must be available and/or report regularly by telephone between 0800 hours and 1700 hours. (Monday through Friday)

## **SECTION 11 ADMINISTRATIVE ASSIGNMENTS**

- 11.1 The fire chief may assign any AFRD member to serve in an administrative duties pending which shall include, but shall not be limited to, the following reasons:
  - 11.1.2 Completion of the administrative investigation of serious allegations of employee misconduct; or the disposition by a criminal court.
  - 11.1.3 Completion of a preliminary psychological evaluation or a Fitness for Duty Evaluation;
  - 11.1.4 For other reasons in the best interest of the department.

### **11.2 ADMINISTRATIVE ASSIGNMENT PROCEDURES**

When the fire chief assigns an employee to an administrative assignment, the Chief of the Office of Professional Standards will:

- 11.2.1 Immediately notify the OPS staff of the action taken;
- 11.2.2 OPS members shall relieve the employee of his or her Department-issued badge and identification card. If the employee is P.O.S.T. Certified, their firearm will also be confiscated.
- 11.2.3 The OPS Section Chief or their designee will inform the employee of where and when to report to work, prepared to perform administrative duties. The supervisor in which the employee is assigned must assign employee to work in a meaningful capacity. The OPS Section Chief will immediately cause a Turn-Around-Document (TAD) and other administrative documents to be issued.

- 11.2.4 P.O.S.T. Certified employees, such as those working in Fire Investigations, OPS, or Homeland Security, who are reassigned to administrative duties while awaiting disposition of their cases will not carry any firearm under their fire authority. They will not display any identification indicating he or she is a fire officer except inside of a fire facility or worksite, they will not work any extra sworn jobs, and will not perform any sworn law enforcement duties except by subpoena or court order.
- 11.2.5 Any AFRD employee who is reassigned to administrative duties while awaiting disposition of their cases is prohibited from engaging in any extra job which may involve emergency medical services and / or fire rescue, departmental sponsored training, or functions until they are subsequently authorized by the Atlanta Fire Rescue Department.
- 11.2.6 Any P.O.S.T. certified member of the AFRD who receives a sustained complaint, resulting in adverse action shall be reported to the Georgia Peace Officer Standards Training Council.

## **SECTION - 12 PROACTIVE CORRECTIVE ACTION**

### **12.1 DESCRIPTION OF PROACTIVE CORRECTIVE ACTION**

There are several proactive corrective actions that an employee or supervisor may take which are appropriate responses to guide and correct an employee's behavior in an effort to anticipate, correct, and prevent problems before they result in disciplinary action. For the purpose of this directive, proactive corrective actions include counseling, training, psychological evaluation, and/or participation in a substance abuse program. Proactive corrective actions are not disciplinary and are to be used to address employee conduct which appears to be repetitious and is susceptible to improvement with the appropriate intervention. Proactive Corrective Actions may be used in combination with a disciplinary action on a sustained complaint but shall not be used as a substitute for disciplinary action.

## 12.2 COUNSELING

Counseling is a management tool supervisors may use to correct a minor deficiency or direct employee performance. A supervisor may choose to counsel an employee either verbally or in writing. When a supervisor verbally counsels an employee, it is considered informal counseling. When a supervisor documents the counseling in writing on a Letter of Counseling Form, it is considered formal counseling.

- 12.2.1 When possible, supervisors are encouraged to utilize counseling for very minor incidents instead of filing a formal complaint against the employee. Examples of minor incidents recommended for counseling include a pattern of sick leave usage, minor tardiness, uniform appearance, the handling of calls, unsafe driving techniques which did not result in an accident, and courtesy.
- 12.2.2 The recommended use of written or verbal counseling is a leadership tool to place the employee on notice that his/her performance is not at the expected level; advise the employee of the specific conduct or behavior which is of concern; to instruct the employee on how to improve his/her behavior; and to provide an opportunity for the employee to correct his/her behavior.
- 12.2.3 Counseling is not a disciplinary action, and therefore no formal disciplinary complaint file or number is necessary to counsel an employee. If counseling does not correct the employee behavior, the supervisor should initiate a formal disciplinary complaint against the employee.
- 12.2.4 Supervisors may use counseling as a proactive corrective action in combination with a disciplinary action in which a formal complaint had been filed. In those instances, the counseling should be noted in the applicable complaint file on the Complaint Investigation Checklist Form under Proactive Corrective Actions.

12.2.5 An employee is entitled to sign and receive a copy of any formal written counseling.

Documentation of any formal written counseling will be maintained in the employee's unit and personnel file for no longer than one year. The employee's unit chief is responsible for ensuring the proper removal of counseling forms from the employee's unit file and the Deputy Chief of Support Services is responsible for ensuring the proper removal of counseling forms from the employee's personnel file.

### 12.3 TRAINING

Supervisors are responsible for ensuring that employee's performance is not adversely affected by a lack of knowledge or training. Supervisors are encouraged to take advantage of training opportunities available for employees in their command. Supervisors have a responsibility to provide and document on-going muster training for employees. There is a variety of training opportunities available to the employees of the department. Recommended training opportunities include, but are not limited to, academy recruit training, yearly in-service training, fire ground tactics, firearms training, muster training, field training, individual enhancement training and outside training at locations such as the Georgia Public Safety Training Center and where applicable, Georgia State University.

12.3.1 If a training need is identified as a result of a formal disciplinary complaint, the fire chief should make a written request to the battalion chief, as part of the disciplinary complaint file, for specific training designed to correct the problem. If the training is approved, the employee's battalion chief is responsible for ensuring that the necessary training arrangements are made with the chief of training, when applicable.

12.3.2 If a training need is identified as a result of the daily observations of the employee's performance, the supervisor should make a written request, in memorandum form, to the battalion chief for specific training designed to correct the problem. If the training is approved, the employee's battalion chief is responsible for ensuring that the necessary training arrangements are made with the chief of training, when applicable.

- 12.3.3 If a training need is identified as a result of a pattern of complaints, any supervisor, either in the employee's chain of command or the chief of the Office of Professional Standards (OPS), may make a written request to the employee's battalion chief and to the OPS section chief for specific training designed to correct the problem. If the training is approved, the chief of OPS, with the knowledge and approval of the fire chief, will coordinate the training with the chief of training and the employee's battalion chief.
- 12.3.4 When training is needed based upon criteria established under Early Warning Guidelines, no disciplinary complaint file or disciplinary action may be associated with the training.

#### 12.4 PSYCHOLOGICAL INTERVENTION

Occasionally, an employee's conduct may be symptomatic of an emotional, psychological or physical condition which may impair the employee's ability to adequately or safely perform his or her job. Any supervisor in the employee's chain of command or at OPS may refer the employee to the Employee Assistance Program (EAP) to determine if further intervention or evaluation is needed. There are two types of referrals supervisors may make: an emergency referral or an early warning referral.

#### 12.5 EMERGENCY REFERRAL

In the event that a supervisor requests an emergency referral of an employee to the EAP, the requesting supervisor will take the steps outlined below.

- 12.5.1 Any supervisor may contact the EAP directly (404 / 817-6750) to request an immediate psychological evaluation of an employee if the supervisor believes the employee is in need of immediate intervention. The supervisor should document the reasons for the request and notify the employee's chain of command of the action as soon as possible.

12.5.2 In cases where the employee's conduct appears to be unstable or poses a threat or danger to him- or herself, to other employees, or to the public, the supervisor will relieve the employee from duty in accordance with Sections 8.5. However, the officer in charge must immediately call the Atlanta Police Department and OPS if a weapon is mentioned or brandished.

12.5.3 All emergency referrals to the EAP will require the EAP to make an immediate assessment of the employee and, to notify the referring supervisor and the employee's battalion chief as to what, if any, additional intervention is needed within 72 hours.

12.5.4 Any employee who is the subject of an emergency referral will promptly and fully cooperate with department, EAP, and any other involved persons, in the furtherance and completion of the emergency referral process. Any failure by the employee to do so will subject the employee to departmental disciplinary action up to and including dismissal.

## 12.6 EARLY WARNING REFERAL

12.6.1 All supervisors are required to closely monitor employees' performance and to initiate a review through the early warning process on any employee whose conduct falls within the criteria established under AFD.SOP.02.102 "Early Warning" (Appendix # 7).

12.6.2 All employees are to refer to the department's Early Warning SOP for guidance on the review criteria, supervisory and employee responsibilities, notification, documentation, and intervention and corrective measures.

12.7 PSYCHOLOGICAL (EAP) RECOMMENDATIONS

- 12.7.1 On any emergency or early warning referral to the EAP, the EAP will make one of the following recommendations to the fire chief, the battalion chief, and/or to the OPS section chief:
  - 12.7.2 The employee is psychologically able to return to or remain at work in an unrestricted duty assignment.
  - 12.7.3 The employee is psychologically able to return to or remain at work in an unrestricted duty assignment contingent upon his or her participation in an identified intervention or treatment program as specified by the EAP. The employee will be required to enter into a written contract with the EAP regarding his or her participation in such a program.
  - 12.7.4 The employee is psychologically able to return to or remain at work in a restricted duty assignment until he or she successfully completes an identified intervention or treatment program as specified by the EAP. The employee will be required to enter into a written contract with the EAP regarding his or her participation in such a program.
  - 12.7.5 The employee is unable to return to or remain at work in any kind of duty assignment until he or she successfully completes a EAP identified intervention or treatment program. The employee will be required to enter into a written contract with the EAP regarding his or her participation in such a program.
  - 12.7.6 The employee is recommended to undergo a Fitness for Duty Evaluation in accordance with the Code of Ordinances of the City of Atlanta. Until any other employee work status recommendation and determination is made within the Fitness for Duty

Evaluation process, the employee:

- a. Is not able to return to or remain at work; or
- b. The employee is able to return to or remain at work in a restricted duty assignment.

## 12.8 PSYCHOLOGICAL RECORDS ON EMPLOYEES

12.8.1 The EAP will maintain a confidential file on each employee that has undergone an emergency or early warning referral and evaluation from the EAP. Access to the confidential file will be controlled by the Chief Psychologist or a designee and will be granted only to authorize personnel. Authorized personnel include the fire chief and the OPS Section Chief. Confidential files are not subject to Open Records requests.

12.8.2 In the event that a referral and evaluation are requested as a result of a disciplinary complaint, the evaluation will generally not be part of the OPS complaint file, nor should the complaint investigation or disciplinary action be delayed due to the referral process. OPS investigations that are initiated as a result of non-compliance with the referral and intervention process do not have any confidentiality protections.

## 12.9 EMPLOYEE ASSISTANCE AND SUBSTANCE ABUSE PROGRAM

### 12.9.1 Voluntary Participation

The department shall provide all of its employee's one opportunity to voluntarily enter the City's employee assistance and substance abuse program without being subjected to any disciplinary action based on the substance abuse. Every reasonable effort shall be made to excuse on duty members to attend EAP meetings. Members who voluntarily enroll may use sick or annual leave to cover the time they are away from their work sites. Mandatory Referrals will be paid for their time, when attending counseling sessions, on their off days, if one or more sessions cannot be scheduled during times in which they are on duty. Such off duty meetings shall be limited in frequency and must be clinically justified.

12.9.2 An employee may voluntarily enter into the employee assistance and substance abuse program through the Employee Assistance Program (EAP) if, and only if, that employee meets the following criteria:

- a. The employee is free of any criminal or administrative charges, is not presently under criminal or administrative investigation, and has not been directed to be tested based upon any of the established grounds for substance testing prior to voluntary entry into the employee assistance and substance abuse program.
- b. The employee agrees to comply with the established guidelines and requirements of the employee assistance and substance abuse program.
- c. The Employee Assistance Program will notify the fire chief or their designee of an employee's entrance and participation in a voluntary program.
- d. If the employee successfully completes all elements of the employee assistance and substance abuse program, all records pertaining to the employee's voluntary participation in a substance abuse program will be considered confidential and will be maintained by the Employee Assistance Program. Should the employee fail to comply with any aspect of the employee assistance and substance abuse program, all records will be open to review and turned over to the Office of Professional Standards for administrative action.
- e. The employee must complete the primary and after-care elements of the rehabilitation program in strict accordance with the established guidelines set forth by the employee assistance and substance abuse program of the City of Atlanta Employee Assistance Program.
- f. Any employee who voluntarily enters the employee assistance and substance abuse program but fails to abide by the established guidelines and requirements shall be subject to adverse disciplinary action up to and including dismissal.

### 12.9.3 Mandatory Participation

At the fire chief's discretion, an employee involved in misconduct while under the influence of alcohol or legal drugs may be required to participate and successfully complete a mandatory substance abuse program. The mandatory employee assistance and substance abuse program participation will be considered a proactive action which shall be used in combination with disciplinary action. Misconduct involving illegal substances will result in dismissal.

- a. The mandatory employee assistance and substance abuse program may be implemented whenever investigation reveals the abuse of alcohol or legal drugs or at any time deemed appropriate.
- b. All mandated substance abuse programs will be coordinated through the Employee Assistance Program. Employees shall be required to enter into a valid contract with the Employee Assistance Program and comply with all of the conditions of the contract. An employee's failure to comply with any of the conditions of the contract shall result in disciplinary action up to and including dismissal.
- c. AFRD members may participate in the City of Atlanta's Substance Abuse Program (EAP) by voluntarily enrolling on their own initiative. There may be certain circumstances in which AFRD may mandate one of its members to be evaluated by EAP for what the department perceives as behavioral issues.

If a member of AFRD enrolls in the EAP and the EAP administrator later has cause to declare that the AFRD member is in non-compliance the consequences shall be the same for both voluntary enrollees and for mandated employees. The fire chief shall have the sole discretion as to what level of adverse action, up to including dismissal, shall be taken against the non-compliant member.

d. The fire chief may take appropriate action he/she deems reasonable if the chief determines that the affected employee is unable to adequately perform his/her job functions because of alcohol or drug abuse. Such personnel action is intended to protect the affected employee, fellow employees, and the public. Such non adverse action is considered an interim action, and is not considered disciplinary in nature.

## **SECTION - 13 SUBSTANCE ABUSE**

### **13.1 RANDOM ALCOHOL/DRUG TESTING**

All employees can be compelled to take a substance abuse screening through the provisions of City of Atlanta's Substance Policy which is defined in City Code Sections 114-566-575 (Appendix #8). In addition, sworn employees can be directed to undergo substance screenings through the provisions of AFRD's Random Drug & Alcohol Testing SOP (Appendix # 9).<sup>1</sup> All Random Substance Testing within AFRD shall be done pursuant to the Commissioner of Human Resources' Random Drug Testing Procedure (July 2008) titled "Random Drug Testing Policy (for) Sworn Personnel and Safety Sensitive Positions".

13.1.1 Drug / Alcohol Testing Based on Reasonable Suspicion Employees of the City of Atlanta can be required to submit to a toxicology screening under the provisions of Sections 114-567 through 114-575 of the Atlanta City Code. That section addresses "Reasonable Suspicion". Its terms and conditions can be found in Appendix #13 of this manual. Supervisors should always contact OPS in the event they have any question or concern as to whether reasonable suspicion exists to require such a test. There will never be any repercussions for being mistaken, only for not taking action where your action is warranted.

## 13.2 SUPERVISOR RESPONSIBILITY FOR REPORTING

- 13.2.1 All allegations of misconduct where there is reasonable suspicion that the accused employee was or is under the influence of drugs or alcohol at the time of the incident shall be treated as a Type I complaint and reported to OPS immediately. Even if the incident itself is clearly a Type II complaint, if there is a reasonable suspicion that the employee was under the influence of drugs or alcohol at the time of the incident, it shall be treated as Type I.
- 13.2.2 Examples of such incidents include, but are not limited to: D.U.I. arrests, arriving to work under the influence of alcohol, and an off duty altercation involving an employee under the influence of alcohol or drugs. Employees have a responsibility to report such occurrences immediately.
- 13.2.3 Employees, while on any City of Atlanta worksite shall be alcohol and drug free regardless as to whether they are on or off duty. Supervisors shall take appropriate action if they discover any employee on any City of Atlanta worksite, or who represents themselves to the public as representatives of the Atlanta Fire Rescue Department, who they have reason to believe is under the influence of any prohibited substance. They shall make reasonable efforts to prevent the employee from driving any vehicle. They shall also immediately contact OPS for assistance. Supervisors can be held accountable for any further misconduct related to the incident at hand by the affected employee should they fail to take action immediately.

The conduct of supervisors who fail to immediately notify OPS and to take appropriate action against an employee when reasonable suspicion exists that the employee is or was involved in misconduct while under the influence of drugs or alcohol will be investigated as a Type I complaint. Supervisors that believe there is reasonable suspicion of a member to be under the influence of drugs and /or alcohol will formulate a memorandum stating the actions or inactions of that member which took place.

### 13.3 EMPLOYEE RESPONSIBILITY TO REPORT

Employees are responsible for reporting to their immediate supervisor the use of any substance such as prescription medications (including psychoactive medication), alcohol, over the counter medications, or other substances that, while legal, may adversely affect the judgment or performance of that employee during duty hours.

### 13.4 SUBSTANCE ABUSE TESTING

When a supervisor develops reasonable suspicion that an employee has violated the City Substance Abuse Policy, or is involved in any misconduct, on or off duty, while under the influence of drugs or alcohol, he/she will relieve the employee from duty, place him/her under direct observation, and contact OPS immediately to arrange for a substance abuse test.

Members of OPS are the designated appointing authority for substance abuse testing and as such shall determine whether reasonable suspicion exists to warrant a substance abuse test.

The on-call OPS supervisor shall assist the affected employee's immediate supervisor in preparing all documentation associated with requesting a substance abuse test, and shall coordinate the administration of the test.

The amount of time that will be allowed to obtain representation for incidents that could lead to alcohol/drug tests based upon reasonable suspicion shall be no more than two hours from the time in which they are notified that they are being required to undergo a substance test. In all cases, employees must report to the testing laboratory within the time (one hour) that they are directed to do so. Once there, they may use the remaining time to wait for the arrival of their representative.

Should the employee be unable to urinate at the time that he / she is directed to provide a urine sample for analysis, every reasonable effort will be made to induce urination. In the event that the member does not provide a urine sample within one hour of being directed to do so it shall be the investigator's responsibility to inform the employee as to what options, if any, are available. Options may include waiting longer; and /or drinking water.

Any employee who refuses to submit to a drug and/or alcohol analysis when directed to do so shall be dismissed from the department. The department will accept results from testing laboratories that have been certified in accordance with applicable City ordinances and guidelines.

Any employee who is determined to have .02% or more of alcohol in their body shall be notified of their right to provide a split sample test to be done by a laboratory approved by the City of Atlanta. The names of those laboratories will be provided, upon request, by the chief of the Office of Professional Standards.

Any AFRD member who is required to undergo a Substance Screening shall be forbidden from driving their personal vehicle home upon administrative release from duty that day. Following any substance test based upon reasonable suspicion, or in cases in which positive findings result from random testing, the member must be driven home in an OPS vehicle. That vehicle must be driven by a member of OPS.

Sections 13.4.5 through 13.4.10 shall be followed regardless of whether the grounds for the test are based on Reasonable Suspicion or on a Random Substance Testing program.

### 13.5 PENALTIES FOR SUBSTANCE ABUSE

A positive test result for alcohol or illegal drugs shall constitute cause for which disciplinary action may be imposed, up to and including dismissal. A case by case consideration shall be given to employees who have been enrolled for less than thirty (30) days in the City of Atlanta's Employee Assistance Program for Substance Abuse.

## **SECTION - 14 ALLEGATIONS OF IMPROPER PRE-HOSPITAL CARE**

- 14.1 Since members of the Department who are licensed Emergency Medical Technicians and Paramedics routinely administer medical care and interventions in the pre-hospital setting as a normal course of work, complaints that allege improper or inappropriate delivery of care may be received. Such complaints may be generated by the patient or patients, a family member, an unrelated bystander or witness, an allied health professional who receives the patient, or other less common sources. Allegations of improper care may relate to acts of commission, acts of omission, or a combination thereof.
- 14.2 When such allegations are received by any member or by the Office of Professional Standards they will follow the normal course of action as any other complaint except that one component of the investigation will be a thorough and objective review of the allegations by competent medical authority. The purpose of this investigative component will be to ensure that the accused members' rights as well as those of the patient are protected.
- 14.3 At a minimum, the Department's Physician Medical Director will review the facts of the case to determine, patient outcome notwithstanding, whether the acts or omissions of the accused member(s) were or were not appropriate for the circumstances and whether or not inappropriate acts or omissions were a result of incompetence, negligence, inability or failure to receive or comply with medical direction, or other factors. This investigation will be deemed a "Medical Quality Review" and as such, findings and recommendations shall not be subject to discovery or disclosure.
- 14.4 In more complex cases a "Medical Quality Review Committee" consisting of the Departments' Physician Medical Director, Paramedic Section Chief from field operations and Airport operations, a Captain Paramedic, a Lieutenant Paramedic, an OPS Lieutenant (preferably a Paramedic), a Firefighter Paramedic and an EMS Instructor from the AFRD Training Center shall be convened. Members of the Medical Quality Review Committee must not be involved otherwise with the case at hand. This will again be performed and handled as a "Medical Quality Review."

- 14.5 The Physician Medical Director and/or the Medical Quality Review Committee will evaluate all facts of the case that pertain to the medical care delivered to the patient by the accused member(s). They will determine whether the care delivered was appropriate or not based on current medical protocol and/or established “best practice.” Their findings and determination will be attached to the investigative file as the “Medical Review.”
- 14.6 In addition to statements made by the accuser, the accused, and available witnesses, the Physician Medical Director and/or the Medical Quality Review Committee should consider other evidentiary items relative to the allegation(s) that may be made available from within the Department or from third parties under proper authorization. These items may include but are not limited to: laboratory/toxicology reports, EKG reports, radiographs, progress notes, patient care reports, EMBRS reports, post-mortem reports, etc. Medical privacy considerations shall be honored as required by Federal statute.
- 14.7 Upon completion of the medical review the Physician Medical Director or his/her designee shall submit to the investigating officer, in writing, their findings and determination of appropriateness or inappropriateness of care delivered. He/she may make recommendations for remediation or re-training of members as appropriate. Such recommendations will not be considered as discipline but will become binding on the member to accomplish within a set time frame.

Such remediation or re-training may be required prior to the member resuming patient care duties in order to serve the best interests of the Department, the accused member(s) and the community. The Physician Medical Director will not recommend disciplinary action to be taken but may be consulted by the fire chief for assistance in determining appropriate discipline in cases where there exists no precedent.

- 14.8 The Physician Medical Director and/or the medical review panel will exercise due diligence in the performance of their duties. However, there may be occasions when it will be impossible to render an authoritative determination due to lack of pertinent information or other factors. Documentation will be submitted and attached to the complaint package indicating such in these situations.

- 14.9 The completed medical review shall be forwarded to the investigating officer or the Chief of the Office of Professional Standards as expeditiously as is practical to be attached to the complaint folder. A copy of each medical review may be retained by the Office of Professional Standards separate from the complaint folder for the purpose of providing a resource for future investigations of the same or a similar nature or for training purposes. It will be incumbent upon the Office of Professional Standards to redact all information contained that identifies any person or persons connected to a particular complaint process from such retained copies.

#### **SECTION - 15 RECORDS**

- 15.1 OPS will maintain a permanent written record of all complaints and disciplinary actions made against departmental employees.
- 15.2 All records will be maintained in accordance with the Georgia Records Act and will be made available upon request pursuant to the Georgia Open Records Act.
- 15.3 The OPS Records Retention Officer, under the direction of the OPS section chief, will be responsible for maintaining all records as required.
- 15.4 Written records of all complaints, the investigation files, will be maintained in a secured location under the control of the OPS section chief.

#### **SECTION - 16 EXTERNAL INVESTIGATIONS**

- 16.1 Any AFRD employee receiving a request to be interviewed in his/her official capacity by an investigator (law enforcement, fire, insurance, etc.) should immediately forward the request to OPS to determine if additional action should be taken
- 16.2 Any AFRD employee receiving a request or summons to be interviewed in his/her official capacity by an attorney should immediately forward the documentation to the Chief of Staff's Office to determine if additional action should be taken

**- END -**

# APPENDIX

***APPENDIX - I***

**ATLANTA FIRE RESCUE  
DEPARTMENT**



**KELVIN J. COCHRAN, FIRE CHIEF  
ATLANTA, GEORGIA**

**EMPLOYEE WORK RULE  
MANUAL**

## PREFACE

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The mission of the Atlanta Fire Rescue Department is to provide prompt quality service to our stakeholders by promoting safety, security, enhancing sustainability, and enriching the quality of life through professional development and dedication to service.

All employees of the Atlanta Fire Rescue Department are essential to the overall mission of the department. It is the responsibility of each and every employee to work towards the achievement of the mission of the department.

The Atlanta Fire Rescue Department requires its employees to exercise a great deal of discretion, due to the nature of its responsibilities. Employees are often required to make important decisions, frequently with little time for weighing alternatives. The informed and well-trained employee has the best chance of making correct decisions. For this reason, the department makes available to its employees, organizational expectations in the form of the Employee Work Rules and other directives. Knowing and complying with these rules, regulations and directives will result in the development of good work ethics, high standards, high morale and an effective and productive work force. For this reason, ignorance of the law as well as any Atlanta Fire Rescue Department rule, regulation, procedure, or policy is no excuse for disobedience.

Rules, regulations and directives, however, cannot be expected to cover every situation employees may face. Many decisions are left to the sound judgment of the individual employee. If employees perform their duties in good faith and with prudence, they will be supported by the chain of command and other departmental employees.

# **ATLANTA FIRE RESCUE DEPARTMENT**

## **EMPLOYEE WORK RULES**

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## CHAPTER 1

# PROFESSIONAL RESPONSIBILITIES

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### *Purpose*

*Based on the responsibilities of employees with the Atlanta Fire Rescue Department and their visible positions within the community, both publicly and privately, the following work rules shall be obeyed by employees at all times.*

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### **Rule 1.00 Appropriate Action Required**

The demands for fire department services are many, varied, and often extreme. Employees shall meet these demands by:

- a. Responding in an appropriate manner to every situation encountered.
- b. Being considerate of the rights, feelings, and interests of all persons.
- c. Taking appropriate action in each situation by providing the necessary service and insuring the notification of the appropriate supervisors when indicated by the circumstances.
- d. Requesting the assistance of supervisors when the appropriate action required either is not clear, or is not possible under the circumstances, or is not within the scope of authority of the employee of whom the action was requested.
- e. Performing official acts in a reasonable, restrained, dignified, impartial, and lawful manner.

### **Rule 1.01 Cooperation**

Employees of the department shall promptly cooperate with all department employees, public agencies, and all citizens toward the accomplishment of any public responsibility, task, or assignment.

### **Rule 1.02 Truthfulness**

Employees of the department shall be truthful in both their spoken and written words. Official reports and/or written statements shall be as factual and accurate as possible; as defined in the *COA Code of Ordinances Section 114-528*.

### **Rule 1.03 Conduct**

Employees of the department shall not act in an official or private capacity in a manner which tends to:

- a. Destroy public trust and/or respect
- b. Bring discredit upon the department or themselves
- c. Impair the operations or efficiency of the department

### **Rule 1.04 Courtesy**

Employees of the department shall be civil, orderly, and courteous to the public, co-workers, and supervisors; as defined in the *COA Code of Ordinances Section 114-528*:

- a. Employees shall not use coarse, insensitive, abusive, threatening, or profane language.
- b. Employees shall not initiate or be party to spreading hearsay against the human character of any person(s).
- c. When in uniform or acting in an official capacity, employees shall be referred to by rank, position, and/or surname.

### **Rule 1.05 Obey the Law**

Employees of the department shall obey all laws, statutes, and ordinances of the federal, state, county, and city governments at all times; as defined in the *COA Code of Ordinances Section 114-528*.

### **Rule 1.06 Suspended or Separated Employees**

Employees of the department shall surrender all department issued property to their immediate supervisor upon being suspended or otherwise separated from employment.

### **Rule 1.07 Public Criticism**

It is the goal of the department to provide a process for every employee to address work-related concerns openly through the established chain of command. Employees of the department shall note the importance of limiting actions that seek to injure or harm the reputation or operation of the department or its employees. Except as officially required, employees shall not publicly criticize any fellow employee, or any work-related order, action, or policy of the department without first taking the issue via the chain of command of the employee. Work-related concerns, or criticism shall first be addressed via the chain of command of the employee to correct any deficiency. Failure to adhere to this policy may be the basis for employee discipline.

### **Rule 1.08 Soliciting Gifts, Gratuities, Fees, Loans, Etc.**

Employees of the department shall not, at any time, solicit any gifts, gratuities, loans, or fees where there is a direct or indirect connection between the solicitation and their employment with the department; as defined in the *COA Code of Ordinances Sections 114-528, and 2-801 through 825*.

### **Rule 1.09 Acceptance of Gifts, Gratuities, Fees, Loans, Etc.**

- a. Employees of the department shall not accept, either directly or indirectly, any gifts, gratuities, loans, fees, or any other item of value, arising from or offered because of department employment; as defined in the *COA Code of Ordinances Sections 114-528, and 2-801 through 825*.

- b. Employees of the department shall not accept, either directly or indirectly, any gifts, gratuities, loans, fees, or any other item of value which might tend to cast an adverse reflection on the department or influences the actions of any member; as defined in the *COA Code of Ordinances Sections 114-528, and 2-801 through 825.*

### **Rule 1.10 Acceptance of Rewards**

Employees of the department shall not accept a reward, of any kind, from any person, without prior written approval from the Fire Chief or his/her designee; as defined in the *COA Code of Ordinances Sections 114-528, and 2-801 through 825.*

### **Rule 1.11 Bribery**

Employees of the department shall not accept money, gifts, or any other items of value, from any person, which may tend to influence employees in the performance of their duties; as defined in the *COA Code of Ordinances Sections 114-528, and 2-801 through 825.*

### **Rule 1.12 Transactions with Involved Persons**

Employees of the department shall not engage in any transactions with any complainant, suspect, defendant, prisoner or other person involved in a department case, whereby jeopardizing the successful prosecution of the case or the personal integrity of the employee.

### **Rule 1.13 Using Position for Personal Gain**

Employees of the department shall not use their official position or identification for any financial or personal gain. Requesting any free or reduced price, service, or item on the basis of official position is prohibited; as defined in the *COA Code of Ordinances Sections 114-528, and 2-801 through 825.*

### **Rule 1.14 Confidentiality of Department Business**

Employees of the department shall treat the business, activities, files, and reports of the department as confidential. They must not impart knowledge of the above noted, except to those who have a "right to know". They shall also comply with any non-disclosure agreement in which they have entered. Official statements, when required, will be provided by the Public Information Officer (PIO), Fire Chief or his/her designee; as defined in the *COA Code of Ordinances Section 2-819.*

### **Rule 1.15 Right to Know**

Employees of the department, when unable to determine the "right to know" of an individual or organization, shall refer the matter to a higher authority; as defined in the *COA Code of Ordinances Section 2-819.*

### **Rule 1.16 Security Matters**

Employees of the department shall not discuss security matters with other employees (unless they have a “right to know”) or in the presence of the general public; as defined in the *COA Code of Ordinances Section 2-819*.

### **Rule 1.17 Personal Debts**

Employees of the department shall not contract a debt under false or fraudulent pretenses, nor shall they refuse, without reasonable cause, to discharge their lawful obligations.

### **Rule 1.18 Personal Problems**

Employees of the department with personal problems may discuss their difficulties with a supervisor, chaplain, personnel officer, affirmative action officer, or employee assistance coordinator. All matters discussed shall be kept confidential and the employee may be referred to the Psychological Services & Employee Assistance Unit for assistance.

### **Rule 1.19 Providing Telephone Number and Address**

Employees of the department shall have telephone service and shall provide the department with the telephone number and address at which they can be contacted, when not at work. This information shall be kept confidential, unless otherwise approved by the Fire Chief or his/her designee.

### **Rule 1.20 Reporting Change of Name, Address and/or Telephone Number**

- a. Employees of the department must keep the department informed of their current name, address and/or phone number at all times. Any change of name, address and/or telephone number shall be reported in writing by the employee via the chain of command to the Fire Chief or his/ her designee without delay.
- b. Any name change is to be consistent with all Human Resource documents, certifications, and identifications.

### **Rule 1.21 Understanding Directives**

Employees of the department, that do not understand an official department directive or procedure, shall seek the advice of their supervisor. Ignorance of the law as well as any Atlanta Fire Rescue Department rule, regulation, or policy is no defense for non-compliance.

### **Rule 1.22 Conformance to Directives**

Employees of the department shall familiarize themselves with and conform to the rules, regulations, directives, and standard operating procedures of the department.

### **Rule 1.23 Chain of Command**

Employees of the department shall conduct official business via the chain of command. While lateral communication is encouraged, employees shall inform immediate supervisors and parties involved of significant matters in such lateral communications.

### **Rule 1.24 Forwarding Written and/or Electronic Communications**

Any supervisor receiving a written or electronic communication from another employee, that is directed to a higher authority, shall acknowledge and promptly forward it via the chain of command. A supervisor receiving a written or electronic communication from another employee shall make comments and forward as necessary.

### **Rule 1.25 Physical and/or Psychological Fitness for Duty**

Employees of the department shall maintain a physical and/or psychological condition that allows them to fulfill the duties of their assignment(s). This requirement shall be administered in accordance with the rules and regulations of the Americans with Disabilities Act; as defined in the *COA Code of Ordinances Section 114-380*.

### **Rule 1.26 Keeping Up to Date**

- a. Employees of the department shall acquaint themselves with any events (which pertain to their responsibilities) since their last tour of duty, upon their return to work.
- b. Supervisory personnel shall ensure that all information is kept up to date and made available to all employees.

### **Rule 1.27 Submitting Reports**

Employees of the department shall submit all reports, which are required of them as promptly, correctly, and completely as possible.

### **Rule 1.28 Identification Cards**

- a. Employees of the department shall wear their identification card above the waist, when on duty or on any city property or facility, and when on duty and not in uniform.
- b. Outside or away from city property or facilities, the identification card must be worn or carried when on duty and not in uniform, unless otherwise approved.

### **Rule 1.29 Providing Identification**

Employees shall identify themselves by name, rank, assignment, position, title, etc., upon request while on duty.

### **Rule 1.30 Improper Use of Department Correspondence**

Employees of the department shall not use department stationery, postage, copiers, fax machine, etc., except for conducting official department or city business.

### **Rule 1.31 Recommending Businesses and/or Services**

Employees of the department, in their official capacity, shall not recommend any business or service to the public without the approval of the Fire Chief or his/her designee.

## **Chapter 2**

### **GENERAL CONDUCT**

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#### **Purpose**

The purpose of this chapter is to establish general rules and guidelines to regulate the general conduct of employees on and/or off duty.

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#### **Rule 2.00 Responsibilities of a Supervisor**

- a. Supervisors shall enforce the rules and regulations of the department and ensure the proper conformity to directives and procedures at all times. Supervisors shall take appropriate action immediately when the conduct of an employee(s) is contrary to the interest of the public or the good reputation or proper operation of the department or the City.
- b. Supervisors shall make a verbal or written report to the employees supervisor detailing any action taken.

#### **Rule 2.01 Obeying Supervisory Personnel**

Employees of the department shall promptly obey all lawful orders of supervisors and other employees assigned to act in a supervisory capacity. Failure to comply with lawful orders and/or instructions shall constitute an act of insubordination; as defined in the *COA Code of Ordinances Section 114-528*.

#### **Rule 2.02 Manner of Issuing Orders**

Orders from supervisors to employees shall be clear, understandable, and expressed in a civil tone.

#### **Rule 2.03 Abuse of Authority**

Employees of the department shall not use their authority to abuse, harass, oppress, or persecute any person(s).

## **Rule 2.04 Unlawful Orders**

Supervisors shall not issue any order which they know to be in violation of any law, department rule, regulation, directive, or procedure.

## **Rule 2.05 Obedience to Unlawful Orders**

- a. Obedience to an unlawful order is never a defense for unlawful or improper action. Employees shall not be required to comply to an order that is contrary to any federal, state, county, or local laws.
- b. The responsibility for refusing a lawful order rests with the refusing employee(s) who shall be required to justify their actions.
- c. No employee shall be required to comply with any order which they know to be illegal, immoral, or unduly hazardous to their health and safety.

## **Rule 2.06 Reporting Unlawful Orders**

An employee receiving an unlawful order shall notify the Fire Chief or his/her designee in writing via the chain of command. This report shall contain the facts of the incident and the action taken.

## **Rule 2.07 Receiving Conflicting Orders**

- a. Upon receipt of an order conflicting with any previous order, instruction, or directive the affected employee shall advise the person issuing the second order of this, either verbally or in writing.
- b. Responsibility for countermanding the original order then rests with the individual issuing the second order.
- c. If so directed by a supervisor, the latter command shall be obeyed unless that command is unlawful.

## **Rule 2.08 Senior Employees in Charge**

When two or more employees of equal rank are engaged in the same operation, the employee with the longest service in rank, shall be in charge except when otherwise designated by a supervisor or by department policy.

## **Rule 2.09 Public Service**

It is the principle responsibility of every employee of the department to promptly, courteously, and effectively assist the public. Prompt assistance shall be rendered whether requested in person, by telephone, email or by letter. Employees shall render immediate attention to the needs of any person when called upon to do so.

### **Rule 2.10 Use of Substances**

Employees of the department are prohibited from using, possessing, manufacturing, and/or distributing any illegal drug and/or controlled substance, at any time or place, including while at their workplace; as defined in the *COA Code of Ordinances Sections 114-528, and 114-566 through 575*:

- a. The purchase, consumption, and possession and/or use of alcohol while on duty is prohibited.
- b. The abusive use of prescription and/or other legal drugs and substances is prohibited.
- c. If the ability of an employee to perform is impaired due to the use and/or abuse of alcohol, illegal drugs, legal drugs, prescription drugs, and/or other substances, they must not report to work or be subject to duty.
- d. The purchase, consumption, and possession of alcohol off duty in the public view while in uniform is prohibited.

### **Rule 2.11 Threats and/or Violence to an Employee or Citizen**

Any act or threat of verbal or physical aggression to include but not exclusive of shouting, abusive and offensive language, or physical contact; as defined in the *COA Administrative Order 94-05 Violence in the Workplace*:

- a. Employees of the department shall not threaten or commit a violent act against another employee or citizen.
- b. Employees of the department shall not harm or attempt to harm an employee or citizen.
- c. Employees shall not engage in any conduct which results in another experiencing psychological distress.

### **Rule 2.12 Personality Clashes/Conflicts**

Employees of the department experiencing a personality problem with another employee, which cannot be resolved amicably, shall promptly notify their supervisor of the conflict in writing. Supervisors shall be responsible for resolving the problem in the best interest of the employee(s) involved and the department.

### **Rule 2.13 Sexual Harassment Prohibited**

Employees of the department are prohibited from harassing any person in a sexual manner. Employees are prohibited from telling lewd or obscene jokes, touching inappropriately, making requests for sexual favors, displaying adult literature, or performing any act that makes others in their presence feel uncomfortable; as defined in the *COA Code of Ordinances Sections 114-601 through 610*.

### **Rule 2.14 Discrimination**

Employees of the department shall not allow any of their actions or decisions to be affected by prejudice of race, creed, color, religion, sex, national origin, physical disability, or sexual orientation; as defined in the *COA Code of Ordinances Sections 114-166 through 169*.

### **Rule 2.15 Use of Discriminatory References**

Employees of the department shall not refer to any person in a derogatory manner because of their race, creed, color, religion, sex, national origin, physical disability, or sexual orientation.

### **Rule 2.16 Call to Duty**

When properly ordered, sworn employees of the department shall be subject to call to active duty twenty-four (24) hours a day and must be prepared to assume duty.

### **Rule 2.17 Sleeping on Duty**

Employees of the department shall not sleep or doze while on duty, except for those periods in a tour of duty during which certain employees are permitted to sleep. Employees who are unable to remain awake or complete their tour of duty, shall notify their supervisor for appropriate action.

### **Rule 2.18 Malingering or Pretending**

Employees of the department shall not avoid their duties by feigning and/or faking illness or injury. Malingering (pretending or otherwise giving a false impression that they are performing their duties) is also prohibited.

### **Rule 2.19 Punctuality**

- a. Employees of the department shall be punctual when reporting for duty or performing any official act.
- b. Employees of the department shall report for duty promptly by their scheduled or assigned reporting time unless prior approval to report is otherwise granted by the supervisor in charge at the work location.

### **Rule 2.20 Absence Without Leave (AWOL)**

Any absence of an employee from duty for all or part of a day which is not authorized by a specific grant of leave of absence shall be deemed to be an absence without leave; as defined in the *COA Code of Ordinances Section 114-425*:

- a. Employees of the department shall be considered Absent With Out Leave (AWOL) if they have not reported for duty by thirty ( 30) minutes past their scheduled or assigned reporting time.
- b. On-duty employees shall keep themselves available for service and shall not absent themselves from their assignment without permission from their supervisor or until properly relieved.

## **Rule 2.21 Abandonment of Job**

Willful failure of an employee to report for duty three (3) consecutive workdays shall be considered Abandonment of Job, provided the employee is not on any approved leave. (53 hour employees adhere to 12 hour workdays; 40 hour employees adhere to 8 or 10 hour workdays); as defined in the *COA Code of Ordinances Section 114-528*.

## **Rule 2.22 Abuse of Leave**

Employees of the department shall not misuse or abuse the leave policies, procedures, practices, or records of the department and/or city.

## **Rule 2.23 Job Actions Prohibited**

Employees of the department shall not at any time nor under any circumstances organize/participate in any apparent job action (i.e. strikes, walkouts, sick-outs, work slowdowns, work stoppage, etc) ; as defined in the *COA Code of Ordinances Section 144-28*.

## **Rule 2.24 Private Business**

Employees of the department shall not conduct any private business while on duty except during lunch periods.

## **Rule 2.25 Outside Employment**

Outside employment shall constitute any paid employment of an employee which is in addition to such employee's employment with the city; as defined in the *COA Code of Ordinances Sections 144-436 through 437*:

- a. Employment shall not interfere with or affect the performance of the employees duties.
- b. Employment shall not involve a conflict of interest or conflict with the employees duties.
- c. Employment shall not involve the performance of duties which the employee should perform as part of such employee's employment with the city.
- d. Employment shall not occur during the employees regular or assigned working hours, unless the employee is on either Annual or Compensatory Leave, or Leave Without Pay.
- e. No employee engaging in outside employment shall work at such outside employment for a longer period of time than that stated in the employee's request for permission to engage in such employment.
- f. Employment shall be conditioned upon the employee's being relieved immediately for the return to and performance of the duties of such employee's employment with the city, if such employee should be called for emergency service.
- g. Employment shall not involve the use of records or equipment of the city.
- h. Employees of the department shall not engage in any employment outside of the department without first filing a written request to the Fire Chief for approval. Such request must be approved prior to starting, and shall state the type, duration, hours, name and business address of the prospective employer and the location of the employment.
- i. Outside employment applications must be renewed on an annual basis.

### **Rule 2.26 Conflicts of Interests**

Employees of the department shall not directly or indirectly be party to any commercial or private business or other transactions that create a conflict of interest with their official duties. Except as provided by law, business with the City of Atlanta is also prohibited unless such business with the city is conducted through sealed competitive bidding or requests for proposal where such bids are opened and the awards are granted at public meetings; as defined in the *COA Code of Ordinances Sections 2-801 through 825*.

### **Rule 2.27 Peddling and /or Soliciting Prohibited**

Unless authorized by the Fire Chief or his/her designee, peddling or soliciting is prohibited on or in city property and facilities.

### **Rule 2.28 Loitering by Public**

- a. Employees of the department shall not permit persons to loiter on department premises.
- b. Personal guests are permitted to visit, provided they do not interfere with any work or job duties, activities, or assignments.
- c. No guests are allowed on department premises between 2100 hours and 0700 hours without approval of a supervisor.

### **Rule 2.29 General Appearance**

- a. Employees of the department shall be neat, clean, and well groomed while on duty at all times. Dress will be appropriate given the position and/or function of the employee and shall reflect standards that depict fire service employees in the best possible image. Strenuous and/or heavy-duty tasks are exceptions to this rule.
- b. While on duty, articles of clothing, visible tattoos, and/or ornamentation that symbolizes or represents an organization or philosophy depicting discrimination in any form or other abridgement of human rights shall not be worn or made visible.

### **Rule 2.30 Wearing of Uniforms and Equipment**

Employees of the department shall comply with the standards and regulations that address the wearing of uniforms and/or equipment as delineated by the department's policy, at all times, both on and/or off-duty

### **Rule 2.31 Off-Duty Personnel, in Uniform, in Public**

Employees of the department appearing in public in uniform (though off-duty), shall be considered on duty and must be prepared to help the public by taking whatever action is appropriate and necessary.

### **Rule 2.32 Unsatisfactory Performance**

- a. Employees of the department shall maintain sufficient competency to assume and perform their duties and responsibilities of their position. Employees shall perform their duties in a manner which establishes and maintains the highest standards of efficiency in carrying out the functions and objectives of the department.
- b. Unsatisfactory performance may be demonstrated by a lack of knowledge of the application of the laws required to be enforced; an unwillingness or inability to perform assigned tasks; failure to conform to work standards established for any incident deserving the attention of a public safety employee; absence without leave; or absence from duty.
- c. Repeated poor performance evaluations or repeated violations of department directives shall be considered *prima facie* (apparent) evidence of unsatisfactory performance.

### **Rule 2.33 Radios/Pagers/Cell phones to Remain On**

Unless otherwise approved, employees who are assigned communications equipment (e.g., radios, pagers, cell phones) whether carried, worn, or installed in a vehicle shall ensure that the assigned equipment is “on” and tuned to the appropriate frequency.

### **Rule 2.34 Interfering with Radio Communications**

Employees of the department shall not willfully or intentionally interfere with radio communications unless an emergency exists.

### **Rule 2.35 Emergency Situations**

Employees of the department shall perform in all emergency situations in accordance with established department procedures.

### **Rule 2.36 Mutual Protection/Assistance**

Employees of the department shall assist/protect any other employee immediately upon observing or hearing that the employee is having difficulty with another person.

### **Rule 2.37 Cowardice**

Employees of the department, who shrink from danger and fail to discharge their duties under emergency situations, shall be guilty of cowardice.

### **Rule 2.38 Unnecessary and/or Excessive Force Prohibited**

Employees of the department shall not use unnecessary or excessive force against any person or property and shall only use force that is necessary to gain entry into a building or vehicle, effect an arrest, prevent an escape, or defend themselves or another from physical assault. Only the amount of force deemed reasonable to a prudent person shall be used.

### **Rule 2.39 Reporting Required When Force Used**

Employees of the department, who use force against any person or property, shall make a detailed report of the incident immediately.

### **Rule 2.40 Situations Involving Off-Duty Employees**

Employees of the department who are confronted with a situation requiring public safety intervention, or any action in which an off-duty employee is involved, shall appropriately respond if an emergency exists. The employee shall promptly notify Communications and request that a supervisor is dispatched to the incident.

### **Rule 2.41 Civil Actions**

Employees of the department, in their official capacity, shall not render aid or assistance to either party in a civil dispute, except when ordered to do so by the court or to advise a person that the matter is civil and referring that person to the proper agency for service.

### **Rule 2.42 Outside Affiliations**

Employees of the department shall not affiliate with, become, nor remain a member of any organization if such affiliation would interfere with or prevent them from performing their duties.

### **Rule 2.43 Indebtedness**

Employees of the department shall not become financially obligated to any person who holds a business license where the business is subject to departmental control or inspection.

### **Rule 2.44 Supervisor-Subordinate Relationships**

- a. Employees shall not engage in loaning or borrowing money, unless the transaction is as defined in the *COA Code of Ordinances Section 2-821*.
- b. Supervisors nor employees shall use their position to solicit or gain personal favors from a subordinate.

## CHAPTER 3

# CONDUCT RELATING TO JUDICIARY BODIES AND INVESTIGATIVE BOARDS

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### **Purpose**

The purpose of this chapter is to provide employees with the proper guidelines relative to appearances before judiciary bodies and/or investigative boards.

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### **Rule 3.00 Conduct and Appearance in Court**

Employees of the department, when called upon to appear in court or at administrative hearings, shall be punctual and prepared as appropriate, conform to the court or hearing rules of conduct, obey all orders of the court, dress appropriately according to the court standards, and be truthful at all times.

### **Rule 3.01 Arrest and/or Court Actions Involving an Employee**

Employees of the department, who have been arrested or become involved in a court action in any capacity other than as a witness for the prosecution, shall immediately notify the Fire Chief or his/her designee in writing via chain of command.

### **Rule 3.02 Receipt of Service of Process**

Employees of the department, who are served in their official capacity regarding a civil case in which liability may attach to the employee, officials of the department, or the city, shall immediately forward the document along with a statement indicating the time, place, and date of service to the Fire Chief or his/her designee via chain of command.

### **Rule 3.03 Employees Subpoenaed as a Defense Witness**

Employees of the department, if subpoenaed as a defense witness in a criminal, civil or internal investigation, shall immediately notify the Fire Chief or his/her designee in writing via chain of command.

### **Rule 3.04 Claims for Damage and Legal Compromise**

Employees of the department shall not file a claim for damage or make any legal compromise in matters arising out of their position with the department without prior written notification and approval of the Fire Chief or his/her designee.

## CHAPTER 4

# DEPARTMENT PROPERTY AND EQUIPMENT

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### Purpose

The purpose of this chapter is to establish standards for all employees acting in an official capacity regarding department property and/or equipment.

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### Rule 4.00 Responsibilities for Examining and Reporting City-Owned Property

- a. Employees of the department shall be responsible for examining the condition and reporting of lost, damaged, or defective city-owned property in their custody. Before use, employees shall examine all city-owned property. The employee shall note any loss, damage, and/or defect, and submit the necessary report(s) to their immediate supervisor without delay.
- b. Employees of the department shall make a detailed report to their immediate supervisor of any lost, stolen or damaged property that was in their custody and/or use at the time of discovery. The supervisor shall review and submit an investigative report to the Fire Chief, via chain of command without delay.

### Rule 4.01 Operator to be Qualified and Authorized

Employees of the department shall not operate a city-owned vehicle unless they are qualified and authorized to do so and must possess a valid driver's license, with the proper class for the vehicle to be operated; as defined in the *COA Vehicle Use Policy Number 08-CWP-DPW-01*.

### Rule 4.02 Assignment and Uses of City-Owned Vehicles

Employees of the department shall not assign or use a city-owned vehicle for any purpose, other than for official business, nor shall they transport any unauthorized person, without approval of their supervisor; as defined in the *COA Vehicle Use Policy Number 08-CWP-DPW-01*.

### Rule 4.03 Vehicle Appearance

Employees of the department, assigned to drive or operate a city-owned vehicle, are responsible for insuring its cleanliness; as defined in the *COA Vehicle Use Policy Number 08-CWP-DPW-01*.

### Rule 4.04 Operation of City-Owned Vehicles

- a. Employees of the department shall operate a city-owned vehicle in such a manner as to avoid injury to persons or damage to property, in accordance to state laws; as defined in the *COA Vehicle Use Policy Number 08-CWP-DPW-01*.

- b. Employees of the department shall park a city-owned vehicle in a manner that causes the least interference with the flow of traffic.

#### **Rule 4.05 Safe Driving Techniques**

Employees of the department shall exercise due regard and exhibit safe driving habits when operating city-owned vehicles.

- a. Employees of the department shall not operate a city-owned vehicle unless all passenger seat belts are fastened in the proper manner.
- b. Employees of the department shall come to a complete stop when approaching a RED traffic signal while operating a city-owned emergency vehicle during an emergency or non-emergency response.
- c. Employees of the department shall use caution and exercise due regard when approaching a YELLOW or GREEN traffic signal while operating a city-owned emergency vehicle during an emergency or non-emergency response.
- d. Employees of the department shall not exceed the posted speed limit by more than 10 mph on surface streets and/or 15 mph on highways/expressways/interstates while operating a city-owned emergency vehicle during an emergency response.

#### **Rule 4.06 Vehicle Maintenance Checklists**

- a. A vehicle maintenance checklist shall be filled out by the operator at the beginning of a tour of duty; as defined in the *COA Vehicle Use Policy Number 08-CWP-DPW-01*.
- b. A completed vehicle maintenance checklist shall be signed by both the operator and the immediate supervisor, and kept on file for inspection.

#### **Rule 4.07 Control of Medications, Controlled Substances, and Legend Devices**

Employees who are assigned medications including controlled substances, legend devices (needles, syringes, IV administration sets, etc.) and fluids for IV administration shall secure and maintain control over items at all times while on duty.

- a. Only those employees authorized by law to possess, transport, and administer controlled substances for patient care activities shall be in direct possession of such substances.
- b. The ranking employee, determined by medical certification then rank, shall be responsible for controlled substances, and legend devices (needles, syringes, IV administration sets, etc.).

#### **Rule 4.08 Electronic Communications**

The Atlanta Fire Rescue Department provides use of electronic mail, Internet, and/or telecommunications devices for conducting city business only. The system is not to be used for personal gain or to support or advocate non-city related businesses or purposes; as defined in the *COA Electronic Communications Policy IS-C0043007v1*:

- a. The system is not to be used to broadcast personal messages or to forward "chain letters" of any kind.
- b. Images or files that display nudity, obscenity, or sexually explicit material shall be prohibited.
- c. Images or files that would be considered offensive due to sexual or graphic content by any reasonable member of the public or any employee of the Atlanta Fire Rescue Department shall be prohibited.
- d. Images or files that would bring discredit to any employee of the Atlanta Fire Rescue Department as a whole shall be prohibited.
- e. Electronic mail (e-mail) advocating political, religious, gender, or racial preferences shall be prohibited.
- f. E-mail messages intended to harass, ridicule, or otherwise demean an individual or group of individuals, shall be prohibited.
- g. Any act or omission which is in violation of applicable City policies and/or SOP's covering electronic communications, shall be prohibited.

#### **Rule 4.09 Recovered Properties**

Employees of the department shall ensure that all recovered city property coming into their possession is returned to the appropriate departmental official without delay.

#### **Rule 4.10 Personal Use of Property**

Employees of the department shall not convert to their own use or have any claim on found and/or recovered property, property held as evidence, or property purchased by the city. Nor, shall any city-owned property be used by employees for personal reasons without the approval of their supervisor.

## Chapter 5

# PUBLIC ACTIVITIES

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### **Purpose**

The purpose of this chapter is to establish guidelines relative to public activities regarding employment.

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### **Rule 5.00 Endorsements and Testimonials**

Employees of the department shall not permit their names, photographs, or identities as employees of the department to be used to endorse any product or service without consent of the Fire Chief or his/her designee.

### **Rule 5.01 Publishing Books, Pamphlets, or Articles**

All written material for publication or distribution outside the department (except personal correspondence) which draws on the experience of the writer or identifies the writer as an employee shall be submitted to the Fire Chief for approval prior to submission for publication. The Fire Chief shall then make a determination of the correctness of any references to department which might be prejudicial to the lawful interest or privacy of any person(s).

### **Rule 5.02 Improper Organizations**

Employees of the department shall not, in any way, join or participate in an organization that advocates violating any law, statute, or ordinance of the federal, state, county, or city government.

### **Rule 5.03 Soliciting Advertisement**

Employees of the department shall not solicit any advertisement which is to appear in a commercial publication or lend support, in any way, to such solicitation if it would identify them as an employee of the department unless authorized by the Fire Chief or his/her designee.

### **Rule 5.04 Political Activity**

Employees of the department shall be subject to the following rules and regulations concerning political activity; as defined in the *COA Code of Ordinances Section 114-2*:

- a. Employees of the department shall not solicit or receive any political contribution or service for any purpose while on duty or while utilizing city-owned property.
- b. Employees of the department in charge of any department facility, shall not permit any person to solicit any type of political contribution on such premises.
- c. Employees of the department are not under any obligation to contribute to any political fund or render any political service to any person or party and shall not be penalized, in any way, for refusing to do so.
- d. Employees of the department shall not use their authority or influence to coerce the political action of any person or body nor shall they interfere with any nomination, appointment, or election to public office of any person.
- e. Employees of the department shall not take part in any political management, campaign, or engage in any political activity for or against any person, candidate, or party while on duty.
- f. Employees shall not wear their city uniform or use city property to endorse candidates for political office.
- g. Employees of the department have the right to vote as they please and to privately express their opinions on all political subjects. Expressing political opinion, while performing official duties, is prohibited.

### **Rule 5.05 Employees and Elective Offices**

No employee shall seek an elective office without having first filed a written notification with such employee's department head of the employee's intent to file as a candidate for elective office; as defined in the *COA Code of Ordinances Section 114-2*.

### **Rule 5.06 Civil Leave**

Each employee shall, upon reasonable notice to his or her supervisor, be permitted take the following civil leave; as defined in the *COA Code of Ordinances Section 114-419*:

- a) An employee shall be entitled to time off with pay when performing jury duty or when subpoenaed to appear before any public body or commission, except when summoned to appear for personal matters. An employee will be permitted to take any necessary time off to vote in any municipal, county, state or federal political party primary or election, pursuant to *O.C.G.A. § 21-2-404*. Such necessary time off shall not exceed two hours, and if the hours of work of such employee commence at least two hours after the opening of the polls or end at least two hours prior to the closing of the polls, the time off for voting need not apply. The employee's supervisor may specify the hours which may be used as provided in this section.

- (b) An employee shall be entitled to time off with pay to work at the polls during a City of Atlanta Municipal Election, provided proper approval is received from the supervisor or department head. Eligible employees must submit an application to the Fulton or DeKalb County Department of Registration and Election, in accordance with applicable regulations, to be approved and selected to work at the polls on Election Day.
- (c) An employee, while taking examinations before a federal, state or other governmental agency, may be granted leave with pay if such examinations are pertinent to the employment of such employee with the city.

### **Rule 5.07 Contributions**

Employees of the department shall not be penalized, in any way, for contributing or refusing to contribute to any charitable, political, or professional organization; as defined in the *COA Code of Ordinances Section 114-504*.

### **Rule 5.08 Contact with Elected or Appointed City Officials**

Employees of the department shall not initiate contact with a publicly elected or appointed city official for the purpose of conducting departmental business, without the approval of the Fire Chief or his/her designee. Routine or emergency requests for department services, by elected or appointed officials are exceptions to this rule.

## CHAPTER 6

# FIREARMS POLICY

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### Purpose

The purpose of this chapter is to provide a single source of reference to the requirements of the department, and expectations of all investigators (Fire Investigations and Internal Affairs) who are authorized to carry firearms. It is the primary intention of this policy to ensure the safety of both the public and the employees of the department. Therefore, while it may become necessary for an investigator to discharge a firearm, it is required that the investigator first make every effort to avoid such drastic action. In all cases, only the necessary amount of force shall be used, which is consistent with the accomplishment of a mission. Investigators shall use caution and act in a calm and deliberate manner when they find the use of a firearm necessary.

Investigators will not be criticized for choosing not to discharge a firearm if the discharge threatened the life or safety of another or if the discharge was not clearly warranted by the policy, state law, or reasonable judgment. Nor will criticism be made of an investigator who, when faced with a situation which threatens life or serious physical injury, discharges a firearm in self-defense or in defense of another.

Investigators are reminded that the use of deadly force cannot be taken lightly and that their actions must not only be legally warranted and defensible but within accepted moral and social codes consistent with rational and humane social control in a democracy.

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### Rule 6.00 Basic Firearms Approval

The basic firearm to be used by all investigators in the performance of their duties, shall be an approved double action, semi-automatic pistol, capable of firing 40mm cartridges. Investigators shall only carry the firearm that is approved by the department.

### Rule 6.01 Basic Firearms Issue

The basic firearm shall be furnished to investigators by the department. Firearms issued to investigators shall remain with them throughout their assignment to the Fire (Arson) Investigations Section or the Fire Office of Professional Standards Section and shall be surrendered to their supervisor upon being transferred, reassigned, or suspended from the unit.

### Rule 6.02 Inspection of Firearms

Employees will have all department issued and personally owned and approved firearms inspected as necessary by their immediate supervisor.

### **Rule 6.03 Ammunition for Firearms**

Only the ammunition that is issued by the department, shall be carried or used in any department issued or otherwise approved firearm.

### **Rule 6.04 Qualifying with Firearms**

Investigators who are authorized and certified to carry a firearm shall be required to qualify annually with the firearm that they carry on a regular basis. Such qualification shall include obtaining a passing score on an approved double-action course.

### **Rule 6.05 Carrying of Firearm**

Investigators who are authorized and certified to carry a firearm shall be armed with the basic or otherwise approved firearm while on duty, when performing official acts, and when traveling to and from their workplace. The firearm shall be carried fully loaded.

### **Rule 6.06 Display of Firearms**

Investigators shall refrain from making any unnecessary display or reference to their firearm or holster and from making reference to the fact that they are carrying a weapon.

### **Rule 6.07 Firearms Prohibited in Restricted Areas**

Investigators shall not wear or transport firearms into any restricted areas of the Department of Corrections and/or the court system.

### **Rule 6.08 Carrying a Firearm aboard Commercial Aircraft**

Employees shall abide by all applicable local, state, or federal laws and regulations when carrying firearms aboard commercial aircraft.

### **Rule 6.09 Safeguard of Firearms**

- a. Whenever investigators are not carrying their weapon, they shall ensure that it is unloaded and locked in a secure place. Firearms should never be left in unlocked desks and extra precautions should be taken with regard to storage at home to prevent tragic accidents.
- b. Care shall be exercised when handling suspects and/or interviewing persons in order to prevent someone from taking the firearm and causing harm.

### **Rule 6.10 Use of Firearms**

- a. Investigators shall not shoot at any person, except to protect their own life or the life of another person.

- b. Investigators shall not point firearms at any persons in circumstances whereby the discharge would not be clearly justifiable. If investigators find it necessary to point a weapon, they should not interpret this necessarily as an obligation to discharge the weapon.
- c. The firing of "warning shots" is prohibited.
- d. Discharging a firearm from or at a moving vehicle is prohibited, unless the occupant of the other vehicle is using deadly physical force against the investigator or any other person by means other than the vehicle.
- e. A firearm shall be discharged ONLY when the lives of innocent persons are in danger, and the appropriate backstop has been observed. Every effort should be made to reduce the risk of innocent bystanders down range of your target.
- f. The discharging of a firearm at dogs or other animals shall be an action employed only when no other means to bring the animal under control exists.

### **Rule 6.11 Loss or Theft of Firearms**

The loss or theft of a department-owned or personally-owned firearm shall be reported promptly to the immediate supervisor of the investigator, furnishing detailed circumstances of the loss. The supervisor shall initiate an immediate and thorough investigation in each case of loss in an effort to recover the weapon. The report submitted by the supervisor to the Fire Chief or his/her designee shall include a recommendation as to whether or not charges should be filed. This report shall be forwarded to the Office of Professional Standards.

### **Rule 6.12 Maintenance and Repair of Firearms**

Responsibility for the safe operation and maintenance of the basic firearm rests with the investigator to whom the firearm was issued. It is essential that every firearm be maintained in a clean, safe, and dependable working condition.

- a. Weapons found to be in need of repair shall be presented to the issuing authority who shall determine what action should be taken toward making repairs or arranging for a replacement weapon.
- b. The cost of any repairs to a personally-owned weapon shall be the responsibility of the investigator.

### **Rule 6.13 Altering Firing Mechanism of Firearms**

- a. No alteration of the firing mechanism of any firearm, whether department-owned or personally-owned, shall be permitted. Personally-owned guns shall not be approved if they have undergone modification which has rendered them professionally unsafe.
- b. Extremely light trigger pulls (3 pounds or less) shall not be permitted. Radical alteration of trigger guards, triggers, and hammers shall not be permitted.

### **Rule 6.14 Reporting Discharge of Firearm**

- a. Investigators who discharge a firearm, whether on or off duty, shall promptly report the discharge to their supervisor.
- b. All firearm discharges require the submission of a miscellaneous incident report containing the duty status of the investigator, whether on or off duty, at the time of the discharge. The supplemental incident report should include the following:
  - The make, model, and serial number of the weapon discharged.
  - If the firearm and ammunition were department approved/issued.
  - The reason for the discharge.
  - The number of shots fired.
  - The distance between the investigator and the person when first shot was fired.
  - Who fired first shot.
  - How many shots were fired at the investigator.

### **Rule 6.15 Firearms Discharge Investigation**

Supervisors of investigators who use a weapon, whether on or off duty, inside or outside city limits, are responsible for initiating an investigation in conjunction with the appropriate police department of whose jurisdiction the discharge took place. The investigator's supervisor shall be notified immediately, if the use of the firearm has resulted in injury or death to a person. When the initial investigation is complete, the investigative report shall be sent via chain of command to the Fire Chief or his/her designee.

### **Rule 6.16 Disposition of Firearms Use Reports**

A copy of all documents of the initial and subsequent investigation of firearms use, and any reports generated by the Fire Chief, shall become a part of the permanent file of the incident.

### **Rule 6.17 Special Weapons and Equipment**

Investigators shall not arm themselves, while on duty, with any submachine gun, rifle, shotgun, gas projectile gun, or other such device, without the approval of the Fire Chief. This approval will be given only during an emergency, and only to investigators qualified to use such weapons. The use of non-department weapons shall only be authorized by the Fire Chief or his/her designee.

### **Rule 6.18 Personal Weapons**

- a. Investigators may request to carry a personally-owned weapon that meets all the requirements of the basic weapon. The request should be in writing to the Fire Chief containing a complete description of the firearm including manufacturer, model, serial number, caliber, and cartridge capacity.

- b. All written requests, along with the weapon, shall be submitted to the investigator's immediate supervisor for inspection and initial approval. The supervisor shall, following inspection and initial approval, endorse the request and forward it to the Fire Chief, via chain of command, for final approval.
- c. Upon final approval by the Fire Chief, the investigator shall, be allowed to carry (concealed) a secondary firearm. A copy of the final approval shall be kept in the personnel file of the investigator.

## **REFERENCES**

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City of Atlanta; COA (2009) Code of Ordinances Codified through Ordinance Number 2009-23 (09-O-0924), (Supplement No. 46, Update 1) Retrieved October 2009, from <http://www.municode.com/resources/gateway.asp?pid=10376&sid=10>

City of Atlanta; COA (1994) Administrative Order Number 94-05 Violence in the Workplace

City of Atlanta; COA (2007) Electronic Communications Policy Number IS-C0043007v1

City of Atlanta; COA (2008) Vehicle Use Policy Number 08-CWP-DPW-01

The Official Code of Georgia Annotated ; O.C.G.A (2009) Retrieved October 2009, from <http://www.lexis-nexis.com/hottopics/gacode/default.asp>

## **ADDITIONAL RESOURCES**

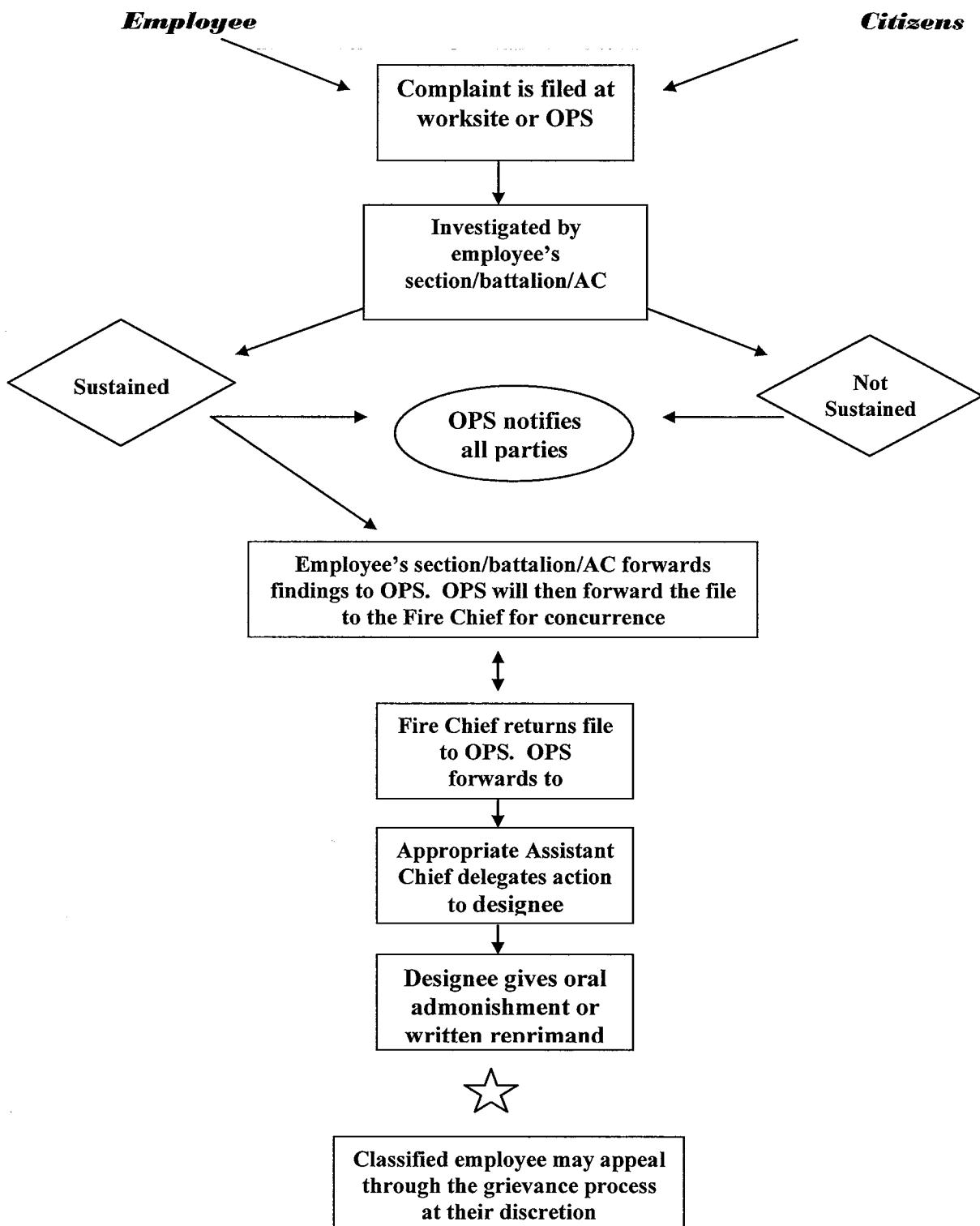
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City of Atlanta Ethics Office , COA (2009) Standards of Conduct, Retrieved October 2009, from [http://www.atlantaga.gov/government/boards/ethics\\_code\\_091306.aspx](http://www.atlantaga.gov/government/boards/ethics_code_091306.aspx)

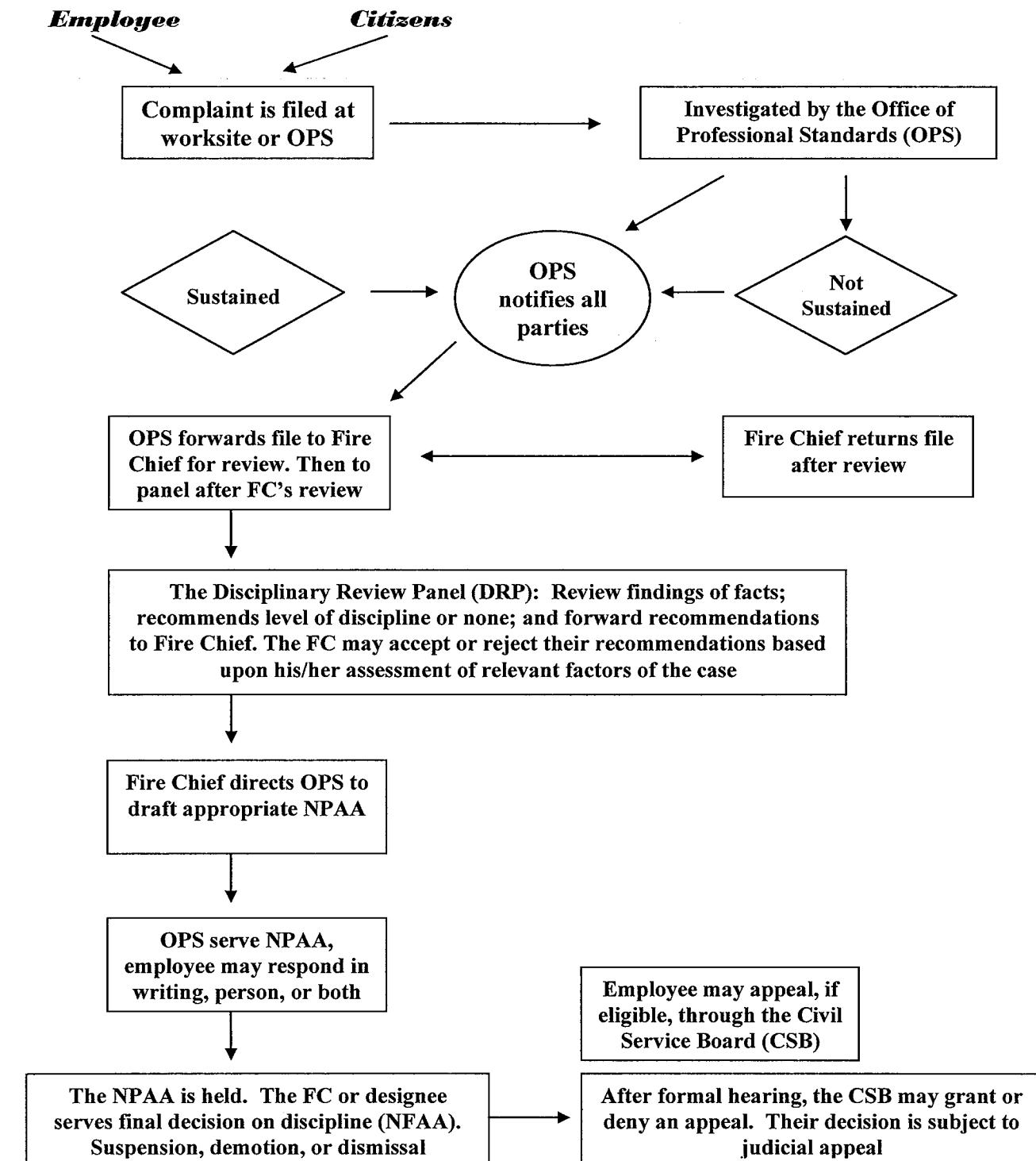
The Federal Hatch Act; The Hatch Act for State and Local Employees (2008), Retrieved October 2009, from [http://www.osc.gov/ha\\_state.htm](http://www.osc.gov/ha_state.htm)

## APPENDIX – 2

### ***Investigation and Disciplinary Process Category II: Non-Adverse Actions***



***Investigation and Disciplinary Process***  
***Category I: Adverse Actions***



The Fire Chief or his/her designee will normally be the disciplinary authority for all Category I cases.

***APPENDIX – 3***



# **Internal Investigation Complaint Package**

**OFFICE OF PROFESSIONAL  
STANDARDS**



**OFFICE OF PROFESSIONAL STANDARDS  
INTERNAL INVESTIGATION  
COMPLAINT PACKAGE INDEX**

**EMPLOYEE NAME:**

**CONTROL #:**

**OFFICE OF PROFESSIONAL STANDARDS  
PRELIMINARY COMPLAINT FORM**

DATE COMPLAINT # ASSIGNED			DATE OF INCIDENT			ADDRESS OF INCIDENT:											
MONTH	DAY	YEAR	MONTH	DAY	YEAR												
BRIEFLY DESCRIBE OF ALLEGATION			<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 33%;">Video Tape of Interview</td> <td style="width: 33%;">Audio Tape of 911 Radio</td> <td style="width: 33%;">Lab Result</td> </tr> <tr> <td>Pictures</td> <td>Incident Reports</td> <td>Others</td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> </table>			Video Tape of Interview	Audio Tape of 911 Radio	Lab Result	Pictures	Incident Reports	Others						
Video Tape of Interview	Audio Tape of 911 Radio	Lab Result															
Pictures	Incident Reports	Others															

Use "A" for Accident Review Committee      Use "CZ" for Citizen      Use "S" for Supervisor  
 Use "C" for Complainant      Use "F" for AFRD

**COMPLAINANT INFORMATION**

CODE	NAME (Last, First, MI)			RACE	SEX
ADDRESS/ Work Location			PHONE (W)		PHONE(C)

**ACCUSED INFORMATION**

NAME (Last, First MI)	RANK	RACE	SEX	DATE OF BIRTH	SSN (Last 4 Digits)
	ASSIGNMENT	LOCATION	SHIFT	DATE OF EMPLOYMENT	EMPLOYEE #

**WITNESS INFORMATION**

NAME #1 (last, first, MI)	PHONE #	NAME #6 (last, first, MI)	PHONE #
NAME #2 (last, first, MI)	PHONE #	NAME #7 (last, first, MI)	PHONE #
NAME #3 (last, first, MI)	PHONE #	NAME #8 (last, first, MI)	PHONE #
NAME #4 (last, first, MI)	PHONE #	NAME #9 (last, first, MI)	PHONE #
SUPERVISOR RECEIVING COMPLAINT	INVESTIGATOR ASSIGNED	DATE ASSIGNED	DATE COMPLETE

Section Chief - OPS



**OFFICE OF PROFESSIONAL STANDARDS  
SUPERVISOR COMPLAINT INVESTIGATION CHECKLIST**

**EMPLOYEE NAME:****CONTROL #:**

**INTERNAL COMPLAINT INVESTIGATIVE FOLDER CONTENTS**

1. Disciplinary Complaint Folder Index
  
2. Supervisor Complaint Investigation Checklist
  
3. Preliminary Complaint Form (**Required on all Formal Complaints**)
4. Citizen Statements (**If applicable**)
5. Employee Statements/video
6. Complaint Investigation Disposition Form (**Command Investigations**) **OR**  
Complaint Transmittal Summary Memorandum (**OPS Investigations**)
  
7. Attach any Supporting Documentation

Investigation Completed By \_\_\_\_\_

Date Completed \_\_\_\_\_

**NON-ADVERSE ACTION**

8. Letter of Written Reprimand given to **(Employee)** \_\_\_\_\_ by  
**(Supervisor)** \_\_\_\_\_ for Work Rule(S) \_\_\_\_\_

**ADVERSE DISCIPLINARY ACTION (OPS USE ONLY)**

9. Notice of Proposed Adverse Action **(NPAA)** issued Date: \_\_\_\_\_
10. Extension of time form **(When applicable)**
11. Notice of Final Adverse Action **(NFAA)** issued Date: \_\_\_\_\_

**PROACTIVE CORRECTIVE ACTION**

12. Memorandum on Corrective Action (If applicable, includes counseling)
13. Training given on \_\_\_\_\_ for \_\_\_\_\_
14. Other



## OFFICE OF PROFESSIONAL STANDARDS INVESTIGATION DISPOSITION FORM

**EMPLOYEE:****CONTROL #:**I. FINDING OF FACT: (*LIST FACTS AS YOU KNOW IT AND DO NOT INCLUDE ANY DISCIPLINARY*)

See Investigative Report

**ACTIONRECOMMENDATIONS**II. PROCEDURE, POLICY OR TRAINING RECOMMENDATIONS: (*DO NOT RECOMMEND ANY DISCIPLINARY ACTION*)**III. INVESTIGATIVE DISPOSITION (INDICATE RECOMMENDED DISPOSITION FOR EACH WORK RULE VIOLATION)**

VIOLATION _____	SUSTAINED <input type="checkbox"/>	NOT SUSTAINED <input type="checkbox"/>	EXONERATED <input type="checkbox"/>	UNFOUNDED <input type="checkbox"/>	EXCEPTIONALLY CLOSED <input type="checkbox"/>
VIOLATION _____	SUSTAINED <input type="checkbox"/>	NOT SUSTAINED <input type="checkbox"/>	EXONERATED <input type="checkbox"/>	UNFOUNDED <input type="checkbox"/>	EXCEPTIONALLY CLOSED <input type="checkbox"/>
VIOLATION _____	SUSTAINED <input type="checkbox"/>	NOT SUSTAINED <input type="checkbox"/>	EXONERATED <input type="checkbox"/>	UNFOUNDED <input type="checkbox"/>	EXCEPTIONALLY CLOSED <input type="checkbox"/>

**IV. REVIEWING SIGNATURES (DOES NOT INDICATE AGREEMENT)**

INVESTIGATING SUPERVISOR'S SIGNATURE DATE

OPS SECTION CHIEF DATE

APPROVED BY FIRE CHIEF

CONCUR (*OPS USE ONLY*)

DATE

DO NOT CONCUR (*OPS USE ONLY*)

DATE

**Comments:**



**ATLANTA FIRE DEPARTMENT  
EMPLOYEE STATEMENT**

**EMPLOYEE:**

**CONTROL #**

EMPLOYEE NAME (LAST, FIRST, MI)				CLASSIFICATION	POSITION NUMBER	DATE & TIME OF STATEMENT	
RACE	SEX	DOB	DATE OF EMPLOYMENT	SS#	DIVISION	SECTION	WATCH

I am \_\_\_\_\_ of the Atlanta Fire Department. The Department is questioning you as a Witness in an official investigation. Also present is: **REPRESENTATIVES NAME**.

Section 3.6.1 of the Department Disciplinary Manual entitled: Responsibilities states: Employees shall answer or render material and relevant sworn statements to the designated departmental authority when so directed. Employee shall answer all questions honestly, completely, and to the best of their ability. No employee shall, in any manner, internal investigation. Except as authorized or required, an employee shall not contact persons involved in an internal investigation nor disclose or discuss with anyone except the designated departmental authority with his/her attorney or other representative or from developing information for his/her defense. However, the employee and representative may be required to sign a non-disclosure agreement.

You are required to give a statement for administrative purposes. You will be asked questions specifically, directly and narrowly related to the performance of your official duties or continued fitness for duty. You are entitled to all the rights and privileges afforded employees by the Disciplinary Manual including the right to have an attorney or representative present during questioning. I further advise you that if you refuse to answer questions relating to the performance of your official duties or continued fitness for duty, you will be subject to department charges, which could result in your dismissal from the Department. If you do answer, neither your statement nor any other information or evidence, which is gained by reason of such statement, can be used against you in any subsequent criminal proceedings except perjury. However: these statements may be used against you in relation to subsequent departmental charges.

DO YOU UNDERSTAND THIS? \_\_\_\_\_

I have read or had read to me the above statement and I swear or affirm that it is true to the best of my knowledge and belief.		
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EMPLOYEE SIGNATURE

**Sworn and subscribed to  
me this** \_\_\_\_\_

day of

in the year

PRINT EMPLOYEE NAME

NOTARY PUBLIC

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**APPENDIX – 4**  
**(Relief from Duty Notice with Pay)**



**CITY OF ATLANTA**

**FIRE – RESCUE DEPARTMENT**

**An Accredited Agency**

**KASIM REED  
MAYOR**

226 Peachtree St., SW  
Atlanta, GA 30303-3749  
(404) 546-7000 FAX (404) 546-8761  
ICHIFFS ID – ATLFRDHQ

**KELVIN J. COCHRAN  
FIRE CHIEF**

**MEMORANDUM**

**TO:** Member

**FROM:** Fire Chief Kelvin J. Cochran

**DATE:**

**SUBJECT: RELIEF FROM DUTY NOTICE WITH PAY**

This memorandum is to notify you that you are hereby relieved from duty with pay effective at \_\_\_\_\_ hours, on the date of \_\_\_\_\_, 20\_\_\_\_, for the following reason(s):

You are required to provide two (2) contact numbers, by which you can be reached. You are also required to make yourself available for interview(s) Monday through Friday from 0880 hours to 1700 hours. If you are unreachable by the numbers that you have provided for more than two (2) hours, you shall contact the Section Chief of OPS or an Investigator at (404) 546-7000 prior to that time. Furthermore, you are required to surrender all Fire Department property (ie. ID card(s), radio, keys, etc.)

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Employee Signature

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Date

---

Investigator Signature

---

Date

Primary Number

Secondary Number

## ***APPENDIX – 5 & 6 (Labor Relations)***

### **ARTICLE VI - LABOR RELATIONS**

Division 1 - Generally

Sec. 114-501. - Short title.

This article shall be known and may be cited as the labor-management relations ordinance.

Sec. 114-502. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Adverse action* means a disciplinary action taken for cause by a department head or designee which results in suspension without pay, demotion or dismissal of a regular, non-probationary employee in the classified service of the city or any regular non-probationary sworn officer of the department of police who holds the rank of lieutenant or below or any regular non-probationary sworn officer of the department of fire who holds the rank of captain or below. It does not include actions which result from challenging the decision to implement or the scope of a reduction in force or actions resulting from insufficient funds, decrease in funds or departmental reorganization or denial of annual increase based on the employee receiving a less than effective performance evaluation. Adverse actions may be appealed to the civil service board.

*Appeal* means a written request by an employee for review by the civil service board of an adverse action, removal from the eligible list, procedures used in a reduction in force or unjust coercion or reprisal as provided in this article.

*Appointing authority* means the official, group of officials, acting official or other person designated by the proper authority having the power of appointment, employment or election to or removal from subordinate positions in the city employment service.

*Board* means the civil service board of the city.

*Classified service* means that which is referenced in 114-84.

*Commissioner*, unless otherwise specified, means the commissioner of human resources.

*Counseling* means a deliberation or discussion between employee and supervisor in which the employee's supervisor advises the employee regarding the appropriateness of work-related

attitudes, behaviors, actions, conduct or performance of the employee and where necessary offers assistance or advise in correcting such. *Days*, unless otherwise specified, means working days.

## ARTICLE VI – LABOR RELATIONS

*Demotion* means a change of employment to a position in a class which has a lower maximum salary limit than the class from which the assignment was made. A reduction in pay shall not be deemed a demotion for cause if such reduction results from a demotion during a probationary period such that the employee is returned to the position held immediately prior to the promotion, a reduction in force, insufficient funds, decrease in funds, departmental reorganization or a change of appointment made in the discretion of the appointing authority as provided by this Code and shall not be appealable under this article.

*Disciplinary action* means an action taken for cause by a department head or designee which results in an oral admonishment, a written reprimand, demotion, suspension with or without pay or dismissal of a regular non-probationary employee in the classified service of the city or any regular non-probationary sworn officer of the department of police who holds the rank of lieutenant or below or any regular non-probationary sworn officer of the department of fire who holds the rank of captain or below. Disciplinary actions include all adverse actions. Only those disciplinary actions which are adverse actions, suspension without pay, demotions or dismissals, by definition of this article, are appealable to the civil service board.

*Dismissal* means the discharge, termination or removal of an employee from employment with the city.

*Eligible* means a person who has qualified to be placed on a list or register of persons eligible for employment with the city pursuant to article IV of this chapter pertaining to civil service.

*Grievance* means a written request by an employee for review of an allegation which describes a work-related event or a condition of employment which the employee reasonably believes is unfair in light of the rules, regulations and standards which govern the employment relationship with the city.

*Hearing officer* means a member of the civil service board appointed by the mayor and confirmed by the council as provided in this article and who is designated in routine rotation sequence to hear appeals filed with the civil service board.

*Hearing panel* means three members of the civil service board who are designated in routine rotation sequence to hear appeals of dismissals filed with the civil service board.

*Oral admonishment* means a verbal discussion by a supervisor with an employee calling attention to the employee's substandard work performance or inappropriate conduct and requiring correction of the substandard work performance or inappropriate conduct within a specified timeframe.

*Performance evaluation* means a periodic written report approved by the appointing authority or designee relative to the work-related conduct and performance of the employee and which is issued in accordance with article IV of this chapter.

*Probationary employee* means any employee appointed to a regular position who has not completed the required probationary period in a given class qualifying the employee for regular employment in that class served in accordance with article IV of this chapter.

## ARTICLE VI – LABOR RELATIONS

*Reprimand* means a written report to an employee by a supervisor calling attention to the employee's substandard work performance or inappropriate conduct and requiring correction of the substandard work performance or inappropriate conduct within a specified timeframe.

*Separation* means termination of the employment relationship.

*Suspension* means the temporary removal of an employee from a position of employment with the city with or without pay.

(Ord. No. 2007-22(06-O-2700), § 1, 3-27-07; Ord. No. 2010-34(10-O-0952), § 6, 6-30-10, eff. 7-1-10)

Sec. 114-503. - Point of contact.

The commissioner of human resources shall serve as the principal employee relations official for this city and shall be responsible for representing the city in discussions with employee organizations concerning personnel policies, practices or procedures and working conditions of city employees.

(Ord. No. 2007-22(06-O-2700), § 1, 3-27-07)

Sec. 114-504. - Disparate treatment prohibited.

There shall be no disparate treatment against or in favor of any employee because such employee is a member of an employee organization. No employee shall be required, as a condition of employment with the city, to become or to remain a member of a labor or employee organization.

(Ord. No. 2007-22(06-O-2700), § 1, 3-27-07)

Sec. 114-505. - Meet and confer sessions.

(a) The mayor or designee shall meet and confer annually with any interested employee organization group recognized for deduction of dues under section 114-28 of this Code, for the purpose of discussing wages, rates of pay, working conditions, and other terms and conditions of employment.

(b) Any consensus reached between the mayor and employee organizations may be embodied in a written memorandum of understanding.

(c) The commissioner of human resources or designee shall meet and confer monthly with any interested employee organization recognized for deduction of dues under section 114-28 of

this Code, for the purposes of discussing wages, rates of pay, benefits, working conditions and other terms of employment for its members.

(Ord. No. 2007-22(06-O-2700), § 1, 3-27-07)

## **DIVISION 2 – GRIEVANCES**

Sec. 114-516. - Application of division.

The policies and procedures set forth in this division for the processing of grievances shall apply to all regular employees in the classified service of the city and all non-probationary sworn employees in the departments of police and fire.

(Ord. No. 2007-22(06-O-2700), § 1, 3-27-07)

Sec. 114-517. - Statement of policy.

Employee grievances should, to the fullest extent practicable, be promptly considered and/or equitably resolved. The city establishes its policy to encourage employees to seek review of legitimate grievances and to require that the managerial and supervisory personnel of all city departments make every effort to fairly resolve grievances of employees in their respective departments at the earliest opportunity.

(Ord. No. 2007-22(06-O-2700), § 1, 3-27-07)

Sec. 114-518. - Purposes.

The procedures set forth in this division are established to:

- (1) Establish and implement a clear, expeditious, efficient and equitable system of processing employee grievances;
- (2) Allow for informal resolution of grievances between employees and managerial and supervisory personnel of city departments;
- (3) Provide a prompt and fair opportunity for employees to seek review of legitimate grievances without fear of reprisal or coercion or unequal treatment; and
- (4) Encourage managerial and supervisory personnel of city departments to eliminate or correct causes of legitimate grievances of employees.

(Ord. No. 2007-22(06-O-2700), § 1, 3-27-07)

Sec. 114-519. - Matters for which grievances may be filed.

The procedures set forth in this division for the resolution of employee grievances shall apply to the following:

- (1) Supervisory-employee relationships;

- (2) Working conditions;
- (3) Classification and pay issues;

## DIVISION 2 – GRIEVANCES

- (4) Departmental policies and procedures;
- (5) Citywide policies and procedures;
- (6) Other employment-related issues not prohibited by city, state, county or federal law;
- (7) Disciplinary actions other than adverse actions; and
- (8) Any other matter determined grievable by the commissioner of human resources pursuant to section 114-521

(Ord. No. 2007-22(06-O-2700), § 1, 3-27-07)

Sec. 114-520. - Matters for which grievances may not be filed.

The procedures set forth in this division for the resolution of employee grievances shall not apply to the following:

- (1) Routine transfers.
- (2) Selection from a properly certified eligibility list.
- (3) Reassignment.
- (4) Staffing levels.
- (5) Neither the commitment setting session nor the rating an employee receives under the employee performance appraisal system.

(Ord. No. 2007-22(06-O-2700), § 1, 3-27-07)

Sec. 114-521. - Determination as to whether a matter is grievable.

If the determination by the employee's department is that the matter is not grievable under sections 114-519 and 114-520, the department must notify the employee in writing of the employee's right to request a review of the determination of grievability by the commissioner of human resources. The employee may request such review and the determination of grievability shall be made as follows:

- (1) *Submission of request for determination of grievability form.* The employee shall obtain a request for a determination of grievability form from the commissioner of human resources. The employee shall complete the form and shall provide therein sufficient facts and details of the circumstances giving rise to or the causes of the employee's grievance. The employee shall

submit the form to the commissioner of human resources within five days from the date the employee was notified by the employee's department that the matter for which the employee seeks redress is not grievable.

## DIVISION 2 – GRIEVANCES

(2) *Determination by commissioner of human resources.* Within five days of receipt of the determination of grievability form, the commissioner of human resources shall make a written determination as to whether the matter is grievable under section 114-519

(3) *Notice of determination of grievability.* A notice of determination of grievability shall be sent to the employee by certified mail and a copy to the employee's department. The notice shall state whether the commissioner of human resources finds the matter grievable or not grievable and shall contain the statement of reasons for such determination.

(Ord. No. 2007-22(06-O-2700), § 1, 3-27-07)

Sec. 114-522. - Right of representation.

The employee shall have the right of representation at all stages of the grievance procedure.

(Ord. No. 2007-22(06-O-2700), § 1, 3-27-07)

Sec. 114-523. - Grievance resolution procedures.

The following procedures shall govern the processing of grievances:

(1) *Verbal discussions initiated by aggrieved employee.* Any employee who has a grievance, as provided in section 114-519, or a matter found to be grievable, as provided in section 114-521, may initiate the grievance process by requesting a meeting for the verbal discussion of the grievance with the employee's immediate supervisor within three working days of the occurrence of the incident giving rise to the grievance or becoming aware of the incident giving rise to the grievances. The immediate supervisor, at the time of the employee's request for a meeting, shall schedule a meeting for discussion for a definite time and place, but such meeting shall not take place later than three working days following the employee's request.

After the meeting, the supervisor shall investigate the employee's grievance and verbally communicate a decision to the employee within three working days of the meeting.

(2) *Submission of grievance to immediate supervisor.* If, after the supervisor's verbal response, the grievance is not resolved to the employee's satisfaction and the employee desires to pursue the matter, the employee shall submit, in writing, on a form supplied by the commissioner of human resources, the nature of the grievance, the facts to support the grievance, any supporting documents and the requested remedy. Copies of the grievance will be forwarded to the head of the affected department and the commissioner of human resources. The form shall be submitted by the employee to the immediate supervisor within five working days of receipt of the verbal decision rendered by the supervisor. Within three working days of the receipt of the grievance form, the supervisor shall set forth in writing on the corresponding section of the

grievance form and transmit to the employee the findings of the investigation and the reasons therefore and shall attach all supporting documents.

## **DIVISION 2 – GRIEVANCES**

(3) *Submission of grievance to next level supervisor.* If the grievance is not resolved by the supervisor to the employee's satisfaction and the employee desires to pursue the matter, the employee may submit the completed grievance form to the next level supervisor having authority to resolve the grievance within three working days of receipt of the decision by the supervisor. The next level supervisor shall investigate the grievance and, as necessary, shall collect evidence. Within five working days of receipt of the grievance form, the next level supervisor shall set forth in writing on the corresponding section of the grievance form and transmit to the employee the findings of the investigation, the decision on the grievance and the reasons therefore and shall attach all supporting documents.

(4) *Submission of grievance to director.* If the grievance is not resolved by the next level supervisor to the employee's satisfaction and the employee desires to pursue the matter, the employee shall submit the completed grievance form to the director of the office under which the employee is employed within three working days of receipt of the supervisor's decision. The director shall investigate the grievance and, as necessary, shall collect evidence. Within five days of receipt of the grievance form, the director shall set forth in writing on the corresponding section of the grievance form and transmit to the employee the findings of the investigation, the decision on the grievance and the reasons therefor and shall attach all supporting documents.

(5) *Submission of grievance to department head.*

- a. If the grievance is not resolved by the director to the employee's satisfaction, the employee may submit the completed grievance form to the head of the employee's department within three working days of receipt of the decision of the director. The head of the employee's department shall investigate the grievance as appropriate and shall collect evidence. Within five working days of receipt of the completed grievance form, the department head shall set forth in writing the final determination of the employee's grievance by the department. The final determination shall include the decision on the grievance, state the reasons therefor shall and include any supporting evidence. A copy of the final determination by the department shall be given to the employee or sent to the employee by registered mail no later than the tenth day from date of receipt of the grievance by the head of the employee's department.
- b. If the grievance is from an employee of the department of fire or department of police, the final paragraph of the chief's letter will differ significantly depending upon the grieving employee's sworn or non-sworn status as follows:
  - 1. If the grieving employee is sworn, the last paragraph will advise the grievant that the chief's decision is not subject to any further administrative appeal, but that the grievant could seek redress in the civil courts on the employee's own initiative and expense. Copies of this letter will be distributed to the deputy chief, the immediate supervisor, the employee's personnel file and the city attorney's office.

2. If the grieving employee is non-sworn, the last paragraph will advise the grievant that the chief's decision could be appealed to the commissioner of human resource as per subsection (6) of this section. Copies of this letter will be distributed to the deputy chief, immediate supervisor, the employee's personnel file and the city attorney's office.

## DIVISION 2 – GRIEVANCES

3. The time constraints of subsection (5)a of this section shall apply to this subsection.

(6) *Submission of grievance to department of human resource.* If the employee is not satisfied with the final determination on the grievance by the department and the employee desires to pursue the matter, the employee may submit the completed grievance form to the commissioner of human resources within three working days of receipt of the decision by the department. Within ten working days of the receipt of the grievance, the office will investigate the circumstances surrounding the grievance, prepare findings of fact thereon and, upon approval of the commissioner of human resources, recommend to the employee and the department, in writing, a resolution of the grievance. If the grievant is an employee of the department of human resources, such prior approval shall not apply. If the recommended resolution requires action by the employee's department, the recommendation shall include a timetable for the implementation of the action. All recommendations made by the commissioner of human resources shall be binding on both the employee and the affected department. Should the employee's department disagree with the decision of the commissioner of human resources, the recommendation may be submitted by the commissioner of human resources to the chief operating officer or designee who shall make within ten days the final determination on the grievance. In no case shall the time to inform the employee of the final decision exceed 15 days from the date of the decision by the commissioner of human resources, and to the extent that this subsection is in conflict with subsection (5)b of this section, then subsection (5)b of this section controls.

(7) *Failure to follow procedure.* The failure of supervisory employees or city officials to follow the steps outlined in this section shall result in conferring upon the employee the right automatically to proceed to the next step in the grievance procedure. Failure of the employee to follow the steps outlined in this section shall result in the dismissal of the grievance.

(8) *Final determination.* The decision by the commissioner of human resources or, in instances in which the grievance is submitted to the chief operating officer, the decision of the chief operating officer shall be final and conclusive.

(Ord. No. 2007-22(06-O-2700), § 1, 3-27-07)

Sec. 114-524. - Extension of time in grievance process.

Time limit requirements for employees who request action on a grievance or for departmental supervisor to respond to employee grievances, as specified in section 114-523, may be extended by agreement of the employee and the supervisor. All agreements for extension of time shall be in writing and shall be signed by the parties thereto. Copies of such agreement shall be attached to the grievance form, kept by the supervisor and given to the employee.

(Ord. No. 2007-22(06-O-2700), § 1, 3-27-07)

## DIVISION 2 – GRIEVANCES

Sec. 114-525. - Grievance forms.

The diversity manager, upon approval of the commissioner, shall issue standard grievance forms for use by employees and managerial personnel of city departments in the grievance resolution process prescribed in section 114-523. Grievance forms shall be available at least in the following places: the offices of department heads, office directors and agency heads of all city departments, and the department of human resources. The form should require at a minimum the following:

- (1) Name;
- (2) Title of position;
- (3) Grade;
- (4) Department and office;
- (5) Code section violated;
- (6) Remedy requested.

(Ord. No. 2007-22(06-O-2700), § 1, 3-27-07)

## DIVISION 3 – DISCIPLINARY ACTION

Sec. 114-526. - Statement of policy.

- (a) *Progressive discipline.* It is the policy of the city to impose, where reasonable, progressive discipline according to procedures that are fair, prompt and appropriate to the situation. However, when an infraction is such as to impair or destroy the future effective performance of the employee or when the employee's presence impairs the effectiveness of others or presents danger to the employee, others or city property, action shall be taken to immediately remove the employee from the work environment. The city supports a process in which disciplinary action is applied in several steps of increasing severity. The usual sequence of progressive discipline is oral admonishment, written reprimand, suspension and dismissal. The progressive disciplinary process affords the employee the opportunity to correct behavior or inadequate job performance with the minimum level of discipline applied at each step.
- (b) *Authority of fire chief and police chief.* Notwithstanding anything in this division to the contrary, the fire chief and police chief shall retain authority to administer corrective and

disciplinary action, to formulate rules and regulations for the operation of their departments and such other powers and responsibilities as are provided by ordinance.

(Ord. No. 2007-22(06-O-2700), § 1, 3-27-07)

### **DIVISION 3 – DISCIPLINARY ACTION**

Sec. 114-527. - Process of progressive discipline.

Prior to application of any disciplinary action permitted by this division, the following shall be met:

(1) *Orientation.* During the probationary period all employees shall be informed of their job duties and the rules, regulations and standards that apply to them. At a minimum, this should include an initial orientation to the job and the organization.

(2) *Course of action when rule or standard is violated.*

- a. *Duty to promptly investigate violation.* The manager or supervisor shall promptly investigate the facts and circumstances of the incident before deciding on the disciplinary action to be taken.
- b. *Determination of appropriate disciplinary action.* The reasonable disciplinary action shall be determined by considering relevant factors, including but not limited to the seriousness of the offense, whether the offense was willful and deliberate, unintentional or the result of gross negligence and the employee's record of performance and conduct.

(Ord. No. 2007-22(06-O-2700), § 1, 3-27-07)

Sec. 114-528. - Cause for action.

- (a) No employee shall be dismissed from employment or otherwise adversely affected as to compensation or employment status except for cause. However, this shall not apply to employees dismissed or otherwise adversely affected due to curtailment of funds or reduction in staff or reorganization or demoted during a probationary period such that the employee is returned to the position held immediately prior to promotion when such action is in accordance with article IV of this chapter.
- (b) The following actions constitute cause for which disciplinary action may be imposed, but the imposition of disciplinary action shall not be limited to such offenses:
  - (1) Negligence in performing assigned duties.
  - (2) Incompetence, inability or failure to perform assigned duties, including but not limited to loss of job requirements, such as the loss of a required license.
  - (3) Failure to carry out an official directive or refusal to carry out the lawful, reasonable directions given by a supervisor or other acts of insubordination.

(4) Misconduct, including but not limited to engaging in offensive conduct or language toward the public, supervisory personnel or fellow employees.

(5) Excessive tardiness.

### **DIVISION 3 – DISCIPLINARY ACTION**

(6) Excessive absenteeism.

(7) Abuse of sick leave.

(8) Absence without official leave.

(9) Abandonment of job. An employee not on authorized leave of absence who, without valid reason, fails to report for work for three consecutive days.

(10) Unauthorized use of city property.

(11) Abuse or theft of city property.

(12) Willful making of false statements to the public, supervisors, officials, boards, department heads or agencies or the willful making of false statements on an employment application within the city.

(13) Consumption of alcoholic beverages, drugs or controlled substances while at work.

(14) Intoxication on the job.

(15) Acceptance of gratuities or contingent fees or other conduct in violation of the code of ethics.

(16) The refusal, when so directed, to be examined by a licensed physician designated by the city.

(17) Political activity in conflict with article IV of this chapter or with other sections of this Code.

(18) The conviction of a job related felony or of a misdemeanor involving moral turpitude.

(19) The violation of article IV of this chapter or of administrative rules and regulations promulgated pursuant to this Code.

(20) Any other conduct or action of such seriousness that disciplinary action is considered warranted.

(21) The sale or distribution of any illegal drugs or controlled substances, as defined by state law.

- (c) Notwithstanding anything in this division to the contrary, the appointing authority or designee shall require the dismissal of any city employee who is convicted while a city employee of the sale, distribution or use of any illegal drug or controlled substance as defined by state law, rape, murder or any felony.

### DIVISION 3 – DISCIPLINARY ACTION

(Ord. No. 2007-22(06-O-2700), § 1, 3-27-07)

Sec. 114-529. - Procedure for imposing disciplinary action.

- (a) *Oral admonishment.* Oral admonishment, as defined in section 114-502, shall be given verbally and shall communicate a warning of an error or inappropriate behavior, inform the employee of the appropriate behavior and offer assistance in correcting the situation. The employee should be advised that the date and nature of the oral admonishment will be documented in the supervisor's file. Depending on the circumstances or seriousness of the offense, no more than two oral admonishments should be given to the employee for the same type of offense, after which a more severe type of disciplinary action should be taken. Sufficient time for improvement should be allowed before further action is taken.
- (b) *Reprimand.* A reprimand, as defined in section 114-502, shall be written and given promptly following the act or behavior in question. It shall communicate a warning of error or inappropriate behavior and state more serious action will be taken if the offense is repeated. The reprimand shall be addressed to the employee and shall include the charge, the specific behavior, dates of the behavior where appropriate, the warning that continuance of the behavior will result in further disciplinary action. A copy of the reprimand should be forwarded to the commissioner of human resources and placed in the employee's official personnel file.
- (c) *Adverse actions.* An adverse action shall be written and shall be imposed in accordance with the procedural requirements set forth in section 114-530. Adverse actions include the following:
  - (1) *Suspension without pay.*
    - a. *When proper.* The appointing authority or designee may suspend an employee without pay for cause and proper disciplinary purposes, as set forth in section 114-528, or for pending criminal court action when such criminal court action is job related or in the reasonable judgment of the department head would deter the employee from effective performance of job duties.
    - b. *Length of suspension.* A suspension without pay for disciplinary purposes shall be proportional to the offense and shall not exceed 30 days for any one offense or for multiple offenses arising out of the same incident. A suspension without pay pending the adjudication of criminal charges may be imposed until the final disposition of those criminal charges. However, back pay shall be awarded if the final disposition of charges does not result in a conviction.

(2) *Demotion.* The appointing authority or designee may demote an employee for cause as set forth in section 114-528, provided that a change of appointment made in the discretion of the appointing authority as provided by this Code or a demotion during a probationary period which results in an employee's being returned to the position held immediately prior to promotion shall not be considered an adverse action.

### DIVISION 3 – DISCIPLINARY ACTION

(3) *Dismissal.* The appointing authority or designee may dismiss an employee for cause as set forth in section 114-528

(Ord. No. 2007-22(06-O-2700), § 1, 3-27-07)

Sec. 114-530. - Procedure for imposing adverse actions.

- (a) *Notice required.* An employee against whom an adverse action is to be taken shall be given a written notice of proposed adverse action, signed by the appointing authority or designee, at least ten working days prior to the effective date of the proposed adverse action. However, in an emergency situation, the adverse action may become effective immediately following the employee's response, if any. During the period of the notice, the employee is expected to perform usual duties without disrupting the activities of other employees or operations of the city department. Any action by the employee to the contrary shall be considered an emergency situation as defined in section 114-532
- (b) *Contents of notice required.* The notice of the proposed adverse action shall include the following:
  - (1) The proposed action to be taken.
  - (2) The effective date of the adverse action, which shall be at least ten working days after the date the notice is received by the employee, or delivered by certified mail to the employee's last-known address.
  - (3) The specific and detailed charges and reasons for the adverse action.
  - (4) A statement that the employee has the right to respond in writing to the charges or to appear before the appointing authority or designee who has authority to affirm or modify the proposed adverse action at a specified time, with a representative if desired, during regular working hours within the employee response period specified in this section.
  - (5) A statement that failure by the employee to respond by the specified date means that the employee has waived all further appeal rights within the department.
- (c) *Procedures for employee response to adverse action.*
  - (1) *Purpose.* The employee response procedure is created to protect the employee from erroneous, arbitrary adverse actions and to afford the acting department an opportunity to reevaluate its position on the proposed adverse action and affirm or modify the action.

(2) *Requirements.* The employee shall be given the opportunity to respond to charges before the appointing authority or designee who has authority to affirm or modify the proposed adverse action, provided that a full evidentiary hearing prior to the adverse action is not required.

### **DIVISION 3 – DISCIPLINARY ACTION**

a. *Employee response period.* The employee shall respond to the adverse action verbally or in writing within five working days from the date of receipt of the notice of the proposed adverse action.

If the employee does not respond by the date required in the notice, the employee shall waive further appeal rights within the department.

b. *Response options.* The employee's response may be made in writing or in person or both.

c. *Supporting documentation.* The employee may submit statements or supporting documentation from persons having knowledge of the circumstances to support the employee's response.

d. *Representative.* If the employee chooses to meet with the appointing authority, the employee may be accompanied by a representative of the employee's choice.

e. *Further official investigation.* The appointing authority or designee may conduct further investigation of the charges, provided that if the appointing authority or designee determines that additional time is necessary for further investigation and proper consideration of the employee's response to the proposed adverse action, the period of consideration may be extended for a reasonable number of days but in no event longer than ten working days, by notifying the employee in writing as to the length of the extension. The extension notice shall also state that the effective date of the proposed adverse action shall be delayed for the same number of days as the length of the period of time for consideration.

(d) *Determination and notice of final action.*

(1) *Time limit.* The appointing authority shall issue the notice of final action not later than three days after the date of the employee's response. However, if the appointing authority or designee determines that additional time is necessary for further investigation and proper consideration of the employee's response to the proposed adverse action, the period of consideration may be extended as provided in this section.

(2) *Contents of notice of final action required.* The notice of final action shall include but not be limited to the following information:

a. Statement of the specific adverse action to be taken;

b. The specific charges for which the adverse action is taken and the reasons therefore;

- c. The effective date of the final action which shall not be earlier than the effective date specified in the notice of proposed adverse action, except in emergency situations in which the effective date of the final action may become effective immediately following the employee's response; and

### DIVISION 3 – DISCIPLINARY ACTION

- d. A statement advising the employee of the right to appeal the determination of final action to the civil service board.
- (e) *Copy to commissioner of human resources.* A copy of the notice of final action shall be sent to the commissioner of human resources not later than the effective date of the action.

(Ord. No. 2007-22(06-O-2700), § 1, 3-27-07)

Sec. 114-531. - Modification of charges of proposed adverse action.

If the appointing authority or designee determines that additional charges or substantially different charges should be made than specified in the notice of proposed adverse action, the following procedure shall govern:

- (1) If the additional or substantially different charges are more severe than the original charges, a new proposed adverse action or other appropriate action shall be initiated.
- (2) If the final charges are less severe but not substantially different than the original charges, no new proposed adverse action will be required, but the employee shall be furnished with a written notice of the charges, and the proceedings on these charges shall be concluded within the timeframe and according to the same procedures governing the original proposed adverse action.

(Ord. No. 2007-22(06-O-2700), § 1, 3-27-07)

Sec. 114-532. - Emergency situations.

- (a) *Conditions for use.* The appointing authority or designee may immediately suspend an employee with pay upon the determination that the following circumstances exist:
  - (1) There is cause to believe that the employee has committed a crime involving moral turpitude or a felony which is job related or deters the employee from effective performance of the employee's job.
  - (2) The retention of the employee in active duty status may result in damage to property or may be disruptive, detrimental or injurious to the employee, coworkers, subordinates or the general public or may be disruptive to the daily operation of a city government function.
- (b) *Notice of emergency action.* The appointing authority or designee shall give the employee against whom the emergency action is taken a notice of emergency action in writing, not

later than five working days after the effective date of the emergency action. The notice of emergency action shall include a statement of the emergency situation that caused the action to be taken. Should the action be an adverse action, the notice shall meet the requirements of section 114-530. A copy of such notice shall be sent to the commissioner of human resources.

(Ord. No. 2007-22(06-O-2700), § 1, 3-27-07; Ord. No. 2007-46(07-O-1617), § 3, 8-28-07)

### **DIVISION 3 – DISCIPLINARY ACTION**

Sec. 114-546. - Right to file appeal.

Unless otherwise provided, all appeals to the civil service board, pursuant to this division, are entitled to a hearing which shall be conducted by a hearing officer of the civil service board pursuant to this division. However, with the written consent of all parties and the approval of the hearing officer, a hearing may be waived and the appeal considered on the written record. The following matters constitute proper reasons for which appeals may be filed with the civil service board under this division, along with the conditions required for such appeals:

- (1) *Adverse actions.* Any non-probationary employee in the classified service or any non-probationary sworn officer of the department of police who holds the rank of lieutenant or below that of lieutenant or sworn officer of the department of fire who holds the rank of captain or any rank below that of captain shall have the right to file an appeal of an adverse action, i.e., suspension, demotion or dismissal, to the civil service board pursuant to the procedures in this article.
- (2) *Removal from eligible list.* An eligible, as defined in section 114-502, whose name is removed from a register pursuant to article IV of this chapter, may appeal to the civil service board for reinstatement to the eligible list. If the appeal is upheld, relief shall be limited to reinstatement to the current eligible list.
- (3) *Disqualification for reemployment.* An employee under Section 114-84 who has been disqualified for reemployment, as provided in article IV of this chapter, may appeal to the civil service board. Such appeal shall be filed within 30 days of notice of disqualification for reemployment.
- (4) *Failure to follow procedures of layoff or reduction in force.* A regular employee who has been laid off, demoted or reduced in salary as a result of a reduction in force may appeal to a civil service board if the reduction in force, as implemented by the appointing authority, is not in accordance with the plan of reduction as approved by the commissioner of human resources.
- (5) *Unjust coercion or reprisal.* An employee who is subjected to coercion or reprisal because of participation in an appeal or grievance proceeding authorized by this article may appeal for relief to the civil service board, as provided in this division.

(Ord. No. 2007-22(06-O-2700), § 1, 3-27-07; Ord. No. 2010-34(10-O-0952), § 7, 6-30-10)

Sec. 114-547. - Notice of appeal.

- (a) *Time for filing appeal.* All appeals to the civil service board shall be initiated by filing a written notice of appeal with the commissioner of human resources, in accordance with the procedures established under this division. Unless otherwise provided, the notice of appeal shall be filed and postmarked within five days after the later of:
- (1) The date when the employee receives final written notice of the action or decision or the date final notice is delivered by certified mail to the last known address or date of last delivery attempt by certified mail to the last known address, as documented by the United States Postal Service.

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- (2) The effective date of the action or decision.

The notice of appeal shall be considered timely if postmarked within the time allowed for an appeal but shall not be considered filed until actually received by the commissioner of human resources.

- (b) *Transmittal of copies of notice within city and assignment to hearing officer/panel.* Upon receipt of the notice, the commissioner of human resources shall immediately transmit a true copy of the notice to the appointing authority and the commissioner of human resources and shall promptly investigate and attempt to mediate the appeal. Upon completion of the investigation and after every effort has been made to mediate, the commissioner of human resources shall assign the appeal for hearing by a hearing officer of the civil service board in the normal rotation of hearing officer assignments as provided in section 114-548

(Ord. No. 2007-22(06-O-2700), § 1, 3-27-07)

Sec. 114-548. - Civil service board members serving as hearing officers.

- (a) *Authorized.* For the purposes of holding hearings of appeals as provided in article IV of this chapter and otherwise assisting in the resolution of appeals under this article, the civil service board shall serve as individual hearing officers. In a dismissal, a panel of three board members shall be convened for the purpose of hearing the dismissal. Notwithstanding any other authority and duties given to the civil service board members, as individual hearing officers they shall compile evidence, prepare findings of fact, issue initial decisions and the basis therefore, certify records and make investigations of matters under the jurisdiction of this article where a review is appropriate.
- (b) *Assignment of hearing officers to appeals.* Upon appointment to the civil service board, the appointee's name shall be placed in the alphabetical listing of civil service board members for the purpose of being assigned appeals as scheduled by the commissioner of human resources. Appeals will be assigned according to alphabetical rotation of names.

(Ord. No. 2007-22(06-O-2700), § 1, 3-27-07)

Sec. 114-549. - Authority and duties of hearing officers/panels.

Any duly appointing hearing officer/panel shall have the authority to do the following in connection with any hearing under this article:

- (1) Administer oaths and affirmation.
- (2) Regulate the course of the hearing.
- (3) Set the time and place for continued hearing and prehearing conference.

Set the time and place for continued hearings and prehearing conferences.

### **DIVISION 3 – DISCIPLINARY ACTION**

- (4) Fix the time for filing written arguments as deemed appropriate.
- (5) Dispose of motions to dismiss for lack of the board's jurisdiction over the subject matter or parties or for any other grounds.
- (6) Dispose of motions to amend or to intervene.
- (7) Provide for the taking of testimony by deposition or interrogatory.
- (8) Reprimand or exclude from the hearing any person for any indecorous or improper conduct committed in the presence of the hearing officer.
- (9) Make informal disposition of any case by stipulation, agreed settlement, consent order or default, unless such disposition is precluded by law.

(Ord. No. 2007-22(06-O-2700), § 1, 3-27-07)

Sec. 114-550. - Hearing procedures.

Under this article, the following are established to provide uniform procedures for the conduct of hearings by the board or hearing officer appointed by the board:

- (1) *Notice of hearing.* The hearing shall be held within 60 days after receipt of the notice of appeal by the commissioner of human resources. Within ten days prior to the date for which the hearing is set, the commissioner of human resources shall designate, from an alphabetical rotation system, a hearing officer/panel of the civil service board and an appropriate time and place to conduct the hearing and shall so notify all parties in writing. Such notification shall be mailed or served at least ten days prior to the date for which the hearing is set. Any hearing officer/panel shall have the authority to postpone or to continue a hearing upon its own motion or upon the motion of either party.
- (2) *Representation.* Opportunity shall be afforded both parties a representative of their choice. All arrangements for providing legal counsel shall be the responsibility of the party desiring such representation.

(3) *Prehearing conference.* The hearing officer/panel may arrange a prehearing conference for the purpose of reviewing the matter being appealed and establishing stipulations to expedite the hearing.

(4) *Witnesses.* The appellant or the agency may request the attendance of employees or other persons as witnesses when their testimony will aid in establishing the facts in the case. Employees appearing as witnesses shall be released from duty without the loss of pay or time and without effect on their service rating. No person shall directly or indirectly use or threaten to use any official authority or other influence which would tend to discourage any other person from testifying.

### **DIVISION 3 – DISCIPLINARY ACTION**

(5) *Subpoenas.*

- a. *Request for subpoena.* The appellant, the department or the hearing officer/panel may request the commissioner of human resources to issue subpoenas for witnesses for hearings. The cost for securing the attendance of witnesses who are non-city employees, including fees or mileage, shall be computed and assessed in the same manner as prescribed by law for civil cases in the superior court.
- b. *Issuance of subpoenas.* Subpoenas shall be issued without discrimination between public and private parties. When a subpoena is disobeyed, any party in the matter may apply to the superior court of the county in which the hearing is being held for an order requiring obedience. Failure to comply with such order shall be cause for punishment as for contempt of court.
- c. *Quashing or limiting subpoenas.* Once issued, a subpoena may be quashed or limited by the hearing officer/panel upon the motion of the hearing officer/panel or any party or at the request of the witness, if it appears that the subpoena was used primarily as a means of harassment, that the testimony or documents sought are cumulative, that the testimony or documents sought are not relevant or material, that to respond to the subpoena would be unduly burdensome or that for other good reasons basic fairness dictates that the subpoena should not be enforced.

(6) *Record of hearing.* A court reported recording shall be made of all hearings; however, the recording of a hearing shall not be transcribed unless approved by the commissioner of human resources. If the transcription is so made pursuant to a request by either party in the hearing, the cost thereof shall be borne by the party making the request. In addition to the recording of the hearing or the transcription thereof, all documents entered into the record during the hearing shall be made part of the official record of the hearing.

(7) *Appointing authority's opportunity to be heard.* At the request of the appointing authority or at the invitation of the hearing officer/panel or the board, the appointing authority or designee

shall be entitled to be heard and to submit evidence in any appeal in which the interpretation of a civil service rule, regulation, policy or practice is at issue.

(Ord. No. 2007-22(06-O-2700), § 1, 3-27-07)

Sec. 114-551. - Conduct of hearing.

In the hearing of an appeal under this division, the proceeding shall be informal but orderly. The following procedure shall prevail:

- (1) The hearing officer/panel shall open the hearing by explaining the procedure to be followed in the hearing. At the discretion of the hearing officer/panel, any or all witnesses may be sequestered.

### **DIVISION 3 – DISCIPLINARY ACTION**

(2) The hearing officer/panel shall read or cause to be read the charges and specifications as contained in the notice of appeal, as filed with the commissioner of human resources. Any written response to the notice of appeal as filed with the director shall then be read. By agreement, these documents may be inserted in the record without reading.

(3) The facts not in dispute shall be stipulated.

(4) Each party shall be given the opportunity to make a brief opening statement identifying the issues and stating what is to be proven.

(5) All witnesses shall testify under oath or affirmation.

(6) Each party may conduct such examination of the witnesses as shall be required for a full and true disclosure of the facts. In addition, the hearing officer may examine the witnesses.

(7) Official notice may be taken of facts generally recognized by the public. In addition, official notice may be taken of technical facts within the specialized knowledge of the hearing officer. Parties shall be notified either before or during the hearing, by reference in preliminary reports or otherwise, of the material officially noted, including any staff memoranda or data, and they shall be afforded an opportunity to contest the materials so noticed.

(8) The hearing officer's/panel's experience, technical competence, and specialized knowledge may be utilized in the evaluation of evidence.

(9) Before closing the hearing, the hearing officer/panel shall allow both parties the opportunity to make brief oral or written closing statements.

(10) The hearing officer/panel who presided shall, within 15 days from the close of the evidence, issue a decision. However, for good cause the time may be extended for rendering a decision but in no case shall exceed an additional 15 days. The decision shall be to the parties or

their representatives. The hearing officer's/panel's decision shall become final, and there shall be no right to any additional administrative appeals.

(Ord. No. 2007-22(06-O-2700), § 1, 3-27-07)

Sec. 114-552. - Evidence.

With respect to all hearings before the board or the hearing officer/panel under this division, the following rules regarding the evidence shall govern:

- (1) Formal, legal rules of evidence shall not be strictly applied. Evidence may be admitted if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. The hearing officer/panel shall follow the state rules of evidence regarding privileges, recognized by the law of the state.
- (2) Irrelevant, immaterial or unduly repetitious evidence may be excluded.
- (3) Objections to evidentiary offers may be made and shall be noted in the record.

### DIVISION 3 – DISCIPLINARY ACTION

(4) When a hearing will be expedited and the interest of the parties will not be prejudiced substantially, any part of the evidence may be received in written form, including but not limited to the use of depositions or interrogatories.

(5) Documentary evidence may be received in the form of copies if the original is not readily available. Upon request and at the discretion of the hearing officer/panel, parties shall be given the opportunity to compare the copy with the original document.

(Ord. No. 2007-22(06-O-2700), § 1, 3-27-07)

Sec. 114-553. - Decision of hearing officer/panel.

- (a) *Requirements of decision.* As part of the final decision, the hearing officer/panel shall include findings of fact and any law on which the decision is based, separately stated, and the effective date of the decision or order. Findings of fact shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. Copies of the decision or order shall be mailed to all parties of record by the commissioner of human resources.
- (b) *Finality of decision.* The decision of the hearing officer/panel shall be binding on both parties. For appeals of adverse actions, the hearing officer/panel may modify the action of the appointing authority but may not increase the severity of such action on the employee. If the appellant is a non-probationary sworn officer of the department of police who holds the rank of lieutenant or below that of lieutenant or sworn officer of the department of fire who holds the rank of captain or any rank below that of captain, the hearing officer/panel may not modify, but must affirm or revoke a suspension or demotion and may affirm, revoke or modify a dismissal to no less than a 30-day

suspension. The appointing authority shall promptly comply with the final decision as may be issued as a result of the appeal.

- (c) *Relief of appellant.* If the decision of the hearing officer/panel is in favor of the appellant on appeals of dismissal, suspension or demotion, the employee shall be reinstated in accordance with the decision to the classification from which the employee was removed. The effective date of the reinstatement shall be the date immediately following the effective date of the appealed action as if there had been no break in service, unless otherwise specified in the order. The employee shall be entitled to the same salary, with any increases in the position or salary which would have automatically inured to the employee if the employee had remained in actual service. The employee shall receive payment as if there had been no break in service, minus any amount earned by or paid to the employee from other employment and wage substitutions, including but not limited to unemployment compensation, during the period off the job and minus any amount paid the employee for annual leave. Sick and annual leave shall be restored to the employee in the same amount that existed at the time of the appealed action, plus sick and annual leave that would have been earned for the period if the employee had actually been in service. However, any period of postponement or continuance of the hearing for the convenience of the appellant shall be excluded from any payment of benefits due, and this period of time shall be considered as if the appellant had been on leave without pay. Prior to any payment to the employee, the employee shall certify under oath the amount of any income received from other employment and any wage substitutes received during the period off the job.

### **DIVISION 3 – DISCIPLINARY ACTION**

(Ord. No. 2007-22(06-O-2700), § 1, 3-27-07; Ord. No. 2010-34(10-O-0952), § 8, 6-30-10)

Sec. 114-554. - Judicial review.

The decision of the hearing officer/panel under this division shall not limit the right of either party to judicial review, and such decision shall be stayed by the filing of a petition for review. Any party, including the city or any city department, office, division, commission or board, who has exhausted all administrative remedies available before the board and who is aggrieved by a final decision or order of the board on any hearing may seek judicial review of the final decision or order of the board in the superior court of Fulton County. At the discretion of the appointing authority, it may comply with the decision of the civil service board without waiving its right to petition for review of that decision.

(Ord. No. 2007-22(06-O-2700), § 1, 3-27-07)

Sec. 114-555. - Dismissal of appeal.

Upon the motion of either party or upon its own motion, the hearing officer/panel may dismiss any appeal under this division prior to holding a full hearing of the appeal upon the following conditions:

- (1) The appeal is clearly moot;

- (2) The appeal is without merit;
- (3) The appeal was not properly filed with the commissioner of human resources; or
- (4) The appeal is not within the scope of the hearing officer's/panel's authority, as provided in section 114-549

(Ord. No. 2007-22(06-O-2700), § 1, 3-27-07)

#### **DIVISION 4 - SUBSTANCE ABUSE POLICY**

Sec. 114-566. - Application of division.

This division shall apply to all employees of the city.

(Ord. No. 2007-22(06-O-2700), § 1, 3-27-07)

Sec. 114-567. - Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Substances* includes the following:

- (1) Alcohol;
- (2) Illegal drugs, including but not limited to marijuana, cocaine, heroin, methamphetamine and any derivatives thereof;
- (3) Legal drugs and other substances which may impair an employee's ability to effectively perform job functions; and
- (4) Any other dangerous drugs or controlled substances as defined by state law.

(Ord. No. 2007-22(06-O-2700), § 1, 3-27-07)

Sec. 114-568. - Employee reform.

(a) The city recognizes that the work environment should be free from the effects of alcohol and drug abuse. To this end the city shall provide all of its employees an opportunity to voluntarily enter the city's employee assistance program (EAP) for substance abuse without being subjected to any disciplinary action based on substance abuse provided that the employee:

- (1) Voluntarily enters the EAP and adheres to its established guidelines and requirements.

- (2) Completes the primary and after-care elements of the rehabilitation program in strict accordance with the established guidelines as set forth by the EAP.

#### **DIVISION 4 - SUBSTANCE ABUSE POLICY**

(3) Is free of any criminal or administrative charges and has not been directed to be tested based upon reasonable suspicion prior to voluntary entry into the EAP substance abuse program.

(4) Successfully completes the primary care portion of the EAP and abides by the elements of after-care treatment. Any employee who voluntarily enters the EAP and fails to abide by the established guidelines and requirements shall be subject to disciplinary action up to and including dismissal.

(b) Notwithstanding anything in this section to the contrary, the appointing authority or designee may take appropriate personnel action to protect the affected employee, fellow employees and the public and to meet the needs of the service, necessitated by an employee's temporary or permanent inability to adequately perform the employee's job.

(Ord. No. 2007-22(06-O-2700), § 1, 3-27-07)

##### **Sec. 114-569. - Use of substances.**

- (a) The consumption or use of illegal drugs by employees is prohibited.
- (b) The consumption or use of alcohol while on duty by employees is absolutely prohibited.
- (c) The abusive use of prescription or other legal drugs and substances while on duty by employees is absolutely prohibited.
- (d) An employee must not report to work or be subject to duty while the employee's ability to perform job duties is impaired due to the use of alcohol, prescription or other legal drugs and substances.

(Ord. No. 2007-22(06-O-2700), § 1, 3-27-07)

##### **Sec. 114-570. - Drug-free workplace statement.**

- (a) No employee may illegally engage in the manufacture, distribution, dispensation, possession, or use of a controlled substance at any time or place, including while at the employee's workplace. Such unlawful activity will be considered a sufficient ground for a serious adverse personnel action, up to and including discharge.
- (b) In addition to prohibiting employees from engaging in the unlawful manufacture, distribution, dispensation, possession or use of illegal drugs in the workplace, this city prohibits its employees from engaging in such illegal activity at all times and at all places. Such activity, even during nonworking hours, clearly affects an employee's ability to perform public duties.
- (c) If an employee is convicted of violating any criminal drug statute in any jurisdiction, regardless of whether the alleged violation occurred at the workplace or elsewhere, the employee

must notify the city personnel office in writing of the conviction within five calendar days of conviction.

#### **DIVISION 4 - SUBSTANCE ABUSE POLICY**

(d) Failure to comply with any part of this section will result in disciplinary action, up to and including dismissal. Specific disciplinary action will follow the prescribed guidelines of this article.

(e) The implementation of this section shall be the responsibility of all department heads, office directors and supervisors. Each employee will receive a copy of the drug awareness program along with one hour of in-service training on the city's substance abuse policy in this division. Each employee will acknowledge by signature receipt of the policy. All city employees are responsible for the continued adherence to all policies and ordinances.

(Ord. No. 2007-22(06-O-2700), § 1, 3-27-07)

Sec. 114-571. - Supervisors' responsibilities and guidelines.

(a) Supervisors are responsible for consistent enforcement of this division. Any supervisor who knowingly permits a violation of this division by employees under the supervisor's direct supervision shall be subject to disciplinary action.

(b) *Reasonable suspicion.*

(1) When a supervisor has reasonable suspicion that an employee is intoxicated or under the influence of drugs or alcohol, the supervisor must immediately notify the appointing authority or designee. The appointing authority or designee shall advise the employee of right of representation and allow the employee the opportunity to explain the employee's behavior. The appointing authority or designee may require the employee to submit to a drug and/or alcohol analysis.

(2) Reasonable suspicion must be based on specific, objective facts about the conduct of an individual that would lead the reasonable person to suspect that the individual is or has been using drugs. Observations which may constitute a factual basis for determining reasonable suspicion may include but are not limited to the following, alone or in combination:

- (i) Slurred speech.
- (ii) Alcohol on breath.
- (iii) Inability to walk a straight line.

(iv) Any accident involving city property when the following elements are present:

- a. Vehicular accidents involving city employees who are cited for traffic code violations.
- b. Other accidents involving city property in conjunction with additional behavior as outlined in this subsection.

- (v) Behavior which is so unusual and inappropriate in its nature as to create an unsafe work environment or disrupt the normal working condition.
- (vi) Possession of alcohol and/or illegal drugs.

#### **DIVISION 4 - SUBSTANCE ABUSE POLICY**

(c) *Random drug-testing.*

(1) Sworn employees of the Departments of Police, Fire, and Rescue, Corrections as well as all other employees of the various departments of the City of Atlanta who hold positions which have been designated by the Commissioner of the Department of Human Resources as being safety-sensitive in accordance with section 114-575, are subject to random drug and/or alcohol analyses as established by the subject employees' respective departments, when directed by the appointing authority.

(2) The Commissioner of the Department of Human Resources may designate certain employment classifications which affect safety and/or security as safety-sensitive positions in accordance with applicable law, rules, and regulations.

(3) Random drug screens for general fund employees in safety sensitive positions shall only be conducted when funding has been allocated in the annual operating budget.

(Ord. No. 2007-22(06-O-2700), § 1, 3-27-07; Ord. No. 2008-68(08-O-0632), § 1, 7-28-08)

Sec. 114-572. - Drug and/or alcohol analysis.

- (a) When directed by the appointing authority or designee, an employee must submit to a drug and/or alcohol analysis test. The direction to submit to the drug/alcohol test must be in writing, signed by the appointing authority or designee, in accordance with section 114-571(b) or (c). The method of testing shall be established by the Commissioner of the Department of Human Resources. All testing labs, utilized by the city to analyze specimens, shall be certified to do so in accordance with applicable state and federal law and guidelines.
- (b) The recognized limit for the level of alcohol which cannot be exceeded for purpose of this section shall be 0.02.

(Ord. No. 2007-22(06-O-2700), § 1, 3-27-07; Ord. No. 2008-68(08-O-0632), § 1, 7-28-08)

Sec. 114-573. - Results of drug/alcohol analysis.

A positive test result of the drug/alcohol analysis made under this division shall constitute cause for which disciplinary action may be imposed, up to and including dismissal.

(Ord. No. 2007-22(06-O-2700), § 1, 3-27-07)

Sec. 114-574. - Disclosures.

No public release of information obtained by the city pursuant to this division will be made, except as required by state or federal law.

## **DIVISION 5 - SEXUAL HARASSMENT POLICY**

Sec. 114-601. - Statement of policy.

The city is proud of its tradition of a collegial work environment in which all individuals are treated with respect and dignity. Each individual has the right to work in a professional atmosphere which promotes equal opportunities and prohibits discriminatory practices, including sexual harassment. Sexual harassment, whether verbal, physical or environmental, is unacceptable and will not be tolerated. In the event incidents of sexual harassment do occur, it is the policy of the city to take prompt remedial action, calculated to end the harassment. Retaliation for making a complaint of sexual harassment will not be tolerated.

(Ord. No. 2007-22(06-O-2700), § 1, 3-27-07)

Sec. 114-602. - Definition of sexual harassment.

It is illegal and against the policies of the city for any employee, male or female, to sexually harass another employee. It is also illegal and against city policy for any employee who may be deemed a representative of the city to sexually harass a non-employee. Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

- (1) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
- (2) Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual;
- (3) Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

Examples of sexual harassment include, but are not limited to: unwanted sexual advances; demands for sexual favors in exchange for favorable treatment or continued employment; repeated sexual jokes, flirtations, advances or propositions; verbal abuse of a sexual nature; graphic, verbal commentary about an individual's body, sexual prowess or sexual deficiencies; leering, whistling, touching, pinching, assault, coerced sexual acts or suggestive, insulting, obscene comments or gestures; display in the workplace of sexually suggestive objects or pictures; ostracizing an employee in conformity with sexual conduct; sexual conduct that reasonably causes mental and emotional detriment to the victim; retaliation against an individual for reporting or complaining about sexually harassing conduct. This behavior is unacceptable in the workplace and is unacceptable in other work-related settings such as business trips and business-related social events.

(Ord. No. 2007-22(06-O-2700), § 1, 3-27-07)

Sec. 114-603. - Individuals covered.

- (a) The provisions of this division are applicable to all city employees. The use of the term "employee" shall include any person holding any position or employment with the city, to include without any limitation, employees of any status or tenure, appointed and elected officials, members of commissions and boards, agents, representatives or interns. The city encourages reporting of all incidents of sexual harassment, regardless of who the offender may be, in accordance with the methods set forth in section 114-604
- (b) In order to ensure the integrity of the work environment, managerial and supervisory personnel are required to ensure adherence to and compliance with this policy and, upon being informed of possible harassment, are required to take appropriate, prompt action in response thereto, including informing complainants of their rights under the procedures set forth in this policy.

(Ord. No. 2007-22(06-O-2700), § 1, 3-27-07)

## DIVISION 5 - SEXUAL HARASSMENT POLICY

Sec. 114-604. - Complaint and investigation procedure.

Employees who feel that they have been victims of sexual harassment should file a discrimination complaint. Prompt reporting of complaints is strongly encouraged, as it allows for rapid response and resolution of objectionable behavior or conditions for the complainant and any other affected employees. An individual who believes he or she has been subjected to sexual harassment should report the incident to any of the following: employee's departmental EEO coordinator or complaint investigator, the city's diversity manager, or the employee's supervisor or commissioner. In the case of employees in the departments of police, fire or corrections, complaints of sexual harassment may also be made at their respective office of professional standards. The aggrieved employee may elect, at his or her option, to use formal or informal procedures as follows:

- (1) *Informal complaint procedure:*
  - a. Each department shall designate the departmental EEO coordinator (DEEOC) and at least one man and one woman from the department to serve as complaint investigators.
  - b. The complainant will meet with a complaint investigator of his/her choosing to discuss any complaint of sexual harassment. A written statement will be taken. An accurate record of objectionable behavior is necessary to resolve a complaint of sexual harassment.
  - c. The complaint investigator will immediately attempt to resolve the complaint through discussions with appropriate managers, scheduling of meetings with concerned parties,

and other informal efforts as appropriate, taking care to preserve confidentiality to the maximum reasonable extent.

#### **DIVISION 5 - SEXUAL HARASSMENT POLICY**

- d. Upon completion of the investigation, the complaint investigator will forward a written report of the investigation to the department head, with recommendations for resolution or corrective action as appropriate.
- e. If the investigative report indicates that there is "reasonable cause" to believe that sexually harassing conduct has occurred, the department head shall implement disciplinary procedures, as outlined below in section 114-605(b), as may be appropriate.
- f. If the informal efforts are unsuccessful, the complaint investigator will inform the complainant of his/her right to file a formal complaint with the affirmative action division, and will provide the complainant with a copy of the formal charge form.

(2) *Formal complaint procedure:* If the complainant elects not to pursue the informal procedures or is not satisfied with the results of the informal procedures, a formal complaint may be filed with the diversity manager in the department of human resources as follows:

- a. The complaint will be reduced to a written statement on an appropriate form. An accurate record of objectionable behavior is necessary to resolve a complaint of sexual harassment.
- b. The diversity manager will review the complaint to assure that the issue is appropriate for the discrimination complaint process. If it is incomplete, the diversity manager will seek clarification.
- c. The diversity manager will notify the appropriate departmental officials of the complaint.
- d. An investigation of the formal complaint will be initiated by the affirmative action division within five working days of the notification.
- e. Upon completion of the investigation, the diversity manager will forward a report of the investigation, with recommendations for appropriate resolution or corrective action, to the commissioner of the department of human resources for review and any recommended changes.
- f. The commissioner of the department of personnel and human resources shall forward the report to the head of the office or department in which the harassment is alleged to have taken place.
- g. If the investigative report indicates that there is "reasonable cause" to believe that sexually harassing conduct has occurred, the department head shall initiate disciplinary procedures, as outlined below in section 114-605 as may be appropriate.
- h. The finding of "reasonable cause" by the diversity manager as approved by the commissioner of the department of human resources on a formal complaint will result in the issuance of a notice of proposed adverse action, where appropriate.

## DIVISION 5 - SEXUAL HARASSMENT POLICY

(3) A member of the public who believes that he or she has been subjected to sexual harassment by a city employee should report the incident to the employee's department head or to the diversity manager, for investigation by the diversity manager in the manner outlined in subparagraph (2) above. Alternatively, members of the public may make sexual harassment complaints against employees of the departments of police, fire and corrections at the office of professional standards of the appropriate department.

(Ord. No. 2007-22(06-O-2700), § 1, 3-27-07)

Sec. 114-605. - Resolving the complaint.

(a) *Determination of "no cause":* If the investigation reveals that there is no "reasonable cause" to believe that the allegation of sexual harassment is true, the matter shall be deemed resolved for city purposes and the parties shall be free to pursue other available legal remedies.

(b) *Determination of "cause":*

(1) *Discipline of "cause":* If the investigation reveals that there is "reasonable cause" to believe that the allegation of sexual harassment is true, the employee determined to have committed the offense of sexual harassment shall be subject to disciplinary action. The complainant shall be informed of the disciplinary action taken.

(2) *Penalty:* Sexual harassment is considered a sufficient ground for serious adverse personnel action. Failure to comply with any part of this policy will result in disciplinary action, up to and including dismissal. A severe or pervasive violation of this policy may result in an employee's termination for the first offense. Where appropriate, specific disciplinary action will follow the process prescribed by section 114-526 through 114-556 of this Code of Ordinances. The employee's appointing authority shall impose discipline within the following ranges:

a. *First offense:* Sexual harassment training and disciplinary action ranging from a ten-day suspension to dismissal.

b. *Second offense:* Dismissal.

(c) *Return to the workplace upon a finding of "cause":* As the staffing needs of the city dictate, and whenever possible and practical, an employee who has been disciplined upon a finding of "cause" and who returns to the workplace shall not be returned to the same location or assignment that placed him/her in close proximity to the victim, for a period of at least one year from the date of the last act of sexual harassment. As the staffing needs of the city dictate, and whenever possible and practical, a victim's request for a transfer to an assignment or location away from that of the harasser shall be granted for a period of at least one year from the date of the last act of sexual harassment. This provision shall not be mandatory where impractical, inefficient, logically impossible or contrary to the best interests of the city as a whole, or a department, office or agency.

(Ord. No. 2007-22(06-O-2700), § 1, 3-27-07)

## DIVISION 5 - SEXUAL HARASSMENT POLICY

Sec. 114-606. - Complaints against elected officials.

(a) Complaints against elected officials can be reported either through the "informal" or "formal" processes in section 114-604, however such complaints shall be promptly investigated by an independent investigator specifically selected for this purpose. Such investigator shall be selected by the city attorney and shall be a member in good standing of the State Bar of Georgia with appropriate skills and experience. Upon completion of the investigation, the findings and recommendations of the investigator shall be transmitted by the city attorney, to the complainant, the alleged harasser and to the city council president or the chair of the committee on council or the committee on the executive, as appropriate.

(b) Upon a determination of cause, the city council president, or the chair of the committee on council, or the chair of the committee on the executive, as appropriate, shall take remedial action against the harasser. That remedial action may include, but is not limited to, counseling by the city council president or committee chair, or a resolution sponsored by the appropriate council committee censuring the offending official.

(c) Any further remedies against an elected official for violation of this sexual harassment policy would be those provided to the electors by the Georgia Recall Statute O.C.G.A. § 21-4-1, et seq.)

(Ord. No. 2007-22(06-O-2700), § 1, 3-27-07)

Sec. 114-607. - Confidentiality.

In an attempt to protect the privacy of all persons involved, confidentiality will be exercised throughout the investigatory process to the greatest extent practicable. Inasmuch as the city is subject to the Open Records Act, (O.C.G.A. § 50-18-70, et seq.) and the Open Meetings Acts, (O.C.G.A. § 50-14-1, et seq.), absolute confidentiality cannot be assured.

(Ord. No. 2007-22(06-O-2700), § 1, 3-27-07)

Sec. 114-608. - Retaliation.

No city employee, official or officer shall discriminate or retaliate against an individual who makes a report of sexual harassment. Retaliation is a very serious violation of this policy and should be reported immediately. Any individual found to have retaliated against an individual for reporting sexual harassment, or against anyone participating in the investigation of a complaint, will be subject to the disciplinary actions as provided by section 114-605.

(Ord. No. 2007-22(06-O-2700), § 1, 3-27-07)

Sec. 114-609. - Sexual harassment prevention training.

**DIVISION 5 - SEXUAL HARASSMENT POLICY**

(a) *Supervisory and management employees:*

(1) Each supervisory and management employee shall receive an initial training course of at least four hours and a one-hour annual update training session.

(2) The training course for supervisory and management employees shall include instruction on what sexual harassment is, how to prevent it, what the repercussions are, and the complaint process.

(3) Training for supervisory and management employees shall include sensitivity training.

(4) Training shall be conducted by the diversity manager or his/her designee, who shall be assisted by at least one person of the opposite gender.

(b) *Other employees:*

(1) Each nonsupervisory, non-management employee shall receive an initial training course of at least three hours and a one hour annual update training session, separate and apart from supervisory and management employees.

(2) The training course for nonsupervisory and non-management employees shall include instruction on what sexual harassment is, how to respond to it, what the repercussions are, and the complaint process.

(3) Training shall be conducted by the diversity manager or his/her designee, who shall be assisted by at least one person of the opposite gender.

(Ord. No. 2007-22(06-O-2700), § 1, 3-27-07)

Sec. 114-610. - False allegations.

If an investigation results in a finding that the complainant willfully made a false complaint of sexual harassment, that complainant shall be subject to disciplinary action as provided by section 114-605.

(Ord. No. 2007-22(06-O-2700), § 1, 3-27-07)

<b>NUMBER:</b> AFD.SOP.02.102	<b>SUBJECT:</b> Early Intervention System
<b>DISTRIBUTION:</b> All Fire Department Personnel	<b>RE-EVALUATION DATE:</b> May 29, 2002
	<b>EFFECTIVE DATE:</b> June 10, 2002
<b>APPROVAL AUTHORITY:</b> Fire Chief	<b>NUMBER OF PAGES:</b> 9

***APPENDIX – 7***  
***(Early Warning SOP)***

**ATLANTA FIRE DEPARTMENT**

<b>DATE SIGNED:</b> May 29, 2002	<b>SIGNATURE:</b> 
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## 1. REFERENCES

- 1.1. Administrative Order by the Mayor 94-05

## 2. PURPOSE

- 2.1. To establish Early Intervention guidelines to identify employees with a pattern of behavior that signals potential problems that may prove detrimental to the achievement of the goals and objectives of the Atlanta Fire Department and to initiate means of providing appropriate corrective actions.

## 3. POLICY

- 3.1. It is the policy of the Atlanta Fire Department to actively monitor all employees' conduct and provide appropriate intervention where it is evident that behavior or medical problems exist and have the potential of undermining the achievement of department goals and objective.

## 4. CANCELLATION

- 4.1. This standard operating procedure cancels and supersedes AFD.SOP.00.102, effective September 13, 2001, and all other directives, practices, and procedures in conflict.

## 5. SCOPE

- 5.1. This standard operating procedure applies to all Atlanta Fire Department personnel, sworn and non-sworn.

## 6. DEFINITIONS

**Behavior-Medical File:** Records of an employee's behavior which caused identification under the Early Intervention System guidelines; the assessment and recommendations by the Bureau of Employee Assistance Services Unit and any corrective actions taken or recommended.

**Employees:** As used throughout this order, all classifications of the Atlanta Fire Department.

**Employee Behavior Review:** A review and/or summary of pertinent information concerning the employee's conduct. The manner of the review process is determined by Section 8.3.

**Threatening Behavior:** Any act which places another in reasonable apprehension of immediately receiving a violent injury; including but not exclusive of, opprobrious (humiliating) or abusive language, flashing weapons and bodily contact of a provoking nature.

**Violence:** Any act or threat of verbal or physical aggression, to include but not exclusive of, shouting, abusive and offensive language, physical contact that constitutes due harm to any person, and any activity which would constitute psychological duress or harassment.

**Workplace:** Constitutes all properties, land and/or buildings owned or managed by the City of Atlanta, or any environment/location where Fire Department employees might be performing city business or work.

## 7. RESPONSIBILITIES

- 7.1. The Section Chief of the Office of Investigative Services (OIS) will act on behalf of the Fire Chief by participating in and monitoring the implementation of this policy throughout the department.
- 7.2. Deputy Chiefs, Assistant Chiefs, Section Chiefs, Battalion Chiefs, and Section Heads will be responsible for ensuring the effective implementation of this policy in their respective divisions, battalions, and sections.
- 7.3. All supervisory personnel will be responsible for actively monitoring employees' conduct and intervening and properly notifying the appropriate channels when an employee's behavior is contrary to the Department's goals and objectives.
- 7.4. All employees will be responsible for their own conduct and are urged to utilize the services available to them through the Psychological Services and Employee Assistance Unit when their behavior is contrary to the Department's goals and objectives.
- 7.5. The Bureau of Employee Assistance Services (BEAS) will be responsible for maintaining a behavior-medical file on each employee identified as having behavior or medical problems that currently or at some future time may undermine the achievement of the goals and objectives of the Department.

## 8. ACTION

- 8.1. Identification under the Early Intervention System guidelines.
  - 8.1.1. Identification of an employee for review under this Early Intervention policy will typically originate from the following four sources:
    - 8.1.1.1. The employee;

- 8.1.1.2. The Bureau of Employee Assistance Services (BEAS);
  - 8.1.1.3. The Office of Investigative Services;
  - 8.1.1.4. The employee's chain of command at or above the level of immediate supervisor.
- 8.1.2. The Office of Investigative Services will monitor its records and will initiate the review process by making the proper notification when it becomes aware that any employee has a record of one or more of the following conditions:
- 8.1.2.1. Two (2) citizen complaints, sustained or unsustained, against the employee within one (1) year;
  - 8.1.2.2. Any allegation of domestic violence involving the employee, whether as victim or perpetrator;
  - 8.1.2.3. Any sustained unnecessary force allegation or six or more unnecessary force complaints, sustained or unsustained, against the employee within five (5) years;
  - 8.1.2.4. Two (2) or more cases of failure to appear in court within twelve (12) months;
  - 8.1.2.5. Any discernible pattern of repeated similar complaints, sustained or unsustained, against the employee within a year;
  - 8.1.2.6. One (1) or more firearm discharges within six months or four or more within twelve (12) months.
- 8.1.3. The employee's chain of command, at or above the level of immediate supervisor will initiate a review of an employee's behavior by giving appropriate notification when it becomes evident that any of the following conditions exist:
- 8.1.3.1. Two (2) or more accidents in City vehicles within one (1) year;
  - 8.1.3.2. Three (3) or more counseling forms within one (1) year;
  - 8.1.3.3. Six (6) or more sick days within six (6) months;
  - 8.1.3.4. Discernible pattern of abuse of leave;
  - 8.1.3.5. One (1) or more days of unexcused absences from duty within six (6) months;
  - 8.1.3.6. Three (3) incidents where the employee is the victim of an assault and is injured in one or more of the incidents within six (6) months;

- 8.1.3.7. Two (2) or more unsatisfactory performance evaluations within three (3) years;
- 8.1.3.8. Behavior that is so unusual or inappropriate that it creates an unsafe work environment or disrupts the normal working conditions.
- 8.1.3.9. Any apparent indication of the employee having received physical or mental abuse (i.e., bruises, sleepiness, behavioral changes, etc.).

8.2. Notification

- 8.2.1. The BEAS will monitor employee records in its possession and when possible employee behavior to detect behavioral problem and will give appropriate notification where problems exist in keeping with ethical and legal requirements.
- 8.2.2. Whenever a decision is made to review an employee's behavior, appropriate notification will be given. Such notification will be in writing and will be controlled by the following conditions:
  - 8.2.2.1. When the Office of Investigative Services identifies an employee under the above Early Intervention guidelines, the Section Chief of the Office of Investigative Services will notify the employee's Division Chief.
  - 8.2.2.2. When an employee's supervisor identifies an employee under the above Early Intervention guidelines, the supervisor will notify his or her chain of command up to and including the Deputy Chief, Assistant Chief, Battalion Chief, and Section Head.
  - 8.2.2.3. When the BEAS identifies an employee under the established Early Intervention criteria, PSEAU will notify the Section Chief of the Office of Investigative Services.
  - 8.2.2.4. When a Deputy Chief, Assistant Chief, Battalion Chief, Section Chief or Section Head is apprised of an employee's conduct falling within the scope of the above Early Intervention guidelines, they shall immediately notify the Fire Chief, the employee, the BEAS, the Office of Investigative Services, and any supervisors in the employee's chain of command.

8.3. Employee Behavioral Review

- 8.3.1. The employee's Battalion Chief, Section Chief or Section Head will initiate or cause to be initiated a review of an employee identified under the Early Intervention System.
- 8.3.2. The employee behavior review may consist of any or all of the following actions:
  - 8.3.2.1. A review of any pertinent documents to include: complaint files, performance evaluations, accident packages, firearm discharge packages, etc.;
  - 8.3.2.2. Discussion or meeting with the employee, employee's Supervisor, and any person(s) with information which may aid the reviewer with his or her evaluation;
  - 8.3.2.3. Discussion or meeting with a staff member from the BEAS and when deemed appropriate a mandatory referral to the BEAS.
- 8.3.3. If an employee has been identified more than once within one (1) year under the established Early Intervention criteria, the Office of Investigative Services will refer the employee to and request an opinion from the BEAS.
- 8.3.4. When an employee behavior review goes beyond the expertise of the employee's Battalion Chief, Division Chief or Deputy Chief, and the Section Chief of Investigative Standards, the employee will be referred to the BEAS for completion of the review process.
- 8.3.5. When requested to conduct an employee behavior review, the BEAS will prepare a brief written summary of their psychological assessment, regardless of whether or not any problems are identified. Limitations on duty fitness, corrective actions, and treatment recommendations will be included in the summary.
- 8.3.6. The BEAS will provide a copy of the written summary to the employee, the employee's Battalion Chief, Division Chief or Deputy Chief, and the Section Chief of the Office of Investigative Services.
- 8.3.7. If the Deputy Chief, Assistant Chief, Battalion Chief, Section Chief or Section Head does not concur with corrective or treatment recommendations made by the Psychological Services and Employee Assistance Unit, that non-concurrence will be summarized in writing and forwarded to the Fire Chief for resolution.

#### 8.4. Corrective Actions

- 8.4.1. If the Deputy Chief, Assistant Chief, Battalion Chief, Section Chief or Section Head, or Fire Chief after examining the information gathered

from the employee behavior review process, determines a need for some type of intervention, corrective actions may be taken, including but not limited to:

- 8.4.1.1. Counseling;
  - 8.4.1.2. Training, to include but not limited to: individual enhancement training, remedial driver's training, firearms training, shoot/don't shoot training, sensitivity training, etc.;
  - 8.4.1.3. Reassignment;
  - 8.4.1.4. Request for a Fitness for Duty Examination;
  - 8.4.1.5. Request for a Substance Abuse Analysis Examination;
  - 8.4.1.6. Mandatory referral and compliance with an identified counseling or therapy program, alcohol abuse program, family violence program, etc.
- 8.4.2. Corrective actions are not disciplinary and should not be used instead of disciplinary action when disciplinary action is appropriate.

#### 8.5. Documentation

- 8.5.1. The Office of Investigative Services will be provided and required to maintain the names of all employees identified under the established Early Intervention criteria, and any corrective actions taken. This information will be provided to and for individuals within the Department that have a right and need to know.
- 8.5.2. The BEAS will maintain a confidential behavior-medical file on each employee identified under these guidelines from its own files and/or referred under Section 8.1.2.
- 8.5.3. Access to the behavior-medical file will be controlled by the chief psychologist or a designee and will be granted only to authorized personnel. Authorized personnel include the Fire Chief and the Office of Investigative Services Section Chief. Behavior-medical files will not be maintained in any office, section, or unit files. The confidentiality of behavior-medical files will be enforced.

### 9. MISCELLANEOUS

- 9.1. Situations and procedures for dealing with violence and the potential for violence in the workplace.

9.1.1. There are four (4) types of situations in which BEAS can be a resource to supervisors in dealing with workplace violence, threats of violence, or potential violence.

9.1.1.1. An employee makes a statement indicating that he/she is planning to bring a weapon onto the work site.

- A. The Office of Investigative Services, Atlanta Police Department, and BEAS should be called simultaneously and asked to come to the work site for an assessment of the employee and discussion of the best course of action.

BEAS will follow through on results of the assessment and provide on-going monitoring of the employee and the work situation.

9.1.1.2. An employee makes an immediate threat of violence directed to a specific person.

- A. Supervisor removes threatening employee from the work site and monitors employee while contacting OIS at (404) 853-7010, or after 1700 hours at (404) 557-7575.

Supervisor calls BEAS at (404) 817-6750 or after hours at (404) 817-2382 and asks to speak to the clinician on emergency duty. Supervisor should state problem as to the need for emergency assistance and notify them that OIS has been called.

B. BEAS emergency staff member will make the decision whether to respond to the work site or have employee transported to BEAS office after speaking with the OIS office.

C. Supervisor will notify Bureau Chief or Commissioner's personnel officer as to the nature of the situation.

D. BEAS staff member needs access to employee's personnel file in order to make long-term recommendations.

BEAS staff member will make immediate recommendations and will also follow-up with a written report to Bureau Director or Commissioner or Commissioner's designated personnel officer.

Decision is made regarding the need for placing employee on paid emergency leave while evaluation is completed.

9.1.1.3. An employee threatens to harm a co-worker off the job site after work.

- A. Threatening employee should be isolated from co-workers and monitored by supervisor.
- B. Supervisor calls BEAS emergency person.
- C. Repeat of steps C, D, E, F, and G above.

9.1.1.4. An employee physically assaults or attempts to assault a co-worker.

- A. Call the Office of Investigative Services to work site.
- B. Call the Atlanta Police Department to work site.
- C. Call BEAS emergency staff to work site.
- D. Office of Investigative Services and APD make decision regarding arrest.
- E. Office of Investigative Services and APD escorts employee off work site or BEAS effects involuntary hospitalization with assistance of Office of Investigative Services and APD.

9.2. Possible recommendations from BEAS after completion of evaluation.

- 9.2.1. Arrest of employee
- 9.2.2. Discipline of employee
- 9.2.3. Transfer of employee
- 9.2.4. Fitness for Duty Evaluation

- 9.2.5. Emergency paid leave for a period of time
- 9.2.6. Specialized treatment program
- 9.2.7. Counseling
- 9.2.8. Substance abuse evaluation
- 9.2.9. Hospitalization

***APPENDIX – 8***  
***(Random Drug & Alcohol Testing Policy)***

**ATLANTA FIRE RESCUE DEPARTMENT**  
**Random Drug and                    100.21**  
**Alcohol Testing Policy**

***Mission Statement:***

*The Atlanta Fire Rescue Department shall provide prompt quality service our stakeholders that promotes safety, security, enhances sustainability, and enriches the quality of life through professional development and dedication to service.*

## 1. REFERENCES

- 1.1. City of Atlanta Substance Abuse Policy, Atlanta City Code Sections 114-566 through 114-575
  - 1.2. City of Atlanta Public Safety Random Drug Policy for Sworn Personnel, HR. 2.20
  - 1.3. Section 16-13-30, Georgia Criminal Code
  - 1.4. Federal Transportation Authority Code of Federal Regulation

## 2. PURPOSE

- 2.1. This policy and procedure describes the actions to be taken when substance abuse tests are given to employees in sworn positions of the Atlanta Fire-Rescue Department and prohibits any influences that might have a detrimental effect upon the orderly, safe and efficient operation of this Department. The intent of this policy is to prevent the continued employment of persons who, due to the use of alcohol or illegal drugs, may harm themselves or others, or cause damage to property.

### 3. POLICY

- 3.1. Whereas, it is the policy of the Atlanta Fire-Rescue Department to foster a work environment free from the effects of both illegal use of controlled substance, misuse of legal drugs and other substances and the use of alcohol; all City of Atlanta employees are bound by the City's Substance Abuse policy as outlined in Division 4, subsections 114-566 to 114-575 of the City Codes of Ordinance.
  - 3.2 The City of Atlanta will administer random substance testing to current employees in **SAFETY SENSITIVE** positions of public safety. This policy applies to all **SAFETY SENSITIVE** Personnel of Atlanta Fire-Rescue Department.
  - 3.3. Compliance with this policy is considered a condition of employment. All acknowledgements with the terms and agreement, constitutes full awareness of the policy provisions.

- 3.4. If an employee tests positive for illegal drug use, alcohol misuse or otherwise violates the rules, the employee must be removed from his/her position pending verification of positive test results.
- 3.5. The Atlanta Fire-Rescue Department requires testing of safety sensitive employees in five (5) situations; (1) Pre-employment; (2) Reasonable suspicion; (3) Random; (4) Post accident; (5) Return-to-duty/follow-up. Alcohol testing is required for all situations except for pre-employment.

#### 4. SCOPE

- 4.1. All sworn personnel assigned to the Atlanta Fire-Rescue Department.

#### 5. DEFINITIONS

**Alcohol:** Alcoholic beverages manufactured for human consumption.

**Apt Admin:** Airport Fire Administration

**COA:** City of Atlanta

**CFR:** Code of Federal Regulations Random Drug and Alcohol Testing Policy 07.112

**DHR:** Department of Human Resources

**Division 1:** Field Operations

**EAP:** Employee Assistance Program

**FTA:** Federal Transportation Agency

**HIPPA:** Health Insurance Portability and Accountability Act

**Illegal Drugs:** Include, but are not limited to, marijuana, cocaine, heroin and any derivatives thereof, and any other dangerous or controlled substances as defined by Georgia Law.

**IOJ:** Injury on the job

**MRO:** Medical Review Officer

**Positive Test Result:** A verified presence of a drug (or its metabolite) at or above the minimum levels allowed by the FTA or the City of Atlanta, an alcohol test with a confirmed breath alcohol concentration of **.02%** or greater.

**Refusal to Test:** Any employee who refuses to submit to a drug and/or alcohol analysis when directed by the appointing authority or designee shall be subject to dismissal for any of the following or combination thereof:

- Failure to appear at the administering facility within the required time frame (one hour after receiving notification Verbal or Written)

- Not giving a second sample when requested by the administering facility
- Leaving administering facility without giving a sample (first or second request to give sample)

**Safety Sensitive:** This term shall apply to all sworn AFRD members

**SAP:** Substance Abuse Professional

**Substance Abuse:** The overindulgence and/or dependence on an addictive substance, especially alcohol or a narcotic drug also known as chemical abuse.

The abuse of alcohol; illegal drugs including but not limited to; marijuana, cocaine, heroin, and any derivatives thereof; legal drugs and other substance that may impair and employee's ability to effectively perform job functions; and any other dangerous drugs or controlled substances as defined by law.

Substances include the following:

- 1) Alcohol;
- 2) Illegal drugs-including but not limited to marijuana, cocaine, heroin, and any derivatives thereof;
- 3) Legal drugs and other substances which may impair an employee's ability to effectively perform job functions.
- 4) Any dangerous drug or controlled substance as defined by State or Federal law.

## 6. RESPONSIBILITIES

### Members

- 6.1. All Fire Department personnel will familiarize themselves with this directive to insure compliance with the policy and procedures outlined herein.
- 6.2. Employees subject to the SOP must submit to drug screening at the following locations:

***Caduceus Occupational Health Caduceus Occupational Health  
535 N. Central Avenue 145 North Avenue  
Hapeville, Georgia 30354 Atlanta, Georgia 30308  
8:00 a.m. – 5:00 p.m. Office hours: 24 hours***

- 6.3. Personnel will not drive their Privately Owned Vehicle. Transportation will be provided by the Atlanta Fire Rescue Department. It shall be the Battalion Chiefs/Supervisor responsibility to ensure that the member has transportation to and from the testing facility.
- 6.4. The member will have one hour from the time of notification to report. If one exceeds the 1 (one) hour time limit, disciplinary actions shall be initiated.

- 6.5. No one will be granted leave after being notified that they have been selected for random drug testing.
- 6.6. Personnel randomly selected to report for testing that are at an incident will report immediately after staffing is adjusted to ensure that the unit is operating at minimum staffing.

### **Office of Professional Standards**

- 6.7. Supervisors and the Office of Professional Standards will be charged with the responsibility of enforcing this directive.
- 6.8. The Office of Professional Standards will be responsible for notifying the Station OIC and Section Chiefs of the members that are selected for random drug/alcohol testing.
- 6.9. The Office of Professional Standards will maintain a current list of all sworn members, the employee's current work location, and last four digits of the social security numbers. The list will be furnished by the Division Chiefs by the 1st (first) of each month and updated on an as needed basis. If the first of the month falls on the weekend or holiday, staffing will be sent by the following Monday.
- 6.10. The Office of Professional Standards will provide the Substance Abuse Coordinator with the current staffing list by the fifth (5th) of each month. Personnel on extended leave, i.e. Sick, Military, or Special Assignment away from the Atlanta Fire Rescue Department will be exempt from random testing until they return to permanent duty status. Members on IOJ assigned to Customer Service 5 (CS-5) or Light Duty assigned to an administrative position **will not** be exempt from testing.
- 6.11. The Office of Professional Standards shall be immediately notified by the testing facility of any personnel with a Breath/Alcohol Content (BAC) greater than .02%.  
**ALL PERSONNEL WITH A POSITIVE BAC WILL RECEIVE A SECOND TEST AFTER WAITING FIVE (5) MINUTES. IF THE SECOND (2nd) TEST IS POSITIVE THE INDIVIDUAL WILL HAVE THE OPTION OF SUBMITTING A BLOOD SAMPLE FOR CONFIMATORY TESTING.**  
Personnel that fail the BAC test shall be immediately relieved of duty, placed on **administrative leave with pay and** taken to their home of record, pending dismissal disciplinary charges. Personnel will be allowed to make arrangements for the retrieval of their automobile from their duty/work location. Under no circumstances will that person be allowed to operate their motor vehicle.

### **Division 1 and Airport Operations**

- 6.13. By 0900 hours, Division 1 and Airport Operations will send their accountability sheets to the Section Chief of the OPS.

### **Battalion**

- 6.14. Fifty three (53) hour employees will be randomly selected according to apparatus assigned. The OIC will be responsible for ensuring all selected personnel are notified. Failure of the OIC to properly and efficiently notify any personnel shall result in disciplinary actions upon the OIC.

#### Sections

- 6.15. Forty (40) hour sworn employees will be randomly selected according to their assigned location. The OIC will be responsible for ensuring all selected personnel are notified. Failure of the OIC to properly and efficiently notify any personnel shall result in disciplinary actions upon the OIC.

#### Airport

Airport personnel will randomly be selected on an individual basis as well as by apparatus assignment. The OIC will be responsible for ensuring all selected personnel are notified. Failure of the OIC to properly and efficiently notify any personnel shall result in disciplinary actions upon the OIC.

### 7. ACTION

#### Verification of Positive Test Results

- 7.1. In the event that an employee has a positive result on a drug test, the MRO will contact the person tested to discuss the results. If the person cannot verify that the results are due to a valid medical reason (for example, appropriate use of prescription medication), the MRO will offer a split specimen test (a test of portion of the original specimen). The employee must contact the MRO within 72 hours after to request the split specimen test; the test must be conducted within 14 days of the date the person was notified of the initial positive results.

#### Response to Positive Test Results for Employees in Sworn Positions

- 7.2. When an alcohol or drug test result is positive for an employee in a sworn position, the Medical Review Officer and/or DHR/SAP will verbally notify the designated representative in the employee's department. The department will remove the employee from performing safety-sensitive functions immediately, without waiting for the results of any split specimen test performed.

Upon written notification from DHR/EAP of a final verified positive test result, the employee's department head will initiate **disciplinary action of dismissal**. For employees in sworn positions, the department will notify EAP in writing of dismissal.

#### Drug and Alcohol Program

- 7.3. The Drug and Alcohol Program is a program of substance abuse treatment, support, and monitoring. The City of Atlanta recognizes that the work environment should be free from the effects of substance abuse. To this end the City of Atlanta shall provide all of its sworn personnel one opportunity, **BEFORE BEING REQUESTED TO TAKE A TEST**, to voluntarily enter the

City's Employee Assistance Program (EAP) for substance abuse without being subjected to any disciplinary action based on substance abuse provided that:

1. Employee enters into and complies with all of the requirements of a state licensed substance abuse treatment program approved by EAP/Psychological Services, if such treatment is required. S/he will comply with requirements of program (including completion of all aftercare requirements) until discharged there from.
2. Employee is responsible for gaining admission to the treatment program and for maintaining participation in the program and all required elements. Responsibility for all costs of the program and required elements are to be borne by the employee. All arrangements involving fees are between the employee, treatment providers, and third party (insurance or health plan) providers, as appropriate.
3. This treatment plan envisions that employee will successfully complete all requirements of the program(s) and contracts of program(s) attendance.

After completion of primary treatment (and return to safety-sensitive functions, if applicable), the employee will be subject to continued compliance with the treatment requirements of the Drug and Alcohol Program and at least six random drug and/or alcohol tests.

### **Privacy Issues and Confidentiality**

- 7.4. Alcohol and drug test results are strictly confidential. Documentation related to test results will be maintained in medical files, separate from other types of records. Release of this information will be restricted to those who have a specific need for the information, as allowed by city, state, and federal law. Any disclosure of information for other purposes must be with the employee's consent.
- 7.5. Atlanta Fire Rescue Department required drug and alcohol testing information differs significantly from health information covered by HIPAA rules (45 CFR Part 164). The COA program is concerned only with employees' compliance with COA safety regulations, and not with preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care or the past, present, or future physical or mental health or condition of an individual
- 7.6. Even if COA drug and alcohol testing information is viewed as protected health information under Part 164, however, it is not necessary, under §164.512(a), to obtain employee written authorization where Federal law requires the use or disclosure of otherwise protected health information.
- 7.7. Use or disclosure of the COA drug and alcohol testing information without a consent or authorization from the employee is required by the Omnibus Transportation Employees Testing Act of 1991, 49 CFR Part 40, and COA agency drug and alcohol testing regulations, unless otherwise stipulated by 49 CFR Part 40.

- 7.8. Consequently, 45 CFR §164.512 enables any employer or service agent in the DOT program to disclose the information without the employee's authorization. For example:

*Employers need no employee authorizations to conduct COA tests.*

*Collectors need no employee authorizations to perform COA urine collections, to distribute Drug Testing Control Forms, or to send specimens to laboratories.*

*Screening Test Technicians and Breath Alcohol Technicians need no employee authorizations to perform COA saliva or breath alcohol tests (as appropriate), or to report test results to employers.*

*Laboratories need no employee authorizations to perform COA drug and validity testing, or to report test results to Medical Review Officers (MRO).*

*MROs need no employee authorizations to verify drug test results, to discuss alternative medical explanations with prescribing physicians and issuing pharmacists, to report results to employers, to confer with Substance Abuse Professionals (SAP) and evaluating physicians, or to report other medical information.*

*SAPs need no employee authorizations to conduct SAP evaluations, to confer with employers, to confer with MROs, to confer with appropriate education and treatment providers, or to provide SAP reports to employers.*

*Consortia/Third Party Administrators need no employee authorizations to bill employers for service agent functions that they perform for employers or contract on behalf of employers.*

*Evaluating physicians need no employee authorizations to report evaluation information and results to MROs or to employers, as appropriate.*

- 7.9. AFRD agrees that there is no conflict between the HIPPA rules and COA requirements, and indicated so in the preamble to Part 164 [65 Federal Register 82593-94; December 20, 2000].

**8.0. Penalties:**

**Failure to comply with any part of this section will result disciplinary action, up to and including dismissal.**

***APPENDIX – 9***

***DOUGLAS FACTORS  
(Checklist)***

- (1) The nature and seriousness of the offense, and its relation to the employee's duties, position, and responsibilities, including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated;
- (2) The employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;
- (3) The employee's past disciplinary record;
- (4) The employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;
- (5) The effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon the supervisor's confidence in the employee's ability to perform assigned duties;
- (6) Consistency of the penalty with those imposed upon other employees for the same or similar offenses;
- (7) Consistency of the penalty with any applicable agency table of penalties;
- (8) The notoriety of the offense or its impact upon the reputation of the agency;
- (9) The clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question;
- (10) Potential for the employee's rehabilitation;
- (11) Mitigating circumstances surrounding the offense such as unusual job tension, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter; and
- (12) The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

***APPENDIX – 10***  
***(Fire Department Offset Program)***



## CITY OF ATLANTA

### FIRE – RESCUE DEPARTMENT An Accredited Agency

SHIRLEY FRANKLIN  
MAYOR

City Hall East 675 Ponce de Leon Avenue, NE Suite 2001  
Atlanta, GA 30308-1807  
(404) 853-7000 FAX (404) 853-7094  
ICHIESTS ID – ATLFRDHQ

KELVIN J. COCHRAN  
FIRE CHIEF

#### M E M O R A N D U M #44

TO: All AFRD Personnel

FROM: Fire Chief Kelvin J. Cochran *Kelvin J. Cochran*

DATE: September 8, 2008

SUBJECT: Atlanta City Code Section 114-553 (c); Fire Department Offset Program

In the past the Atlanta Fire Rescue Department have suspended members of the department without pay for various disciplinary reasons. Those members who have returned to full duty from suspension were welcome back with full benefits and made whole without the department deducting any earned income from their salary.

However, as of today, this shall no longer be the policy of the Atlanta Fire Rescue Department for the following reason:

Atlanta City Code Section 114-553 (c) Decision of Hearing Officer/Panel read:

(c) Relief of Appellant. If the decision of the hearing officer/panel is in favor of the appellant on appeals of dismissal, suspension or demotion, the employee shall be reinstated in accordance with the decision to the classification from which the employee was removed. The effective date of the reinstatement shall be the date immediately following the effective date of the appealed action as if there had been no break in service, unless otherwise specified in the order. The employee shall be entitled to the same salary, with any increases in the position or salary which would have automatically inured to the employee if the employee had remained in actual service.

The employee shall receive payment as if there had been no break in service, minus any amount earned by or paid to the employee from other employment and wage substitutions, including but not limited to unemployment compensation, during the period off the job and minus any amount paid the employee for annual leave. Sick and annual leave shall be restored to the employee in the same amount that existed at the time of the appealed action, plus sick and annual leave that would have been earned for the period if the employee had actually been in service.

However, any period of postponement or continuance of the hearing for the convenience of the appellant shall be excluded from any payment of benefits due, and this period of time shall be considered as if the appellant had been on leave without pay. Prior to any payment to the employee, the employee shall certify under oath the amount of any income received from other employment and any wage substitutes received during the period off the job.

It is the department intention to inform and educate all AFRD members of any policy changes prior to the enforcement of those policies. Therefore the Atlanta City Code Section 114-553 supersedes Atlanta Fire Department's Policy relating to the reinstatement and compensation of employees who were dismissed, suspended or demoted from the department.

KJC:JGB:jgb

## ***APPENDIX – 11***

**(Drug/Alcohol Testing on Reasonable Cause)**

**DIVISION 4. - SUBSTANCE ABUSE POLICY**

Sec. 114-566. - Application of division.

This division shall apply to all employees of the city.

(Ord. No. 2007-22(06-O-2700), § 1, 3-27-07)

Sec. 114-567. - Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Substances* includes the following:

- (1) Alcohol;
- (2) Illegal drugs, including but not limited to marijuana, cocaine, heroin, methamphetamine and any derivatives thereof;
- (3) Legal drugs and other substances which may impair an employee's ability to effectively perform job functions; and
- (4) Any other dangerous drugs or controlled substances as defined by state law.

(Ord. No. 2007-22(06-O-2700), § 1, 3-27-07)

Sec. 114-568. - Employee reform.

- (a) The city recognizes that the work environment should be free from the effects of alcohol and drug abuse. To this end the city shall provide all of its employees an opportunity to voluntarily enter the city's employee assistance program (EAP) for substance abuse without being subjected to any disciplinary action based on substance abuse provided that the employee:
  - (1) Voluntarily enters the EAP and adheres to its established guidelines and requirements.
  - (2) Completes the primary and after-care elements of the rehabilitation program in strict accordance with the established guidelines as set forth by the EAP.
  - (3) Is free of any criminal or administrative charges and has not been directed to be tested based upon reasonable suspicion prior to voluntary entry into the EAP substance abuse program.

- (4) Successfully completes the primary care portion of the EAP and abides by the elements of after-care treatment. Any employee who voluntarily enters the EAP and fails to abide by the established guidelines and requirements shall be subject to disciplinary action up to and including dismissal.
- (b) Notwithstanding anything in this section to the contrary, the appointing authority or designee may take appropriate personnel action to protect the affected employee, fellow employees and the public and to meet the needs of the service, necessitated by an employee's temporary or permanent inability to adequately perform the employee's job.

(Ord. No. 2007-22(06-O-2700), § 1, 3-27-07)

Sec. 114-569. - Use of substances.

- (a) The consumption or use of illegal drugs by employees is prohibited.
- (b) The consumption or use of alcohol while on duty by employees is absolutely prohibited.
- (c) The abusive use of prescription or other legal drugs and substances while on duty by employees is absolutely prohibited.
- (d) An employee must not report to work or be subject to duty while the employee's ability to perform job duties is impaired due to the use of alcohol, prescription or other legal drugs and substances.

(Ord. No. 2007-22(06-O-2700), § 1, 3-27-07)

Sec. 114-570. - Drug-free workplace statement.

- (a) No employee may illegally engage in the manufacture, distribution, dispensation, possession, or use of a controlled substance at any time or place, including while at the employee's workplace. Such unlawful activity will be considered a sufficient ground for a serious adverse personnel action, up to and including discharge.
- (b) In addition to prohibiting employees from engaging in the unlawful manufacture, distribution, dispensation, possession or use of illegal drugs in the workplace, this city prohibits its employees from engaging in such illegal activity at all times and at all places. Such activity, even during nonworking hours, clearly affects an employee's ability to perform public duties.
- (c) If an employee is convicted of violating any criminal drug statute in any jurisdiction, regardless of whether the alleged violation occurred at the workplace or elsewhere, the employee must notify the city personnel office in writing of the conviction within five calendar days of conviction.
- (d) Failure to comply with any part of this section will result in disciplinary action, up to and including dismissal. Specific disciplinary action will follow the prescribed guidelines of this article.

- (e) The implementation of this section shall be the responsibility of all department heads, office directors and supervisors. Each employee will receive a copy of the drug awareness program along with one hour of in-service training on the city's substance abuse policy in this division. Each employee will acknowledge by signature receipt of the policy. All city employees are responsible for the continued adherence to all policies and ordinances.

(Ord. No. 2007-22(06-O-2700), § 1, 3-27-07)

Sec. 114-571. - Supervisors' responsibilities and guidelines.

- (a) Supervisors are responsible for consistent enforcement of this division. Any supervisor who knowingly permits a violation of this division by employees under the supervisor's direct supervision shall be subject to disciplinary action.
- (b) *Reasonable suspicion.*
- (1) When a supervisor has reasonable suspicion that an employee is intoxicated or under the influence of drugs or alcohol, the supervisor must immediately notify the appointing authority or designee. The appointing authority or designee shall advise the employee of right of representation and allow the employee the opportunity to explain the employee's behavior. The appointing authority or designee may require the employee to submit to a drug and/or alcohol analysis.
- (2) Reasonable suspicion must be based on specific, objective facts about the conduct of an individual that would lead the reasonable person to suspect that the individual is or has been using drugs. Observations which may constitute a factual basis for determining reasonable suspicion may include but are not limited to the following, alone or in combination:
- (i) Slurred speech.
  - (ii) Alcohol on breath.
  - (iii) Inability to walk a straight line.
  - (iv) Any accident involving city property when the following elements are present:
    - a. Vehicular accidents involving city employees who are cited for traffic code violations.
    - b. Other accidents involving city property in conjunction with additional behavior as outlined in this subsection.
  - (v) Behavior which is so unusual and inappropriate in its nature as to create an unsafe work environment or disrupt the normal working condition.
  - (vi) Possession of alcohol and/or illegal drugs.

- (c) *Random drug-testing.*
  - (1) Sworn employees of the Departments of Police, Fire, and Rescue, Corrections as well as all other employees of the various departments of the City of Atlanta who hold positions which have been designated by the Commissioner of the Department of Human Resources as being safety-sensitive in accordance with section 114-575, are subject to random drug and/or alcohol analyses as established by the subject employees' respective departments, when directed by the appointing authority.
  - (2) The Commissioner of the Department of Human Resources may designate certain employment classifications which affect safety and/or security as safety-sensitive positions in accordance with applicable law, rules, and regulations.
  - (3) Random drug screens for general fund employees in safety sensitive positions shall only be conducted when funding has been allocated in the annual operating budget.

(Ord. No. 2007-22(06-O-2700), § 1, 3-27-07; Ord. No. 2008-68(08-O-0632), § 1, 7-28-08)

Sec. 114-572. - Drug and/or alcohol analysis.

- (a) When directed by the appointing authority or designee, an employee must submit to a drug and/or alcohol analysis test. The direction to submit to the drug/alcohol test must be in writing, signed by the appointing authority or designee, in accordance with section 114-571(b) or (c). The method of testing shall be established by the Commissioner of the Department of Human Resources. All testing labs, utilized by the city to analyze specimens, shall be certified to do so in accordance with applicable state and federal law and guidelines.
- (b) The recognized limit for the level of alcohol which cannot be exceeded for purpose of this section shall be 0.02.

(Ord. No. 2007-22(06-O-2700), § 1, 3-27-07; Ord. No. 2008-68(08-O-0632), § 1, 7-28-08)

Sec. 114-573. - Results of drug/alcohol analysis.

A positive test result of the drug/alcohol analysis made under this division shall constitute cause for which disciplinary action may be imposed, up to and including dismissal.

(Ord. No. 2007-22(06-O-2700), § 1, 3-27-07)

Sec. 114-574. - Disclosures.

No public release of information obtained by the city pursuant to this division will be made, except as required by state or federal law.

(Ord. No. 2007-22(06-O-2700), § 1, 3-27-07)

Sec. 114-575. - Procedures.

The commissioner of human resources shall be responsible for developing procedures for the implementation of this division.

(Ord. No. 2007-22(06-O-2700), § 1, 3-27-07)

Secs. 114-576—114-600. - Reserved.

*(Bill of Rights)*

***BILL OF RIGHTS***

***ATLANTA FIRE RESCUE DEPARTMENT***

**PREAMBLE**

Atlanta Fire Rescue Department (AFRD) hereby establishes a Bill of Rights for the benefit and welfare of all of its members. This Bill of Rights is intended to insure that the rights of AFRD members are safeguarded and protected. This Fire Rescue member's Bill of Rights consists of statements, in nontechnical terms, of the rights of the members of AFRD's Fire Rescue service and the department's obligations towards them. These rights which are afforded to members of the AFRD are available insofar as they are implemented in accordance with the Atlanta City Code of Ordinances. Nothing in this Bill of Rights shall be considered to afford AFRD members with any right which exceeds those afforded by the code of ordinance or by applicable departmental work rules. "AFRD member" includes any person who is a full time, non probationary employee of the Atlanta Fire Rescue Department. This Bill of Rights is intended to address the inherent rights of AFRD members who may have cause to file a grievance; or who are undergoing disciplinary investigation. Be it hereby resolved that said persons shall have the following rights which are delineated within by the Atlanta City Code and the OPS Procedures Manual:

- I. **GRIEVANCES:** Classified AFRD members shall have the right of representation at all stages of the grievance procedure. They shall also have the right to have their grievance(s) addressed within the time frames delineated by the Atlanta City Code and explained in the OPS Procedures Manual.
  
- II. **NON ADVERSE DISCIPLINARY MATTERS:** Classified AFRD members who are the recipient of Non Adverse disciplinary actions have the right to grieve the matter up to, and including, the office of the fire chief; civilian members may grieve up to, and including, the City of Atlanta's Labor Relations office.

## **BILL OF RIGHTS**

### **ATLANTA FIRE RESCUE DEPARTMENT**

#### **III. ADVERSE DISCIPLINARY ACTIONS: INVESTIGATIONS**

All classified AFRD members shall have the following rights throughout each stage of the disciplinary process:

- a. Right to a timely advance notification by OPS of being interviewed. Fifty three (53) hour employees shall be afforded notification to appear for OPS business seventy two (72) hours prior to the date in which they are being compelled make a statement. Forty (40) hour members shall be afforded twenty four (24) hours advance notice. Prior to an interview.
- b. Investigative business shall take place where the investigator is assigned or at a business facility designated by the investigator.
- c. Right to have one representative present during each phase of the disciplinary process, subject to conflict of interest issues.
- d. Right to know the origin and nature of the complaint prior to making a statement;
- e. Right to make and to receive a written copy of any statements they make to investigative personnel. Any and all statements given must be preceded with the Garrity v. New Jersey case being explained to the member.
- f. Right to present their defense to the complaint.
- g. Right against being addressed by investigators in a demeaning manner including but not limited to; use of profanity or any implied threat.
- h. Right to be interviewed for a reasonable length of time and to be provided with reasonable bathroom breaks, if so needed.

#### **IV. ADJUDICATION OF NOTICE OF PROPOSED ADVERSE ACTION:**

AFRD members shall have the right to be notified of any adverse actions which is being proposed against them. They shall have the right to due process as provided for within the City of Atlanta's Labor Relations code. No member shall be adversely affected as a result of their enforcement of these rights.

**(Disciplinary Review Panel Bylaws)**



**ATLANTA FIRE RESCUE DEPARTMENT  
DISCIPLINARY REVIEW PANEL BYLAWS**

**Purpose**

To make a holistic review all sustained complaint packages submitted from the Office of Professional Standards (OPS) and follow the letter and spirit of the Atlanta Fire Rescue Disciplinary Manual.

**Section I: Panel Composition**

- The DRP will consist of fourteen (14) members that includes: Four (4) Deputy Chiefs, six (6) Assistant Chiefs, one (1) Representative of Local 134, one (1) Representative of PACE, one (1) Representative of Professional Progressive Firefighters, and one (1) Chairperson.

**Section II: Panel Responsibilities**

- The Chairperson's responsibility is to plan, coordinate, and preside over the panel meetings.
- All panel members are required to vote on each case unless prior approved is granted by the Chairperson to be Recused.
- In the event of a tie decision, the Chairperson will be the deciding vote, which is the only time the Chairperson votes.
- Members may be Recused from voting on a case under the following conditions:
  - a. Married, related, or personally involved with the accused
  - b. Involved in the investigation
  - c. Filed the complaint
- Any member that recuses themselves must provide the Chairperson justification and request approval.
- The panel is not bound to arrive at a unanimous vote, only to achieve a simple majority of the voting members.

- Panel members are required to attend all meetings. If a member is unable to attend a meeting, the member shall provide an advance notice to the Chairperson for an excused absence.
- The Chairperson is responsible for scheduling meetings, communicating with panel members, and keeping all members up-to-date on panel activities.
- The Chairperson or his/her designee is responsible for keeping meeting minutes and providing a summary to the Fire Chief within five (5) business days after the meeting.
- A Representative of the Office of Professional Standards (OPS) shall be present to respond to any questions of the panel or provide clarity to a case.

### **Section III: Meetings (Regular, Special, Quorum)**

- Meetings will be held as deemed necessary by the number, timeframe, or severity of completed OPS complaints.
- A minimum of a two week notice will be given to all panel members and the Fire Chief for all regular DRP meetings.
- Special meetings may be called at any time by the Chairperson. In all cases, special meetings shall be limited to the stated purpose, which must be communicated in advance to all panel members and the Fire Chief. The special meeting notice shall be at least three (3) days.
- Meetings may be canceled or rescheduled by a majority vote of all panel members present in a quorum at a given meeting.
- A quorum of at least six (6) panel members shall be present at any regular or special meeting in order for business to be conducted.

### **Article VI: Guests or Observers**

- Any guest or observers are prohibited from attending regular or special called meetings, unless approved by the Fire Chief prior to the meeting date.

### **Article V: Action or Removal of a Panel Member**

- If a panel member does not fulfill the duties required within these bylaws and the AFRD Doctrine, the Chairperson will be notify the Fire Chief in writing and the appropriate actions deemed necessary by the Fire Chief will be taken against the member.
- Permanent or temporary removals from the DRP will occur at the discretion of the Fire Chief or his/her designee.

- When removing a panel member representing a union or labor organization, the Chairperson will notify the union or labor organization President of the situation for removal or action.
- The President of the union or labor organization should make another recommendation to replace the removed member.

#### **Section VI: Miscellaneous**

- Each panel member shall have one vote in all DRP meeting matters.
- Each union or labor organization should submit a representative to the Chairperson to serve on the panel.
- No Officer-In-Charge (OIC) or proxies are permitted to fill-in for panel members that are unable to attend any regular or special meeting.
- When the DRP modifies or concurs with OPS findings, the panel shall recommend a range of sanctions for the Fire Chief's consideration.
- Any discrepancies, issues, or concerns regarding the panel shall be communicated in writing to the Fire Chief immediately following the meeting.
- Every panel member is required to agree and sign a confidentiality agreement.



**City of Atlanta  
Employee Ethics Pledge**

To assure public confidence, I am committed to promoting integrity in city government by placing the best interest of the City above my own financial or personal interests.

1. I will not use my position to secure special advantage or benefit for myself, my family, or other persons and will seek to avoid situations that may give the perception of an impropriety. When uncertain about the right thing to do, I will seek guidance from my supervisor, the Ethics Office, or the Board of Ethics.
2. I will not solicit or accept money or a personal gift, meal, ticket, travel, entertainment, or other thing of value from a prohibited source unless the gift falls within one of the 11 exceptions to the ban on gratuities.
3. I will use public property, vehicles, equipment, labor, and services only for official city business and not request or allow its use for the private advantage of any individual or private entity.
4. I will not knowingly vote or participate in any matter in which I have a financial or personal interest and will not participate in any bid, proposal, contract, or subcontract if I or my immediate family, employer, prospective employer, or a related business entity have a financial or personal interest.
5. I will refrain from working for any business or entering into any contract to provide goods and services to the City of Atlanta unless the business is conducted through a sealed competitive bid process.
6. I will not represent any individual or private interest for pay before any city agency or in matters adverse to the City while working as a city employee.
7. I will not hold investments, engage in outside employment, or be paid to render services for a private interest when the work is adverse to and incompatible with the proper discharge of my official duties. I will seek permission from my department head for any extra job that I have.
8. I agree that I will not disclose any confidential information that I learn in my official capacity as a city employee.
9. I agree to file my annual financial disclosure statement by the filing deadline, if I am identified as a required filer, and file any report on conflicts of interest, travel, or gifts to the City when appropriate.
10. I understand that the City has a one-year cooling-off period and agree that for one year after leaving city employment I will not appear before any city agency for pay or be paid to work on any matter in which I was directly concerned, personally participated, or actively considered, or about which I acquired knowledge while with the City.

I, KELVIN J. COCHRAN, acknowledge that I have received and read this pledge and agree to abide by the City's Code of Ethics. I understand that the most current copy of the Code of Ethics is at the Board of Ethics' website and that I can seek advice from the Ethics Office or Board of Ethics if I need guidance on how to avoid a conflict of interest and comply with the Code of Ethics.

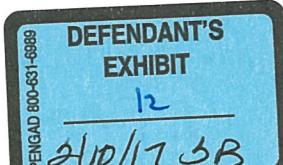
Kelvin J. Cochran  
Signature

June 21, 2010  
Date

KELVIN J. COCHRAN  
Print Name

FIRE RESCUE  
Department

3/18/2010



COA-Cochran 000020

City of Atlanta

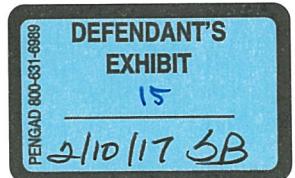
# Employee Handbook



**Department of Human Resources  
November 2010**

DHR - 10/10

1



**This employee handbook is for informational purposes only. It is not intended to create a contract of employment or to establish terms or conditions of employment. Pursuant to OCGA §34-7-1, employment with the City of Atlanta is at-will and may be terminated at will by the employee or the city.**

## **Introduction**

This handbook provides employees of the City of Atlanta with general information regarding the city's policies and procedures. It supersedes and replaces all prior published versions. The most current version is maintained on the city's intranet site at [www.atlanta.web](http://www.atlanta.web).

The information provided within should be helpful in familiarizing employees with the city's policies and procedures. This handbook, however, cannot anticipate every situation or answer every question about employment. The city will demonstrate appropriate flexibility in the administration of guidelines and reserves the right to make changes and revisions without notice when necessary.

The information in this handbook is not intended to supersede or override any provision of the city charter or code of ordinances. Employees are directed to this charter and code for guidance.

## **How Atlanta City Government Works**

Atlanta has a "strong mayor" form of government, established by city charter. The charter was granted by the State of Georgia and gives the city all powers necessary to promote the safety, health, peace and general welfare of Atlanta and its people.

City government is divided into three branches: legislative, executive and judicial. City council comprises the legislative branch and makes the laws that govern the city. City departments, under the direction of the mayor, constitute the executive branch and are responsible for the day-to-day operation of the city. The chief financial officer (CFO) and city attorney have dual reporting responsibilities to the mayor and city council. The judicial branch is comprised of the municipal court system.

## **Vision, Mission, Management Philosophy and Values**

- Ensure Atlanta is clean and safe
- Maintain and develop a strong infrastructure
- Nurture open and honest government
- Ensure that the city is fiscally responsible
- Maintain effective and efficient government

The vision of the City of Atlanta is to become a global leader, creating and supporting an environment where all people thrive and prosper.

The mission of the City of Atlanta is to provide leadership, services and support necessary to achieve a high quality of life for all people.

This mission is accomplished through a management philosophy that supports investing in the workforce, delivering quality customer service, living within means and finding a better way.

The City of Atlanta operates under the values of serving everyone equitably, striving for excellence, valuing employees, promoting public trust, celebrating diversity and seeking a global role.

### **Customer Service**

One of the top priorities for the City of Atlanta is to provide outstanding service for all customers, both external and internal. Thus, anyone who lives in or visits the city has the right to expect top-notch service that is fast, courteous, professional and flexible.

In support of this priority, the city launched a quality customer service initiative embodying the slogan, "I am the City of Atlanta, committed to serving you." This initiative is designed to encourage and equip all employees to become more customer-responsive. Employees are expected to provide quality service to all customers in a prompt, courteous and effective manner. Every employee has customer service as a critical job element, which is included on all performance evaluations.

### **Equal Opportunity**

The City of Atlanta is an equal opportunity employer, committed to providing and nurturing a work environment free of discriminatory practices. City policy prohibits forms of discrimination covered under Title VII of the Civil Rights Act, the Americans with Disability Act, and city ordinances. Specifically, discrimination is prohibited based on race, color, religion, age, disability, gender, sexual orientation, veteran status or national origin. Atlanta's equal opportunity policy applies to recruitment, selection, hiring, compensation, promotion, training and all other conditions of employment.

The city provides a process for all employees to report any conduct perceived to be discriminatory, which employees are encouraged to use. An employee should immediately report any employment action believed to be discriminatory to the equal opportunity coordinator within the employee's department or to the city's Office of Diversity Management at 404-330-6416. Employees can also make requests for workplace disability accommodations to these resources.

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### **Civil Service System**

The City of Atlanta government operates under a formal civil service system adopted by city council and approved by the mayor. Under this system, employees who are "classified" have certain civil service protections related to adverse employment decisions. Additionally, the system provides for the administration of all human resource processes, including classification of positions; compensation matters; manner and method of publicizing vacancies; procedures for appointing and dismissing personnel; terms, conditions and benefits of employment; procedures for filing grievances and related matters; and the development of employees. The Department of Human Resources has responsibility for administering the civil service system.

Many of the rights and benefits of the city's civil service system are dependent upon an employee having regular status. A regular employee is a benefit-earning employee who has been appointed to a permanent position in the civil service in accordance with the *City of Atlanta Code of Ordinances* and, if required, has satisfactorily completed a probationary period

### **Civil Service Board**

The civil service board, established by the city charter, consists of five members appointed by the mayor with the consent of the city council. The board holds hearings and makes final determinations on classified employee appeals of demotions, suspensions, and dismissals; removal from employment eligibility registers; disqualification for reemployment; layoff or reduction-in-force procedures and unjust coercion or reprisal related to appeals or grievances.

### **Classified and Unclassified Service**

The civil service system is divided into the classified and unclassified service, as defined in Section 114-84 of the *City of Atlanta Code of Ordinances*.

The fundamental difference between the classified and unclassified service is that all regular employees in the classified service may appeal actions to the civil service board and file grievances. Sworn, regular employees at the rank of captain and below in the Departments of Fire Rescue and Police may also appeal actions to the board, except for demotions from discretionary ranks. All sworn, regular employees in the departments of Fire Rescue and Police may file grievances. Certain employees in the unclassified service with "retained rights" may request a name-clearing hearing before the board.

Employees in the unclassified service, other than the sworn employees described above, serve at the pleasure of the appointing authority.

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### **Hours of Work**

The standard for all full-time employees is a 40-hour workweek, except for certain sworn members of the Department of Fire Rescue who work a 53-hour week. Normal city hall business hours are 8:15 a.m. to 5:00 p.m., Monday through Friday. Employee work schedules may vary from these standard hours, based on operational needs. The standard workday is eight hours, although some operations may require longer shifts. Supervisors will inform employees of their specific work schedules. The work schedule will be determined by the department head in consultation with the commissioner of Human Resources.

### **Attendance**

Employees are expected to report to work on time and to maintain a good attendance record. Late or absent employees must inform their supervisors as soon as possible. Supervisors will inform employees of the call-in procedures for their particular work locations. Frequent or unreported lateness and/or absences may result in disciplinary action, up to and including dismissal. This policy applies equally to situations where an employee may be required to work overtime or to report to work on holidays or other scheduled off-days.

### **Lunch Breaks**

A lunch period of 30-45 minutes is generally provided within the workday. Department heads may prescribe appropriate lunch period regulations as necessary. Regardless of the lunch period, all full-time employees are expected to work a minimum eight-hour day. Employees are not permitted to perform any of their job functions during the lunch break.

### **Probationary Period**

All employees who have been appointed to a regular position in the classified service and who earn benefits, as well as sworn employees in nondiscretionary ranks, must satisfactorily complete a probationary period to acquire rights in that position. This period is six months in duration and may be extended for an additional six months, except for the supervisory ranks of captain and below in the Departments of Corrections, Fire Rescue and Police. These employees have a 12-month probationary period, which cannot be extended. Note: Police Officers do not begin the six-month probation until they complete field training. Employees serving an initial probation cannot appeal adverse actions or file grievances.

Non-sworn, unclassified employees are not required to serve a probationary period.

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### **Performance Management**

The City of Atlanta has a comprehensive performance management program. The program links the city's priorities and department management plans to quality customer service, work expectations, team values, employee rewards and recognition and continuous process improvement.

In the initial phase of the performance management cycle, supervisors and employees agree on work expectations and discuss any needed or desired development plans.

Throughout the appraisal period, supervisors regularly communicate with employees to review performance, reinforce desirable behaviors, make adjustments in job expectations and identify any areas needing improvement. Improvement plans may be developed and discussed with the employee, as needed.

The final component of the cycle is the evaluation conference between the supervisor and employee. During this session, the supervisor and employee discuss the employee's successes and problems in meeting job and customer expectations and accomplishing development goals and make any modifications needed to performance expectations and development plans for the next appraisal cycle.

Performance evaluations are used as a basis for determining salary increases when funding is available. They are also considered in making decisions regarding training, promotion, transfer and dismissal. Evaluations are completed prior to the expiration of any probationary period, as well as on an annual basis, upon an employee's separation from service and upon the employee's supervisor leaving their position if the employee has not been evaluated in the previous six-month period.

For additional information, employees should contact their departmental human resources unit or the city's Office of Organization and Employee Development at 404-330-6470.

### **Employee Development and Training**

City employees are encouraged to participate in training opportunities during the year. Each department provides its employees with department-specific technical and job-related training and development opportunities, dependent on availability of funds. Departmental training coordinators can provide additional information regarding these opportunities.

Additionally, the city's Office of Organization and Employee Development provides employees with mandatory and elective citywide training and development programs, as funding allows. These programs are designed to help employees perform their jobs better while preparing them

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for promotional opportunities. Some mandatory training and development programs provided are:

- New Employee Orientation
- Quality Customer Service Training
- Performance Management Training for Rating Supervisors
- Sexual Harassment Training

Elective training and development programs include:

- GED/Basic Skills Training
- Computer Skills Training
- Office/Support Staff Development
- Executive/Management/Supervisor Development

For additional information on training and development programs, employees should contact their departmental training coordinators or the city's Office of Organization and Employee Development at 404-330-6470.

### **Promotions**

Promotions are made according to merit and fitness. Classified promotional opportunities must be advertised for a minimum period of seven calendar days.

Employees selected for promotion to positions that require working with children, seniors, money or other financial transactions will be required to pass a criminal background check as a condition of the promotion. A credit check also must be completed successfully if the promotion so warrants based on job-relatedness.

Employees who are promoted to classified positions or to sworn, nondiscretionary positions are required to serve a new probationary period. Except for probationary employees in sworn, supervisory positions, these employees may be demoted during the probationary period in keeping with the civil service rules without recourse to a hearing before the civil service board. Sworn supervisors in nondiscretionary positions who do not successfully complete the probationary period are removed from the eligible list for the rank. They may appeal this removal to the civil service board.

Employees demoted during the probationary period will be credited with any pay adjustments they would have earned had they not been promoted.

Unclassified, non-sworn employees do not serve a promotional probationary period.

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### **Pay Periods/ Paychecks**

City employees are paid every two weeks, either by check or direct deposit.

If a payday falls on a legal holiday, paychecks are distributed on the workday immediately prior to the holiday.

Paychecks are distributed at employee work sites. Employees on extended leave may request that their supervisor mail the paycheck to their home address. Paychecks returned to the Department of Finance, Payroll Division, may be picked up at 55 Trinity Avenue in Suite 1600. No check will be released without proper identification.

### **Overtime/Compensatory Time**

Overtime is paid in accordance with the federal Fair Labor Standards Act (FLSA). Overtime may be compulsory or mandatory if required to maintain an acceptable level of service to citizens. Opportunities to work overtime are normally rotated among all employees in the same classification and work area.

Employees non-exempt from FLSA may be given compensatory time off in lieu of overtime pay. Any compensatory time accumulated beyond 160 hours by a non-exempt employee will be paid as cash compensation. Non-exempt employees will be paid in cash for all accumulated compensatory time remaining at the time of termination.

Employees exempt from FLSA may be given compensatory time off at the rate of one hour for each hour worked beyond their regularly scheduled work period. Exempt employees are not eligible for overtime pay and are not eligible to have accrued compensatory time paid out in cash.

Employees may accrue a maximum of 160 hours of compensatory time.

All accrued compensatory time must be used before the end of the calendar year in which it was earned. When work circumstances prevent employees from taking time off, accrued compensatory time may be approved for carryover into the following calendar year. The employee's department head and the commissioner of Human Resources must approve such requests.

### **Premium Pay**

If non-exempt employees are required to work on a holiday, they receive regular pay, plus an additional one and one-half times their regular pay (either in cash compensation or compensatory

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time) for each hour worked. This is not overtime pay. It is special premium pay for holiday work.

Exempt employees do not receive premium pay but may be given compensatory time off on an hour-for-hour basis for work on scheduled holidays.

Holidays falling on a Saturday (or the first day of an employee's normal two-days off) are taken (observed) on the preceding workday. Holidays falling on a Sunday (or the second day of an employee's normal two-days off) are taken (observed) on the following workday. Non-exempt employees are not paid premium pay for working on observed holidays.

In order to be paid for holidays, employees must be in a paid status for the regularly scheduled workdays immediately before and immediately after the holiday. Part-time employees in regular positions are paid for holidays at their part-time rate. Temporary employees are not paid for holidays not worked.

### **Flexible Benefits Program**

Flexible insurance benefits are offered to City of Atlanta employees through payroll deduction. These benefits are on a pre-tax basis. The city contributes a portion of health, dental and life insurance costs. All other costs are paid through employee contributions.

Insurance benefits are available for the financial protection of employees and their dependents. Employees decide which plans best fit their individual needs. Choices include the following:

- Health Insurance
- Dental Insurance
- Vision Insurance
- Life Insurance
- Flexible Spending Accounts
- Supplemental Insurance
- Continuation of Insurance after Termination of Employment and at Retirement

The latest flexible benefits program booklet describes the plans listed above in detail. For more information or a copy of the booklet, call the city's Employee Benefits Division at 404-330-6036.

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### **Social Security/Medicare**

Federal law does not require most city employees to participate in the Social Security Retirement System. Only temporary employees or others not covered by the city's pension plan have payroll deductions taken for Social Security retirement benefits.

Federal law does require that all employees hired or re-hired after April 1, 1986 be enrolled for retirement health insurance under Medicare. Therefore, all city employees hired after that date have mandatory withholding for Medicare retirement health insurance coverage.

For further information, contact the local Social Security Administration office or the city's Payroll Division at 404-330-6260.

### **Pension**

The City of Atlanta has two types of pension plans. Defined benefit plans, created by state law, provide employees with a source of defined retirement benefits determined by salary, length of service and age at retirement. These plans are provided for classified employees and employees at pay grade 18 and below, as well as for police officers and firefighters. Also, some employees hired prior to September 1, 2005 who fall outside these categories may have elected to participate in the defined benefit plan when eligible to do so. The three defined benefit programs also provide for death and disability benefits under certain circumstances.

Unclassified employees at pay grade 19 and above hired September 1, 2005 or later are enrolled in a defined contribution pension plan. Some employees hired prior to this date who are classified or are at pay grade 18 and below may also participate in the defined contribution plan if they chose to do so when eligible. The defined contribution plan allows employees to determine how their retirement funds are invested. Upon leaving or retiring from city service, employees may withdraw their invested pension contributions and a portion of the city's match, based on the vesting schedule.

Current updates and details of all pension plans are available through the Pension Division at 404-330-6260.

### **Deferred Compensation/Retirement Savings Plans**

These plans allow employees to save for retirement with pre-tax dollars through payroll deduction. Employees may choose from several plans. Contact the city's Payroll Division at 404-330-6260 for more information.

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### **Credit Union**

Regular employees and their immediate family members are entitled to membership privileges in the credit union. These privileges include saving by payroll deduction and borrowing funds at competitive interest rates. The Atlanta City Employees Credit Union is located at 670 Metropolitan Avenue and can be reached at 404-658-6465.

### **United States Savings Bonds**

Employees may purchase United States Savings Bonds through payroll deduction. For more information, call the city's Payroll Division at 404-330-6260.

### **Employee Health and Wellness Center/Wellness Initiatives**

The Department of Human Resources (DHR) operates an employee Health and Wellness Center in city hall south, which includes a state-of-the-art fitness facility on the 4<sup>th</sup> floor and an employee health center on the 5<sup>th</sup> floor of 55 Trinity Avenue. All services are offered free of charge. Employees may use these facilities at their own risk. Time spent in the facilities is not counted as working time or working hours.

The health center provides a variety of services for employees, retirees and their families. These services include: health screening/monitoring (e.g., blood pressure, blood sugar and cholesterol); health education and coaching; flu shots; nutritional counseling; behavior modification support in areas such as smoking cessation, stress management and weight loss; chronic disease management; basic care for minor emergencies and consultation regarding health concerns. DHR also sponsors health fairs, vision screenings, blood drives and lunch-and-learn programs related to wellness. Some services and programs are made available at work sites other than city hall south.

No appointments are necessary for use of the fitness facility or to visit the health center. For further information or to schedule on-site employee screenings, contact the Health and Wellness Center at 404-865-8496 or 8497.

### **Workers' Compensation**

A comprehensive program of workers' compensation protects employees injured on the job. This program provides payment of all authorized medical expenses and contains provisions for continuous income during the period of disability for any on-the-job injury deemed compensable.

Employees injured on the job are required to immediately report to their supervisors the nature of the accident and injury. Supervisors will complete appropriate forms and forward them through

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the chain of command so that the city's third-party administrator receives notification within 24 hours of the injury. This information should also be forwarded to the Department of Finance; Risk Management; 68 Mitchell Street, Suite 9100; Atlanta, GA 30303.

Failure to abide by this procedure may result in denial of coverage for medical and income benefits which would otherwise have been received.

For additional information, contact the Department of Finance at 404-330-6684.

#### **Employee Assistance Program/Psychological Services**

The Employee Assistance Program (EAP)/Psychological Services Unit (PSU) provides a no-cost confidential counseling service for employees and their families.

Professional staff can assist in resolving personal problems, such as marriage and partnership conflict, depression, alcohol or drug abuse, emotional distress, financial problems and job stress, some of which may impact job performance. They are also available to provide consultation to supervisors and managers regarding job performance problems resulting from such issues.

In cases where employees are impaired in their ability to perform job-related tasks due to physical or psychological difficulty or because of substance use and/or abuse, the department may refer employees to EAP/PSU for coordination of early-warning or fitness-for-duty evaluations.

If assistance is needed, call 404-658-7397. In an emergency situation, call 404-614-6525 and ask for the emergency clinician.

#### **Annual/Vacation Leave**

Annual leave may be requested for personal or emergency reasons or vacation. Temporary employees are not eligible for annual leave. Part-time employees are entitled to annual leave only in proportion to the number of hours worked. When scheduling vacation time, the employee should be considerate of the workload of the department. If the employee is terminated or resigns, any unused vacation will be paid to the employee.

Annual leave based on a standard 40-hour workweek is accrued in accordance with the schedule below. Sworn employees in the Department of Fire Rescue with a standard 53-hour workweek will accrue and carry over hours based on a 12-hour workday.

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### **Annual Leave Accrual for 40-Hour-Per-Week Benefit-Earning Employees**

<u>Length of Service</u>	<u>Days/Hrs. Accrued</u>
0 to 5 Years	12 Days/96 Hours
5 to 10 Years	15 Days/120 Hours
10 to 15 Years	18 Days/144 Hours
15 to 20 Years	21 Days/168 Hours
20 Years & Up	25 Days/200 Hours

### **Holidays**

The City of Atlanta designates the following days as holidays:

New Year's Day .....	January 1
Martin Luther King's Birthday.....	Third Monday in January
Memorial Day .....	Last Monday in May
Independence Day.....	July 4
Labor Day .....	First Monday in September
Veterans Day.....	November 11
Thanksgiving.....	Fourth Thursday and Friday in November
Christmas Day.....	December 25

### **Sick Leave**

Employees who are entitled to earn annual leave will also be entitled to earn sick leave with pay to be computed on the basis of one-fourth day for each workweek or equivalent (13 days of sick leave per year for an employee whose regular work schedule is 40 hours per workweek). The maximum accumulation of sick leave is unlimited. Sick leave may not be used in units of less than one hour.

A department head may grant an employee sick leave with pay for the following reasons: personal illness, injury, or disability; consultation or treatment for personal medical, dental, or optical conditions; exposure to a contagious disease that would endanger others; maternity; or death or illness of a member of an employee's family or domestic partner, as defined by city code, that requires the employee's personal care and attendance. An employee's department head

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may require verification of a death. Such verification must be submitted within a reasonable time frame.

A medical certificate from a licensed physician or chiropractor may be required by an employee's department head in order to substantiate a request for sick leave under the following circumstances:

- Any period of absence due to illness that consists of three or more consecutive workdays (except for the Department of Fire Rescue, for which the fire chief may adopt a different policy to accommodate the 53-hour workweek)
- Request for sick leave during a period when the employee is on annual leave
- The occurrence of frequent or habitual absences from duty, after the employee has been notified or warned that a certificate would be required

#### **Paid Leave for Health Screenings**

Regular, full-time employees are allowed to take up to four hours of paid leave, one time per calendar year, for health screening for cardiovascular disease, cancer, HIV, diabetes and pneumonia/influenza.

The employee must submit a signed copy of the medical documentation verifying the screening to their supervisor. Health screening leave forms may be obtained from the departmental human resources unit.

#### **Advanced Sick Leave**

In case of emergency, employees who have used all accumulated sick leave and annual leave because of protracted illness may be advanced sick leave upon the recommendation of the commissioner of Human Resources and approval of the chief financial officer.

Employees wishing to apply for advanced sick leave should contact their departmental human resources unit to obtain the appropriate forms.

#### **Family and Medical Leave**

Classified, unclassified and temporary employees with the appropriate amount of service are entitled to take job-protected leave, in compliance with the federal Family and Medical Leave Act (FMLA) in certain situations. The employee must have worked for the city for at least 12 months and have provided at least 1,250 hours of service during the 12 months prior to the date leave is to begin.

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Eligible employees may take up to a total of 12 weeks of leave during any 12-month period for one or more of the following reasons:

- birth and care of the employee's child
- placement of a child with the employee for adoption or foster care
- care of the employee's spouse, son, daughter or parent with a serious health condition
- medical leave for a serious health condition that makes the employee unable to work
- qualifying exigencies arising out of the fact that the employee's spouse, son, daughter or parent is on active military duty or call to active duty status, including as a member of the National Guard or Reserves, in support of a contingency operation

When an eligible employee's spouse, son, daughter, parent or next of kin who is a current member of the Armed Forces incurs a serious injury or illness in the line of active duty, the employee is entitled to up to 26 workweeks of leave to care for the service member during a single 12-month period. This period begins on the first day the employee takes military caregiver leave and ends 12 months after that date, regardless of any leave periods otherwise used for FMLA calculation. The employee is eligible for a combined total of 26 workweeks of FMLA leave in the single 12-month period if leave is taken for any other FMLA-qualifying reason, provided that no more than 12 workweeks of leave may be used for reasons other than military caregiver leave.

FMLA leave can be a combination of annual leave, sick leave, compensatory time and leave without pay.

This entitlement guarantees that employees who take FMLA leave have the same job or a job with equivalent status and pay when they return from FMLA leave. The city will continue an employee's health benefit coverage during the leave period, with the employee making required premium contributions.

Employees wishing to apply for FMLA leave must notify their supervisor at least 30 days in advance of the need to take leave when the need is foreseeable and such notice is practicable. Forms and assistance for applying for FMLA leave are available from your departmental human resources unit.

### **Voluntary Shared Leave**

A regular employee may receive leave (annual, sick and/or compensatory time) voluntarily transferred from one or more other employees in the event that the employee or an immediate family member suffers from a serious illness or injury that necessitates the employee's absence from work. The leave is subject to all conditions specified in Section 114-429 of the *City of*

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*Atlanta Code of Ordinances.* Employees may contact their departmental human resources unit or the city's Employee Benefits Division at 404-330-6036 for additional information.

### **Blood Donation Leave**

An employee is entitled to a leave of absence of not more than 16 hours in each calendar year without loss of pay for the purpose of donating blood. This absence will be computed at four hours per donation, up to four times per year. Satisfactory evidence of having donated or attempted to donate blood is required.

### **Disability Leave**

An employee who is injured in the line of duty and suffering a temporary total disability which is compensable under the Georgia workers' compensation act may receive full salary in lieu of workers' compensation weekly benefits during the period of disability as defined below. The disability must be substantiated by an authorized panel physician's report.

An injured employee who is covered by the city's pension plan and is not temporary may receive full salary for six months in lieu of workers' compensation. No compensation in the form of disability leave shall be allowed for the first three working days of incapacity resulting from an injury; provided, however, if an employee is incapacitated for 28 consecutive days following an injury, disability leave shall be paid for the first three working days of incapacity. After six months, the injured employee shall be allowed to utilize all accrued sick and annual leave with appropriate approved documentation or the employee shall be paid the rate provided by the state workers' compensation act.

Employees not eligible to be paid salary in lieu of workers' compensation will be paid in accordance with the state workers' compensation act.

### **Military Leave**

Regular, full-time employees who are members of the United States Armed Forces are entitled to military leave to fulfill their obligation for military duty and/or training, including travel time.

Up to 18 days of military leave with pay may be granted in one calendar year. Employees will be paid the difference between the military salary and current city salary for workdays 19 through 25 in any calendar year for military duty in support of homeland security or military action against terrorism. Employees exhausting their entitlement to paid military leave will have the option of using annual leave, compensatory time and/or leave without pay for any additional obligation.

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If military leave extends beyond December 31 of any year, January 1 begins a new eligibility period for the city's paid military leave benefit. Federal law places a five-year limit on the cumulative length of time a person may serve in the military and remain eligible for reinstatement with the city.

Employees should provide their supervisors with an annual drill schedule for their unit and any orders directing their participation in training. Employees who are called to active duty, or who enlist and will be serving on active duty, should request a leave of absence as outlined in this handbook.

Employees not receiving a copy of military orders in sufficient time to prepare a written leave request may notify their supervisor orally that they have been called to military service. Written documentation of military service is required to receive compensation for military leave from the city and/or for reinstatement upon return. This documentation may be provided prior to leaving, during service or upon return from military duty.

### **Educational Leave**

Study leave of absence is granted to regular employees only when it does not adversely affect city services. Any such leave taken beyond accrued annual leave or compensatory time is without pay.

### **Civil/Jury Duty Leave**

An employee is entitled to time off with pay when performing jury duty or when subpoenaed to appear before any public body or commission, except when summoned to appear for personal matters.

An employee is also permitted to take up to two hours off to vote in any municipal, county, state or federal political party primary or election. If the hours of work commence at least two hours after the opening of the polls or end at least two hours prior to the closing of the polls, the time off for voting need not apply.

An employee is entitled to time off with pay to work at the polls during a City of Atlanta municipal election, provided prior approval is received from the employee's supervisor or department head and the employee applies to and is approved and selected by the Fulton or DeKalb County Department of Registration and Election.

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### **Leave for Examinations**

Leave with pay may be granted when an employee is being examined by a federal, state or other governmental agency, if such exams are pertinent to employment with the city.

### **Unpaid Leave of Absence**

A department head, with notification of the commissioner of Human Resources, may grant a regular employee a leave of absence without pay for a period not to exceed one year if the leave will not adversely affect the interest of the service of the city. Unclassified employees are limited to a period of three months of unpaid leave to work on a political campaign.

Employees on an unpaid leave of absence may continue group life and health benefits by paying the premium payments, provided that the leave is granted for military leave, maternity leave, sick leave or study leave of absence.

### **Unauthorized Leave**

An employee taking leave without authorization during the prescribed hours of work does so without pay and is subject to disciplinary action.

Note: Failure to return at the expiration of approved leave will be considered as absence without official leave.

### **Safety Program**

The City of Atlanta provides a safe and healthy work environment for all employees. Employees are responsible for carrying out the responsibilities of their jobs in a safe manner and not endangering their own lives or the lives of others. Further information on safety procedures can be obtained from your supervisor or by clicking on the "Safety" link on the city's intranet site ([www.atlanta.web](http://www.atlanta.web)).

### **Smoke-Free Environment**

The City of Atlanta offers a smoke-free environment in which to work. Smoking is not permitted inside of any city work site.

### **Emergency Procedures**

Every department is responsible for installing an emergency and evacuation plan. For emergency and evacuation procedures and locations, contact your departmental emergency coordinator.

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### **Identification Badges**

Employees are required to wear their identification badges visibly displayed at all times while on city property. ID badges are made available upon employment at no cost to employees. Lost or destroyed badges must be replaced immediately at the employee's expense.

### **Inspection of Parcels/Building Security**

Security staff may, from time-to-time, search and/or require employees to allow searches of parcels, bags, briefcases, handbags and/or other personal items.

### **General Guidelines for Conduct**

Employees are expected to present a professional demeanor and treat citizens, customers and other employees with dignity and respect. City employees will be professional and courteous to the public, co-workers and supervisors and will not use insensitive, abusive, violent or profane language, either in person, in writing, via the telephone or in any other type of communication.

### **Alcohol and Drug Policy**

The City of Atlanta recognizes that the work environment should be free of the effects of alcohol and drug abuse. All new employees must submit to a pre-employment drug screening. Additionally, the city provides all employees an opportunity to voluntarily enter the city's Employee Assistance Program without being subjected to any disciplinary action based on the substance abuse, provided that the employee meets the conditions established in Section 114-568 of the *City of Atlanta Code of Ordinances*.

Sworn employees, as well those holding a commercial driver's license (CDL), will be subject to random drug testing. When reasonable suspicion exists that any employee is using alcohol or illicit substances or abusing prescription drugs, that employee will be required to submit to a "for cause" drug test. A positive result on a drug screen is a direct violation of the city's substance abuse ordinance. Any employee found in violation will be subject to disciplinary action, up to and including dismissal.

The following employee behaviors related to the use of substances are prohibited and will result in disciplinary action, up to and including dismissal:

- Consumption or use of illegal drugs at any time, either on- or off-duty
- Consumption or use of alcohol while on duty
- Abusive use of prescription or other legal drugs and substances while on duty

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- Reporting for work or being subject to duty while having impaired ability to perform job duties due to the use of alcohol, prescription drugs or other legal drugs or substances
- Illegal manufacture, distribution, dispensation, possession or use of a controlled substance at any time, either on- or off-duty
- Failure to notify the city's Department of Human Resources within five calendar days of a conviction for violating any criminal drug statute

### **Sexual Harassment Policy**

It is illegal and a violation of city policy for any employee, male or female, to sexually harass another employee. It is also a violation for any employee to sexually harass a non-city employee while representing the city. Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature which adversely impact one's employment status, work performance and /or work environment. Sexual harassment complaints are addressed in accordance with Sections 114-601 through 114-610 of the *City of Atlanta Code of Ordinances*.

Employees determined to have committed the offense of sexual harassment will be subject to progressive discipline:

- First offense: Sexual harassment training and disciplinary action ranging from a ten-day suspension to dismissal
- Second offense: Dismissal

The city provides a process for employees and citizens to report sexual harassment for investigation. Aggrieved individuals are encouraged to avail themselves of this process by contacting their department equal employment opportunity coordinator or the city's Office of Diversity Management unit at 404-330-6416.

### **Possession of Weapons on City Property**

Employees may not have any weapon while on city property, except those required and authorized by the city for the performance of assigned duties or allowed by state or federal law. Examples of weapons are firearms, certain knives, straight razors, ice picks or similar objects. Consult with your supervisor regarding restrictions which may be placed on leaving personal firearms in locked vehicles on city premises or for further questions about possession of weapons on city property.

### **Gambling**

Gambling of any kind is prohibited on city property.

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### **In-House Solicitation and Distribution**

The city encourages employees to support city-sponsored events and charities; however, the solicitation and distribution of materials by employees for personal profit during work hours is prohibited.

### **Political Activity**

Employees of the City of Atlanta desiring to run for the office of mayor or president or member of city council must resign from their position with the city. Such resignation must be effective as of the date of announcement of offering for election or as of the date of filing as a candidate, whichever is earlier.

Employees seeking any elective office must present a written notification to their department head of intent to file as a candidate.

Employees are prohibited from soliciting contributions or services for any political candidate during working hours.

### **Outside Employment**

City employees are permitted to engage in paid employment in addition to their city job only as long as such employment does not interfere with job performance, occur during the employee's working hours, involve conflict of interest, involve the use of city records or equipment or include the performance of duties that the employee should perform as part of their city job. (Police uniforms are not considered equipment in the meaning of this rule.) The request to participate in outside employment must be submitted to the department head for approval prior to beginning any outside employment. An employee is not allowed to work a second job while on sick leave or FMLA during the employee's normal work hours.

### **Employment of Relatives**

No person may be employed in a position in which that employee directly supervises or is directly supervised by a member of such person's immediate family. Immediate family for this purpose includes father, mother, son, daughter, brother, sister, spouse, in-laws, domestic partner or immediate family members of a domestic partner.

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### **Dress Code/Personal Appearance**

Appearance on the job should be business-like and appropriate for the position and work area. For departments that have a "dress-down day" or "casual day," attire still must be appropriate for the work environment (business casual in office settings). For example, no jeans in an office environment or spaghetti-strap dresses, stretch pants, spandex clothing or clothing with abrasive language or reference to drugs or alcohol should be worn. Uniformed employees should always wear their complete uniform and never wear their shirt untucked. Employees may confer with their supervisor or departmental human resources representative or click on the "Administrative Orders" link on the city's intranet site at [www.atlanta.web](http://www.atlanta.web) for more information.

### **Personal Use of Business Equipment**

All city equipment, including office telephones, cell phones, fax machines and computers, are meant for business purposes. Employees may be subjected to disciplinary action for inappropriate use of business equipment.

The cost of personal long distance calls, cell phone calls, faxes or other expenses charged to the city is the responsibility of the employee and must be reimbursed.

### **Release of Information**

Instances may arise where an employee receives an inquiry for information about city-related business from newspapers, radio and television stations or other sources of public information. Such inquiries should be directed to a supervisor, manager, bureau head, director, commissioner and/or the city's Office of Communications. Employees should not become involved in outside inquiries and/or discussions about city-related business without prior approval of their supervisor.

### **Open Records Act**

The Open Records Act of the State of Georgia provides guidelines for release of public information maintained by the City of Atlanta. Public information on employees includes names, job titles and salaries. Employees should immediately forward or refer any open records requests to the person or persons with their department designated to handle such requests or to their supervisor. Such requests are subject, by law, to specific timelines.

Employees may review their personnel records during normal business hours.

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### **Eligibility to File Grievances and Appeals of Adverse Actions**

All regular employees in the classified service and all sworn, regular employees in the Departments of Fire Rescue and Police may file grievances. Classified employees may appeal adverse disciplinary actions to the civil service board. Certain employees in the unclassified service with "retained rights" and sworn police officers and firefighters at the rank of captain and below who have completed an initial probation may also appeal actions to the civil service board, other than demotion from a discretionary, sworn rank.

### **Grievance Procedure**

A grievance is a request by an employee for review of an allegation which describes a work-related event or a condition of employment which the employee reasonably believes is unfair in light of the rules, regulations and standards that govern the employment relationship with the city.

Employee grievances should, to the fullest extent practicable, be promptly considered and/or equitably resolved.

Eligible employees may file a grievance for any of the following reasons:

- Supervisory-employee relationships
- Working conditions
- Classification and pay issues
- Departmental policies and procedures
- City-wide policies and procedures
- Other employment-related issues not prohibited by city, state, county or federal law
- Disciplinary actions other than adverse actions
- Any other matter determined grievable by the commissioner of Human Resources

Matters for which a grievance may not be filed include:

- Routine transfers
- Selection from a properly certified eligibility list
- Reassignment
- Staffing levels
- The commitment-setting session or the rating an employee receives under the performance appraisal system

An employee who has a grievance should immediately consult Sections 114-516 through 114-525 of the *City of Atlanta Code of Ordinances*, as certain timelines apply. In addition, the Department of Human Resources is available to answer questions concerning the grievance

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process at 404-330-6360. Failure of an employee to act promptly may result in the loss of some rights.

Grievances within the Departments of Fire Rescue and Police involving sworn employees are concluded at the department-head level. Grievances from classified, regular employees may progress to the commissioner of Human Resources and to the city's chief operating officer for final resolution.

Any employee may report for investigation what the employee believes to be a discriminatory employment decision based on race, sex, age, national origin, sexual orientation, disability or veteran status. Any such perceived conduct should be reported immediately to the department equal opportunity coordinator or to the DHR Office of Diversity Management.

### **Progressive Discipline**

Disciplinary action is an action taken for cause by a department head or designee which results in an oral admonishment, written reprimand, demotion, suspension with or without pay or dismissal of an employee in the classified or unclassified service of the city. Actions resulting from reduction in force, insufficient funds, decrease in funds or reorganization are not considered disciplinary.

Progressive discipline is a process in which disciplinary action is applied in several steps of increasing severity culminating, if warranted, in dismissal. The usual sequence of progressive discipline is as follows:

1. Oral admonishment
2. Written reprimand
3. Suspension
4. Dismissal

Action to immediately remove employees from the work environment must be taken when employees commit an infraction that:

- Impairs or destroys their present or future effective performance
- Impairs the effectiveness of others
- Presents a danger to self, others or city property

Progressive discipline does not apply for infractions that are of a severe or egregious nature. Department heads may impose more severe discipline without going through this progressive process when so warranted.

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### **Disciplinary Appeal Process**

Eligible employees may grieve or appeal disciplinary actions as follows, by following prescribed procedures in Sections 114-523 and 114-547 of the *City of Atlanta Code of Ordinances*:

- Oral admonishments and written reprimands are appealable through the grievance procedure
- Adverse actions resulting in suspension, demotion or dismissal are appealable to the city's civil service board

The Department of Human Resources can answer questions regarding the appeal process at 404-330-6360.

### **Resignation**

Employees must submit a written notice of resignation, with appropriate signature, to the department head at least 14 days in advance of the date of separation. Upon receipt, the department head will forward the notice to the commissioner of Human Resources. Resignation without the required notice may result in the employee's personnel record reflecting that the employee left in bad standing.

### **Abandonment of Job**

Employees failing to report to work without authorization for three consecutive workdays may be terminated from the service of the city for job abandonment.

### **Dismissal**

Classified employees may be dismissed for just cause such as delinquency, misconduct, insubordination, inefficiency, inability to perform assigned duties or willful violation of any city ordinance, rule or regulation. Unclassified employees may be dismissed for any reason that is not unlawful under federal or state law.

### **Layoff or Reduction in Force**

A layoff or reduction in force is an involuntary separation not related to job performance. If laid-off, a classified employee will be given priority re-employment consideration. For further information, contact the Department of Human Resources at 404-330-6360.

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### **Contract Management**

When the city determines that it is in its best interest to have certain services privately managed, operated or outsourced, separation of employees performing those services may occur. Employees may be terminated or may be subjected to a reduction in force layoff.

Separations due to contract management are not appealable to the civil service board.

### **Termination**

Termination is a no-fault separation from employment for such reasons as lack of funding, grant expiration, completion of an employment contract, organizational restructuring or elimination of job functions.

### **Re-Employment**

Regular employees separated from the city in good standing and with an “effective” or better performance evaluation are eligible to have their seniority restored, if they return to city employment within three years following the date of separation.

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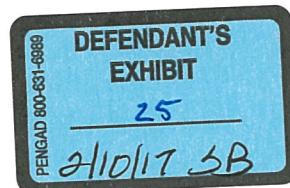
From: Myrna Gale <[myrna.gale@gmail.com](mailto:myrna.gale@gmail.com)>  
Date: Mon, May 20, 2013 at 11:40 PM  
Subject: Contract  
To: "Cochran, Kelvin" <[kjcochran@atlantaga.gov](mailto:kjcochran@atlantaga.gov)>

Good evening Kelvin,

Please find attached for your perusal the contract as promised. If you have any questions, please do not hesitate to contact me. If everything is in order, please execute and return to me as soon as possible, so that we may start the project upon receiving your approval. Looking forward to hearing from you.

Blessings,

Myrna Gale  
404-553-1566



## **SELF-PUBLISHING Author Agreement**

This contract is entered into on the 25<sup>th</sup> day of February, 2013 between **3G Publishing, Inc.**, (hereinafter known as "**Publisher**") located at 3600 Park Lake Lane, Suite 3508, Norcross, GA 30092, and **Kelvin J. Cochran** (hereinafter known as "**Author**") of **Who Told You that You are Naked?** (hereinafter known as "Work").

The Contract is considered legal and binding in the United States. If there should be any legal dispute, the laws of the state of Georgia shall apply.

### **I. The Author hereby represents and warrants to the Publisher that:**

- A. The Work is free and clear of any counts of libel, plagiarism, breach of privacy or misrepresentation of facts.
- B. The Work does not infringe upon any copyright or proprietary right, common law or statutory law, and does not contain any material of libelous nature.
- C. The Work is not in the public domain and the Author is the sole owner and copyright holder of the work with full power to enter into this contract.
- D. If the Work has been previously published in whole or part, the Author currently holds all copyrights to the Work and is legally permitted to enter this agreement.
- E. The Author releases Publisher from any responsibilities relating to any legal actions incurred by the contents of the Work or the Author.
- F. The Publisher will obtain appropriate ISBNs for the Work under the name of Kelvin J. Cochran.

This representations contained herein are true on the date of the signing of this contract.

### **II. Grantor of Rights:**

- A. The Author, on behalf of himself/herself and his/her heirs, executors, administrators, successors and assignees, agrees to grant the Publisher exclusive rights to produce, publish and sell in electronic format (including email, download, disk, CD, or any other digital format known or to be invented), the Work. This contract does not infringe on print rights.

### **III. Term of Contract:**

- A. Electronic rights will be exclusive for one year commencing on the date the Work becomes available for sale on the Publisher's site. After such time, the contract can continue if both parties agree.
- B. The Contract may be terminated by either party upon a thirty (30)-day written notice to the other party. Notification of intention to terminate the contract is to be delivered by certified mail or other receipted delivery service. Upon expiration of the contract term or termination, all rights granted the Publisher will revert back to author.

- C. Upon breach of contract, the Contract may be terminated by either party with a 30-day written notice. Notification of breach and intention to terminate the contract is to be delivered by certified mail or other receipted delivery service. If breaching party cures said breach within 30 days, the contract shall continue to remain enforceable until its natural expiration. Upon expiration of the contract term, all rights granted the Publisher will revert back to author.
- D. During the term of the contract, the Work will not be said to be out of print.

**IV. Basic Services to be rendered (\$750.00):**

- 1. One-on-One Author Support
- 2. Full Color Cover
- 3. Setup of Interior Design
- 4. Image Insertions (24)
- 5. New ISBN
- 6. Electronic proof
- 7. Online Distribution
  - a. Barnes & Noble.com
  - b. Amazon.com
- 8. Professional Marketing Consultation
- 9. Bookstore availability (available for direct ordering)
- 10. 3 complimentary copies
- 11. Bookseller Returnability
- 12. eBook Distribution
- 13. Copyright

**Additional Services to be rendered (\$500.00):**

- 1. Ghost Writer
  - a. Proofing
  - b. Editing

**V. Compensation:**

Both parties agree to the package cost for comprehensive publishing services shall be \$1250.00 for completion of **Who Told You that You are Naked?** A 50% deposit is required upon acceptance of contract to commence work. **ALL DEPOSITS ARE NON-REFUNDABLE.** The final amount must be finalized before an electronic galley delivery is given to author for authorization.

**VI. Manuscript Preparation:**

- A. Author shall provide an acceptable, final revision of the manuscript in either Microsoft Word or RTF within the time agreed upon or this contract will be void. Publisher will not be held liable for lost manuscripts or defective disks. Both parties should always keep a back up copy.

**VII. Royalties and Statements:**

- A. Publisher and Author will mutually set the retail price of the Work based on length and comparable works. Publisher agrees to pay to the Author, a royalty of fifteen (15%) percent per retail sale price of each book sold, whether via internet or retail store in United States dollars (USD). If the Work is purchase in eBook form, the royalty will be ten (10%) percent per retail sale price. Author is not entitled to any royalties if the publication is reduced by outside retailers for less than original retail price.

- B. The Publisher has the right to contract with distributors, bookstores, vendors, organizations and or outlets of electronic books to sell the Work in association with the Publisher's name. For all sales through these outlets, the Author will be compensated ten percent (10%) of the download price less any handling costs or discounts charged by the outlet.
- C. In order to stimulate sales, the Publisher reserves the right to lower the price of the Work after a reasonable amount of time if the price appears to be too high (no sooner than three months).
- D. Royalties shall be calculated and paid no later than forty-five (45) days following the end of each calendar quarter for sales during that quarter. Royalties shall be paid by check. Payment arrangements, mutually agreed upon by the Publisher and the Author, shall be made for payment of royalties to Author if he/she resides outside the USA. Royalties equaling less than \$20 will be held until such a time as they accrue to \$20 or above. Any withheld royalties shall be made immediately upon contract termination.
- E. No royalty shall be paid on paper or digital copies distributed for review, advertising, publicity, promotional purpose, samples, or other similar purposes, or on copies sold below or at cost.
- F. If Author has elected to grant Publisher the right to contract with various distributors and outlets, royalties will be paid to Author contingent on payment received from distributor. In most cases, distributors pay Publishers every sixty to ninety days for sales through their channels during those timeframes.
- G. The Author is responsible for paying his/her own taxes on all royalty payments received from Publisher and is advised to keep accurate records for tax purposes.

### **VIII. Marketing and Promotion:**

- A. The Author shall provide the Publisher with biographical information, a photo (if author desires), and a suggested blurb for use on Publisher's website. Author agrees to give Publisher the right to use the Author's name, likeness, title of work and biographical material for publishing, advertising and promoting the Work. Publisher reserves the right to edit or rewrite the blurb submitted by Author.
- B. Cover art will be provided by Publisher. If the Author has his/her own cover art, the Author must warrant that the provided art is either owned by the Author or that it does not infringe on any copyright.
- C. Publisher reserves final approval of art in consultation with Author.
- D. Author agrees to self-promote the Work to the best of his/her ability. Any major marketing consultation will be discussed between Publisher and Author, and agreed upon a separate contractual agreement. If Author has his/her own website, the Work must be linked to the Publisher's website. With any promotional material the Author generates, the Author will consult with Publisher to insure proper use of Publisher's name and/or other information.
- E. Author may use up to 3 chapters to post on his/her website or to give away as "teasers" to promote the work provided it includes a link to [www.3gpublishinginc.com](http://www.3gpublishinginc.com).

- F. Author is encouraged to solicit reviews along with the Publisher. For added promotional purposes, Publisher and Author agree to notify each other as to what review sites submissions have been made.
- G. With enough advance notice, Publisher will provide Author any needed book copies for Author appearances or signings. These copies can be purchased by the author at a discount set by the Publisher.

**IX. Assignment:**

- A. **3G Publishing, Inc.** may at any time sell itself, or the majority of itself, its holdings, or licenses. Current contracts would transfer to the new owner.
- B. Bankruptcy: If **3G Publishing, Inc.** is legally judged bankrupt or liquidates its business, this Contract shall be terminated effectively and all rights granted to **3G Publishing, Inc.** shall be terminated.

**X. Entire Agreement:**

This Contract hereby constitutes the entire agreement between Author and Publisher and supersedes all previous agreements regarding the Work, whether oral or in writing. Modification of this contract may only occur in writing, signed by both parties.

Author's Real Name: \_\_\_\_\_

Pseudonym (if any): \_\_\_\_\_

Street Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

Website URL: \_\_\_\_\_

Title of Work: \_\_\_\_\_

Social Security Number: \_\_\_\_\_

Author's Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**3G Publishing, Inc.**

Authorized Signature: \_\_\_\_\_

Date: \_\_\_\_\_

---

**From:** Cochran, Kelvin [kjcochran@AtlantaGa.Gov]  
**Sent:** 6/6/2014 6:40:09 AM  
**To:** Myrna Gale [info@3gpublishinginc.com]  
**Subject:** RE: Galley

Good Morning Myrna:

The galley is all good. I only found one edit that was not captured. On page 122, third paragraph, third sentence should be "are" limited instead of "is" limited.

Let's go ahead with plans for the reprint and pulling the current version after its done. Let me know the cost and I will send you the payment. Additionally, I want to order 100 copies. Thanks Myrna.

Kelvin

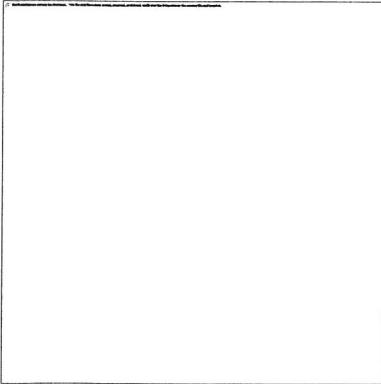
---

**From:** myrna.gale@gmail.com [myrna.gale@gmail.com] on behalf of Myrna Gale [info@3gpublishinginc.com]  
**Sent:** Monday, June 02, 2014 1:24 PM  
**To:** Cochran, Kelvin; Kelvin Cochran  
**Subject:** Galley

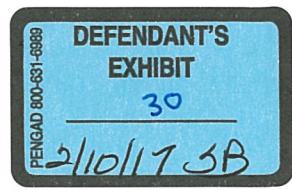
Kelvin,

Hope you and your family had a great weekend! Please find attached the revised galley for your perusal. Do not hesitate to call if you have any questions.

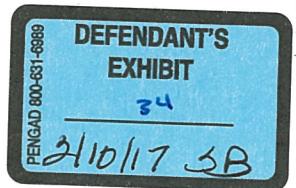
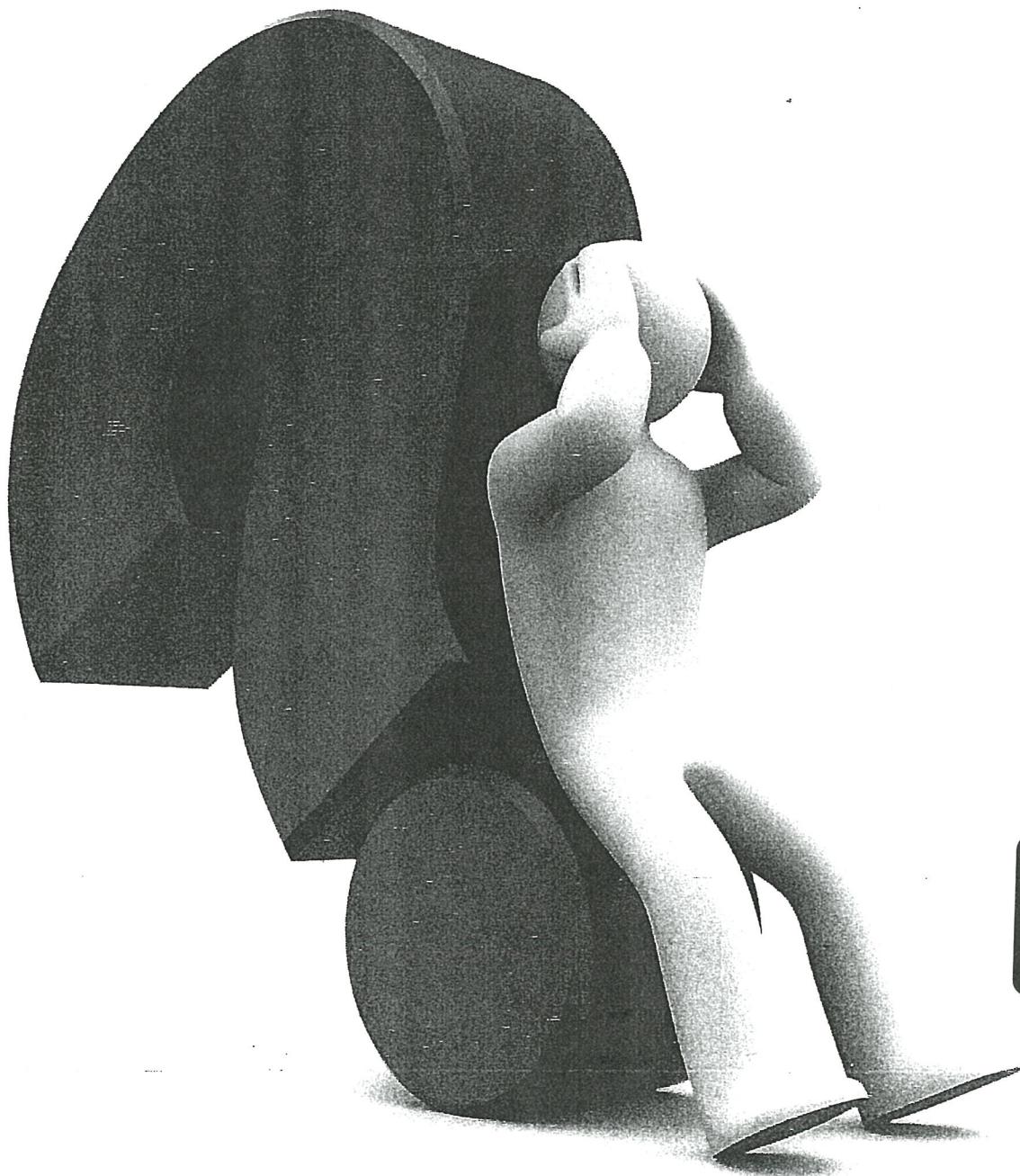
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Myrna Gale  
CEO  
3G Publishing, Inc.  
[www.3gpublishinginc.com](http://www.3gpublishinginc.com)



# Who Told You That You Were Naked?



# **WHO TOLD YOU THAT YOU WERE NAKED?**

Overcoming the Stronghold  
of Condemnation

3G Publishing, Inc.  
Loganville, GA 30052  
[www.3gpublishinginc.com](http://www.3gpublishinginc.com)  
Phone: 1-888-442-9637

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## *About the Author*

Kelvin J. Cochran is a native of Shreveport, LA, who now calls Atlanta, GA his home. He is a devout Christian man pursuing the life of a Psalm 112 man and the promises of Deuteronomy 28:1-14. His greatest desire is to fulfill the purpose of God for his life and to be living proof of God's exceeding great and precious promises.

Kelvin is a husband and father of three, with one granddaughter; and a faithful member of Elizabeth Baptist Church, Atlanta, GA where he serves as a deacon and teacher. He has thirty-two years in the Fire Service and has served as Fire Chief for the City of Shreveport Fire Department (LA); United States Fire Administrator (Washington, D.C.) and is currently serving as Fire Chief of the City of Atlanta Fire Rescue Department (GA).

## Acknowledgement

I thank God for choosing me to deliver this message to redeemed men of the Body of Christ who wrestle with the stronghold of condemnation. I pray also that by the grace of God it will find its way into the hands of men who have not confessed Christ as Savior and Lord. While I am still a work in progress, my life is a testimony of the struggle with condemnation and how a man can grow from strength to strength, through diligent pursuit of fulfilling God's purpose for his life through the Word of God.

My wife Carolyn and my children Tiffane, Kelton and Camille, and my granddaughter Thailyn, inspire me day by day, to be the man God has called me to be. Their love and support keeps me striving for greater heights and depths of seeking the glory of God for our household and the generations of Cochran's to come.

The men in my bible study small group on Friday mornings at Q-Time Restaurant and the men of my Quest for Authentic Manhood small group at Elizabeth Baptist Church both inspired me to take what was initially a six week lesson plan to study this topic, to a book. Sharing the lesson plan with my brothers on Friday mornings convinced me that more men would be blessed from this study.

impression a man makes. Over a period of time, a man's style of clothing, how he dresses, becomes a part of the testimony of his personality and character. This fact is supported by many common phrases in American culture such as, "The clothes make the man."; or the very popular song by Huey Lewis and The News in the 1980's, "Every Girl's Crazy 'Bout a Sharp Dressed Man."

When a man is dressed well he is confident and sure. He is intentional about the selection of his attire on every occasion, whether hunting, golfing, playing basketball, going to the beach, the prom or going to church. Being appropriately clothed plays a major role in a man being self-assured that he is at the top of his game.

On the other side of the issue of clothing, when a man is not appropriately dressed he is insecure, unsure and lacks confidence. If he shows up at an event that has a specific dress code and is the only man in the wrong attire, he is embarrassed and ashamed.

These are the same emotional responses that Adam experienced in the Garden of Eden. These emotional responses are all consequences of condemnation. The divine clothing Adam had before transgression was appropriate for all occasions. It made him feel right before God and Eve. He was confident and sure of himself. When he was appropriately attired, he was always at the top of his game. When God arrived and he was in the wrong attire, he was embarrassed and ashamed.



A man without Christ is naked no matter how good he feels in his clothes. Physical clothing only provides a false sense

of security and makes a man feel presentable before people when he has on the right clothes for the right occasion. On the outside he is confident and sure of himself. Underneath the clothing is a fearful, insecure, naked soul. The vanity which drives his style incites compliments that feed his false sense of fulfillment—like the story of the Emperor.

### Jesus Clothes

God's perspective on clothes is different from man's view of clothing. To be in right standing with God we must have on the clothing he provides, the Lamb's clothing, Jesus clothes. God's clothing is perfect in every way. His clothes are right for all occasions. They are appropriate attire for good and bad occasions; happy and sad occasions; formal and casual occasions. Occasions when we are up, and on occasions when we are down. One size fits all. This Lamb's skin is adequate to cover every sin that needs to be covered. They are tailor-made, custom fit for all men, short or tall, thick or thin. God's clothes for his children are uniform.

The very word uniform expresses God's motive for clothing his own. Uniform as an adjective means identical or consistent from example to example; without variations in detail. In its context as a noun, uniform means an identifying outfit or style worn by members of a given profession, organization, or rank. In other words, because we have been clothed with Christ, in the sight of God we are all identical to the Son. We all look alike. We are uniform. Everyone looks the same.

As a professional firefighter, from the time I began the recruit academy I was placed in uniforms provided by the city that I served. As a new hire we were provided shoes, socks,

T-shirts, five pair of pants, five short sleeve shirts, five long sleeve shirts, a Class A uniform for formal occasions, a neck tie and a dress cap. We were also issued personal protective clothing for firefighting in the form of what is called bunker pants, a bunker coat, firefighting boots, gloves, a heat resistant hood and a helmet with ear protection and a face shield to protect the eyes. After the initial issuance, we are furnished a clothing allowance in order that everything we need to be properly attired could be sustained on an ongoing basis. The uniforms are paid for by taxpayers.

Since being a firefighter was a childhood dream fulfilled, one of my greatest joys has always been wearing the uniform. I took great pride in wearing it properly. I kept my shoes shined, my shirts starched and my pants crisply pressed. Though there were other uniformed city employees, a distinction was made between firefighters and others because of our uniform patch, badges and symbols of rank. Every day before leaving for work, I am very careful and diligent to put on my uniform in order that I may be distinctly identified as a firefighter.

The uniform of the Lord has the same effect in the Kingdom of God. Our clothes distinguish us from other people in the sight of God. From the time we accept Christ and are baptized (Galatians 3:27), we are provided with the attire commensurate to our new status. We are clothed with salvation, adorned with glory, honor and strength—our everyday on duty attire (2 Chronicles 6:41). Similar to the purpose of bunker gear, we are issued the full armor of God for fighting spiritual battles. We have a spiritual clothing allowance which sustains and renews uniforms day by day. The clothing is paid for by the blood of Jesus. Every day before interacting with anyone in our house

The Lord provided every tree in the garden:

- Pleasing to the sight
- Good for food
- The tree of life in the midst
- The tree of the knowledge of good and evil

The Lord took the man and put him into the Garden of Eden to cultivate it and to keep it. It was the Lord who created and established a place, land, field, career for Adam to fulfill his purpose.

- God made the Garden
- Adam was placed in the Garden to cultivate it and to keep it
- Adam's job (gardener) was given to him by God
- Adam's job description:
  - To cultivate the garden
  - To keep the garden (sustain it)

*Personal Life Application: God gave me my fire service land, field, career. He gave me the job of being a fire service leader, Fire Chief of Atlanta Fire Rescue. He also made me the head—United States Fire Administrator. My job description as a fire chief of Atlanta Fire Rescue Department is:*

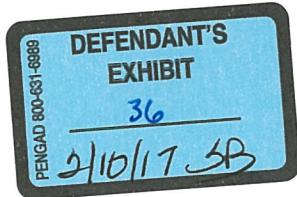
- To cultivate its culture for the glory of God
- To keep it focused on its mission of saving lives and property
- To sustain its culture, its members and its capabilities, both now and for future generations

*evil, who tear off their skin from them and their flesh from their bones, who eat the flesh of my people, strip off their skin from them, break their bones and chop them up as for the pot and as meat in a kettle.” Micah 3:1-3*

Men in a state of depravity begin to feed on their families and anyone else they feel has something to satisfy their carnal cravings. Their quest to be fulfilled through worldly pleasures eventually leads to self-destructive behaviors and addictions. Proverbs 23:31-35 depicts an episode of a man who has a zombie-like lifestyle. It starts with him having too much red wine. It bites like a serpent and stings like an adder. The wine is analogous to a snake, just like the words of their ancestor, the serpent in the Garden of Eden. Because of this habit of too much red wine, his eyes are attracted to strange women, and his heart begins to conjure up perverse fantasies. He has so much to drink, when he lies down it is as if he is lying in the midst of the sea upon a mat. He wakes up the next day and realizes he has been in a fight. He concludes, he was beaten and did not feel a thing. When his head clears from the stupor of his hangover, he will repeat the same pattern all over again. Such is the case of a man without Christ in his life—a depraved man, a naked man. He is consumed with the state of depravity. All he thinks about is fulfilling his carnal desires.

## Lust Originates in the Heart

Lust is a passionate, overwhelming desire or craving for things such as power, prestige, money and other possessions. The most common use of the word “lust” is in the context of intense sexual desire or appetite; or uncontrolled, illicit sensual desire. However, because “lust” is first and foremost a passionate, overwhelming desire, there are righteous, spiritual,



godly applications of the word “lust” although these applications are rarely if ever described as lust.

Synonyms of the word “lust” used in godly applications are desire and pleasure. This kind of lust is associated with God’s passionate, overwhelming desire to please his children (Psalm 149:4; Psalm 35:27b) and a clothed man’s passionate, overwhelming desire to please God (Psalm 19:7-14). Consequently, there are sinful applications of the word “lust” and there are righteous applications of the word “lust”.

God’s desire is for a man to enjoy life and to have an abundant life. Here is a news flash from heaven. God’s desire is for a man to enjoy sex, but according to his purpose and statutes. God wants a man to be rich, but according to his plan and purpose. God wants a man to have prestige, but according to his plan and for his glory. God does not want a man to be sexually depraved, broke and insignificant. In his presence is fullness of joy (we call it ecstasy), and at his right hand there are pleasures forevermore (Psalm 16:11). But apart from a relationship with God, a man’s motives are driven by self-pleasure, self-aggrandizement, and self-exaltation.

A naked man’s motives are driven by sensuality—lust of the flesh, lust of the eyes and the pride of life; not spirituality—love, joy, peace, patience, kindness, gentleness, faithfulness, goodness and self-control. Sensuality drives the personality of a naked man. Spirituality drives the personality of a clothed man.

All lusts both sinful and righteous originate in the heart. We are born with the capacity of imaginations. As we get older, our sight, smell, touch, hearing and tastes are exposed to things

**Adultery** – unlawful sexual relations between men and women, single or married when one is married.

**Fornication** – same as adultery above besides all manner of other unlawful sexual relations.

**Uncleanness** – whatever is opposite of purity; including sodomy, homosexuality, lesbianism, pederasty, bestiality, and all other forms of sexual perversion.

**Lasciviousness** – licentiousness, lustfulness, unchastity (sexually suggestive), and lewdness (inciting to lust); wantonness (sexually lawless) and filthy; anything tending to foster sexual sin and lust.

**Idolatry** – image worship, including anything upon which passions are affectionately set; extravagant admiration of the heart.

**Witchcraft** – sorcery, practice of dealing with evil spirits; magical incantations and casting of spells and charms upon one by means of drugs and potions of various kinds.

**Hatred** – bitter dislike, abhorrence, malice, and ill-will against anyone; tendency to hold grudges against or be angry at someone.

**Variance** – dissensions, discord, quarreling, debating, and disputes.

**Emulations** – envies, jealousies; striving to excel at the expense of another; seeking to surpass and out do others;

uncurbed rivalry spirit in religion, business, society, and other fields of endeavor; fervent minded; envy; jealousy; and indignation.

**Wrath** – indignation and fierceness; turbulent passions; domestic and civil turmoils; rage; determined and lasting anger.

**Strife** – contention; disputing; jangling; strife about words; angry contentions; contest for superiority or advantage; strenuous endeavor to equal or pay back in kind the wrongs done to one.

**Seditions** – divisions; parties and factions; popular disorder; stirring up strife in religion, government, home or any other place.

**Heresies** – a doctrinal view or belief at variance with the recognized and accepted tenets of a system, church, or party. It takes on an evil meaning when sound doctrine is rejected and fallacy is accepted and taught in preference to truth. Heretic-a person who holds a heresy, a dissenter, a nonconformist.

**Envyng** – Pain, ill-will, and jealousy at the good fortune or blessing of another; the most base of all degrading and disgraceful passions.

**Murders** – To kill; to spoil or mar the happiness of another; hatred.

**Drunkenness** – Living intoxicated; a slave to drink; drinking bouts.

**Revelling**—Rioting; lascivious and boisterous feasting, with obscene music, and other sinful activities; pleasures; carousing.

*“But chiefly them that walk after the flesh in the lust of uncleanness, and despise government; presumptuous are they, self-willed, they are not afraid to speak evil of dignities.” 2 Peter 2:10*

Every one of these infirmities of the flesh are rooted in deprivation—the overwhelming sense of not having enough, consequently engaging in carnal, man-made solutions to fill the void of emptiness and lack. Notice the top four matters of lust of the flesh are related to sex. God’s plan and purpose for sex is always enough. Sex outside of God’s plan and purpose always leaves a man empty, causing him to pursue greater frequency and variety to be sexually fulfilled. He never has enough.

### How Much Sex is Enough

So how much sex is enough? To answer the question, let’s start with the fundamentals. God created sex. His purpose for sex was in accordance with his plan for populating the earth. Because of the number of people required to fill his population agenda in the beginning and across centuries and generations, he intended it to be something that both Adam and Eve would enjoy immensely and frequently. It takes several attempts for conception to occur in some cases. As such, God wanted each effort to be an enjoyable experience so Adam and Eve would keep trying—over and over and over again!

Additionally, since God made sex for procreation, he only intended it to be between a man and a woman. Since procreation

is a spiritual act between carnal beings, God intended it to occur only in the institution of holy matrimony—marriage.

During the rigors and pain of childbirth women often conclude they will never go through the experience again. In other words, she vows she will never have sex again. Thank goodness those thoughts are only temporary. Subsequently, soon after cradling the bundle of joy in her arms, within a short period of time the delight of motherhood gives way to the ecstasy of what made it all possible. Her desire for sexual intimacy is restored and the procreative process begins again.

In holy matrimony, even after a couple has met their charge to be fruitful and will have no more children, the desire for sexual intimacy still exists. So they continue to affectionately enjoy each other in ways that bring one another pleasure, honoring God without defiling their bodies and until death breaks the holy union. This is the lifestyle of sex intended by the Creator. This is the kind of sex that fulfills a man—a clothed man.

Sexual acts pursued for purposes other than procreation and marital pleasure in holy matrimony is the sex life of a naked man. When men are unrestrained in their quest for sex outside of God's purpose they will never be fulfilled. Naked men refuse to give in, so they pursue sexual fulfillment through multiple partners, with the opposite sex, same sex and sex outside of marriage and many other vile, vulgar and inappropriate ways which defile their body-temple and dishonor God. This is the kind of sex that leaves a man continually empty—the sex life of a naked man. Who told you that you were naked?

**From:** Kelvin J. Cochran (kelvin.cochran@yahoo.com)  
**Sent:** Thursday, November 27, 2014 12:46:49 AM  
**To:** Ron (rlittle670@bellsouth.net)  
**Subject:** Re: Praying for you

Good Evening Ron:

Thank you for your generous words. I am grateful for this divine opportunity to suffer this for Christ and rejoicing every day. Please continue to pray for me and our city. To God be the glory! Happy Thanksgiving!

Kelvin

Sent from my iPhone

On Nov 26, 2014, at 3:35 PM, Ron <[rlittle670@bellsouth.net](mailto:rlittle670@bellsouth.net)> wrote:

Happy Thanksgiving Chief!

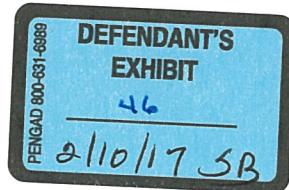
Thank you for taking time to share your faith with the Chaplains just over a week ago. I was greatly blessed to hear your heart and to know your life is dedicated to serving our Lord.

I am praying for you and your family as you are in the cross-hairs of spiritual warfare. I am praying God uses your book to reach men and women who serve with Atlanta Fire. I've learned that when there is a moving of the Holy Spirit there will be a moving of the unholy spirit, guaranteed! I've also learned to lean on God's Word: 1 John 4:4 "you are of God little children, greater is He that is in you than he that is in the world!" May God give you the peace and comfort that passes all understanding.

I am thankful to you for letting your Light so shine that others see your good deeds and God receives the glory in heaven.

May God bless you and your family this Thanksgiving and Christmas season.

Respectfully,  
Ron J Little  
Chaplain Clayton County Fire and Emergency Services  
Pastor Tara Baptist Church



**From:** Cochran, Kelvin [mailto:[kjcochran@AtlantaGa.Gov](mailto:kjcochran@AtlantaGa.Gov)]  
**Sent:** Friday, November 28, 2014 2:44 PM  
**To:** Bobby Halton  
**Subject:** Re: Note

Bobby:

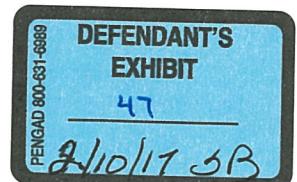
Thank you for your prayers and friendship. All is truly well! Magnify The Lord with me during this time of spiritual warfare.

Kelvin

Sent from my iPhone

> On Nov 28, 2014, at 10:36 AM, "Bobby Halton" <[RobertH@PennWell.com](mailto:RobertH@PennWell.com)> wrote:

>  
> Chief Cochran  
>  
> I wanted you to know that you and your family are in my thoughts and prayers. If there is anything I can do to support you please let me know.  
>  
> Your Friend Bobby  
>  
> Sent from my iPad  
>



**From:** Kelvin Cochran (kelvin.cochran@yahoo.com)  
**Sent:** Friday, December 05, 2014 4:48:42 PM  
**To:** gharris@christianindex.org (gharris@christianindex.org)  
**Subject:** Re: article for The Christian Index

Good Morning Gerald:

Please remove the section referencing Mayor Franklin's comments (the final three candidates, and offering me the position). You may simply state I was appointed in January 2008 under her administration.

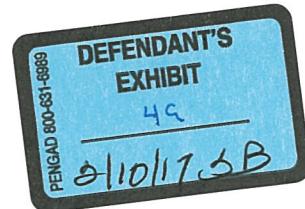
Please remove the statements regarding the ethics office altogether.

Kelvin

On Friday, December 5, 2014 12:02 AM, "gharris@christianindex.org" <gharris@christianindex.org> wrote:

Dear Chief Cochran,

I was thrilled to have the opportunity to meet you this morning. I was immediately impressed with your humility, grace, spirit and brilliant mind. I have already read much of your book and have found it to be excellent. I am attaching a rough draft of the editorial I wrote about your situation and want you to give it a careful look to make sure you are all right with it. I will look forward to your response. Sometimes our filter system prohibits emails from getting through, so if your response to this email bounces back feel free to give me a call on my cell at 770.906.6339 and we will work out another plan. Blessings, Gerald Harris



**From:** Kelvin Cochran (kelvin.cochran@yahoo.com)  
**Sent:** Saturday, December 13, 2014 2:48:03 AM  
**To:** eeelliott@mac.com (eeelliott@mac.com)  
**Subject:** Fw: Plan: Cochran confidential ....Press Release, Index Article, etc.

Let's try this again.

On Friday, December 12, 2014 7:27 PM, Ed Elliott <eeelliott@mac.com> wrote:

Kelvin,

The timing of this is perfect. Providential! We will work with, and alongside of, the GBC's plan of action. This is a solid strategy, which I don't see how it can be improved upon. It certainly will keep us from reinventing the wheel, and the unified front will strengthen the effort. The key will be to bathe everything in fervent prayer and get as many of God's people involved as we can. We'll keep in touch as things progress. Stand strong in Him, my friend!  
Ed

"And Moses said unto the people, Fear ye not, stand still, and see the salvation of the Lord,...The Lord shall fight for you, and ye shall hold your peace."

Exodus 14:13-14 (KJV)

Sent from my iPad

On Dec 12, 2014, at 17:16, Kelvin Cochran <[kelvin.cochran@yahoo.com](mailto:kelvin.cochran@yahoo.com)> wrote:

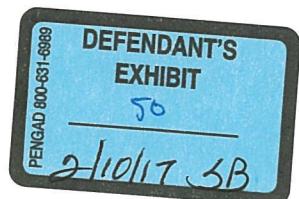
FYI

Sent from my iPhone

Begin forwarded message:

**From:** Mike Griffin <[MGriffin@gabaptist.org](mailto:MGriffin@gabaptist.org)>  
**Date:** December 12, 2014 at 12:23:22 PM EST  
**To:** Jonathan C email <[jcrumly@manercc.com](mailto:jcrumly@manercc.com)>, Kelvin Cochran E <[kelvin.cochran@yahoo.com](mailto:kelvin.cochran@yahoo.com)>  
**Subject: Fwd: Plan: Cochran confidential ....Press Release, Index Article, etc.**

Here is the battle plan. Your eyes only.



Let me know any concerns.

Pressing on for Christ,  
Mike

Sent from my iPhone

Here is what the current communications plan is regarding this topic:

1. Petition: We are creating the petition website and will send out link to this group for review before going live; target is tomorrow
  - a. Receiving petition language from Dr. White (Karen), review and put on web
  - b. Petition page web address (currently no content/not live):  
<http://gabaptist.org/petition>
  - c. Petition page will contain online version of press release, links to article, and PDF versions that can be downloaded
  - d. Share button will be added so visitors can share the page with friends
2. General Website:
  - a. Petition page will be added and go live
  - b. Banner on main GBC landing page will summarize and link to Petition
  - c. Expect that press release and article will be on website, possibly multiple locations
  - d. Kelvin's testimony was recorded; Rod will provide link that we can add to website, email blast, social media, etc. for those that want to listen to him
3. Christian Index:
  - a. Article will be posted
  - b. Link to press release and petition
  - c. Firewall brought down so people can access (this will be temporary, so need to make sure links will go back to free version on GBC website)
4. Press Release:
  - a. Mark is putting into press release format; along with hyperlinks throughout for SEO purposes.
  - b. Press release will go on official letterhead
  - c. Mark will PDF and secure document before posting and distribution
  - d. Release Date: After discussion with Dr. White, and with his approval, we will date and release on Monday morning at 9am will not have good pickup on a Friday afternoon.
  - e. Mark will distribute to media outlets Monday morning
  - f. A hard copy with all links typed out will be created for printing and used for sending via US Mail.
5. CI Article:

- a. Mark will format and put on letterhead to appear as official article from Christian Index / GA Baptist
- b. Mark will PDF and secure document before posting and distribution
- c. A hard copy without hyperlink alias (web address will be typed out) will be created for printing and used for sending via US Mail.
6. Social Media:
  - a. Create buzz via Facebook, Twitter and LinkedIn
  - b. Push out info on book and Amazon link
  - c. Ask GA Baptists to read the book; provide reviews on Amazon
7. Dr. White's letter to Pastors:
  - a. Email letter/blast in process; will review and optimize
  - b. Hard copy without hyperlink alias (web address will be typed out) will be created for US Mail (copy of press release will be included)
8. Additional buzz:
  - a. Suggest providing a simple email draft/summary and ask Ministry leaders/Specialists to send out to contacts (Men's ministry contacts, SS teachers, others, etc.); not an official blast but more of a peer-to-peer  
Hey did you hear about this
9. Public Affairs Mike Griffin:
  - a. Unsure how you will distribute once you receive final versions and all goes live. -Mark

I just want to make sure all components are telling the same story and that the timing is lined up for maximum effect.

Please keep me in the email loop for communication on this topic among this group.

Thanks.

Mark

**Mark Strange**

Specialist, Communication Services

Email: [mstrange@gabaptist.org](mailto:mstrange@gabaptist.org)

Phone: 770.936.5233

Web: [www.gabaptist.org](http://www.gabaptist.org)

GBCLogo-NEW

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This email has been scanned for email related threats and delivered safely by Mimecast.  
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**Defendant's Brief in Support of Their Motion for Summary Judgment**

## Exhibit B

### Deposition Transcript of Mayor Kasim Reed & its exhibits

(relevant portions attached)

**KELVIN J. COCHRAN vs. CITY OF ATLANTA, ET AL.**  
**Mayor Kasim Reed on 02/14/2017**

1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE NORTHERN DISTRICT OF GEORGIA  
3                   ATLANTA DIVISION  
4  
5                   KELVIN J. COCHRAN,                         )  
6    )  
7    )  
8    )  
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24    )  
25    )

VIDEOTAPED DEPOSITION OF  
MAYOR KASIM REED

FEBRUARY 14, 2017  
9:35 A.M.

BAKER DONELSON BEARMAN CALDWELL & BERKOWITZ, P.C.  
MONARCH PLAZA, SUITE 1600  
3414 PEACHTREE ROAD, N.E.  
ATLANTA, GEORGIA

(TRANSCRIPT CONTAINS CONFIDENTIAL PORTIONS)  
PAGE 10, LINE 4 TO PAGE 10, LINE 7  
PAGE 31, LINE 4 TO PAGE 39, LINE 5  
PAGE 110, LINE 4 TO PAGE 114, LINE 22

Reported by: Suzanne Beasley, RPR  
CCR-B-1184

**KELVIN J. COCHRAN vs. CITY OF ATLANTA, ET AL.**  
**Mayor Kasim Reed on 02/14/2017**

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1 are your direct reports? Does that make sense?

2 A. Uh-huh, sure. Our commissioners -- well,  
3 in terms of who are my direct reports, my direct  
4 reports are the city attorney and the chief financial  
5 officer.

6 Q. Okay.

7 A. So they're direct reports to me.

8 Q. Okay.

9 A. The chief operating officer also reports  
10 to me.

11 Q. Okay.

12 A. And the chief of staff reports to me.

13 Beyond those, those -- those are the direct reports.

14 Q. The direct --

15 A. Then I have a group of commissioners --

16 Q. Okay.

17 A. -- and deputy commissioners. And  
18 commissioners would be similar to a cabinet.

19 Q. Okay.

20 A. And so the cabinet is the people that  
21 operate the major departments of the city.

22 Q. Okay.

23 A. So the general manager of public works  
24 would be a cabinet member or a commissioner of public  
25 works. The commissioner of human resources, the

**KELVIN J. COCHRAN vs. CITY OF ATLANTA, ET AL.**  
**Mayor Kasim Reed on 02/14/2017**

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1       commissioner of our police department, the  
2       commissioner of our corrections department, the  
3       commissioner of our fire department, the commissioner  
4       of our airport would make up the municipal equivalent  
5       of a cabinet.

6           Q.     Okay. And -- and those are -- those are  
7       direct reports or do they go through the city  
8       attorney or the CFO or the COO?

9           A.     They are not direct reports. They report  
10      up through the four individuals I listed.

11          Q.     Okay.

12          A.     And so the CFO and the city attorney are  
13      actually dual reports, so they report to me and to  
14      the council. And so those are the four individuals  
15      that report up to me.

16          Q.     Okay. And the people that are  
17      commissioners, which would have been -- Chief Cochran  
18      held one of the positions as commissioner of the fire  
19      department.

20          A.     That's accurate.

21          Q.     Okay. And how did -- how are those people  
22      appointed?

23          A.     They were appointed by me and approved by  
24      the city council.

25          Q.     And when they want to speak with you or

**KELVIN J. COCHRAN vs. CITY OF ATLANTA, ET AL.**  
**Mayor Kasim Reed on 02/14/2017**

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1 interact with you, what's the -- what's the primary  
2 way that they do that?

3 A. They would do that through the chief  
4 operating officer, who -- who is the individual that  
5 they report to, or our chief of staff.

6 Q. Okay.

7 A. But primarily the COO.

8 And then on a weekly basis, on Monday  
9 mornings at 8:00 a.m., we have cabinet meetings. And  
10 we've been having cabinet meetings during my time as  
11 mayor, so for seven years. So those are really the  
12 opportunities, on Monday from 8:00 to 9:00 or 9:30,  
13 depending on the agenda.

14 We have cabinet report-outs, and so there  
15 is time, if folks need to have a conversation with me  
16 directly, that they can make the request at that  
17 time. Otherwise, I don't really interact with them.

18 Q. Okay. Not any e-mails from commissioners  
19 or texts or phone calls on a regular basis?

20 A. Very rarely.

21 Q. So if they want to get in touch with you,  
22 as I understand it, they would contact the COO or the  
23 CFO?

24 A. That's correct. And some of my -- some  
25 members of my senior team have communicated with me

**KELVIN J. COCHRAN vs. CITY OF ATLANTA, ET AL.**  
**Mayor Kasim Reed on 02/14/2017**

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1 through text messages, but in a very limited fashion.

2 Q. And by "senior team," that would include  
3 the commissioners?

4 A. Include the -- uh-huh.

5 Q. Okay. The -- one thing I forgot to  
6 mention was the uh-huh and huh-uhs, if you can avoid  
7 those and say yes or no.

8 A. Okay. That's fine.

9 Q. But everybody does it, so -- as you're  
10 well aware.

11 Lilly Cunningham, is -- what's her role in  
12 your administration?

13 A. She's my executive assistant.

14 Q. Okay. And what's her job description?

15 A. Her job includes managing my calendar.

16 Q. Okay. And takes phone calls for you?

17 A. She does.

18 Q. Okay. When she manages your calendar,  
19 that includes all your professional appointments as  
20 mayor, correct?

21 A. The answer is no. I have a scheduling  
22 team of four individuals.

23 Q. Oh, really?

24 A. Uh-huh.

25 Q. All right. So how does that work?

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1           A.     Different -- I receive about 400 requests  
2     a month as mayor for public appearances. I can't  
3     count the amount of calls that come into the office.  
4     And that work is distributed among Lilly Cunningham,  
5     a woman named Karla Johnson, a woman named Tanisha  
6     and a woman named Cheryl Pe.

7           Q.     Okay. When you have -- when they're  
8     scheduling things for you, they have to take into  
9     account your personal responsibilities, like, for  
10    instance, officiating a wedding, that kind of thing?

11          A.     The answer is yes.

12          Q.     All right. And that was a little bit of  
13    an assumption there. I assume officiating a wedding  
14    is something you do in your personal capacity and not  
15    as mayor?

16          A.     The answer is, I have the ability to do  
17    that, but I have only actually participated in a  
18    wedding on one occasion, and that was for a Jewish  
19    couple that was renewing their 25-year vows.

20          Q.     Okay.

21          A.     So it's not something I do frequently.

22          Q.     Okay. But part of her responsibility and  
23    the responsibility of the others you mentioned is to  
24    make sure that the professional things that you do  
25    don't interfere with your private life; is that

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1 right?

2 A. I think that's -- well, I think that they  
3 have to consider everything that's going on and have  
4 a global view of what's going on.

5 Q. Right.

6 A. So I don't know if your clarification  
7 would be accurate.

8 Q. So when you -- well, let me say it this  
9 way. When you have a private event that you're going  
10 to, a party with your family that's not related to  
11 your mayor, that would show up on your calendar to  
12 make sure that it doesn't conflict with some of your  
13 professional obligations, correct?

14 A. I don't know if it would show up on my  
15 calendar, but they would definitely be the people  
16 that communicate about it.

17 Q. Okay.

18 A. It may show up on my calendar; it may not.

19 Q. All right.

20 A. I can't answer the question precisely.

21 But the way that the office is set up is,  
22 is the volume of requests is so high that you have to  
23 have someone handle the requests and then to  
24 communicate with the individuals or the organization  
25 whether or not I can participate, and so a different

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1 person focuses on a different function.

2                   There's one person that's calling to say  
3 yes, I will attend. That's one person. There are  
4 also individuals that handle the occasions where I  
5 can't participate. And it's a pretty complex  
6 process, but it's been going on for some time.

7                 Q. Does Ms. Cunningham ever field calls for  
8 you from your family?

9                 A. She does.

10                Q. What about e-mails? Do you ever receive  
11 e-mails that might have come from your family or  
12 somebody else in a personal capacity?

13                A. Not that I'm aware of, and if so, very  
14 rarely.

15                Q. Okay. Texts, same question?

16                A. No, not that I'm aware of.

17                Q. All right. You have a -- a city-issued  
18 cell phone, I assume?

19                A. I do.

20                Q. And do you have also a personal cell phone  
21 that you use?

22                A. I do.

23                Q. Do you ever get any personal calls on your  
24 city cell phone?

25                A. Personal calls on my city cell phone?

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1       the merits in a search process, he would do very  
2       well.

3                   And the way that the process worked was  
4       that five to seven individuals, typically five, were  
5       advanced to me for consideration.

6       Q.     So you interviewed about five different  
7       candidates for that job at that time?

8       A.     I believe so. I may have.

9       Q.     Okay.

10      A.     It's been a long time. But there were  
11       five names that were discussed, including the  
12       gentleman who is currently the chief, Joel Baker.

13      Q.     And you decided to select Chief Cochran  
14       based upon his resume?

15      A.     I did.

16      Q.     What was it in particular about his  
17       resume? Was it just his service on the national  
18       level or were there other things?

19      A.     I thought that it was a combination of his  
20       service during my predecessor's administration and  
21       the interview that I had with him and the results of  
22       the folks that he was competing against in the pool  
23       and -- and his national appointment, so it was -- it  
24       was really those three things.

25      Q.     All right. What was his -- or is --

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1 strike that.

2 What was his job description as fire  
3 chief?

4 A. His job description as fire chief was to  
5 run the fire department, fire and rescue department  
6 for the City of Atlanta on a day-to-day basis.

7 Q. Once he was appointed did you have -- what  
8 kind of contact did you have with Chief Cochran on a  
9 regular basis?

10 A. He attended cabinet meetings on Monday.  
11 There were ceremonial occasions for the fire  
12 department, but those would typically be it.

13 Q. Did you -- did he communicate with you via  
14 telephone?

15 A. He's communicated with me by telephone and  
16 he communicated with me on very rare occasions by  
17 text messages.

18 Q. What about by e-mail?

19 A. Very rarely. I don't recall communicating  
20 with him by e-mail, and if he did, it was rare.

21 Q. Chief Cochran, as you understand it, was  
22 he awarded the Fire Chief of the Year in 2012?

23 A. Uh-huh.

24 Q. And that was after he came to work for  
25 you; is that right?

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1 conversation with Ms. Yancy first.

2 A. Sure.

3 Q. I believe you testified it took place in  
4 October of '14 or November or somewhere around --

5 A. I'm giving you my best guess.

6 Q. Right. What -- what did she say to you  
7 and what did you say to her in that conversation?

8 A. She said that -- that Chief Cochran had  
9 distributed a book with a number of inflammatory  
10 comments around women, some inflammatory comments  
11 around Jewish people, some inflammatory comments  
12 around LGBTQ people.

13 Q. And she showed you a copy of some excerpts  
14 of the book; is that right?

15 A. She did.

16 MR. THERIOT: Let's mark this as  
17 Plaintiff's Exhibit 8.

18 (Exhibit 8 was marked for  
19 identification.)

20 THE WITNESS: Thank you.

21 BY MR. THERIOT:

22 Q. Plaintiff's Exhibit 8 is some excerpts of  
23 the book that we -- that your attorneys have provided  
24 us through discovery. Is -- does this appear to be  
25 the -- a copy of what Ms. Yancy gave to you in that

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1 meeting?

2 A. It appears to be.

3 Q. Did you look at it at that time?

4 A. I looked at some of it. I didn't look at  
5 all of it at that time, so.

6 Q. But the marks in here, and they're not  
7 real evident, there are some editing marks in writing  
8 and then you can kind of see there's some gray  
9 shading.

10 A. Uh-huh.

11 Q. Those were done -- were those done by you?

12 A. They were not done by me.

13 Q. Do you know who did them?

14 A. I do not.

15 Q. All right. After she spoke to you and  
16 told you, did she point out particular portions of  
17 the book that you should read and take notice of?

18 A. She did. She pointed out the passage  
19 regarding members of the Jewish community, she  
20 pointed out a passage that related to women, and she  
21 pointed out a passage that related to homosexuality.

22 Q. Do you know how she was able to obtain a  
23 copy of the book?

24 A. I have no idea.

25 Q. She never mentioned who she got it from.

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1       And I think that I asked Ms. Yancy to look into what  
2       had occurred and try to give me a more full response.

3                   So, for example, I didn't know when the  
4       book had been written. It may have been written when  
5       he worked in another job. These were just facts that  
6       I didn't have.

7                   So similar to what would occur in your  
8       organization, when you get two incoming phone calls,  
9       one from an HR person and one from a member of the  
10      legislative branch raising a question, before you  
11      respond you want to try to get some sense of what  
12      actually happened here. And so that was -- that was  
13      the substance of the visit that I had.

14       Q.       At that point did you ask anyone to do an  
15      investigation? Is that what you mean?

16       A.       No. At that point I asked to start  
17      looking into this and find out what the facts are.

18       Q.       But there was no -- I'm sorry, I  
19      interrupted you.

20       A.       On that day I did not ask for an  
21      investigation.

22       Q.       Okay.

23       A.       I asked to find out what were the facts.

24       Q.       Okay. So after -- after they went and got  
25      some facts and they -- was there another meeting

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1 after that initial meeting where they reported that?

2 A. After that I spoke with Yvonne Yancy, she  
3 informed me that the book had been written while he  
4 was the fire chief. She pointed out that he used his  
5 title as fire chief in the book. She told me that  
6 she had confirmed that the book had been given to  
7 individuals, and at that point I determined that we  
8 needed to investigate -- to have an investigation,  
9 because at that point we had members who were a part  
10 of the fire department who had received a book that  
11 to some could be offensive. And I really was  
12 concerned about Title 7 issues at that point.

13 Q. Okay.

14 A. And so I ordered that an investigation  
15 proceed. And in order to do that, obviously we  
16 couldn't have -- in my opinion, have the chief in the  
17 building while we had an investigation around, what  
18 were the real facts related to this book?

19 Q. When -- approximately when did you make  
20 that decision? Let me just represent to you --

21 A. Sometime within -- no, I can tell you.

22 Q. Okay.

23 A. Sometime within 15 days after first being  
24 made aware of it.

25 Q. And he was suspended on November 24th,

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1       2014. So how many -- how many days prior to that was  
2       that decision made?

3           A.     Sometime within two weeks before that.

4           Q.     Okay. Did you want to terminate  
5       Chief Cochran at that time?

6           A.     I did not want to terminate him because I  
7       liked him. I was disappointed, but I didn't want to  
8       terminate him. Certainly without having a full  
9       complement of the facts.

10          Q.     Was there -- was there anyone else -- or  
11       anyone that recommended that he be suspended, or was  
12       that pretty much your decision based upon your  
13       experience?

14              MR. GEVERTZ: Hold on. You've got to  
15       exclude Kathy, Bob, and the legal team, but  
16       outside of them, if you can answer, you  
17       should.

18              THE WITNESS: Yes. Yvonne Yancy  
19       recommended that he be suspended.

20   BY MR. THERIOT:

21          Q.     And what was her rationale for that?

22          A.     That we had clear liability around Title 7  
23       issues.

24          Q.     What was your understanding of the clear  
25       liability around the Title 7 issues?

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1           A.     I was concerned that if a person was  
2     having a book with the contents of his book being  
3     distributed, either for sale or directly from a  
4     person in that position of authority, that it could  
5     cause real discomfort to our employees, and we could  
6     be sued as a result.

7           Q.     Based on what aspect of Title 7? What --

8           A.     Hostile environment.

9           Q.     Hostile environment towards -- based on  
10    religion, based upon --

11          A.     I think the breadth of the book covered so  
12    much.

13          Q.     Okay.

14          A.     For any number of reasons. I think it  
15    certainly warranted an inquiry.

16          Q.     And so at that point you were concerned.  
17    You didn't have any evidence of a hostile work  
18    environment?

19          A.     I did not. But I do know that once a  
20    matter is brought to your attention and that you  
21    don't act to at least make an inquiry, that you open  
22    the city up to significant liability long term, and  
23    so that was a concern of mine. And I tried to make  
24    the judgment in an even-handed fashion to give time  
25    and space to find out what were all of the facts

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1 prior to making a decision.

2 Q. Prior to his suspension on November 24th,  
3 did anyone other than your attorneys recommended that  
4 he be terminated?

5 A. I don't recall.

6 Q. Was there anyone that -- other than your  
7 attorneys -- that recommended that he not be  
8 suspended prior to this suspension date on  
9 November 24th?

10 A. No.

11 Q. Why did you decide -- all right. I  
12 mean -- strike that.

13 So your testimony, as I understand it, is  
14 that you decided to suspend him so you could take --  
15 could do an investigation because you were concerned  
16 about some possible Title 7 ramifications.

17 A. The answer is, I decided to suspend him  
18 because we needed to find out what the facts were.

19 So I had received a phone call from  
20 Councilmember Wan, my HR representative had raised  
21 legitimate concerns that involved the treatment of  
22 women, comments about Jewish people, comments about  
23 homosexual people, and so I had a concern that this  
24 book -- I didn't know whether it was sold or given.  
25 So if you're in my shoes, you have no idea what the

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1 facts are.

2 And so I thought that -- and you couldn't  
3 have the chief in the building because the fire  
4 department, Atlanta Fire Rescue, operates under a  
5 command structure. So how could you have gone  
6 through and interviewed people and gotten their  
7 honest reflection with the chief sitting in the  
8 building?

9 And so I thought that the fairest path was  
10 to suspend him, get him out of the building, and to  
11 find out what the facts were.

12 Q. Whom did you tell to suspend him?

13 A. Commissioner Yancy.

14 Q. Did -- did you tell her to give him a  
15 specific reason?

16 A. I didn't direct the execution of the  
17 suspension. I made it clear to Commissioner Yancy  
18 and the chief operating officer, who is the person  
19 that the fire chief directs -- reports directly to  
20 and is the person that they communicate to, that it  
21 be done.

22 Q. That was Michael Geisler?

23 A. Mr. Geisler, yes.

24 Q. But you didn't give them any specifics  
25 about what to tell him, just suspend him?

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1           A.     I did not give them specifics about what  
2 conversation to have with him.

3           Q.     Did you tell them to tell him not to talk  
4 to the press?

5           A.     I definitely asked that during the  
6 investigation that he not communicate about this  
7 employment matter.

8           Q.     And that was the phrase you used?

9           A.     Definitely.

10          Q.     Okay. As far as you know, is that what  
11 they told him?

12          A.     As far as I know.

13          Q.     Do you have any indication -- is there  
14 anything in writing about what they told him in the  
15 meeting that they had with him?

16          A.     Not that I have in my possession.

17          Q.     Did you ever discuss what -- how that  
18 meeting went that they had with Chief Cochran where  
19 they informed him of his suspension with Ms. Yancy or  
20 Mr. Geisler?

21          A.     No. I didn't discuss it, because I don't  
22 think anyone enjoys being suspended.

23          Q.     Right. Was the admonition not to -- I  
24 don't want to misphrase your -- misquote you -- not  
25 to do any communication; is that right?

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1       it, which we knew pretty quickly, was completely  
2       inappropriate and wrong. And at no time did my chief  
3       of -- at fire and rescue come in my office and sit  
4       down and have an in-person conversation and say, I am  
5       writing a book and I would like you to support me.

6                   And a passing "I wrote a book that I'd  
7       love for you to read" doesn't cut it when you're  
8       responsible for a fire department that has  
9       responsibility for 150,000 people's lives.

10                  And it should not have been a vacation.  
11       And the only way that it's not a vacation is that if  
12       you're not compensated during that month.

13                  Q.     So that was -- that was part of the reason  
14       why he was suspended without pay, was that he didn't  
15       check with you first?

16                  A.     The reason -- no. The reason that  
17       he -- I'm a human being with feelings. He was  
18       suspended because he wrote a book without getting an  
19       opinion from our ethics officer in writing. I don't  
20       believe that that required extraordinary judgment or  
21       additional steps. And then he passed the book out.

22                  Now, I don't know whether he was paid or  
23       gave the book freely. I don't know. But if you are  
24       the head of a department with a thousand people, if  
25       they feel pressured to accept a book that cost \$10 or

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1       counsel, the fact that other people in the fire  
2       department had gotten the book, I didn't know whether  
3       he had given it to them or charged for it, there are  
4       a number of facts.

5                  I couldn't make a decision on someone's  
6       career without having a factual investigation. And I  
7       was not going to have an investigation during the  
8       time and be paying for it. I just wasn't going to do  
9       that.

10          Q.      The concern about him not talking with you  
11       first, is that based upon any kind of policy or is  
12       that just a practice?

13          A.      No. It's based upon professional  
14       courtesy, being a colleague.

15          Q.      Would that -- what would that have looked  
16       like? Would he have made an appointment through  
17       Mr. Geisler?

18          A.      He could have made an appointment through  
19       Mr. Geisler. He could have made an appointment  
20       through my chief of staff.

21          Q.      Up to the point where he was --  
22       before -- let me strike that.

23                  Before November 24th, 2014, was  
24       there -- were there any articles in the press or was  
25       there anything that you were aware of in the media

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1 Kevin Sandlin dated November 24th. They responded  
2 right away to your Facebook post on the  
3 November 24th; is that correct?

4 MR. GEVERTZ: Object to the form.

5 THE WITNESS: It appears so.

6 BY MR. THERIOT:

7 Q. Okay. And -- and they expressed  
8 disagreement with your post; isn't that right?

9 A. It appears so.

10 MR. GEVERTZ: Object to the form.

11 BY MR. THERIOT:

12 Q. Were there any other responses that you're  
13 aware of, other than on your Facebook page, to your  
14 Facebook post?

15 A. I don't know.

16 Q. Not that you're aware of?

17 A. Not that I'm aware of. But, I mean, you  
18 can't possibly mean responses in general, because  
19 during the course of this, I received more than -- we  
20 stopped counting at 10,000 e-mails.

21 Q. And those began when?

22 A. They began between the date that he was  
23 suspended and the date that he was terminated.

24 Q. Okay.

25 A. And I have been in politics long enough to

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1 know that they were manufactured. I believed it the  
2 minute that we started getting e-mails that read  
3 almost exactly the same.

4 Q. That -- was that the -- the basis of your  
5 statement they were manufactured is the e-mails were  
6 essentially the same?

7 A. They were very similar.

8 Q. Okay. Any other thing that indicated they  
9 were manufactured?

10 A. No, not that I can think of right now.

11 Q. Was there any indication that you are  
12 aware of that -- who was behind the manufacturing of  
13 the e-mails and the texts?

14 A. No. I mean, I did not know it verifiably  
15 until we got the document showing that Chief Cochran  
16 was -- was a part of an effort to stimulate comment  
17 towards me and my family.

18 Q. When did you get that document?

19 A. I only learned of the document during the  
20 course of discovery, but I had a strong suspicion  
21 that Chief Cochran was coordinating with members from  
22 certain communities that didn't agree with the  
23 judgment that I made to communicate their displeasure  
24 to that.

25 Q. What was that suspension based upon?

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1           A.     My suspicion was that -- it was based upon  
2 my instinct and a person who's been in politics for  
3 almost 20 years, that the opposition was coordinated  
4 and manufactured.

5           Q.     What was your -- why did you think that  
6 Chief Cochran was involved in that coordination?

7           A.     Because I watched his behavior. He went  
8 out, after -- after we made it very clear that during  
9 the course of this investigation related to your  
10 employment that you should not comment on issues  
11 related to your employment, he went out and gave  
12 public speeches that were covered by the press that I  
13 thought inflamed a certain part of the community.

14          Q.     What did he say in those public speeches  
15 that concerned you?

16          A.     I don't recall.

17          Q.     Anything that specifically had to do with  
18 your behavior?

19          A.     I don't recall. I just said that I didn't  
20 recall. I do remember the media reports and I do  
21 remember being shocked that after communicating that  
22 he should not discuss issues related to employment,  
23 that he was in public forums discussing it.

24                 And then shortly after being in those  
25 public forums, we were inundated with electronic

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1     communications and calls to my home throughout the  
2     holidays, included death threats, including calling  
3     me the anti-Christ, including calling me a nigger and  
4     other inflammatory comments that we got by the  
5     thousands.

6           Q.     How did those -- how did you receive  
7     those? Were they texts, did you say?

8           A.     No. I said that they were e-mails.

9           Q.     E-mails?

10          A.     More than --

11          Q.     To which account?

12          A.     To my city hall account. And phone calls  
13     to my home.

14          Q.     Phone calls to your home.

15          A.     Phone calls to my home.

16          Q.     Any idea how they got your home phone  
17     number?

18          A.     I have no idea.

19                   MR. GEVERTZ: For the record, we  
20     produced those 17,000 e-mails. I think  
21     you've seen them.

22                   THE WITNESS: We stopped counting at  
23     10,000.

24     BY MR. THERIOT:

25          Q.     Did you make any public statements during

**KELVIN J. COCHRAN vs. CITY OF ATLANTA, ET AL.**  
**Mayor Kasim Reed on 02/14/2017**

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1 examination of all your religious precepts. What  
2 I'm -- what I'm looking for is, is what exactly about  
3 the book do you -- that is not your beliefs and that  
4 you disagree with?

5 MR. GEVERTZ: Currently or in 2014?

6 Because I think with respect to 2014, at  
7 least seven times today, he's given you the  
8 same answer.

9 THE WITNESS: Well, what I've said  
10 is, is in 2014, I'm not going to recall the  
11 elements that were -- I'm not going to  
12 pretend like today I remember every single  
13 provision that was offensive to me.

14 BY MR. THERIOT:

15 Q. Have your beliefs changed since 2014?

16 A. Some have.

17 Q. Have the beliefs regarding, for instance,  
18 what the Bible has to say about homosexuality changed  
19 since 2014?

20 A. It has.

21 Q. It has? How has it changed?

22 A. I believe that Christianity and God have  
23 room to care about all of His people, and I believe  
24 that the Bible and your faith experience has to be  
25 viewed in its entirety. And I think that the God

**KELVIN J. COCHRAN vs. CITY OF ATLANTA, ET AL.**  
**Mayor Kasim Reed on 02/14/2017**

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1       that I worship would not turn His back on any of His  
2       people, and I think all -- everyone is a child of God  
3       worthy of redemption.

4                   And so the place that I moved from was a  
5       place that was -- that believed one thing, certainly  
6       around homosexuality, to a broader understanding  
7       after an enormous amount of personal soul searching  
8       and spending time with my Bible.

9                   And the view that I came to is, is that  
10      the God that I worship and love would not set forth a  
11      path that didn't allow people who I think were born a  
12      certain way not to be embraced by our entire  
13      community. So that's where I ended up.

14       Q.     When did that start, that change?

15       A.     I think candidly, Counselor, it was a long  
16      time, really over a five- to seven-year period after  
17      talking through the issue with people that I respect  
18      and with really primarily my chief of staff, who I've  
19      known since I was a law school student.

20       Q.     Who is your chief of staff?

21       A.     A woman named Candace Byrd.

22       Q.     And I appreciate you sharing that.

23                   What about your beliefs regarding same-sex  
24      marriage, have those changed since 2014 also?

25       A.     They have.

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**Mayor Kasim Reed on 02/14/2017**

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1 Q. How have they changed?

2 A. They changed from believing that being a  
3 person who was homosexual could not enjoy the full  
4 faith and embrace of God to the fact that a person  
5 who is a homosexual could still be whole in Christ.

6 Q. And that would include being able to get  
7 married?

8 A. It would.

9 Q. That -- and that also is over the past  
10 five or six years, that change?

11 A. I think seven to eight years would be more  
12 accurate.

13 Q. And same prompting of the change as  
14 regarding the same-sex marriage as -- that you spoke  
15 of with regard to homosexuality?

16 MR. GEVERTZ: Object to the form.

17 THE WITNESS: I mean, I wouldn't  
18 characterize it in that fashion. I think  
19 it's an overall change that came about over  
20 time, that everybody that loves God and  
21 loves Jesus is entitled to work out their  
22 own faith with their creator.

23 BY MR. THERIOT:

24 Q. I understand.

25 Are there people in the -- well, strike

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**Mayor Kasim Reed on 02/14/2017**

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1 proceed.

2 Q. And that was -- so that was Ms. Yancy,  
3 Mr. Geisler and --

4 A. And Ms. Hampton.

5 Q. Ms. Hampton.

6 I'm sorry, Ms. Hampton.

7 MS. HAMPTON: That's okay.

8 BY MR. THERIOT:

9 Q. That was something that you ordered them  
10 to do and wasn't somebody else's idea; is that right?

11 A. No, that was a recommendation.

12 Q. A recommendation by your senior team?

13 A. Yes, from the human resources commissioner  
14 about the aspects of his suspension.

15 Q. Okay. Do you know who the person was that  
16 actually did the investigation?

17 A. I do not.

18 Q. You mentioned you received -- during the  
19 investigation and during his suspension you received  
20 thousands, I believe you may have said 10,000 --

21 A. You know that I have. You have the  
22 documents. You know that 17,000 people contacted me.

23 Q. Right.

24 A. What you don't know is that my phone rang  
25 so much that we could not answer it through the

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**Mayor Kasim Reed on 02/14/2017**

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1 A. I don't recall.

2 Q. Okay. When did you decide to terminate  
3 Chief Cochran?

4 A. I came to that decision sometime in the  
5 first ten days of January.

6 Q. Was that a collaborative decision with  
7 your senior team?

8 A. Yeah, it was a collaborative decision  
9 after the results of the investigation, which were  
10 crystal clear that he had violated the path -- or the  
11 process for you to write a book and sell it for a  
12 profit. And he had not done it. And I did  
13 not -- and he no longer had my confidence.

14 Q. And you made that -- you're the one who  
15 made that final decision; is that correct?

16 A. I am the one that made that final decision  
17 after consultation with our city attorney, the COO,  
18 my chief of staff, and the human resources  
19 commissioner, that he could not continue with the  
20 support of the people that worked for him.

21 Q. Was that at a meeting?

22 A. I don't recall the forum.

23 Q. Okay. So it may not have been a formal  
24 meeting where you consulted with all them together,  
25 you may have consulted with them individually?

## INVESTIGATIVE REPORT

Atlanta Fire Rescue Department – Chief Cochran Book Publication

City of Atlanta Law Department

January 9, 2015



## INVESTIGATIVE REPORT

Atlanta Fire Rescue Department – Chief Cochran Book Publication

January 9, 2015

As requested, the Law Department conducted an investigation to determine (1) whether publication of the book *Who Told You That You Were Naked*, by Atlanta Fire Rescue Department Chief Kelvin Cochran had been authorized; (2) whether and to what extent the book had been distributed in the workplace; and, (3) if there was any indication that Chief Cochran allowed his beliefs, as expressed in the book, to influence his disciplinary decisions. The investigation involved in-person interviews with Commissioner of Human Resources, Yvonne Yancy, members of the Atlanta Fire Rescue Department's (AFRD) command staff, the City's Ethics Officer Nina Hickson, AFRD Public Information Officer Janet Ward, and union president Steven Borders.

### I. Was Publication of the Book Authorized?

The Standards of Conduct provide a clear directive to “commissioners, deputy commissioners [and] department heads” to seek approval of the Board of Ethics before the department head “may engage in private employment or render services for private interests.”<sup>1</sup> No such approval was sought or rendered in the publication of the book that is available on Amazon.com for purchase.

At the outset of the investigation, Chief Cochran admitted that he did not inform Mayor Reed that he was publishing the book and did not have the Mayor’s

---

<sup>1</sup> City of Atlanta Code of Ordinances Section 2-820 (d) Commissioners, deputy commissioners, department heads, chief operating officer, deputy chief operating officers, chief of staff, deputy chiefs of staff, bureau directors, and employees of the office of the mayor who report directly to the mayor shall not engage in any private employment or render any services for private interests for remuneration, regardless of whether such employment or service is compatible with or adverse to the proper discharge of the official duties of such employee. However, the employees named in this paragraph may engage in private employment or render services for private interests only upon obtaining prior written approval from the board of ethics in accordance with this paragraph. The board of ethics shall review each request individually and provide written approval or disapproval of the notification within 30 days. All requests for approval of outside employment shall state the type and place of employment, the hours of work, and the employer's name and address. City employment shall remain the first priority of the employee, and if at any time the outside employment interferes with city job requirements or performance, the official or employee shall be required to modify the conditions of the outside employment or terminate either the outside employment or the city employment. This paragraph shall not apply to single speaking engagements or to participation in conferences or on professional panels; provided, however, that any expense reimbursements received for such engagements must be reported in accordance with section 2-815.

## INVESTIGATIVE REPORT

Atlanta Fire Rescue Department – Chief Cochran Book Publication

January 9, 2015

permission. The only indication there was any mention of the book to anyone in the Mayor's Office is the Chief Operating Officer at the time of publication remembering that Chief Cochran had talked about writing a book on leadership.

Chief Cochran insists Ethics Officer Hickson authorized both the publication of the book and the reference in the book to his position as AFRD Chief. His recollection is that he first contacted Ms. Hickson to determine if it was permissible to publish the book and that he later asked if it was appropriate to identify himself in the book as AFRD Chief. Ms. Hickson indicated that she did not approve publication of the book and had no authority to grant such approval. She said she told him that he would need to get the Mayor's permission as well as a formal opinion from the Board of Ethics.

Contemporaneous notes from Ms. Hickson's log read as follows:

*31 Oct 2012...T/C 10:34 a.m. ....Advise regarding non-city-related book he is authoring...will check back w/ me in about 6 mos.*

*2:22 p.m....9 July 2013...T/C Fire Chief Cochran...mentioning in book...advice-> Leadership Association...assoc...MLM...get a percentage of profit...told him to clear with Mayor...then get authority from Board of Ethics.*

## II. To What Extent Was the Book Distributed in the Workplace?

Chief Cochran stated that he provided the book to certain members of his command staff as a personal gift. He originally stated that he did not provide it to anyone who did not request a copy. The investigation disclosed that the book was distributed in the workplace to at least nine (9) individuals. Three (3) of these officers stated that the book was given to them without a request on their part.

Battalion Chief Stephen Hill stated he had been in a professional counseling one-on-one session with Chief Cochran regarding what he needed to do to prepare himself for appointment to Assistant Chief, the only sworn position over which Chief Cochran had sole appointing authority.

Chief Christopher Wessels stated the book was given to him unsolicited at a Chiefs' retreat, but there was no discussion about the book.

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Atlanta Fire Rescue Department – Chief Cochran Book Publication

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Chief William Collier received an unsolicited book from Chief Cochran at a workshop conducted at the airport but there was no discussion of the book's content.

Chief Cochran acknowledged that he had given these three individuals unsolicited copies of the book.

### **III. Did the Expressed Beliefs Influence Disciplinary Decisions?**

There is currently no indication that Chief Cochran allowed his religious beliefs to compromise his disciplinary decisions. While the fire chief has final authority over disciplinary decisions, the initiation of discipline occurs at lower management ranks for investigation by the Office of Professional Standards. Final recommendations on the level of discipline are made by a Disciplinary Review Panel consisting of chief officers that convenes to review cases sustained by OPS. This Panel then vets each case individually and recommends a level of discipline based on a preset grid that ensures consistency. The recommendation from the Panel must fall within the range set within the grid. Once the Panel forwards its recommendation to the fire chief, he then makes a decision to accept the recommendation, to reduce or to increase within the range or to refer back to the Panel for further review.

The consensus of the command staff witnesses interviewed is that Chief Cochran is more likely to adopt a level of discipline lower than what the Panel recommends. A review of the disciplinary recommendations presented to Chief Cochran from September 2012 through December 2014 shows that, of the 120 cases presented, Chief Cochran deviated from the recommendation of the Disciplinary Review Panel in three instances. In one case, Chief Cochran decreased a firefighter's discipline for a first occurrence failure to report accident infraction from the recommended written reprimand to no discipline. In two cases involving lieutenants, Chief Cochran upgraded discipline from the recommended Category B violation to Category C. In those two cases, the vote of the Disciplinary Review Panel had been split between Category B and C, and both employees held the rank of lieutenant, which Chief Cochran considered to warrant an enhanced level of accountability.

There was a consistent sentiment among the witnesses that firefighters throughout the organization are appalled by the sentiments expressed in the book.

## INVESTIGATIVE REPORT

Atlanta Fire Rescue Department – Chief Cochran Book Publication

January 9, 2015

There also is general agreement the contents of the book have eroded trust and have compromised the ability of the chief to provide leadership in the future.

No interviewed witness could point to a specific instance in which any member of the organization has been treated unfairly by Chief Cochran on the basis of his religious beliefs.

Union president Borders was unable to offer any examples of maltreatment. He echoed the sentiment of distrust and disgust created by the contents of the book with the representation in the book that Chief Cochran is speaking in his capacity as AFRD Chief. He cited to an example wherein firefighters were disciplined for expressing support of *Chick-fil-A* CEO Dan Cathy's stance on homosexuality. In that case, during the height of the controversy, a squad of AFRD firefighters took a group picture showing them in uniform at one of Cathy's restaurants. One of the firefighters then posted the picture on Facebook expressing support for Cathy's religious beliefs and his opinion of homosexuality and gay marriage. When a citizen complained, Chief Cochran directed the captain of the squad to initiate an OPS complaint. The complaint was sustained for a work rule violation and the firefighters were given thirty day suspensions. Borders' opinion was that Chief Cochran should be held to the same standard.

Retired Battalion Chief Cindy Thompson, a lesbian, expressed her views publicly after the contents of the book became an issue, indicating that she had suspected Chief Cochran had such beliefs. She stated that she took a voluntary demotion because of these suspicions. Steven Borders stated that the employees who brought the issue to his attention did not feel comfortable coming forward, but he also indicated that there were no specific complaints of maltreatment. He also advised that the employees thought the "investigation" would not be a serious effort to get at the truth, but said that he was convinced in seeing what was being done that the investigation was legitimate. He was then asked to have any of these employees who wanted to share their concerns contact us. None of them ever did so.

Robin Shahar, LGBT advisor to Mayor Kasim Reed, provided us with the names of two individuals who contacted her. AFRD retiree Mary Pharr and AFRD Lt. Joette Castranova were both contacted for telephone interviews. Both stated that they were intensely offended by the viewpoints expressed in Chief Cochran's book, but neither provided any examples of having experienced Chief Cochran displaying the influence of any of these viewpoints in his professional capacity.

**Defendant's Brief in Support of Their Motion for Summary Judgment**

Exhibit C  
Deposition Transcript  
of Nina Hickson  
(relevant portions attached)

**KELVIN J. COCHRAN vs. CITY OF ATLANTA, ET AL.**  
**Nina Hickson on 02/16/2017**

10 - - -

11

12 VIDEOTAPED DEPOSITION OF  
NINA HICKSON

13

FEBRUARY 16, 2017  
9:54 A.M.

15 BAKER DONELSON BEARMAN CALDWELL & BERKOWITZ, P.C.  
16 3414 PEACHTREE ROAD, N.E.  
17 MONARCH PLAZA  
18 SUITE 1600  
19 ATLANTA, GEORGIA 30326

18

19

20

21

22

23

24

8

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**KELVIN J. COCHRAN vs. CITY OF ATLANTA, ET AL.**  
**Nina Hickson on 02/16/2017**

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1 position as ethics officer?

2 A. I did.

3 Q. So why don't you just tell me in your own  
4 words about the duties of the ethics officer.

5 A. I -- I reported to a seven-member board  
6 with my responsibilities involving providing  
7 education and training on the ethics code, providing  
8 advice and counsel when employees or citizen  
9 representatives or public officials had questions  
10 related to the ethics code.

11 I oversaw investigations where there were  
12 complaints or anonymous complaints or, you know,  
13 on-the-record complaints of violations of the ethics  
14 code. I supervised the associate ethics officer  
15 and -- and the person who is now the business  
16 manager, oversaw the financial disclosure process,  
17 conducted -- or helped to conduct the monthly board  
18 meetings.

19 In general, those are were my  
20 responsibilities as the ethics officer.

21 Q. Anything else?

22 A. I'm sure there are other things, but  
23 that's generally what I did.

24 Q. So you were educated and trained with  
25 respect to the ethics code, advised and gave advice

**KELVIN J. COCHRAN vs. CITY OF ATLANTA, ET AL.**  
Nina Hickson on 02/16/2017

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1 was a leadership book that he was authoring. But I  
2 was never given a title or a content other than  
3 leadership.

4 Q. If he came to you -- well, first of all,  
5 did he contact you about this matter?

6 A. He called me. This indicates it was a  
7 telephone call. He called me.

8 Q. And what did he say?

9 A. My memory was that he was writing a  
10 non-city book on leadership, and was this a matter  
11 that the ethics -- that the ethics board would be  
12 concerned about or would this fall under the ethics  
13 code? That was my understanding of his question.  
14 And so I said yes.

15 And he said, well -- as I recall, he said  
16 it wasn't happening anytime soon, but he would get  
17 back with me in about six months. That was the  
18 extent of it. Or that's what I remember.

19 (Exhibit 24 was marked for  
20 identification.)

21 BY MR. WARDLOW:

22 Q. I'm placing in front of you what will be  
23 marked as Plaintiff's Exhibit 24. This is an e-mail  
24 from Sherry Dawson to you --

25 A. Uh-huh.

**KELVIN J. COCHRAN vs. CITY OF ATLANTA, ET AL.**  
Nina Hickson on 02/16/2017

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1      then he went on to say something about a multilevel  
2      marketing matter where he would be receiving a  
3      percentage of the profits. And I told him at that  
4      point I didn't understand it, but -- but it sounded  
5      to me that it was something he needed to clear with  
6      the mayor and that it would definitely have to come  
7      to the Board of Ethics given his level in the  
8      organization.

9            Q.     What -- why did you tell him that he  
10     needed to get clearance from the mayor?

11          A.     Because that's typically the -- he --  
12     that's who I understood he reported to. And our  
13     practice is when something -- when you're talking  
14     about outside remuneration, that it's something that  
15     has to be cleared with the supervisor. So to my  
16     knowledge, that was his supervisor and that's who he  
17     needed to get it cleared with.

18          Q.     Is there a -- is there an ethics code  
19     provision that requires the supervisor's approval on  
20     something like this?

21          A.     I'm not sure that there's an ethics code  
22     provision, but I know on our -- when we do our  
23     training and on the ethics pledge, we talk about if  
24     you're doing something outside of your regular job,  
25     that you need to go to your supervisor.

**KELVIN J. COCHRAN vs. CITY OF ATLANTA, ET AL.**  
Nina Hickson on 02/16/2017

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1                   So I'm not -- I don't -- I can't think of  
2        a specific provision in here, but I know that's the  
3        practice.

4                  Q.     And what's the basis for your  
5        understanding that that's the practice?

6                  A.     Basically that's the way it was done when  
7        I got there. It's the way we continued to do it.  
8        And as I indicated, on our ethics pledge, that's what  
9        we essentially say if it's outside employment,  
10      because the supervisor needs to make the initial cut  
11      of if there's a conflict of interest. We don't know  
12      everything about a job.

13                 So if they -- you know, if they've  
14      determined that there's a conflict, then there's no  
15      need for it to come to -- to the board.

16                 Q.     So if there's no -- if there's no conflict  
17      of interest between whatever the outside services or  
18      activities are and the job --

19                 A.     Uh-huh.

20                 Q.     -- then it doesn't need to come to the  
21      board?

22                 MS. HINTON: Object to form.

23                 THE WITNESS: No, that's not what I  
24      said. That's not what I said.

25

**Defendant's Brief in Support of Their Motion for Summary Judgment**

**Exhibit D**

**Deposition Transcript of**

**Michael Geisler**

**(relevant portions attached)**

**KELVIN J. COCHRAN vs. CITY OF ATLANTA, ET AL.**  
**Michael J. Geisler on 02/28/2017**

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE NORTHERN DISTRICT OF GEORGIA  
3 ATLANTA DIVISION  
4  
5 KELVIN J. COCHRAN, )  
6 Plaintiff, ) CIVIL ACTION FILE  
7 vs. ) NO. 1:15-cv-00477-LMM  
8 CITY OF ATLANTA, GEORGIA; )  
9 and MAYOR KASIM REED, IN )  
10 HIS INDIVIDUAL CAPACITY, )  
11 Defendants. )  
12  
13 - - -  
14  
15 VIDEOTAPED DEPOSITION OF  
16 MICHAEL J. GEISLER  
17 FEBRUARY 28, 2017  
18 1:55 P.M.  
19  
20 BAKER DONELSON BEARMAN CALDWELL & BERKOWITZ, P.C.  
21 MONARCH PLAZA, SUITE 1600  
22 3414 PEACHTREE ROAD, N.E.  
23 ATLANTA, GEORGIA  
24  
25 Reported by: Suzanne Beasley, RPR  
CCR-B-1184

**KELVIN J. COCHRAN vs. CITY OF ATLANTA, ET AL.**  
Michael J. Geisler on 02/28/2017

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1 Q. Against Chief Cochran.

2 A. No actions taken, but it was -- it was  
3 clear that if the accreditation didn't occur, that  
4 actions would be taken.

5 Q. How was that made clear to him?

6 A. I told him.

7 Q. Was that in a meeting, face-to-face  
8 meeting?

9 A. Probably was one on one.

10 Q. Do you recall what you said to him exactly  
11 and what he said to you?

12 A. That his position would be terminated if  
13 we didn't get the accreditation.

14 Q. And how did Chief Cochran respond to that?

15 A. He accepted it.

16 Q. We're doing pretty well here.

17 All right. When did you first hear that  
18 Chief Cochran had written a book?

19 A. Yvonne Yancy came to me, and it was  
20 probably in the third quarter of 2014, to tell me  
21 that she had received a copy of the book, and she had  
22 read it, and she raised issues with some of the  
23 things that were said in the book.

24 Q. What were the issues that she said were a  
25 concern?

**KELVIN J. COCHRAN vs. CITY OF ATLANTA, ET AL.**  
Michael J. Geisler on 02/28/2017

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1           A.     It had to do with sexual preferences,  
2 primarily. You know, she had some issues, I believe,  
3 with respect to the way comments were made about  
4 women in the book.

5           Q.     Anything else?

6           A.     Those are the pieces -- those are what I  
7 recall.

8           Q.     So that was the first time that you had  
9 heard that Chief Cochran was writing a book --

10          A.     I believe, yes.

11          Q.     -- was in the third quarter, which is --  
12 is that September or October of 2014?

13          A.     Probably October.

14          Q.     October?

15          A.     Fourth quarter.

16          Q.     Yeah, fourth quarter. Dealing with an  
17 accountant, you think in --

18          A.     Yeah.

19          Q.     -- terms of quarters. I understand. All  
20 right.

21                 Prior to that time, had anyone talked to  
22 you about Chief Cochran writing a book at all?

23          A.     I don't recall anyone speaking to me, no.

24          Q.     Did you ever have a conversation with the  
25 mayor about when he first heard of the book?

**KELVIN J. COCHRAN vs. CITY OF ATLANTA, ET AL.**  
Michael J. Geisler on 02/28/2017

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1 Q. And how do you come to that conclusion?

2 A. Well, I know that when the presentations  
3 were made, the reaction that the mayor had on this  
4 that, you know, it violated whatever understanding he  
5 had with the chief was apparent, and it changed a lot  
6 of people's views. People that had been supporters  
7 prior to that saw that as a violation. A lot of  
8 support diminished from a lot of different people at  
9 that point.

10 Q. Did your own opinion change at that point?

11 A. Yes.

12 Q. Why did it change your opinion?

13 A. Because I thought that he had violated the  
14 understanding that existed about how we'd go forward  
15 with it. You know, it was -- it was a poke in the  
16 eye to the mayor.

17 Q. Did you feel that Chief Cochran could  
18 return to work and be an effective leader after that  
19 point?

20 A. I didn't think he could.

21 Q. Did you feel that he could have a positive  
22 relationship with the mayor after that point going  
23 forward?

24 A. No.

25 Q. Was his conduct during his suspension

**Defendant's Brief in Support of Their Motion for Summary Judgment**

## Exhibit E

# Deposition Transcript of Stephen Borders (relevant portions attached)

**KELVIN J. COCHRAN vs. CITY OF ATLANTA, ET AL.  
Stephen D. Borders on 02/17/2017**

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

KELVIN J. COCHRAN, )  
                        )  
                        )  
Plaintiff,         )  
                        )  
                        ) CIVIL ACTION FILE  
vs.                 )  
                        )  
                        )  
CITY OF ATLANTA, GEORGIA;     )  
and MAYOR KASIM REED, IN     )  
HIS INDIVIDUAL CAPACITY,     )  
                        )  
                        )  
Defendants.         )

VIDEOTAPED DEPOSITION OF  
STEPHEN D. BORDERS

FEBRUARY 17, 2017  
2:01 P.M.

BAKER DONELSON BEARMAN CALDWELL & BERKOWITZ, P.C.  
MONARCH PLAZA, SUITE 1600  
3414 PEACHTREE ROAD, N.E.  
ATLANTA, GEORGIA

**KELVIN J. COCHRAN vs. CITY OF ATLANTA, ET AL.**  
**Stephen D. Borders on 02/17/2017**

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1       this proper, was it not, and that it really -- it  
2       would only cloud the issue to involve Chief Cochran,  
3       so we didn't involve Simon and didn't involve Chief  
4       Cochran.

5           Q.      I want to turn to what is at the heart of  
6       this case, a book written by Chief Cochran. When did  
7       you become aware that Chief Cochran had written a  
8       book?

9           A.      When Chief Wessels brought it to my  
10      attention after work one morning in the back parking  
11      lot of Station 1, and he showed me the book, told me  
12      that it had been given to him, and that he finally  
13      got around to reading it or reading part of it, and  
14      there were some passages that were disturbing. And  
15      that he wanted to make me aware and get my opinion  
16      and see how we wanted -- how we wanted to handle that  
17      as the union.

18           Q.      Working at, you said Station 1; is that  
19      correct?

20           A.      Yes.

21           Q.      Was Chief Wessels -- did he work out of  
22      that station?

23           A.      Yes. His office was on the back of  
24      Station 1. I mean, there's -- it's a separate  
25      office, but it's attached to the station.

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**Stephen D. Borders on 02/17/2017**

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1           Q.     Do you recall -- sounds like you have a  
2 pretty good memory of where it happened, back parking  
3 lot, I think you said. Do you recall when, if you  
4 can give me your best guess on a date?

5           A.     I feel like it was the end of October,  
6 early November. Maybe a month or so before Chief  
7 Cochran's suspension.

8           Q.     So Chief Wessels brings you the book. Did  
9 he tell you he had read the whole book? What was  
10 the -- give me the conversation soup to nuts, if you  
11 would.

12          A.     The conversation was -- it was, hey, I  
13 want to show you something. This is a book that  
14 Chief Cochran wrote that was given to me during a  
15 work event. And I don't remember exactly what the  
16 details were, and that when he read it, there was  
17 some very explicit conservative Christian ideals that  
18 concerned him since he also identified himself very  
19 clearly and explicitly as the fire chief in the City  
20 of Atlanta.

21               And it was -- from a firefighter  
22 standpoint, that we were all brought up very clearly  
23 that if you say that you are representing the City of  
24 Atlanta that -- and you give an interview, a public  
25 statement, write a book, write an article in a

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1 you know, how should we handle this. And I felt like  
2 that we needed to be prepared and have a response  
3 from our members, as well as the public if the story  
4 was framed that there's a fire chief that has a  
5 problem with a certain population, what was the  
6 union's response going to be; that we weren't  
7 blind-sided with an issue that we didn't know was  
8 coming.

9                   And then I took it to Alex Wan on the city  
10 council, who I had a good relationship with  
11 professionally and a lot of dealings with on pay  
12 matters and different city issues for just his  
13 counsel and advice on how we should handle it, how  
14 the city should handle it. And then he -- I gave him  
15 one of the copies of the book and let him take it  
16 from there.

17               Q.     I want to talk to you a little bit about  
18 that decision making-process, okay?

19               A.     Okay.

20               Q.     You testified earlier that you had an open  
21 line of communication with Chief Cochran, correct?

22               A.     (Witness nods head affirmatively.)

23               Q.     Did you ever attempt to speak with Chief  
24 Cochran about the book before handing it along to  
25 Councilman Wan?

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1 underlines or notes on the side.

2 Q. Do you recall on that initial conversation  
3 with Chief Wessels the portions of the book he was  
4 concerned about?

5 A. I only remember the very beginning where  
6 it identifies Chief Cochran working for the City of  
7 Atlanta, and then there were some other passages  
8 where -- that were talking about homosexuality and  
9 kind of a conservative Christian.

10 Q. So that was -- when you said you all  
11 bought books after that and you read through it, was  
12 that the population you were talking about with  
13 respect to the problems you had with the book?

14 MR. GEVERTZ: Object to the form.

15 THE WITNESS: Can you clarify a  
16 little?

17 BY MR. CONNELLY:

18 Q. What did you find -- did you find anything  
19 objectionable about the book when you read it?

20 A. I personally didn't agree. I don't think  
21 it was anything that I felt like -- I mean, Chief  
22 Cochran is -- he's welcome to have any opinion he  
23 wants to, any interpretation of the Bible he wants  
24 to, and I didn't have a problem with it. It just, as  
25 a labor organization, I had an issue with that it

**KELVIN J. COCHRAN vs. CITY OF ATLANTA, ET AL.**  
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1 seemed like that he was putting himself as an  
2 official representative of the city explicitly, and  
3 saying that he believes these views, as well as being  
4 on -- at an employee-sponsored event or meeting or  
5 something, and that it seemed to be given to chief  
6 officers in the boss/employee-type relationship and  
7 that -- those were the two things that really  
8 concerned me. And I felt like that we needed to have  
9 a response and some counsel from the city on how --  
10 what their opinion was and how they wanted to handle  
11 the situation.

12 Q. So going back to Wessels again, that  
13 initial conversation, did he express misgivings about  
14 the book?

15 A. I think -- personally, I think he  
16 was -- he disagreed with how the book was presented,  
17 as well as the two things I mentioned earlier. That  
18 it was, you're saying that you're the fire chief and  
19 you're saying that you believe this way, and that  
20 that was a -- a concerning issue.

21 Q. And when you said presented, you mean how  
22 the book was given -- the circumstances under which  
23 the book was given to him?

24 A. Yes. That was one issue. The  
25 circumstances of how the book was given, as well as

**KELVIN J. COCHRAN vs. CITY OF ATLANTA, ET AL.**  
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1       it being framed as a official representation of how  
2       the fire department feels.

3           Q.     After you and the executive board or  
4       Justin Padrazzi and Vic Bennett decided to hand it up  
5       to Councilman Wan, did you have any more  
6       conversations with Chief Wessels about it?

7           A.     I'm sure we did. I don't recall  
8       specifically, but it was not an issue that I wanted  
9       to get out internally or externally in the public  
10      until we felt like that we had a good response and  
11      the city had a good response, and so it was something  
12      that we -- that I tried to keep a lid on the best I  
13      could.

14          Q.     So you didn't publicize this with any  
15      other members of the AFRD; is that an accurate  
16      statement?

17          A.     Yeah, I spoke to some specific chief  
18      officers and other members in trying to ask if they  
19      were aware of it. It was not something that we  
20      announced, this is going on, this has happened, and  
21      tried to stir the pot with it, no.

22          Q.     So when you give the book to Councilman  
23      Wan, do you remember the -- can you approximate the  
24      date, to the best of your ability?

25          A.     Early November -- early to mid November

**KELVIN J. COCHRAN vs. CITY OF ATLANTA, ET AL.**  
**Stephen D. Borders on 02/17/2017**

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1       would probably be a good -- because it probably took  
2       a couple of days for the book to come in, be able to  
3       review it, feel like I had a good handle on where we  
4       were, talk to the executive board, schedule a meeting  
5       with Councilman Wan and meet with him.

6           Q.     All right. That leads me to my next  
7       question. You said schedule a meeting. Do you  
8       remember -- I mean, you remember where the Wessels  
9       thing happened pretty vividly. Do you remember where  
10      the meeting happened with Councilman Wan?

11          A.     In his office in city hall.

12          Q.     Was it night or day?

13          A.     It was daytime. I don't remember the  
14      exact time, but it was during the day.

15          Q.     Was it -- who was there?

16          A.     It was just Councilman Wan and myself.

17          Q.     He had already had a copy of the book?

18          A.     No.

19          Q.     You brought it to him?

20          A.     Yes.

21          Q.     Talk to me about that conversation. What  
22      happened?

23          A.     I went in and explained to him the  
24      information that Wessels had shared on, it was given  
25      to him during a work event, and that, you know, there

**Defendant's Brief in Support of Their Motion for Summary Judgment**

# Exhibit F

## Deposition Transcript of Alex Wan (relevant portions attached)

**KELVIN J. COCHRAN vs. CITY OF ATLANTA, ET AL.**  
**Alex S. Wan on 02/23/2017**

10 [\[link\]](#) [\[link\]](#) [\[link\]](#)

11

12 VIDEOTAPED DEPOSITION OF  
ALEX S. WAN

13

FEBRUARY 23, 2017  
2:21 P.M.

15

MONARCH PLAZA, SUITE 1600  
3414 PEACHTREE ROAD, N.E.  
ATLANTA, GEORGIA

1 /

18

19

20

21

22

23

25

**KELVIN J. COCHRAN vs. CITY OF ATLANTA, ET AL.**  
Alex S. Wan on 02/23/2017

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1 That would be about the extent of it.

2 Q. Did you encourage him to change his  
3 position on same-sex marriage?

4 A. No, I did not.

5 Q. Did he ever articulate what his position  
6 was on same-sex marriage?

7 A. No, he did not.

8 Q. You say that you've -- so when you say  
9 "look at what I've done over the past three years,"  
10 and then as part of that where you reference  
11 Mayor Kasim Reed coming out in favor of marriage  
12 equality, did you mean that you had anything to do  
13 with Mayor Kasim Reed coming out in favor of marriage  
14 equality?

15 A. Well, the context of this was largely  
16 because the mayor used the passage of the marriage  
17 equality resolution when he signed it to affirm his  
18 position on it. So it did provide the opportunity or  
19 context for him to publicly make that statement where  
20 he had not done it before.

21 Q. So what was your involvement in the  
22 passage of the resolution by the city council to  
23 support same-sex marriage?

24 A. I was the writer -- cowriter and sponsor  
25 of the legislation.

**KELVIN J. COCHRAN vs. CITY OF ATLANTA, ET AL.**  
Alex S. Wan on 02/23/2017

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1 Q. And did that pass unanimously?

2 A. No, it passed 11 to 2.

3 Q. Which council members voted against it?

4 A. Councilmember Martin and Councilmember  
5 Shook.

6 Q. Did you have any conversation with the  
7 mayor's staff about his position on same-sex  
8 marriage?

9 A. Robin Shahar was the one who helped me  
10 craft this legislation. I think there was discussion  
11 about whether or not the mayor would veto this with  
12 regard to process, and that was the extent of it.

13 Q. What did she say regarding whether he  
14 would veto?

15 A. I don't recall specifically, but it wasn't  
16 enough for me to stop moving this through.

17 Q. What do you mean by "with regard to  
18 process"?

19 A. Because when we pass legislation, the  
20 mayor has the opportunity to either sign it, veto it,  
21 or let it become law without his signature. So that  
22 is the context in which -- you know, if he were to  
23 veto it, then we -- the council would have the  
24 opportunity to override his veto with two-thirds  
25 vote. So that was just trying to chart out what

**KELVIN J. COCHRAN vs. CITY OF ATLANTA, ET AL.**  
Alex S. Wan on 02/23/2017

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1 and that's when he presented me with the book.

2 Q. What did he say to you at that time?

3 A. He told me that it had been brought to him  
4 by another member of the fire staff. He showed me --  
5 there were two passages that were -- there were  
6 Post-its in the book, and he just handed it to me and  
7 explained to me that the police chief -- I mean,  
8 sorry, the fire chief had written it and that there  
9 was concern about it. At which point, I took it and  
10 I read it, and I agreed with him that there was  
11 concern. I had concerns.

12 Q. What were the two passages that he  
13 referenced?

14 A. The two specific ones were in reference to  
15 the gay and lesbian community. One about  
16 uncleanliness, and there was another one about -- I  
17 don't recall the specific language, but it discussed  
18 a man having sex with someone outside of marriage  
19 with somebody of the opposite sex, same sex. And I  
20 can't remember the other one, but those were the two.

21 Q. Those were the two passages that concerned  
22 you?

23 A. Well, those were the two that he showed me  
24 that I read.

25 Q. Did you read any other passages from the

**KELVIN J. COCHRAN vs. CITY OF ATLANTA, ET AL.**  
Alex S. Wan on 02/23/2017

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1       was still at the City, we invariably would have had  
2       conversations about those two other topics, but I  
3       don't know when he left. I don't recall.

4           Q.     How you doing?

5           A.     Fine.

6           Q.     You good?

7           A.     Good.

8           Q.     Maybe we'll take a break in about ten  
9       minutes.

10          A.     I'm --

11          Q.     We don't even need to take one then if you  
12       don't have --

13          A.     I'm good.

14          Q.     So let's -- I'm just moving to another  
15       topic, so --

16          A.     Sure.

17          Q.     -- I wanted to -- well, next conversation,  
18       let's try it that way.

19                   So you -- at some point I believe you  
20       testified you had a conversation with Ms. Yancy.

21          A.     Correct.

22          Q.     Why did you take the book to Ms. Yancy?

23          A.     Well, based on the concerns that I had  
24       about the content, to me it was an HR matter. That  
25       was my natural or just my reaction to who should

**KELVIN J. COCHRAN vs. CITY OF ATLANTA, ET AL.**  
Alex S. Wan on 02/23/2017

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1 address this. And so her being the commissioner of  
2 HR, I took it directly to her.

3 Q. Did Mr. Borders ever mention anything  
4 about taking it to HR in his conversation with you?

5 A. I don't recall.

6 Q. Did you ever mention anything to  
7 Mr. Borders about HR?

8 A. Before I did it?

9 Q. Yes.

10 A. No.

11 Q. Any idea why Mr. Borders came to you  
12 instead of HR?

13 A. Probably because I'm gay.

14 Q. What did you tell Ms. Yancy when you  
15 talked with her about the book?

16 A. Broadly I think I just expressed my  
17 concern about what I had read and that I felt it  
18 needed to be reviewed and that whatever appropriate  
19 actions or process from that point on, you know, I  
20 would leave it in her hands.

21 Q. When did that -- did that conversation  
22 occur by phone?

23 A. No, in person.

24 Q. How did that meeting get set up?

25 A. If I recall correctly, I either phoned her

**Defendant's Brief in Support of Their Motion for Summary Judgment**

**Exhibit G**

**Deposition Transcript of**

**Yvonne Yancy**

**(relevant portions attached)**

**KELVIN J. COCHRAN vs. CITY OF ATLANTA, ET AL.**  
**Yvonne Cowser Yancy on 02/17/2017**

1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE NORTHERN DISTRICT OF GEORGIA  
3                   ATLANTA DIVISION  
4  
5                   KELVIN J. COCHRAN,                         )  
6                   vs.   )  
7                   CITY OF ATLANTA, GEORGIA;                 )  
8                   and MAYOR KASIM REED, IN                 )  
9                   HIS INDIVIDUAL CAPACITY,                 )  
10                  Defendants.                                 )  
11  
12                  - - -  
13  
14                  VIDEOTAPED DEPOSITION OF  
15                  YVONNE COWSER YANCY  
16                  FEBRUARY 17, 2017  
17                  10:02 A.M.  
18  
19                  BAKER DONELSON BEARMAN CALDWELL & BERKOWITZ, P.C.  
20                  MONARCH PLAZA, SUITE 1600  
21                  3414 PEACHTREE ROAD, N.E.  
22                  ATLANTA, GEORGIA  
23  
24                  (TRANSCRIPT CONTAINS CONFIDENTIAL PORTION)  
25                  PAGE 9, LINE 4 TO PAGE 9, LINE 10  
26  
27  
28  
29  
30  
31  
32  
33  
34                  Reported by: Suzanne Beasley, RPR  
35                  CCR-B-1184  
36

**KELVIN J. COCHRAN vs. CITY OF ATLANTA, ET AL.**  
**Yvonne Cowser Yancy on 02/17/2017**

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1 meeting?

2 A. No.

3 Q. And what did you tell him?

4 A. I don't recall. I told him I would read  
5 the book and I would, you know, follow up  
6 appropriately; and I thanked him for bringing it to  
7 our attention.

8 Q. Did he give you a copy of the book?

9 A. Yes.

10 Q. And you read it?

11 A. Yes.

12 Q. Cover to cover?

13 A. Yes.

14 Q. Did you do that right away?

15 A. No.

16 Q. When did you read it?

17 A. The next day, Thursday.

18 Q. Thursday.

19 A. Yes.

20 Q. So by the end of Thursday, you had read  
21 the entire book?

22 A. Yes.

23 Q. Why did the topic of termination come up  
24 during the phone call -- I'm sorry, the meeting with  
25 Councilmember Wan?

**KELVIN J. COCHRAN vs. CITY OF ATLANTA, ET AL.**  
**Yvonne Cowser Yancy on 02/17/2017**

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1           A.     I said, Sir, I have received this book  
2 from Councilman Wan. I read it from cover to cover.  
3 I spoke with the COO about the book. I have concern  
4 about the book's reference as his employer. Did you  
5 provide permission for Mr. Cochran to write the book?  
6 Are you aware of this book?

7           Q.     And was the mayor aware of the book?

8           A.     No, he was not.

9           Q.     And what concerns about the book did you  
10 tell the mayor that you had specifically?

11          A.     Specifically that the City of Atlanta is  
12 referenced in the book, that Mr. Cochran's role as  
13 the fire chief is referenced in the book as a point  
14 of reference in terms of his leadership and his  
15 activity, and that -- and we had not given permission  
16 for the book, that in fact was a problem.

17               It appeared as though the City of Atlanta  
18 had endorsed the book, when in fact if we had not  
19 given permission for the book, that would not be  
20 acceptable.

21          Q.     Did you relay any other concerns?

22          A.     I thought the content was problematic, but  
23 the issue in the book was whether or not we had given  
24 permission for it.

25          Q.     Did you talk about any content that you

**KELVIN J. COCHRAN vs. CITY OF ATLANTA, ET AL.**  
**Yvonne Cowser Yancy on 02/17/2017**

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1 thought was problematic with the mayor?

2 A. I was offended by it, so yes.

3 Q. What specifically were you offended by  
4 that you talked about with the mayor?

5 A. I was offended by how women were  
6 referenced, and how Jews were referenced, and how the  
7 LGBT community was referenced. And I was really  
8 offended that the City of Atlanta was presented as a  
9 factor in the book because it was not a book that I  
10 was aware the City had in fact endorsed or approved.

11 Q. Any other concerns you expressed to the  
12 mayor?

13 A. No. Oh, yes. I was concerned about the  
14 breakfast that he was going to be at. And I was  
15 concerned about employees having a protest or this  
16 issue being raised to embarrass us at the breakfast.  
17 I did not want him to be surprised with that  
18 possibility.

19 Q. When was this breakfast to be held?

20 A. On Friday.

21 Q. So that was the next morning?

22 A. Yes.

23 Q. And what did Councilmember Wan tell you  
24 might happen at this breakfast?

25 A. Councilmember Wan indicated -- he received

**KELVIN J. COCHRAN vs. CITY OF ATLANTA, ET AL.**  
**Yvonne Cowser Yancy on 02/17/2017**

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1                   THE WITNESS: I'd encourage you to  
2                   ask Councilman Wan.

3     BY MR. WARDLOW:

4         Q.     Why do you think that he suggested you  
5     read it?

6                   MR. GEVERTZ: Objection. You can  
7     speculate to your heart's content.

8                   THE WITNESS: He thought -- the book  
9     was given to him by an employee who was  
10    concerned about it. He conveyed that to  
11    me, so the obvious next thought would be  
12    something was concerning about the book.

13    BY MR. WARDLOW:

14         Q.     So what did Mayor Reed -- going back to  
15    your conversation with Mayor Reed on Thursday  
16    evening. What was Mayor Reed's response? What did  
17    he say to you after you told him about the book and  
18    you relayed concerns about its contents?

19         A.     He said that he wanted me to check to see  
20    if there had been any other requests for permission  
21    from the ethics board per the code; that he was not  
22    interested in making a big deal of this. He wanted  
23    me to talk to Cathy Hampton, the city attorney, to  
24    make sure she was aware. He had not provided  
25    permission for the book. He was not aware of the

**KELVIN J. COCHRAN vs. CITY OF ATLANTA, ET AL.**  
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1 book.

2 He appreciated the heads up before the  
3 breakfast. That if there was an issue, he would, you  
4 know, respond appropriately; but to begin the process  
5 to look into whether or not there had been any other  
6 requests for approval or any other data about the  
7 book that I could find out.

8 Q. Did you make those inquiries?

9 A. I started them. I was going out of town,  
10 so I did speak with Cathy Hampton that evening by  
11 phone, and I talked to the mayor's two other senior  
12 advisors who were present to make sure they were  
13 aware of the matter.

14 Q. Did you take any action with respect to  
15 the breakfast?

16 A. I did not. There was no action for me to  
17 take.

18 Q. What did you do to address the mayor's  
19 concerns about the breakfast?

20 A. Well, the --

21 MR. GEVERTZ: Object to the form.

22 THE WITNESS: The concern was simply  
23 making sure he was aware it could happen.  
24 And the mayor often receives questions from  
25 the press and from people when he is, you

**KELVIN J. COCHRAN vs. CITY OF ATLANTA, ET AL.**  
**Yvonne Cowser Yancy on 02/17/2017**

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1       a 30-day unpaid leave, and so I met with Mr. Cochran  
2       with the city attorney, Bob Godfrey, and the chief of  
3       staff, Candace Byrd. The COO was not available at  
4       the time. And that communication was delivered to  
5       him.

6           Q.     When did the mayor ask you to put  
7       Chief Cochran on unpaid leave?

8           A.     That Monday, the same day it occurred.

9           Q.     That morning?

10          A.     I don't know the exact time, but, you  
11       know, before the conversation, yes.

12          Q.     And why did the mayor want to put Chief --  
13       did he tell you why he wanted to put him on  
14       administrative leave?

15          A.     He was very concerned about the data that  
16       we had gathered thus far. He was not aware of the  
17       book. He had not given permission for the book.  
18       That was a significant violation of not just the  
19       ethics pledge but the employer relationship, and he  
20       wanted to ensure that we were able to discipline  
21       Mr. Cochran appropriately; look into whether or not  
22       he had inappropriately used authority in the  
23       department and move forward.

24          Q.     You mentioned data that you had  
25       gathered --

**KELVIN J. COCHRAN vs. CITY OF ATLANTA, ET AL.**  
**Yvonne Cowser Yancy on 02/17/2017**

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1 A. Yes.

2 Q. -- up to that point. What data are you  
3 referring to?

4 A. Well, before I left, I had made requests  
5 to receive information on whether or not Mr. Cochran  
6 had received approval from the ethics board and  
7 from -- through the ethics process that exists. I  
8 was not aware of any second employment remuneration  
9 approval he received. There's a process for that as  
10 well.

11 The book had been published during this  
12 administration. We did not know -- you know, we did  
13 not receive it when it was published, but we did find  
14 that out, so it had taken place while he was employed  
15 by the City of Atlanta and this -- his second stint  
16 with the City under this mayor. So the appropriate  
17 people to give approval would have been the COO and  
18 the mayor, and that had not taken place.

19 Q. Anything else?

20 A. Well, no. He's a leader of a department.  
21 He reports directly in to the executive chain, and we  
22 were unaware and had not given permission for this  
23 activity, so no.

24 Q. This activity being?

25 A. Writing a book, distributing a book naming

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1 A. I did not.

2 Q. Who drafted this letter?

3 A. Lydia Jamison.

4 Q. So she's the person that reports to you  
5 that leads up the employee relations group?

6 A. Correct.

7 Q. When did you ask her to draft this letter?

8 A. That morning. I also asked for a  
9 termination letter.

10 Q. You asked Ms. Jameson to draft a  
11 termination letter?

12 A. Yes.

13 Q. Why?

14 A. I recommended it.

15 Q. You recommended termination?

16 A. Absolutely.

17 Q. Who decided to suspend rather than  
18 terminate?

19 A. The mayor.

20 Q. Did you have a discussion with the mayor  
21 about whether to suspend or terminate?

22 A. Yes.

23 Q. Tell me everything that was said Monday  
24 morning.

25 A. I'm not sure I can discuss it. Cathy

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1 that conversation.

2           A.     So we discussed, you know, the option  
3 around how to handle what we had discovered this far  
4 concerning the book. I recommended separating  
5 Mr. Cochran. The mayor was uninterested in  
6 separating Mr. Cochran. He really respected him,  
7 talked about how he'd been the number one fire  
8 professional nationally; that he did not want to  
9 separate him, that he wanted other options. And so  
10 the 30-day suspension was the second option.

11               The 30 days was picked because that's  
12 really the longest period of time someone's suspended  
13 traditionally in terms of our practices in lieu of  
14 termination, and so that's how we got to that 30-day.  
15 There are other examples of 30-day suspensions that  
16 had taken place that made sense for the mayor.

17               He also wanted to have some process put  
18 together so that when Mr. Cochran returned from his  
19 suspension that we could help the department move  
20 forward. We talked about sensitivity training. I  
21 recommended Al Vivian and BASIC Diversity. They're  
22 known for their, one, faith, but also their race work  
23 and their work in helping organizations grapple with  
24 different issues.

25               I thought they would be a great sort of

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1 option because we're familiar with them internally,  
2 and that I thought Mr. Cochran would respect Al  
3 Vivian, C.T. Vivian, if they were the people that we  
4 asked him to work with around the department  
5 afterwards; and put together sort of a process for  
6 how to deal with that.

7                   The communication process in terms of, you  
8 know, we would have to say the fire chief was not at  
9 work. We'd have to have an interim fire chief in  
10 that process. Joel Baker was identified as the  
11 interim fire chief. He was currently a deputy of  
12 Mr. Cochran's, who was well regarded internally, and  
13 I thought that Mr. Cochran would support Mr. Baker  
14 being put in that interim role, that would not be  
15 seen as problematic for him. And then we put  
16 together a process to notify Mr. Cochran.

17               Q. So tell me, what were all the bases for  
18 the suspension decision?

19               MR. GEVERTZ: Object to the form.

20               If you can read the mayor's mind, go  
21 for it.

22               THE WITNESS: In lieu of terminating  
23 Mr. Cochran, there had to be disciplinary  
24 activity for his failure to get approval  
25 from his direct manager for this book.

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1           There was also a failure to disclose  
2       it in the ethics forms that we gather. The  
3       ethics officer had indicated in our  
4       conversation with her that she had not  
5       given permission for the book and was not  
6       aware that it had been published.

7           And we also had to conduct a process  
8       to investigate whether or not Mr. Cochran's  
9       beliefs had led to different outcomes in  
10      his management of the department because he  
11      referenced his leadership of the department  
12      and how he led the department in his book.  
13      That cannot take place with Mr. Cochran at  
14      work.

15           And so the discipline was about his  
16       failure to get approval, his failure to  
17       operate within the processes that are  
18       clearly identified, not just in the code,  
19       but in general expectations as an employer.

20           And then the second part of that  
21       process was he could not be present while  
22       we ensured there wasn't a Title 7 issue,  
23       which we had to make sure of because as the  
24       employer, we're compelled to offer an  
25       environment where employees are treated

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1 consistently. And we didn't know there had  
2 been an issue with how employees were  
3 treated, but we had to in fact document  
4 that we had looked at that and there was an  
5 outcome.

6 That would have taken place whether  
7 he was terminated or not, but if he was  
8 going to be retained as a fire chief, it  
9 certainly could not take place with him at  
10 work.

11 BY MR. WARDLOW:

12 Q. Anything else?

13 A. No.

14 Q. So you mentioned failure to get approval  
15 or permission from the mayor?

16 A. Correct, or the COO.

17 Q. Mr. Geisler?

18 A. Or the ethics board.

19 Q. With respect to getting permission or  
20 approval from the mayor or the CEO -- COO,  
21 Mr. Geisler --

22 A. Yes.

23 Q. -- is there a rule that you can point to  
24 that would require such approval?

25 A. Yes. There's a form that we have to sign

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1       found ourselves having a conversation about his  
2       employment or not or suspension or not. You know,  
3       people were -- were sad.

4           Q.     Now, tell me a bit about the investigation  
5       that was prompted by all this. When did that begin?

6           A.     We communicated to Mr. Cochran in his  
7       suspension meeting that there would be an  
8       investigation into potential Title 7 issues.

9           Q.     That was later the same day?

10          A.     Yes. Mr. Godfrey, Bob Godfrey, who's in  
11       the law department, would be conducting that  
12       investigation. Mr. Cochran was aware of that. In  
13       that meeting we explained that Mr. Cochran -- would  
14       give Mr. Cochran an opportunity to respond to  
15       anything that came up in the investigation, and that  
16       we would keep him apprised of the investigation.

17          Q.     During that suspension meeting, who was  
18       there?

19          A.     The chief of staff, Candace Byrd, because  
20       the COO was not available, Mr. Cochran, and  
21       Mr. Godfrey from the law department, and myself.

22          Q.     And where did that take place?

23          A.     In my office.

24          Q.     So you asked Chief Cochran to come to your  
25       office?

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1           A.     Yes.

2           Q.     And then what happened next?

3           A.     We asked him to come to the office. We  
4     explained that we were having this meeting because of  
5     our notification of the book, and the fact that we  
6     were unable to find any documentation where he in  
7     fact received permission to write the book.

8                 We asked Mr. Cochran if he had in fact  
9     gotten permission to write the book from the mayor or  
10    the COO. His answer was no. We explained that the  
11    book itself was an issue because the City is  
12    referenced in the book. His leadership of the  
13    department, of the fire department was referenced in  
14    the book. That at that juncture, we had not found  
15    anything that indicated he had received permission  
16    from his manager or the ethics board.

17               He said that he had spoken with Nina  
18    Hickson, and they'd had a conversation that perhaps  
19    Nina was misunderstanding; she was confused. We  
20    explained that at this point we had not gotten that  
21    same data point from Ms. Hickson.

22               That we were going to be suspending him  
23    without pay for 30 days. That we would again follow  
24    up with Ms. Hickson. We would give him an  
25    opportunity to respond to what she said. That we'd

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1 do the Title 7 investigation. We'd give him an  
2 opportunity to respond to the investigation.

3 That our hope was that over the 30-day  
4 period of time that we'd be able to resolve this  
5 entire matter; that he'd return to work on the date  
6 of January 6th. I talked about the diversity  
7 training that would happen when he returned to work;  
8 that that would be a part of the expectation for him  
9 to return to work.

10 Mr. Cochran puts people on suspension, and  
11 so we referenced the process when you're on  
12 suspension you don't discuss the suspension. We  
13 talked about returning his vehicle and, you know, his  
14 badge, et cetera, the things that you have as an  
15 employee. We talked about how he would get back  
16 home.

17 We talked about naming Joel Baker as the  
18 interim chief. He was fine with that choice. I  
19 mean, he wasn't fine with being suspended, but he was  
20 fine in the lieu of that that Joel Baker was an  
21 appropriate person to name to be the interim chief.  
22 We explained that we would not be commenting on this  
23 employment matter, and that per our process we  
24 expected him not to comment on this employment  
25 matter.

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1 going through the process that's clearly articulated  
2 in the City code and the basic employment  
3 expectation. Which frankly, was disappointing and  
4 upsetting because he's a credentialed, successful,  
5 accomplished leader who knows how to follow the  
6 process. He upheld the process for others, but he  
7 did not find it appropriate and applicable to  
8 himself, and that is a problem.

9 Q. So the content of the book was relevant  
10 because that's what you thought could possibly lead  
11 to a situation where you had some kind of hostile  
12 work environment problem, right?

13 A. Or a Title 7 issue, yes, that is correct.

14 Q. Now, if a book doesn't have any content  
15 that might lead to, in your view, a Title 7 issue,  
16 and isn't published for remuneration, is not done for  
17 profit, is not sold, and does not convey the  
18 impression of endorsement by the City, would you be  
19 able to discipline, in your view, an employee for  
20 such a book?

21 A. If they did not follow the process to get  
22 approval to write said book, absolutely.

23 Q. So you need to get approval for any book  
24 whatsoever?

25 A. Absolutely. You have to get approval for

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1           A.     Yes.

2           Q.     And what did you use the copy of the book  
3     for at the meeting?

4           A.     I just had it. It was the copy that I  
5     bought that Thursday.

6           Q.     Did you talk about any sections of the  
7     book with Chief Cochran at that meeting?

8           A.     No, but I did ask him -- not that I can  
9     recall, no. We did ask him did he get permission to  
10    write the book. The issue at the meeting was who  
11    gave you permission to write this book; and the  
12    answer was Ms. Hickson had, Mr. Cochran said.

13          Q.     Did you have any discussion at that  
14    meeting about the content of the book regarding  
15    homosexuality or sexuality?

16          A.     We discussed religion, women, and the  
17    LGBTQ issues that are raised in the book  
18    specifically, and the need for a Title 7  
19    investigation that Bob Godfrey from the law  
20    department would lead; and that Mr. Cochran would  
21    have the opportunity to respond to anything that come  
22    up -- that came up in that investigation, because we  
23    explained that we had to do an investigation to  
24    ensure and to document that he had not in fact  
25    treated anyone differently because of the beliefs he

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1 espoused in the book.

2 Q. So again, list for me just one more time  
3 the areas of content that you discussed that led to  
4 that conclusion that there should be an  
5 investigation.

6 MR. GEVERTZ: Object to the form.

7 THE WITNESS: The references in the  
8 book concerning the role of women, the  
9 reference in the book concerning the role  
10 of -- or what would happen if you were not  
11 a believer in Christ, so Jewish people and  
12 people of other faiths who don't believe in  
13 Christ. The reference in the book around  
14 LGBTQ community. The reference in the book  
15 around how he articulated Christianity from  
16 his viewpoint, how there are many views of  
17 Christianity and many denominations in the  
18 Christian faith. And so those things all  
19 are covered under Title 7.

20 And you can have a viewpoint, but we  
21 have to make sure that you're not managing  
22 to that viewpoint. And since the book  
23 includes a reference where you talk about  
24 how you lead to create a culture and  
25 cultivate the culture of God, then we're

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1           an e-mail this morning that I responded to  
2           from a citizen about a concern about an  
3           employee. My response to that was to  
4           include the law department and to say,  
5           gosh, how should we proceed and look at  
6           this matter. We have to address this  
7           particular issue.

8       BY MR. WARDLOW:

9           Q.     So --

10          A.    And so as an employer when you're notified  
11       by someone, you're on notice under the EEOC. The  
12       clock starts around potential damages and fines,  
13       et cetera, and so you have to respond not just in a  
14       timely way, but in a complete way.

15               And in this matter because the issue that  
16       was raised was specifically around potential faith,  
17       religion, gender, you know, sexual orientation, et  
18       cetera, it was highly relevant to include the law  
19       department and, frankly, for them to lead it because  
20       Title 7 is under their umbrella as well.

21          Q.    So generally hostile work environment  
22       investigation comes -- begins because of a complaint;  
23       is that fair?

24          A.    It can begin because of a complaint. It  
25       can begin because of an observation someone makes, or

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1           a suspension, that he is familiar with  
2           because he put people on suspension, and  
3           then talks about not just the suspension  
4           itself, which is against our process and  
5           policy, and was communicated to him at the  
6           time, and he knows because he does it.

7                 But to suggest that the City was  
8           impugning upon his freedom of religion and  
9           that he was in this trial by God because of  
10           how he espoused his views was just -- not  
11           just offensive, but false.

12               And so we found ourselves explaining  
13           that to people continuously when we  
14           shouldn't have had to talk about it at all.  
15           And the mayor didn't talk about it at all,  
16           frankly. And so Mr. Cochran talking and  
17           Mr. Cochran going down this narrative,  
18           which is mythology that he could not have a  
19           viewpoint or a religious perspective or be  
20           a man of faith in the workplace is false.  
21           And I suspect that's why the mayor wanted  
22           to terminate him.

23       BY MR. WARDLOW:

24       Q.       Did you have conversations with the mayor  
25       about the reasons for the termination?

**Defendant's Brief in Support of Their Motion for Summary Judgment**

Exhibit H  
Deposition Transcript of  
Candace Byrd  
(relevant portions attached)

**KELVIN J. COCHRAN vs. CITY OF ATLANTA, ET AL.  
Candace L. Byrd on 02/23/2017**

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

KELVIN J. COCHRAN, )  
                        )  
                        )  
Plaintiff,         )  
                        )  
                        ) CIVIL ACTION FILE  
vs.                 )  
                        )  
                        ) NO. 1:15-cv-00477-LMM  
CITY OF ATLANTA, GEORGIA; )  
and MAYOR KASIM REED, IN )  
HIS INDIVIDUAL CAPACITY, )  
                        )  
                        )  
Defendants.         )

VIDEOTAPED DEPOSITION OF  
CANDACE L. BYRD

FEBRUARY 23, 2017  
11:39 A.M.

BAKER DONELSON BEARMAN CALDWELL & BERKOWITZ, P.C.  
MONARCH PLAZA, SUITE 1600  
3414 PEACHTREE ROAD, N.E.  
ATLANTA, GEORGIA

(TRANSCRIPT CONTAINS CONFIDENTIAL PORTION)  
PAGE 80, LINE 4 TO PAGE 83, LINE 14

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1           couple, so I don't know -- it wasn't a  
2           meeting spot, so I don't know. I don't  
3           remember.

4     BY MR. CONNELLY:

5       Q.     Do you remember what Ms. Yancy said to you  
6     about her concerns regarding the book?

7       A.     Again, specifically that there was this  
8     book, that someone had brought it to her attention,  
9     that she didn't know about the book and that we  
10    needed to find out whether there was approval for the  
11    book. She wasn't aware that we had gotten it. That  
12    didn't say whether he had or he hadn't, but at the  
13    time, we didn't know. And so those were the concerns  
14    that she had about the book. So --

15      Q.     Can you talk to me about what Mr. Geisler  
16    said?

17      A.     I don't recall.

18      Q.     How about Ms. Mullinax?

19      A.     I don't recall either.

20      Q.     Do you recall what you said about the book  
21    or Chief Cochran or the situation?

22      A.     I don't specifically. I know that we  
23    were -- I was shocked that there was a book. And  
24    again, we were talking about the approval of the book  
25    and that nobody knew about the approval of the book,

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1 and I think that was what I recall discussing.

2 Q. Do you recall once you found out about the  
3 book -- and it sounds like you don't recall exactly  
4 when this discussion or whether there were a number  
5 of discussions -- do you recall ever speaking to the  
6 mayor about Chief Cochran or the book, this issue,  
7 during that time between November 20th and the 24th?

8 A. Yes, we -- excuse me. Yes, we talked  
9 about the book and, again, that Chief Cochran had  
10 written a book. I didn't know about it. He didn't  
11 know about it. And that Commissioner Yancy had  
12 happened upon or someone had brought the book to  
13 Commissioner Yancy.

14 Q. Do you recall if Commissioner Yancy told  
15 you who brought her the book?

16 A. I do not recall, no.

17 Q. In those discussions with the mayor, what  
18 did he say to you about the book? What were his  
19 concerns?

20 A. Well, I don't know if he had seen the  
21 book, so what he wanted to do was to do an  
22 investigation about the writing of the book. And so  
23 he didn't want to pass judgment on anything or make  
24 any hasty decisions about anything at that point.  
25 And so I think that was, if I recall correctly, what

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**Candace L. Byrd on 02/23/2017**

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1 could continue -- well, Chief Cochran could continue  
2 to lead the department based on what was written in  
3 the book. And so we were putting him on a 30-day  
4 suspension without pay, and then that would -- after  
5 the 30 days, he would come back. I think he would be  
6 reinstated after the 30-day period.

7                   My responsibility was to talk about the  
8 fact that we wanted him to remain quiet during this  
9 30-day period and not talk about the facts  
10 surrounding his suspension and just to be on a 30-day  
11 suspension without pay.

12                 Q. You mentioned that a couple of times. Why  
13 was the suspension without pay?

14                 A. Because basically that's a vacation. If  
15 I'm going to be suspended and get paid, I'm basically  
16 off for 30 days with pay. And so we were doing an  
17 investigation, and the suspension, again, was for the  
18 30 days. And that pretty much, I believe, was the  
19 content or the conversation of the meeting.

20                 Q. And you said just a second ago you were  
21 doing an investigation, so I'm assuming, again,  
22 correct me if I'm wrong, that that would mean the  
23 investigation hadn't been concluded?

24                 A. I don't know who actually concluded the  
25 investigation. I would say they were still

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**Candace L. Byrd on 02/23/2017**

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1           A.     To remain quiet and not to talk about the  
2 events surrounding his suspension and to be on  
3 suspension for 30 days.

4           Q.     What's the normal protocol when an  
5 employee is suspended regarding communications like  
6 that?

7                   MR. GEVERTZ: Object to the form.

8                   THE WITNESS: I don't -- I don't  
9 really know in the sense of when -- people  
10 get suspended for any number of things, and  
11 in my seven years being here, I've not  
12 known of an employee to write a book. And  
13 so you're talking about in terms of those  
14 communications, I don't -- I don't know.  
15 So it's not our -- a routine kind of  
16 suspension as far as I'm concerned.

17 BY MR. CONNELLY:

18           Q.     So you said that you gave that admonition?

19           A.     I did.

20           Q.     Did you come up with that admonition, or  
21 did somebody say "We need to do this, Candace, please  
22 do this"?

23           A.     I believe the mayor said this is what we  
24 need to do while we are going to have this  
25 suspension, and just to, again, be on suspension for

**KELVIN J. COCHRAN vs. CITY OF ATLANTA, ET AL.**  
**Candace L. Byrd on 02/23/2017**

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1       30 days and not to talk about the nature of the  
2 suspension and the employment. We don't typically  
3 talk about employment matters to the media either.  
4 Those are employment matters, and we reserve comments  
5 surrounding suspensions or terminations or anything  
6 else.

7           Q.     Did the City communicate the facts or the  
8 circumstances or the existence of the suspension in  
9 this case?

10           MR. GEVERTZ: Object to the form.

11           THE WITNESS: When you mean "the  
12 City," who do you mean?

13 BY MR. CONNELLY:

14           Q.     Well, I think you just said that it's not  
15 normal for the City to talk about suspensions --

16           A.     Right.

17           Q.     -- in the normal course.

18           Did the City or any official statement  
19 emanate from the communications department regarding  
20 Chief Cochran's suspension?

21           A.     I don't recall if it was an outward or an  
22 external communication. I believe that I sent an  
23 e-mail, I believe, to members of council, to members  
24 of city council and the council president.

25           Q.     And what did that e-mail say? Do you

**Defendant's Brief in Support of Their Motion for Summary Judgment**

## Exhibit I

# GBC Mission Board Petition

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## Help Us Defend Religious Liberty!

### NEWS UPDATE 1-30-2015



Advocate of Georgia's Religious Liberty Legislation by J. Gerald Harris,  
By J. Gerald Harris, Editor of The Christian Index – [download the PDF](#)

### NEWS UPDATE 1-13-2015

The petition is being delivered to Mayor's Reed office on January 13th; however if you would like to continue to voice your support for former Fire Chief Kelvin Cochran, the online petition will remain open.

Please enlist as many churches and believers as possible to express these concerns to Mayor Reed:

**Mayor Kasim Reed**  
404-330-6100  
55 Trinity Ave, Suite 2500, Atlanta, GA 30303  
[mkreed@atlantaga.gov](mailto:mkreed@atlantaga.gov)

## Additional Resources:

- Statement on firing of Atlanta Fire Chief Kelvin Cochran 1-7-2015- [download the PDF](#)
- Read the Full story in [The Christian Index](#).
- GBC News Press Release 12-15-2014 – [download the PDF](#)
- Purchase Chief Cochran's book "Who Told You That You Were Naked?" on [3G Publishing, Inc.](#)
- For more information contact [Mike Griffin](#) at the Georgia Baptist Convention (706) 436-2646.

### NEWS UPDATE 1-11-2015

## Standing for Our Faith Rally



Kelvin Cochran

On Tuesday, January 13 come to the Georgia State Capitol and stand with Christians from around our state!

The unjust firing of Chief Kelvin Cochran by Atlanta Mayor Kasim Reed has awakened believers from around our state and nation to the reality of Christian discrimination in the workplace.

Now is the time for all Bible-believing Christians to show their support for Chief Cochran's courage and for our First Amendment rights as American citizens!

Come stand for your faith and against anti-Christian bigotry with Chief Kelvin Cochran, pastors, church leaders and Christians. We will conclude our time together by walking to City Hall for a time of prayer.

**What: Standing for Our Faith Rally**

**When: Tuesday, January 13, 1:30-2:30 p.m.**

**Where: Georgia Capitol Rotunda**

**Who: Public Invited**

**Organized by Concerned Pastors:**

Garland Hunt, [garlandhunt1@gmail.com](mailto:garlandhunt1@gmail.com)

Mike Griffin, [mgrieff@gabaptist.org](mailto:mgrieff@gabaptist.org)

## Sign the Petition:

The Georgia Baptist Convention (GBC) is calling on the Christian community to "stand up for biblical principles and fellow believers who are punished or marginalized for their faith."

In response to Atlanta Fire Chief Kelvin Cochran's original suspension, and now termination by Mayor Kasim Reed, the GBC's Public Affairs Committee is continuing the petition started last month. The committee has issued its own statement defending the Fire Chief and is calling on Reed to:

- Acknowledge Chief Cochran's First Amendment Rights.
- Make a public apology for the termination and grief it has caused the Chief and his family.
- Restore Chief Cochran's position and reputation as an honorable Fire Chief.

GBC is requesting Christians and people of faith across the nation to sign the related petition (right) calling upon Mayor Reed to reverse his decision as outlined in the three areas listed above.

[emailpetition id="1"]

### How to Contact:

Address:

**Georgia Baptist Mission Board**

**Missions & Ministry Center**

6405 Sugarloaf Parkway

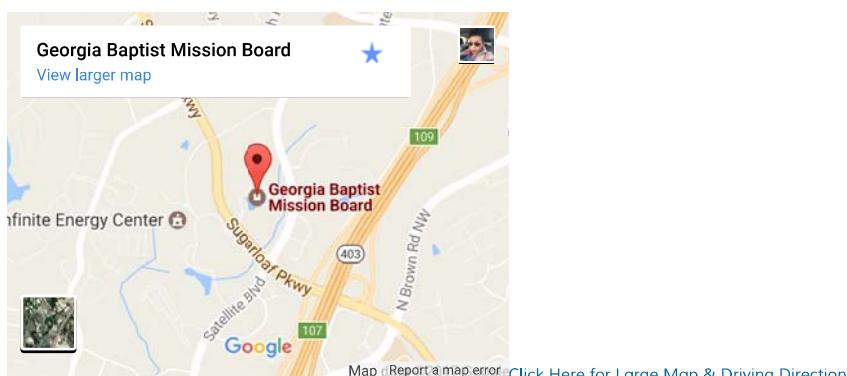
Duluth, GA 30097-4092

Phone: 770-455-0404

Toll Free: 800-746-4422

[Contact Form](#)

### Our Location:



**Defendant's Brief in Support of Their Motion for Summary Judgment**

## Exhibit J

# 12.15.14 Georgia Baptist Convention Press Release



**Georgia Baptist Convention**  
6405 Sugarloaf Parkway  
Duluth, GA 30097

## **Georgia Baptist Convention Defends Religious Liberty, Calls on Atlanta Mayor to Reverse Discipline of Atlanta Fire Chief**

**DULUTH, Dec. 15, 2014** — The [Georgia Baptist Convention](#) (GBC) is calling on the Christian community to “stand up for biblical principles and fellow believers who are punished or marginalized for their faith.”

The Duluth agency, which represents 1.4-million members statewide, felt called to respond to the recent 30-day suspension of Atlanta Fire Chief Kelvin Cochran by Mayor Kasim Reed. The statement was issued by the GBC’s Public Affairs Committee on Dec. 9.

Cochran, on his own time and reflecting his personal religious convictions, penned a small self-published book for members of his church titled “Who Told You That You Were Naked?” The paperback drew the attention of the LGBT community for its stand on traditional marriage and sexual immorality.

Reed responded to the book’s statement, and the concern of the LGBT community, by suspending Cochran without pay, requiring him to attend sensitivity training, and prohibiting the distribution of the book on city property. His reprimand was released on [Facebook](#) where he immediately distanced himself from the Fire Chief’s book.

“I want to be clear that the material in Chief Cochran’s book is not representative of my personal beliefs, and is inconsistent with the Administration’s work to make Atlanta a more welcoming city for all of her citizens – regardless of their... religious beliefs,” according to the site.

No mention is made that Cochran’s statements are taken from Galatians 5:19-21 and includes definitions of, and warnings about promiscuity, idolatry, jealousy, hatred, strife, envy, dissensions, heresies, murder and drunkenness; among others.

Cochran wrote the faith-based book for men in his church as part of an ongoing Bible study that focused on sin and redemption through Jesus Christ. His opening acknowledgement states, “...my life is a testimony of the struggle with condemnation and how a man can grow from strength to strength, through diligent pursuit of fulfilling God’s purpose for his life through the Word of God.” He is a member of Elizabeth Baptist Church, which is affiliated with the Georgia Baptist Convention and the Southern Baptist Convention.

~ more ~





**Georgia Baptist Convention**  
6405 Sugarloaf Parkway  
Duluth, GA 30097

Upon learning of the punishment placed upon Cochran, the GBC's committee responded by issuing its own statement defending the Fire Chief and calling on Reed to:

- Acknowledge Chief Cochran's First Amendment Rights,
- Make a public apology for the suspension and grief it has caused the Chief and his family, and
- Restore Chief Cochran's pay and reputation as an honorable Fire Chief.

"It is time for believers to stand up for their religious beliefs, biblical principles and fellow Christians who are punished or marginalized for their faith," said Dr. J. Robert White, executive director, Georgia Baptist Convention. "GBC's Public Affairs Committee's statement is a call to action for all fellow believers to take a stand."

The statement further calls upon Christians and people of faith across Georgia to sign the related [petition](#) on the Georgia Baptist Convention website, support Chief Cochran by purchasing his book on [Amazon](#), and enlist as many churches and believers as possible to contact Mayor Reed to request that he reverse his decisions.

The Mayor can be contacted by email at [mkreed@atlantaga.gov](mailto:mkreed@atlantaga.gov), by phone at (404) 330-6100, or by mail at 55 Trinity Ave. Suite 2500, Atlanta, GA 30303.

## About Georgia Baptist Convention

The Georgia Baptist Convention is made up of autonomous, cooperating churches that partner together through the [Cooperative Program](#), special mission offerings and [mission efforts](#) to share Jesus Christ across Georgia, throughout North America, and around the world. Churches give through the [Cooperative Program](#) and the [State Missions Offering](#) to support the missionaries and ministries of the Georgia Baptist Convention. In turn, Georgia state missionaries provide assistance, training, encouragement, and support for the ministries of Georgia Baptist churches and associations. Churches are affiliated with the [Southern Baptist Convention](#) through their affiliation with the Georgia Baptist Convention. [www.gabaptist.org](http://www.gabaptist.org)

## Contact

Mike Griffin  
Public Affairs Spokesman  
706-436-2646  
[mgriffin@gabaptist.org](mailto:mgriffin@gabaptist.org)

Mark Strange  
Communications  
770-936-5233  
[mstrange@gabaptist.org](mailto:mstrange@gabaptist.org)



**Defendant's Brief in Support of Their Motion for Summary Judgment**

# Exhibit K

08.02.12 S. Deaderick Email to  
K. Cochran

**From:** Stephen Deaderick [mailto:[stephen.deaderick@gmail.com](mailto:stephen.deaderick@gmail.com)]  
**Sent:** Thursday, August 02, 2012 12:25 AM  
**To:** Cochran, Kelvin  
**Subject:** Facebook Picture Concern

Chief Cochran,

First, let me say thank you for all that you and your team do for the city of Atlanta. I just came across a picture on facebook that disturbed me and I felt the need to share it with someone. If you are not the appropriate person, please let me know where I should direct this. It is attached. It is not the fact that a squad chose to patronize Chick-Fil-A today that bothers me, I think that everyone should have the right to eat where they please and spend their money as they please. It is the comment to the side by Joey Shoemaker "Glad to see y'all fags are not to bitter" that makes me uncomfortable. By clicking on his profile I could see that he was also a firefighter for the city of Atlanta. The part that makes me most uncomfortable with this is that he could potentially be saving the lives of people who may identify as gay, lesbian, or bisexual. The clearly homophobic language that he uses does not necessarily mean that he is bigoted or that you are not teaching an appreciation of diversity in your office, but I must question whether or not your staff receives appropriate training when it comes to working with and working for a diverse community. I would personally be uncomfortable if this person were to come into my home using language like that. I don't want to bring this to your attention to criticize you or your office or diminish the work that you do, I simply want to make you aware of it so that it could potentially be a learning moment and something educational can come out of it. This picture is in a public place and I know the comment that was made is not reflective of the values that you and your department stand for.

Thank you for your time,  
Stephen Deaderick

**Defendant's Brief in Support of Their Motion for Summary Judgment**

# Exhibit L

## Deposition Transcript of Robin Shahar (relevant portions attached)

**KELVIN J. COCHRAN vs. CITY OF ATLANTA, ET AL.**  
Robin Joy Shahar on 02/22/2017

Page 21

1 half of your job duties, which begin on page 114  
2 there on the revised -- on the LGBT side. You said  
3 the mayor asked you at some point to become his LGBT  
4 advisor. How did that happen; do you recall?

5 A. I believe he contacted me by phone --

6 Q. Okay.

7 A. -- and asked me to serve in that position.

8 Q. Do you recall when that was?

9 A. If you have a date when I took that  
10 position, that's when it occurred right then.

11 Q. No. I was just asking actually.

12 When he called you on the phone, do you  
13 recall why? Did he say why he wanted to create the  
14 position?

15 A. I don't believe he said why he wanted to  
16 create the position.

17 Q. Did you have an opinion or a sense as to  
18 why he would want to create that position?

19 A. I mean, other than the obvious that this  
20 was -- that -- I think that the mayor -- in my  
21 experience, the mayor takes pride in the City of  
22 Atlanta being a welcoming city, being a diverse city.  
23 He takes a lot of pride in our civil rights history,  
24 and he wants to be certain that our city continues to  
25 be a welcoming place where people are treated without

**KELVIN J. COCHRAN vs. CITY OF ATLANTA, ET AL.**  
Robin Joy Shahar on 02/22/2017

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1 BY MR. CONNELLY:

2 Q. Well, I guess what I -- let's move a  
3 little bit back to the meeting then. You said there  
4 was a group discussion, I think, that you had your  
5 personal view when you read the material --

6 A. Uh-huh.

7 Q. -- and then what were the ideas or beliefs  
8 expressed in the book that you found personally  
9 offensive?

10 A. I did.

11 Q. Were those --

12 A. I would say frightening and offensive.

13 Q. Were those -- did anyone else discuss  
14 those in the meeting?

15 A. The contents of the book?

16 Q. Yes.

17 A. Within the context of his role as leader  
18 of the fire department, yes.

19 Q. Can you break that down for me? In other  
20 words, people said what, if you can recall? Who said  
21 what, or give me an example?

22 A. People -- some people in the room were  
23 concerned that the City must abide by  
24 nondiscrimination laws, and that publishing this book  
25 with the statements that are in it, including Chief

**KELVIN J. COCHRAN vs. CITY OF ATLANTA, ET AL.**  
Robin Joy Shahar on 02/22/2017

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1 Cochran identifying himself as the chief of the fire  
2 department, including putting in there what his  
3 responsibilities were as fire chief, and then  
4 defining the way that he did what it meant to bring  
5 the glory of God, what that meant, that that as a  
6 package was troubling.

7 Q. Did anyone in that room express an opinion  
8 that was different from yours?

9 A. Expressed lots of opinion.

10 Q. Do you recall any opinions about the LGBT?

11 A. Oh, about the LGBT community?

12 Q. About the book and relating to the  
13 comments that you found to be offensive with regard,  
14 or problematic with regard to the LGBT community.

15 A. I was not focused on LGBT comments in that  
16 meeting. Like I said, I was focused on a collective  
17 group of facts that talked about who Chief Cochran  
18 would be as the leader of a department. And frankly,  
19 under federal law, I was more concerned about  
20 religion and gender, so I'm not sure what your  
21 question is.

22 Q. Well, let's pass on that for a second.

23 So the book itself, okay, you said there  
24 were a core of problems with it, right? What -- and  
25 you said one of your main -- one of your first

**KELVIN J. COCHRAN vs. CITY OF ATLANTA, ET AL.**  
Robin Joy Shahar on 02/22/2017

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1 BY MR. CONNELLY:

2 Q. The court reporter has handed you what's  
3 been marked as Plaintiff's Exhibit 63. Do you  
4 recognize that e-mail?

5 A. Yes.

6 Q. We talked a little bit I think about when  
7 we broke down your job responsibilities on the  
8 advisor side about attending meetings and events.  
9 This appears to be that type of situation. The  
10 subject line is "Human Rights Campaign Gala, can you  
11 attend." It's an e-mail from you to Joel Baker. Do  
12 you recall sending this e-mail to Chief Baker?

13 A. Yes.

14 Q. What was your involvement in this gala?

15 A. The mayor purchased a table of ten seats  
16 and tasked me with filling it.

17 Q. How did -- did he purchase it in his  
18 personal capacity? His official capacity?

19 A. I think his campaign purchases it.

20 Q. Okay.

21 A. It never -- I was never part of the -- it  
22 was not the City, and I was never part of the payment  
23 process.

24 Q. Okay.

25 A. I was purely part of finding it, inviting

**Defendant's Brief in Support of Their Motion for Summary Judgment**

## Exhibit M

# Nina Hickson Declaration and its Exhibits A-C

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

**KELVIN J. COCHRAN,**

Plaintiff,

v.

Case No. 1:15-cv-00477-LMM

**CITY OF ATLANTA, GEORGIA;  
and MAYOR KASIM REED, IN HIS  
INDIVIDUAL CAPACITY,**

Defendants.

**DECLARATION OF NINA HICKSON**

1. My name is Nina Hickson. I was the Ethics Officer for the City of Atlanta from approximately June 2012 until April 2016. I am submitting this declaration to provide information about which I was not asked during my deposition in this matter.
2. Unless otherwise stated, the facts stated in this Declaration are within my personal knowledge. I am over the age of eighteen (18) and competent to testify to the matters set forth in this Declaration. I understand that this Declaration may be used for any purpose permitted by law.
3. As Ethics Officer, I am familiar with the forms the Ethics Office used for employees to disclose various types of required information. A true and correct copy of one of those forms, titled "Request for Permission to Perform Outside Employment," is attached hereto as **Exhibit A**. During my tenure, this form was completed by City employees and submitted to their department head for approval prior to accepting paid outside employment. The second page of this form contains several excerpts of the City Code that apply to these types of requests, to assist employees and their department heads in reviewing proposed outside employment for potential conflicts of interest or other risks that the work might interfere with an employee's City job responsibilities.
4. The Ethics Office also provides written guidance regarding how to comply with the City's ethical requirements on its website. Attached as **Exhibit B** is a true and correct copy of one such guidance titled "Ethical Standards for City Employees." It provides several examples of the type of outside employment typically prohibited under the Code of Ethics. See Exhibit B, at 1. This document was on the Ethics Office website and available to all City employees during my tenure.

5. In my role, I reviewed all requests for outside employment submitted to the Board of Ethics by employees pursuant to Sec. 2-820(d) of the City's Code of Ethics. I was responsible for assessing each request and then making a recommendation to the Board of Ethics on whether it should be approved or denied. Additionally, I was responsible for providing training to the Board of Ethics about the factors it should consider when reviewing each request and my recommendations.
6. In making these recommendations, my sole considerations were the extent to which the outside employment opportunity could create a conflict of interest for the employee with respect to his/her City employment, and the extent to which it might otherwise interfere with or impede the employee in carrying out his/her City job responsibilities. I also advised the Board of Ethics to focus on these considerations when reviewing each request.
7. Attached as **Exhibit C** are true and correct copies of documents reflecting requests for outside employment submitted to the Board of Ethics between 2008-2016. These records were made in the normal course of the Ethics Office's regularly conducted business activity. They were created at or near the time of the matters reflected therein, and were created by those with knowledge of the information they contain. It is a part of the Ethics Office's regularly conducted business activity to make and keep these records. In light of my former position as Ethics Officer, I am well acquainted with these records and the process for preparing and maintaining them.
8. The first outside business request attached within Exhibit C is the request submitted by Kelvin Cochran in March 2008. The level of detail which Cochran provided regarding the outside employment in which he wanted to engage is reflective of the detail typically provided by employees and required for approval.

I have given this Declaration voluntarily. No threats or promises of any kind have been made to me, nor have I received any benefits or promise of a benefit in exchange for providing this Declaration. I have read and edited this Declaration to the extent necessary to make it accurate and complete. Nothing has been left out of these statements that I feel should have been included in order to make them more accurate and/or complete.

I declare under penalty of perjury that the foregoing is true and correct. (28 U.S.C. § 1746). Executed on April 26, 2017, in Atlanta, Georgia.



Nina R. Hickson  
Nina Hickson, Esq.

**Defendant's Brief in Support of Their Motion for Summary Judgment**

Ex. A  
to Hickson Declaration



**City of Atlanta Board of Ethics  
Thursday, March 20, 2008, 6 p.m.  
City Council Committee Room 2**

---

COA-Cochran 001616

**AGENDA**

Tab 1 MINUTES

Tab 2 AWARDS CEREMONY

**FINANCIAL DISCLOSURE**

Tab 3 Report on timely, late, and reasonable cause filers and non-filers

Tab 4 Roll of Delinquent Filers and recommended penalties

**FORMAL ADVISORY OPINIONS**

Tab 5 Proposed Formal Advisory Opinion 2008-3 on gifts of travel from prohibited sources to the City (recommend adoption)

Tab 6 Proposed Formal Advisory Opinion 2008-4 on use of city property for election campaigns for city pensions boards (recommend adoption)

Tab 7 **REQUEST FOR OUTSIDE EMPLOYMENT**

- Kelvin Cochran, Fire Chief (recommend approval)

Tab 8 ETHICS OFFICER'S REPORT

Tab 9 RECOGNITION OF JACQUEE MINOR'S SERVICE

**PUBLIC COMMENTS**

**ANNOUNCEMENTS**

**Next Meetings**

- April 17, 2008 - Advice Committee
- April 24, 2008 – Complaints Committee
- May 15, 2008 – Regular monthly meeting & Operations Committee



Name of Department or Agency \_\_\_\_\_

**Request for Permission to Perform Outside Employment**

(Please type or print)

**Part I: Employee Information**

Name (print) \_\_\_\_\_ Employee ID \_\_\_\_\_

Job Classification \_\_\_\_\_ Bureau/Division \_\_\_\_\_

**Part 2: No Outside Job** (to be completed by employees who are not engaged in outside employment)

**I am not employed in any outside employment at this time and understand that I must file a written request with my department head before performing outside employment.**

Signature of Employee \_\_\_\_\_ Date \_\_\_\_\_

**Part 3: Outside Job** (to be completed by employees who seek permission to perform an outside job) 

Name of Employer \_\_\_\_\_ Supervisor \_\_\_\_\_

Business Address \_\_\_\_\_

Telephone \_\_\_\_\_ Type of Business \_\_\_\_\_

Duties \_\_\_\_\_  
\_\_\_\_\_

Days/Dates of work \_\_\_\_\_ Hours per week \_\_\_\_\_

Daily start/end time \_\_\_\_\_ / \_\_\_\_\_ Length of job \_\_\_\_\_ indefinitely # \_\_\_\_\_ weeks # \_\_\_\_\_ months

Location where you will work \_\_\_\_\_

**I have reviewed the City of Atlanta's policies on outside employment on page 2 and agree that my outside job will not interfere with the performance of my official duties, involve a conflict of interest, or involve the use of city records or equipment. I understand that my department head has the right to approve or deny this request.**

Signature of Employee \_\_\_\_\_ Date \_\_\_\_\_

**Part 4: APPROVED BY (if denied, attach reasons & include relevant section number from back):**

Approved  Denied \_\_\_\_\_  
Immediate Supervisor \_\_\_\_\_ Date \_\_\_\_\_

Approved  Denied \_\_\_\_\_  
Bureau Director or Division Head \_\_\_\_\_ Date \_\_\_\_\_

Approved  Denied \_\_\_\_\_  
Department Head \_\_\_\_\_ Date \_\_\_\_\_

**Defendant's Brief in Support of Their Motion for Summary Judgment**

Ex. B  
to Hickson Declaration

**Sec. 114-436. Definitions and conditions.**

Outside employment shall constitute any paid employment of an employee which is in addition to such employee's employment with the city. As related to one's employment with the city, outside employment shall only be allowed under the following conditions:

- (1) Such employment shall not interfere with or affect the performance of the employee's duties.
- (2) Such employment shall not involve a conflict of interest or a conflict with the employee's duties.
- (3) Such employment shall not involve the performance of duties which the employee should perform as part of such employee's employment with the city.
- (4) Such employment shall not occur during the employee's regular or assigned working hours, unless the employee is on either annual leave, compensatory leave or leave without pay.
- (5) No employee engaging in outside employment shall work at such outside employment for a longer period of time than that stated in the employee's request for permission to engage in such employment.
- (6) Such employment shall be conditioned upon the employee's being relieved immediately for the return to and performance of the duties of such employee's employment with the city, if such employee should be called for emergency service.
- (7) Such employment shall not involve the use of records or equipment of the city. Police uniforms shall not be considered equipment in the meaning of this subsection.

**Sec. 2-811. Use of property & services.**

No official or employee shall request, use or permit the use of any publicly owned or publicly support property, vehicle, equipment, labor or service for the private advantage of such official or employee or any other person or private entity.

**Sec. 2-820. Incompatible interests.**

(a) No official or employee shall invest or hold any investment, directly or indirectly, in any financial, business, commercial or other private transaction, which creates a conflict with and adversely affects official duties of the official or employee to the detriment of the city.

(b) No official or employee shall engage in or accept private employment or render services for private interests when such employment or service is adverse to and incompatible with the proper discharge of official duties of the official or employee.

(c) No official or employee shall own stock in or be employed by or have any business, financial or professional connection with or ownership interest in any business, company or concern which does business with the city, unless such business with the city is conducted through sealed competitive bidding or requests for proposal where such bids are opened and the awards are made at meetings open to the public. . . . This section is not intended to apply to ownership of less than ten percent of any publicly traded stock.

(d) Commissioners, deputy commissioners, department heads, chief operating officer, deputy chief operating officers, chief of staff, deputy chiefs of staff, bureau directors, and employees of the office of the mayor who report directly to the mayor . . . may engage in private employment or render services for private interests only upon obtaining prior written approval from the board of ethics.

Form #HR226OJ

3/22/04

Original to Department, copy to employee

## Ethical Standards for City Employees

The City of Atlanta's Code of Ethics seeks to ensure that governmental decisions are made in the public's best interest by prohibiting city officials and employees from participating in matters that affect their personal or financial interests. By following the standards established in the code, employees help the City of Atlanta gain the full trust of its citizens as a government that conducts itself in an open, honest, and fair manner.

### **Persons Affected by the Ethics Code**

The ethics code applies to all city officials and employees. It covers persons who are elected or appointed, employed full-time or part-time, and paid or unpaid.

### **Conflicts of Interest**

A conflict of interest occurs when a city official or employee has a personal or financial interest or engages in an outside activity that is incompatible with the proper discharge of the employee's official duties or the individual's exercise of independent judgment or action.

Participation in contracts. City employees may not participate in any decision related to a contract or other matter in which they, their immediate family, or their business have a financial or personal interest in the matter. See § 2-812.

*Example:* The president of a city authority that handles economic development may not participate in any decision related to a real estate investment company that owns land within the city where a proposed multi-modal station would be located because his wife sits on the company's board of directors and owns a significant amount of stock in the company.

Private employment. City employees may not engage in private employment, including self-employment, or render services for private interests when the employment is adverse to and incompatible with the proper discharge of the employee's official duties. See § 2-820 (b).

*Example:* The city's fire marshal with oversight authority over fire safety inspectors and permits at public venues may not accept an extra job as an in-house fire marshal at one of those venues.

*Example:* An automotive technician supervisor who operates a private repair shop cannot purchase the city's surplus motorcycles at the city's public auction because he makes the initial recommendation about when the vehicles should be replaced rather than repaired.

Investments. No employee may hold any direct or indirect investment in any financial, business, commercial or other private transaction that adversely affects the individual's official duties to the city's detriment. See § 2-820 (a).

*Example:* A city council policy analyst may not own and participate in a company that provides city-mandated new and annual taxi driver training because it conflicts with, and

adversely affects, his official duties as policy analyst to the public safety committee with jurisdiction over vehicles for hire, a heavily regulated industry.

*Example:* The program manager in the Quality of Life Bond Project, which handles streetscapes and green space, may have an ownership interest in a landscape architect business that purchases a business license and seeks permits from the city, but engages in no other transactions with the city.

**Doing business with the city.** City employees may not have an ownership interest in a company that does business with the City of Atlanta unless the business is conducted through a sealed competitive bid process or a request for proposal awarded at a public meeting. This rule does not apply when an employee owns less than ten percent of any publicly traded stock. See § 2-820 (c).

*Example:* An assistant city solicitor operates a catering business. She may submit applications to serve as a food vendor for any city event or activity so long as she has no special knowledge about the bidding process other than information available to the general public and the contract is awarded through a competitive bid or publicly awarded request for proposal.

### **Gratuities**

City officials and employees may not accept gratuities, honoraria, or other things of value from a prohibited source.

**Prohibited source.** A prohibited source is any person, company, or entity that is doing business or seeking to do business with the city, is seeking official action from the city, has interests that could be substantially affected by the performance of the employee's official duties, or is registered as a lobbyist under state law. See § 2-801.

*Example:* A neighborhood civic association invites council staff to attend the association's annual meeting and accept an award in appreciation of their services. Because the association frequently seeks official action from the city and has interests that may be substantially affected by the performance of the staff member's official duties, it is a prohibited source.

**Gifts and things of value.** A city employee may not accept any gift from a prohibited source unless the gift falls within one of the exceptions to the definition of gratuity. There are exceptions for (1) awards, plaques, certificates, mementos, novelties, or similar items given in recognition of public service; (2) nominal gifts from representatives of other governments; (3) gifts from family members; and (4) gifts accepted on behalf of the city. See §§ 2-801, 2-817, 2-818.

*Example:* Elected officials and city employees participate in a walking challenge sponsored by Central Atlanta Progress in which the employees wear pedometers to keep track of the number of steps that they walk at City Hall. At the end of the contest, the participants may keep the pedometers as mementos given in recognition of their civic service in the walking campaign.

*Example:* The Department of Planning and Community Development may accept on behalf of the city a donation from the Metro Atlanta Chamber of Commerce to upgrade the computer system used in the building permit process.

Meals. Employees may accept reasonable meals and refreshments furnished in connection with their appearance in an official capacity at a public event, hospitality extended for a purpose unrelated to the city's official business, and meals in connection with certain travel. See § 2-801.

*Example:* A building inspector may attend a topping-off ceremony sponsored by a local builder, but may not accept the project manager's invitation to lunch.

*Example:* A city department may provide lunch for its employees as part of an all-day training session, but may not accept an offer from the private company providing the training to furnish lunch for all the city employees in attendance.

Travel. City employees may accept reasonable hosting expenses from non-city sources for travel, meals, and lodging provided in connection with teaching, a speaking engagement, participation on a professional or civic panel, or attendance at a conference in an official capacity. See §§ 2-801 & 2-815.

*Example:* The Department of Wastewater Management may accept a city contractor's offer to pay for engineers to attend a professional conference where they may view a demonstration of new electronic switching equipment proposed by the company for a city project, but may not accept travel expenses offered by the same contractor for engineers to tour the factory where the equipment is made and examine an installation similar to the one proposed for Atlanta.

Tickets. City officials and employees generally may not accept tickets to concerts, plays, athletic, or other entertainment events as a gift, except when performing an official duty at the event. See § 2-816.

*Example:* A police officer may not accept the Atlanta Hawk's offer of free tickets for his family to attend any basketball game during the season, but may accept tickets to a Hawks game given by American Red Cross as part of a national blood drive among law enforcement agencies.

*Example:* The City Council President may receive tickets to attend the National Basketball Association's 2003 All-Star Game in Atlanta in her official capacity as a member of the Host City delegation. However, she may not accept tickets from the Georgia World Congress Center to attend any game during the Southeastern Conference's annual basketball tournament since she performs no official duty at that event.

Honoraria. City employees may not accept personal honoraria from a prohibited source. See § 2-820 (f).

*Example:* A fire captain may not receive a personal honorarium for teaching a Community Emergency Response Training class to a local electric utility that does business with the city. Any payment for his appearance must go directly to the city's general fund.

Other Things of Value that May Be Accepted. Besides certain gifts, meals, and travel, the code excludes the following from the definition of a prohibited gratuity: salaries from another employer, campaign contributions, commercially reasonable loans, inheritances, and items of nominal, insignificant, or trivial value. See § 2-801.

### **Disclosure of Interests**

Disclosure of financial interests. The ethics code requires managers and employees involved in inspections, law, contract compliance, purchasing, procurement, finance, internal audit, and ethics to file a financial disclosure statement every year that they are employed with the city and for the year after they leave city employment. The statement requires disclosure of sources of income, real estate interests, business transactions with the city, and fiduciary positions. It does not require disclosure of amounts of income from any source or personal information, such as home addresses. Monetary penalties may be imposed for the failure to file a timely or complete statement. See § 2-814.

Disclosure of interest in pending decisions. When an employee knows or should know that he or she has a financial or personal interest in any proposal or decision pending before the employee or agency, the individual must publicly disclose the nature of that interest in writing on the official records of the agency, with a copy to the municipal clerk, and refrain from voting or participating in any way in the matter. See § 2-813.

*Example:* An employee in the Bureau of Buildings who gives final approval for building permits cannot review the architectural drawings or plans prepared by his spouse. After publicly disclosing his interest in the matter, he is disqualified from considering, discussing, or participating in the matter.

Other disclosure forms. City employees must also disclose travel expense reimbursements received from a prohibited source and gifts accepted on behalf of the City of Atlanta. See §§ 2-815, 2-818.

*Example:* A financial system auditor is invited to participate in a panel discussion at a national conference sponsored by a city software vendor. The vendor pays for the employee's airfare and, following her presentation, gives her a gift certificate for a city employee to attend a company seminar without charge. The employee must disclose receipt of the travel expenses on a travel reimbursement form that is filed with the Municipal Clerk and Ethics Office and receipt of the honorarium on the gift report form that is filed with the Ethics Office.

### **Other Ethics Provisions**

Use of Public Property. City employees may not use city property, vehicles, equipment, labor, or services for their own personal use or for the private advantage of any other person, unless the general public may use the property in the same way. City officials should restrict their use of city property to official city business. See § 2-811.

*Example:* An employee has a second job as a sales representative for a cosmetic company. She may not use her city e-mail account or her city cell phone to announce new products, solicit orders from customers, or place orders with the company.

**Defendant's Brief in Support of Their Motion for Summary Judgment**

Ex. C

to Hickson Declaration

*Example:* A city employee may reserve the Old City Council Chamber to honor a fellow employee who is retiring after 30 years because it is official city business, but must pay the normal fee charged the general public when reserving a city facility on behalf of a community group in her neighborhood.

*Example:* The Department of Corrections may not use its vehicles to escort union officials during an international convention of trade unionists or loan the cars to employees for their use while their personal vehicles are undergoing repair.

Confidential information. A city employee may not disclose any confidential information concerning the property, governing operations, policies, or affairs of the city or use the information acquired in an official capacity to advance any personal or financial interests. See § 2-819.

*Example:* An employee in the Department of Watershed Management operates his own plumbing business on the weekends. He may not use his work orders or other department records to solicit city residents as customers for his private business or to make referrals to other private plumbing companies.

Representation. City employees may not appear on behalf of private interests before any city agency and may not represent private interests in actions that conflict with the city's interests, in litigation where the city is involved, or in certain proceedings in city court or municipal court. See §§ 2-808, 2-809.

*Example:* A parks department employee who is also a landscape architect may not represent a homeowner client before the Urban Design Commission.

*Example:* A city planner cannot serve as a paid expert witness on behalf of a property owner who sues the City of Atlanta seeking to overturn a decision of the Board of Zoning Adjustment.

Solicitations. A city employee may not solicit anything calculated to influence a decision or the exercise of official authority. See § 2-818.

*Example:* An attorney in the law department serves on the planning committee for the American Bar Association's annual meeting. The attorney should not solicit funds for the conference from any lawyers or private law firms who are performing legal services for the city or seeking the city's legal work.

### **Restrictions for One Year After Leaving City Employment**

Representation after Separation from Employment. The city's "revolving door" policy limits the activities of former city employees for one year. It prohibits employees from appearing before any city agency or receiving compensation for any services in connection with any matter in which they were directly concerned, personally participated, actively considered, or acquired knowledge while working for the city. See § 2-810.

*Example:* A former administrative and budget analyst in the planning division of the Department of Aviation may not make any presentation or attend weekly construction meetings concerning any airport project of his new employer, an airport prime concessionaire, in the City of Atlanta for one year after leaving his city job.

*Example:* While employed with the City of Atlanta, an employee sat on the consultant selection panel that recommended the award of the contract for the Long-Term Waste Water Master Plan Project. She accepts a job offer to work for a private consulting firm that is a subcontractor of that project. Based on her direct role in evaluating the proposals, she is precluded from participating in the wastewater project with her new employer for one year.

### **Standards of Conduct**

This guide provides a summary of the significant provisions in the City's Code of Ethics. Employees are encouraged to review the specific language in sections 2-801 to 2-825 of the City's Code of Ordinances or contact the City's Ethics Office at [ethicsofficer@atlantaga.gov](mailto:ethicsofficer@atlantaga.gov) if they have a question about applying these ethical standards to their actions.

6/30/04

**City of Atlanta Board of Ethics Meeting  
Minutes of March 20, 2008**

The monthly meeting of the City of Atlanta Board of Ethics was called to order by Chair John Lewis Jr. at 6:16 p.m. in City Council Committee Room 2, 55 Trinity Avenue, Atlanta, Georgia 30303. Attending the meeting were board members Cathy Daniels, MaryAnne Gaunt, and Jacquee Minor. Also present were staff members Ginny Looney and Nasceas Timms. Board member Susan Housen was absent.

**MINUTES**

1. The Board approved the minutes of the February 21, 2008 meeting on a motion by Ms. Daniels and a second by Ms. Gaunt.

**AWARDS CEREMONY**

2. The Board held the Financial Disclosure Awards Ceremony to honor departments with the best filing records. Ms. Daniels moved for the adoption of a resolution on the Transparent Diamond Award recognizing the following recipients: Department of Corrections, Department of Law, Department of Parks, Recreation & Cultural Affairs, Department of Watershed Management, Executive Offices, and Municipal Court. Ms. Gaunt seconded the motion, which the Board adopted unanimously.

**FINANCIAL DISCLOSURE**

3. Ms. Looney delivered the annual report to the Board on persons required to file an annual financial disclosure statement, those who complied with the filing requirements, those who filed late, and those who failed to file in 2008 as required by law. Ms. Looney noted that ninety-nine percent of city officials and employees have filed their 2008 City Financial Disclosure Statement.
4. The Board next considered the Roll of Delinquent Filers that lists 10 persons who have not filed a 2008 City Financial Disclosure Statement and one late filer who filed after the end of the March 3 grace period without reasonable cause. Concerning the two nonfilers who are current employees, Ms. Daniel made a motion that the Board issue a letter of reprimand and that the letter go into the employees' personnel file and be taken into consideration during their performance review. Ms. Gaunt seconded the motion, which the Board adopted unanimously.
5. Regarding seven former city employees who have not filed, Ms. Looney recommended that the nonfiling employees be named to the Roll of Delinquent Filers, they be required to pay a fine when they do file, and the Board send a letter of reprimand to their former department and the Department of Human Resources recommending that they be considered ineligible for rehiring for one year and must comply with the financial disclosure law before being considered for another job. Ms. Gaunt moved to adopt the recommendations for the seven former employees, Ms. Daniels seconded the motion, and the motion carried unanimously.
6. For the one board member who did not file, Ms. Gaunt moved that he be named to the Roll of Delinquent Filers, the Board impose no further financial penalties, and the Board issue a letter of reprimand that the board is disappointed and the City should consider him ineligible for future service on a city board. Ms. Daniel seconded the motion, all members voted in favor, and the motion carried.

Board of Ethics  
Minutes of March 20, 2008

7. With respect to the late filer, Ms. Minor moved that the current board member be issued a letter of reprimand for being a delinquent filer and that the ethics officer send copies of the letter to the board chair and the appointing authority. Ms. Gaunt seconded the motion, and the Board adopted it unanimously.

#### FORMAL ADVISORY OPINIONS

8. Ms. Daniels moved to adopt proposed Formal Advisory Opinion 2008-3 on gifts of travel from prohibited sources to the City. Ms. Gaunt seconded the motion, which the Board adopted unanimously. The opinion concludes: "The City may accept gifts of travel from prohibited sources when the gift is donated to the City or one of its agencies, the travel is done in an official capacity on official city business, the travel is approved in advance, the expenses are reasonable, the agency receiving the gift discloses it on an online Gift to the City Report, and officials and employees disclose any travel financed under the travel gift program on an online Expense Reimbursement Report."
9. Ms. Gaunt moved to adopt, with a second by Ms. Minor, Formal Advisory Opinion 2008-4 on use of city property for election campaigns for city pension boards. The opinion states: "City employees may not use city property to advocate the candidacy of any individual to serve on the city's three pension boards. Under the exception for official city business, the City of Atlanta, its agencies, and employees may use city property to conduct the elections of the pension board members under policies and procedures that give all candidates equal access to the property." The Board adopted the opinion unanimously.

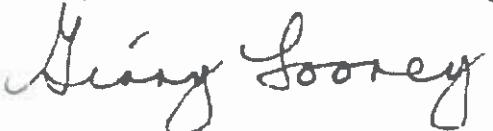
#### REQUEST FOR OUTSIDE EMPLOYMENT

10. Ms. Daniels moved to approve a request for outside employment from Fire Chief Kelvin Cochran to conduct leadership training to fire departments in other cities. The Board agreed that he should have the ability to fulfill the commitments that were made prior to his employment by the City. Ms. Minor seconded the motion, which the Board approved unanimously.

#### RECOGNITION OF BOARD MEMBER'S SERVICE

11. The Board adopted a resolution honoring Jacquee Minor for her board service the past three years as a representative of the Atlanta Business League.

Having no further business, the meeting was adjourned at 7:50 p.m.



Ginny Looney, Ethics Officer  
Approved May 15, 2008

COA-Cochran 001618



# CITY OF ATLANTA

**BOARD OF ETHICS**

John Lewis Jr., Chair  
 Kenyatta Mitchell, Vice-Chair  
 Cathy R. Daniels  
 MaryAnne Gaunt  
 Susan Housen  
 Lawrence S. Levin  
 Jacquie Minor

68 MITCHELL STREET SW, SUITE 3180  
 ATLANTA, GEORGIA 30303-0312  
 (404) 330-6286  
 FAX: (404) 658-7720

**ETHICS OFFICE**  
 Ginny Looney  
 City Ethics Officer  
[glooney@atlantaga.gov](mailto:glooney@atlantaga.gov)

COA-Cochran 001619

## Request for Outside Employment

Requester	Chief Kelvin J. Cochran
Subject matter	Outside Employment
Date	March 20, 2008 board meeting
Code provisions	2-820(d)
Previous action	Tentative approval via email
Facts	<ul style="list-style-type: none"> <li>-Chief Cochran had three commitments to conduct leadership training to fire departments in other cities prior to accepting his position with the City</li> <li>-After starting employment with the City, he learned that he needed the Board's approval</li> <li>-He requested permission prior to the training</li> <li>-Three board members gave tentative approval</li> <li>-Two of the three training sessions have already occurred.</li> </ul>
Recommendation	Approve request for outside employment.



SHIRLEY FRANKLIN  
MAYOR

**CITY OF ATLANTA**  
**FIRE – RESCUE DEPARTMENT**  
City Hall East - 675 Ponce de Leon Avenue, NE Suite 2001  
Atlanta, GA 30308-1807  
(404) 853-7000 \* FAX (404) 853-7245/7092  
ICHIFFS ID – ATLFDHQ

KELVIN J. COCHRAN  
FIRE CHIEF

COA-Cochran 001620

**MEMORANDUM**

**TO:** Virginia Looney, Ethics Officer

**FROM:** Kelvin J. Cochran, Fire Chief

**DATE:** February 27, 2008

**SUBJECT:** TRAINING CONFERENCES

*Kelvin J. Cochran*

After being appointed fire chief of Atlanta Fire-Rescue, I was informed of Mayor Shirley Franklin's policy of commissioners not engaging in additional work opportunities to generate income. The City of Shreveport, my prior employer allowed for additional employment on a part-time and consulting basis. I had a well established training and professional development practice, speaking at conferences and conducting workshops. Prior to my appointment, I had no indication I would not be able to continue.

Consequently, I accepted the City of Atlanta's policy, but had made three commitments to conduct training prior to my appointment. Chief Operating Officer Mr. Greg Giornelli agreed to allow me to complete those commitments using accrued compensatory time. No further training/consulting commitments would be made.

As such, I am seeking approval from the Board of Ethics for the three commitments made prior to my employment with the City of Atlanta. The dates for the upcoming training conferences are listed below for your information:

Maryland Fire and Rescue Institute: Staff and Command  
Louisville, KY  
March 12-13, 2008

Oroville Fire Department: Leadership Symposium  
Oroville, CA  
March 17-18, 2008

Humboldt Fire Department: Leadership Symposium  
Eureka Springs, CA  
April 2-4, 2008

I will be utilizing accrued compensatory time accumulated through work activities beyond normal working hours as we had agreed. Please contact me if you have any questions.

Thank you for your support and consideration in this matter.

KJC/mbt





**City of Atlanta Board of Ethics  
Thursday, November 20, 2008, 6 p.m.  
City Council Committee Room 2**

COA-Cochran 001623

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**AGENDA**

**Welcome**

Board member Caroline Tanner-introduction  
Staff member Jabu Sengova-introduction by Ginny Looney

**Minutes**

- Minutes of October 16 meeting (recommend approval)

**Election of officers**

**Formal Advisory Opinions**

- Proposed FAO2008-7 on whether city stationery may be used to solicit donations or make endorsements on behalf of private entities or individuals (recommend approval) (Tab 1)
- Endorsements, official city business, and city stationery (Tab 2)
- Proposed FAO2008-8 on whether a board member's law firm may represent private interests in matters adverse to the City (recommend approval) (Tab 3)

**Request for Outside Employment (Tab 4)**

**Meeting schedule for 2009 (Tab 5)**

**Ethics officer's report (Tab 5)**

**Public Comments**

**Announcements**

**Next Board Meetings**

Board retreat, Saturday, December 6, 9:30 a.m., Spelman College  
Thursday, January 15, 2008, 6 p.m., City Council Committee Room 2

**City of Atlanta Board of Ethics Meeting  
Minutes of November 20, 2008**

The monthly meeting of the City of Atlanta Board of Ethics was called to order by John Lewis, Jr., at 6:19 p.m. in City Council Committee Room 2, 55 Trinity Avenue, Atlanta, GA 30303. Attending the meeting were board members Carol Snype Crawford; Charles B. Crawford, Jr.; Cathy Daniels; MaryAnne Gaunt; Caroline Tanner; and Charmaine Ward. Staff members Ginny Looney, Jabu Sengova and Nasceas Timms also attended.

**MINUTES**

1. The Board adopted the minutes of the October 16, 2008 meeting on a motion by Mr. Crawford and a second by Ms. Gaunt.

**ELECTION OF OFFICERS**

2. Ms. Daniels moved that the Board reelect John Lewis, Jr., as the chair and MaryAnne Gaunt as vice chair; Ms. Ward and Ms. Crawford seconded this motion, which the Board unanimously adopted.

**FORMAL ADVISORY OPINIONS**

3. Ms. Daniels moved, with a second by Ms. Gaunt, that the Board adopt proposed Formal Advisory Opinion 2008-7 on use of city letterhead. The Board adopted the motion unanimously. The opinion concludes: "City officials may not use official city letterhead or other city resources to raise funds on behalf of individuals, organizations, or non-profit groups that are not affiliated with the City."
4. The Board agreed that the issue of when endorsements are official city business should be addressed on a case-by-case basis through the informal advice process.
5. Ms. Gaunt made a motion to adopt Proposed Formal Advisory Opinion 2008-8 on representing clients in matters adverse to the City. Ms. Daniels and Ms. Crawford seconded the motion, and it was adopted unanimously. The opinion concludes that city "officials who serve as board members may not represent any person or private interest in any action or proceeding in conflict with the interests of the City or in litigation in which the City is involved." This ban does not apply to the board member's firm, provided the firm erects a firewall that insulates the official from any participation in the matter. Further, the Ethics Code does not prevent the board member from receiving his or her proportional share of any firm proceeds derived from the matter.

**REQUEST FOR OUTSIDE EMPLOYMENT**

6. Ms. Gaunt moved to approve Lisa Gordon's request for outside employment with the University of Georgia's Carl Vinson Institute of Government; she will provide instruction and training for up to five assignments a year. Ms. Ward seconded the motion, which the Board approved unanimously.

**ETHICS OFFICER REPORT**

7. The Board agreed to send a letter to the Mayor on the budget cutbacks and the independence of the board.

Having no further business, the meeting adjourned at 7:17 p.m.

  
 Ginny Looney, Ethics Officer  
 Approved January 15, 2009



# CITY OF ATLANTA

**BOARD OF ETHICS**  
 John Lewis Jr., Chair  
 MaryAnne F. Gaunt, Vice-Chair  
 Carol Snype Crawford  
 Charles B. Crawford, Jr.  
 Cathy R. Daniels  
 Caroline Johnson Tanner  
 Charmaine Ward

68 MITCHELL STREET SW, SUITE 12130  
 ATLANTA, GEORGIA 30303-0312  
 (404) 330-6286  
 FAX: (404) 658-6077

**ETHICS OFFICE**  
 Ginny Looney  
 City Ethics Officer  
 glooney@atlantaga.gov

## Request for Outside Employment

Requester	Lisa Gordon
Subject matter	Outside Employment
Date	November 20, 2008
Code provisions	2-820(d)
Facts	<ul style="list-style-type: none"> <li>• Ms. Gordon currently serves as Enterprise Assets Management Officer in the Mayor's Office</li> <li>• She seeks approval for outside employment with the University of Georgia's Carl Vinson Institute of Government</li> <li>• She will provide training on public administration, policy and organizational development</li> <li>• Training will be conducted two to five times a year for eight to 16 hours on weekends</li> <li>• The Office of Enterprise Assets Management does not have any contracts with the Carl Vinson Institute</li> <li>• Her supervisor has approved the request</li> </ul>
Conclusion	The proposed teaching job is not an actual or potential conflict of interest
Recommendation	Approve request for outside employment; include boilerplate language that she cannot be involved in any decision related to hiring the institute to provide any training or services for the City

Shirley Franklin  
MAYOR



OFFICE OF THE MAYOR  
Chief Operating Officer  
Gregory J. Giornelli

COA-Cochran 001626

## CITY OF ATLANTA

Facilities Management  
Larry Riddle, Director

ENTERPRISE ASSETS MANAGEMENT  
Lisa Y. Gordon, Officer  
68 Mitchell Street, Suite 1225  
ATLANTA, GEORGIA 30303  
(404) 330-6225—FAX (404) 658-7787  
Internet Home Page: [www.atlantaga.gov](http://www.atlantaga.gov)

Real Estate Portfolio  
John C. Lavelle, Director

## MEMORANDUM

TO: Virginia Looney, Ethics Officer

FROM: Lisa Y. Gordon, Enterprise Assets Management Officer *YLG*

DATE: October 13, 2008

SUBJECT: Outside Employment

The attached request is to seek approval for outside employment with the University of Georgia-Carl Vinson Institute of Government to provide instruction and training for public administration, policy and organizational development 2-5 times a year. The Office of Enterprise Assets Management does not have any contracts with UGA – Carl Vinson Institute of Government. In accordance with Section 2-820(d) this request is for written approval from the Board of Ethics.

Thank You.

C: Gregory J. Giornelli, Chief Operating Officer



Executive Offices/OEAM

Name of Department or Agency \_\_\_\_\_

**Request for Permission to Perform Outside Employment**  
*(Please type or print)*

**Part I: Employee Information**

Name (print) Lisa Y. Gordon Employee ID 30482  
 Job Classification Enterprise Assets Management Officer Mayor's Office of Enterprise Assets Management  
Bureau/Division

**Part 2: No Outside Job (to be completed by employees who are not engaged in outside employment)**

I am not employed in any outside employment at this time and understand that I must file a written request with my department head before performing outside employment.

Signature of Employee \_\_\_\_\_ Date \_\_\_\_\_

**Part 3: Outside Job (to be completed by employees who seek permission to perform an outside job)**

Name of Employer Univ of GA - Carl Vinson Institute of Government Supervisor Gordon Maner  
 Business Address 201 N. Milledge Ave, Athens GA 30602  
 Telephone 706-542-9502 Type of Business University  
 Duties Instruction & Training for Public Administration, Policy and Organizational Development

Days/Dates of work maximum of 2-5 assignments per year Hours per week 8-16 hours on weekends

Daily start/end time 8:30 / 5:00 pm Length of job x Indefinitely #    weeks #    months

Location where you will work Will vary based on assignment, generally at a conference facility.

I have reviewed the City of Atlanta's policies on outside employment on page 2 and agree that my outside job will not interfere with the performance of my official duties, involve a conflict of interest, or involve the use of city records or equipment. I understand that my department head has the right to approve or deny this request.

Lisa Y. Gordon  
 Signature of Employee

10-13-08  
 Date

**Part 4: APPROVED BY (if denied, attach reasons & include relevant section number from back):**

Approved  Denied \_\_\_\_\_ Immediate Supervisor \_\_\_\_\_ Date \_\_\_\_\_

Approved  Denied \_\_\_\_\_ Bureau Director or Division Head \_\_\_\_\_ Date \_\_\_\_\_

Approved  Denied D. Jones \_\_\_\_\_ Department Head \_\_\_\_\_ Date 10/13/08

COA-Cochran 001628



**City of Atlanta Board of Ethics**  
**Thursday, February 20, 2014, 6 p.m.**  
**City Council Committee Room 2**

**AGENDA**

**Adoption of Agenda**

**Minutes**

- Minutes of January 16, 2014, meeting

**Other Actions**

- Request from Dr. Adrienne Bradford, Director of the City of Atlanta Employee Assistance Program, to engage in consulting practice
- Request from Paul Brown, Director of Concessions Division, to engage in consulting work with the Coleman Research Group

**Enforcement Actions**

- CO-12-007. In the Matter of Stanley Domengeaux - Probable Cause Hearing

**Ethics Officer's Report**

- Status report on activities performed under Work Plan
- FY14 Budget Report
- Rescheduling of June 2014 retreat
- Update on e-learning project
- 2013 Highlights by the Numbers
- Annual Report on Advice
- Annual Report on Ethics Complaints

**Public Comments**

**Announcements**

- Next Board of Ethics Meeting – Thursday, March 20, 2014, 6 p.m., City Council Committee Room 2

**Mission Statement**

The Board of Ethics builds public trust, promotes open and transparent government, and fosters a strong ethical culture through educating, advising, and enforcing the city's ethical standards and encouraging city officials and employees to act with honesty, integrity, and accountability.

**City of Atlanta Board of Ethics Meeting  
Minutes of February 20, 2014**

The monthly meeting of the City of Atlanta Board of Ethics was called to order by Chair Caroline Johnson Tanner at 6:05 p.m. in the City Council Committee Room 2, 55 Trinity Avenue, Atlanta, Georgia 30303. Attending the meeting were board members Brent Adams, De'Lonn Brown and Kate Wasch. Board members Carol Snype Crawford, Shukura Ingram Millender, and Kai Williamson were absent. Staff members Nina R. Hickson, Jabu M. Sengova and Sherry H. Dawson also attended.

**MINUTES**

1. Ms. Wasch moved to adopt the minutes of the January 16<sup>th</sup> board meeting which was seconded by Ms. Brown and the Board unanimously adopted the minutes.

**OTHER ACTIONS**

2. **Request from Dr. Adrienne Bradford, Director of the City of Atlanta Employee Assistance Program, to engage in consulting practice**

Dr. Bradford presented her request to the Board to engage in consulting, education and assessment outside her city job. The position would average 10 hours per month with no referrals from the city as a source of clientele. Mr. Adams made a motion to approve the request which was seconded by Ms. Brown. Ms. Wasch made a friendly amendment to the motion stating that Ms. Bradford would continue to work full-time for the city and not draw from city sources as clientele, and the motion passed unanimously.

3. **Request from Paul Brown, Director of Concessions Division, to engage in consulting work with the Coleman Research Group**

Mr. Brown presented his request to engage in outside employment to the Board. His outside employment would involve targeted activities related to investment advice and development for institutional investors and private equity firms for approximately five hours a week. Mr. Brown's request for outside employment was approved on a motion by Ms. Wasch, which was seconded by Mr. Adams, and the motion passed unanimously.

**ENFORCEMENT ACTION**

4. **CO-12-007. In the Matter of Stanley Domengeaux**

The Board conducted a probable cause hearing in Case Number CO-12-007 concerning former city arborist, Stanley Domengeaux. Mr. Domengeaux provided no written response to the probable cause report and was not present at the hearing. Ms. Sengova presented the case that Mr. Domengeaux violated Sections 2-820, 2-819, and 2-811 the Code of Ethics when he sought business from and presented invoices on behalf of his private company, Treepointe LLC, while he was working on city time. Further, he used confidential information acquired while he was performing city inspections to advance his own financial interests. After presenting the case, Ms. Sengova recommended that the Board find probable cause and set the matter down for an enforcement hearing for the May 15<sup>th</sup> board meeting.

Board Chair Tanner asked whether Mr. Domengeaux had disclosed this private business on his annual financial disclosure statements and the associate ethics officer advised her that he had not. Ms. Tanner recommended that an additional violation of section 2-814 be found based on Mr. Domengeaux's failure to disclose his business interest.

Following a brief discussion, Mr. Adams made a motion for a finding of probable cause in the matter of Stanley Domengeaux for violations of code sections 2-820, 2-819, 2-811, as well as violation of 2-814 for his failure to disclose; and setting the matter down for an enforcement hearing at the May board meeting. Ms. Wasch seconded the motion and it passed unanimously.

## **ETHICS OFFICER'S REPORT**

### **5. Work Plan**

Ms. Hickson reported on activities that support the Ethics Office Work Plan in the following areas: operations, training, activities, advice, public education and outreach, investigation and enforcement actions, financial disclosure, and legislation and lobbying.

### **6. FY14 Budget Report**

Ms. Hickson presented the approved FY14 budget which allocates \$344,729 in personnel expenses and \$58,832 in operating expenses for a total budget of \$403,561. She also reported that the Ethics Office was spending as budgeted for fiscal year 2014 and the budget process for fiscal year 2015 would begin in March.

### **7. Rescheduling of June 2014 Board Retreat**

This matter would be moved to the March board meeting for review by the absent board members.

### **8. Annual Reports**

Ms. Hickson reported that the Board of Ethics issued one formal advisory opinion and the Ethics Office wrote 41 advisory emails in 2013. In addition, the staff gave verbal advice to 50 persons and ethics training was provided to a total of 1299 city employees and officials. Ms. Hickson also presented a report on complaints and investigations from January 1, 2013 through December 31, 2013, showing that 14 new cases were opened, 13 cases were closed, and four cases remained open at the end of the year.

Having no further business, the meeting adjourned at 6:51 p.m.

Jaba M. Sengova, Associate Ethics Officer  
Approved March 20, 2014

Date: February 17, 2014

To: City of Atlanta Board of Ethics

From: Dr. Adrienne Bradford, Director of the City of Atlanta Employee Assistance Program

Re: *Dr. Adrienne Bradford*  
Outside Employment

Good afternoon Board of Ethics members:

I am writing this letter to request approval to perform outside employment as directed by Section 2-280, subsection F. I was hired in my current position over a year ago and suspended my practice during this time, but it is my desire to return to my consulting practice at this time. I will be functioning as a solo practitioner primarily specializing in consultation, training and assessment to begin immediately after approval by this board. My request has been also approved by my supervisor Commissioner Yvonne Yancy, Human Resources. This outside employment will not interfere or adversely impact my position with the City of Atlanta. Thank you for your time and consideration.

COA-Cochran 001632

**Memorandum**

Date: February 17, 2014

To: Nina Hickson

From: Paul Brown

Cc: Vivica Brown

Re: Request for Permission to Perform Outside Employment with Coleman Research Group

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I am writing this memorandum to request permission to perform outside employment. The company that I would like to work with, on a severely limited basis, is Coleman Research Group ("Coleman"), a think-tank that serves the needs of international private equity groups and institutional investors. Coleman is a multinational firm with bases of operations in North Carolina, New York, London, Beijing, and Hong Kong. They provide consultancy to their clients using professionals with first-hand experiences ("experts") from a variety of different industries. I have been asked by Coleman to be one of these "experts" on a part-time, limited basis.

Coleman Research Group's clients are investment funds, consultancies and corporations who seek broader context and insight into the global industries they are researching. In addition to reading reports and speaking with analysts, Coleman's clients often request to obtain a first-hand, industry perspective. Coleman's policy is never to share or advertise the expert's information without the consent of the subject matter expert. It is against Coleman's policy for experts to discuss confidential or material, non-public information during a consultation. All of their clients agree that they will not knowingly ask experts to disclose such information. All experts are admonished to refrain from discussing a topic that is off-limits due to a confidentiality obligation. Neither Coleman Research nor I is interested in creating any conflicts of interest in this consultative process.

In advance of any consulting work, Coleman asks the expert (in this case, me) to identify any third-party relationships that present a conflict of interest and thus cannot be discussed. These relationships may pertain to an entity due to certain positions or confidentiality agreements. Coleman Research Group strongly prefers that its experts engage in consultations after the expert has secured permission from his or her current, permanent employer. Consultations are informal, typically last 30-60 minutes over the phone and require no advance preparation.

**My background**

I have been selected by Coleman Research due to my having over 25 years of experience in addressing consumer needs through the provision of consumer goods and services, including retail and food and beverage, to the end user in special venues. I have worked on the "airport side" of negotiations for Seattle International Airport and for O'Hare International Airport prior to coming to ATL, and have also overseen the building of the New Reagan National Airport in 1997 as a master-tenant general manager. I have also consulted for over a dozen food and beverage and retail concessionaires throughout these years, confidentially advising them on concept development and facility optimization matters.

I am aware that, because of my position within the City of Atlanta, my case must go before the Ethics Review Board. I welcome this review, and stand ready to answer any questions that the board may have. I feel that, in my short, three-plus years of tenure, I have demonstrated both my integrity and my ability to not reveal sensitive City of Atlanta information, even when spearheading the world's largest concessions procurement on the City's behalf. I sincerely hope that the review board can find favor with my request.

I intend to work no more than 5 hours per week, and only during non-City of Atlanta-business hours. Below I have included the website from Coleman Research which details their policies regarding expert consultations.

<http://www.colemanrg.com/how-it-works>

Please let me know what additional information I can provide to you and/or the review board. Thank you.





**City of Atlanta Board of Ethics**  
**Thursday, March 19, 2015 6 p.m.**  
**City Council Chambers**

**AGENDA**

**Adoption of Agenda**

**Minutes**

- Minutes of February 19, 2015 meeting (action item-recommend adoption)

**Board Operations**

- Request pursuant to Section 2-820(d) - Jennifer Ogunsola, Communications Director, Atlanta Workforce Development Agency (action item)

**Enforcement Actions**

- In the Matter of Pamela Lockett; CO-14-015 – report only
- In the Matter of Cynthia Burch; CO-14-013 – enforcement hearing (action item)

**Financial Disclosure**

- Report to Board on 2015 Filing Season

**Ethics Officer's Report**

- Status report on activities performed under Work Plan
- FY15 Budget Report

**Public Comments**

**Announcements**

- Next Board of Ethics Meeting – Thursday, May 21, 2015, 6 p.m., City Council Chambers

**Mission Statement**

The Board of Ethics builds public trust, promotes open and transparent government, and fosters a strong ethical culture through educating, advising, and enforcing the city's ethical standards and encouraging city officials and employees to act with honesty, integrity, and accountability.

**City of Atlanta Board of Ethics Meeting  
Minutes of March 19, 2015**

The monthly meeting of the City of Atlanta Board of Ethics was called to order by Board Chair Shukura Ingram Millender at 6:06 p.m. in the City Council Chambers, 55 Trinity Avenue, Atlanta, Georgia 30303. Attending the meeting were board members Brent Adams, Carol Snype Crawford, Jessica Stern, and Kate Wasch. Board members Patricia Upshaw-Monteith and Kai Williamson were absent. Staff members Nina R. Hickson, Sherry H. Dawson, Carlos R. Santiago and Jabu M. Sengova also attended.

**MINUTES**

1. Ms. Wasch moved to approve the minutes the February 19, 2015 board meeting which was seconded by Ms. Crawford. The Board unanimously adopted the minutes.

**BOARD OPERATIONS**

2. Request pursuant to Section 2-802(d) – Jennifer Ogunsola, Communications Director, Atlanta Workforce Development Agency

Ms. Ogunsola appeared before the Board to seek permission to teach an online master's level course. Ms. Crawford moved to approve Ms. Ogunsola's request for outside employment to teach the online course which was seconded by Ms. Stern. The Board unanimously approved the request.

**ENFORCEMENT ACTIONS**

3. CO-14-015. In the Matter of Pamela Lockett

Ms. Sengova reported to the Board on the subpoena issued for Ms. Lockett to appear regarding her noncompliance with the settlement agreement previously reached in her case. Ms. Lockett is currently unemployed and the Ethics Office came to an agreement with Ms. Lockett that she would pay \$20 per month for the next six months and then the parties would revisit the terms of the modified agreement.

4. CO-14-013. In the Matter of Cynthia Burch

Carlos Santiago presented evidence that former city employee, Cynthia Burch, violated Sections 2-817, 2-818, and 2-811 of the City of Atlanta Code of Ethics. Because Ms. Burch had not responded to the proceedings nor appeared for the hearing, Mr. Santiago requested that the Board accept the proposed findings of fact as outlined. He then proceeded to present evidence that the Ethics Office had met all notice requirements pursuant to Board Rule 6 which included mailing notices to Ms. Burch by regular and certified mail. Mr. Santiago submitted evidence to the Board that Ms. Burch acknowledged receipt of one of the notices sent by certified mail. The Board issued a subpoena which the Ethics Office was unable to have served on Ms. Burch because she no longer resided at the her last known address. However, Mr. Santiago asserted that the Ethics Office had utilized all efforts to notify Ms. Burch of the pending ethics case. Ms. Wasch made a motion for the Ethics Board to accept the proposed findings of facts and the evidence presented. The motion was seconded by Ms. Crawford and unanimously approved.

The Board next considered the sanctions to be imposed against Ms. Burch. Mr. Santiago outlined five counts of the allegations against Ms. Burch and her violations of

Sections 2-817, 2-818 and 2-811 of the Code of Ethics. Mr. Santiago asserted that Ms. Burch accepted \$100 gratuity from a contractor, a prohibited source, in violation of Section 2-817, after a city inspection; she also accepted free meals from Manuel's Tavern, a prohibited source, in violation of Section 2-817. Further, Ms. Burch violated Section 2-818 when she solicited meals and food services for her private advantage while using her apparent authority as a food establishment inspector. Mr. Santiago stated that Ms. Burch used her assigned city vehicle for her private advantage in violation of Section 2-811 while traveling to food establishments and other private establishments during her assigned city work hours. Finally, Ms. Burch used city time for her private advantage in violation of Section 2-811 while using her assigned city hours to obtain meals and other food services at Manuel's Tavern and while traveling to other private establishments.

Mr. Santiago recommended that the Board impose a \$1000 fine for each count for a total fine of \$5000, that the Board issue a public reprimand which should be forwarded to the Department of Human Resources for inclusion in Ms. Burch's personnel file, and that the case be forwarded to the City's Solicitor's office for prosecution if the Respondent failed to comply with the final order. Following a brief discussion, Ms. Crawford moved that the proposed sanctions be approved which was seconded by Mr. Adams. The motion carried unanimously.

#### **FINANCIAL DISCLOSURE**

##### **5. Report to Board on 2015 Filing Season**

Ms. Dawson reported that the 2015 City Financial Disclosure Statement became available online as scheduled on March 2, 2015. The filing deadline is April 1, 2015 and the grace period ends on April 16, 2015.

#### **ETHICS OFFICER'S REPORT**

##### **6. Work Plan**

Ms. Hickson reported on activities that support the Ethics Office Work Plan in the following areas: operations, training, activities, advice, investigation and enforcement actions, and financial disclosure.

##### **7. FY15 Budget Report**

Ms. Hickson presented a budget report indicating spending being in line with projected expenditures.

Having no further business, the meeting adjourned at 6:44 p.m.

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Jábú M. Sengova, Associate Ethics Officer  
Approved May 21, 2015.

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**From:** Ogunsola, Jennifer  
**Sent:** Monday, March 02, 2015 3:33 PM  
**To:** Hickson, Nina  
**Cc:** Sterling, Michael  
**Subject:** teaching an online course

Good Afternoon Mrs. Hickson,

Thank you for speaking with me. I have the opportunity to teach an online course at the Welch Center for Graduate and Professional Studies at Goucher College. It is an online communications course that will run four weeks – July 22 through August 21. They are expecting me to give my final response within the next week.

This position will in no way interfere with my work as the Communications Director for the Atlanta Workforce Development Agency.

I have also copied my executive director, Mr. Michael T. Sterling. Please let me know next steps.

Thank you,

Jennifer Ogunsola

Jennifer Ogunsola  
Communications Director  
Atlanta Workforce Development Agency

818 Pollard Boulevard, S.W. | Atlanta, Georgia 30315  
O: 404.546.3035 | C: 404.806.2963 | F: 404.546.9536  
[jogunsola@atlantaga.gov](mailto:jogunsola@atlantaga.gov) | [www.atlantaga.gov](http://www.atlantaga.gov)

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COA-Cochran 001639





## **City of Atlanta Board of Ethics**

**Thursday, May 21, 2015, 6:00 p.m.  
City Council Chambers**

### **AGENDA**

#### **Adoption of Agenda**

#### **Election of New Board Chair**

#### **Minutes**

- Minutes of March 19, 2015 meeting (action item-recommend adoption)

#### **Board Operations**

- Request pursuant to Section 2-820(d) – Wendy Heath-Gainer, Psychologist, Human Resources (action item)

#### **Financial Disclosure**

- 2015 Roll of Delinquent Filers (action item-recommend adoption)
- Report to Board on 2015 filing season
- Adoption of Resolution for Transparent Diamond Awards

#### **Ethics Officer's Report**

- Status report on activities performed under Work Plan
- FY15 Budget Report
- FY16 Budget Update

#### **Public Comments**

#### **Announcements**

- Transparent Diamond Award Ceremony and Reception – Monday, June 1, 2015, 1 p.m., City Council Chambers
- Board Retreat –
- Next Board of Ethics Meeting – Thursday, July 16, 2015, 6 p.m., City Council Committee Room 2

#### **Mission Statement**

The Board of Ethics builds public trust, promotes open and transparent government, and fosters a strong ethical culture through educating, advising, and enforcing the city's ethical standards and encouraging city officials and employees to act with honesty, integrity, and accountability.

**City of Atlanta Board of Ethics Meeting  
Minutes of May 21, 2015**

The monthly meeting of the City of Atlanta Board of Ethics was called to order by Board Vice-Chair Brent Adams at 6:09 p.m. in the City Council Chambers, 55 Trinity Avenue, Atlanta, Georgia 30303. Attending the meeting were board members Carol Snype Crawford, Jessica Stern, Kate Wasch, Kai Williamson; and new board member Riah Greathouse. Staff members Nina R. Hickson, Sherry H. Dawson, Carlos R. Santiago and Jabu M. Sengova also attended.

**ELECTION OF NEW BOARD CHAIR**

1. Ms. Stern moved to nominate Kate Wasch as Board Chair which was seconded by Mr. Adams. Ms. Wasch accepted the nomination of election to Board Chair and the Board unanimously approved. Thereafter, Ms. Wasch presided over the board meeting.

**MINUTES**

2. Ms. Stern moved to approve the minutes of the March 19, 2015 board meeting which was seconded by Brent Adams. The Board unanimously adopted the minutes.

**BOARD OPERATIONS**

3. **Request pursuant to Section 2-820(d) - Wendy Heath-Gainer, Psychologist**  
Ms. Hickson recommended that the Board approve Ms. Heath-Gainer's request for outside employment which would consist of providing therapy to private clients in the evenings and on weekends. Further, Ms. Heath-Gainer understands that she is not allowed to seek any clients from the City of Atlanta and that the outside work cannot conflict with any of her official work duties. Mr. Adams moved to approve the request which was seconded by Ms. Crawford and the Board unanimously approved.

**FINANCIAL DISCLOSURE**

4. **Roll of Delinquent Filers**  
The Board next considered the Roll of Delinquent Filers that lists 71 individuals which includes persons who have not filed a 2015 City Financial Disclosure Statement and persons who filed after the April 16 grace period without reasonable cause. Ms. Stern moved to adopt the Roll of Delinquent Filers, which was seconded by Mr. Greathouse; and the Board unanimously adopted the motion.
5. **Report to Board on 2015 Filing Season**  
Ms. Dawson delivered the May 2015 report to the Board on persons required to file an annual financial disclosure statement, those who complied with the filing requirements, and those who failed to file in 2015 as required by law. Ms. Dawson noted that the percentage of timely filers was 92 percent this year based on a total of 1931 timely filers; lower than last year's 96 percent timely filing rate with 1694 timely filers. Ms. Dawson further stated that this year's rate is

comparable to 2008 based on 1646 required filers with a 92 percent timely filing rate. In 2011 there were 1507 required filers with a 91 percent timely filing rate.

**6. Resolution for Transparent Diamond Award.**

Ms. Stern moves to adopt the resolution for the Transparent Diamond Awards which was seconded by Mr. Adams and unanimously approved by the Board. The Board recognized the following city departments for 100% compliance with the filing requirement: City Auditor's Office, City Solicitor's Office, Department of Corrections, Department of Information Technology, Department of Procurement, Municipal Court of Atlanta, and Public Defender's Office. The Honorable Mention list included departments who filed after the filing deadline but before the grace period ended and those recognized were: City Council, Atlanta Fire and Rescue, Atlanta Police Department, Department of Law, Department of Planning and Community Development, and Department of Watershed Management. These departments would be formally recognized on June 1, 2015 during the City Council meeting.

#### **ETHICS OFFICER'S REPORT**

**7. Work Plan**

Ms. Hickson reported on activities that support the Ethics Office Work Plan in the following areas: operations, training, activities, advice, investigation and enforcement actions, and financial disclosure.

**8. FY15 Budget Report**

Ms. Hickson reported that the Ethics Office was spending as budgeted for the remainder of fiscal year 2015.

**9. FY16 Budget Update**

Ms. Hickson reported that for FY16, the budget has been approved for \$611,000 which includes the conversion of the Investigator/Attorney position from a part-time to a full-time position. The Ethics Office will receive direct allocations from two of the Enterprise Funds which will decrease the amount it receives from the General Fund.

Having no further business, the meeting adjourned at 6:40 p.m.




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Jabu M. Sengova, Associate Ethics Officer  
Approved July 16, 2015.

Wendy Heath-Gainer  
1853 Queens Way  
Chamblee, GA 30341  
404-423-9637  
[wendyhg@mindspring.com](mailto:wendyhg@mindspring.com)

3/31/2015

Dr. Adrienne Bradford  
Chief Psychologist  
City of Atlanta -EAP  
818 Pollard Boulevard  
3<sup>rd</sup> floor, Suite 301B  
Atlanta, GA 30315

Dear Dr. Bradford,

It was requested that I forward the following description of my outside employment request (in addition to the form which was forwarded to HR). I will be working at a private practice called the Atlanta Network for Individual and Family Therapy. The street address of the practice is 1864 Independence Square Suite A, Dunwoody, GA, 30338, and the owner/director is Dr. Marsha Sauls. The work will be after hours during the work week (for up to 7 hours) and on weekends. The type of work involves providing individual therapy for clients seeking services through this practice. I understand that I am not allowed to take any clients from Atlanta in this outside job. I also understand that this outside work is not to conflict with my job at the City of Atlanta, and that the clients in my outside job will be informed of my responsibilities when I have my "on call" status.

Please let me know if you need any additional information.

Sincerely,  
Wendy Heath-Gainer

Name of Department or Agency Psychological Services

Request for Permission to Perform Outside Employment  
(Please type or print)

Part 1: Employee Information

Name (print) Wendy Heath-Gainer Employee ID \_\_\_\_\_

Job Classification Psychologist Bureau/Division Human Resources

Part 2: No Outside Job (to be completed by employee who are not engaged in outside employment)

I am not employed to any outside employment at this time and understand that I must file a written request with my department head before performing outside employment.

Signature of Employee \_\_\_\_\_ Date \_\_\_\_\_

Part 3: Outside Job (to be completed by employee who seek permission to perform an outside job)

Name of Employer Atlanta Psychologist Network Supervisor Dr. Marsha Sauls

Business Address 1864 Independence Square, Steff. Dunwoody, GA 30338

Telephone 770-668-0350 Type of Business private practice

Duties Individual therapy

Days/Dates of Work \_\_\_\_\_ Hours per week 0-7

Daily start/end time 1 Length of job Indefinitely # Weeks # months

Location where you will work Above address

I have reviewed the City of Atlanta's policies on outside employment on page 2 and agree that my outside job will not interfere with the performance of my official duties, involve a conflict of interest, or involve the use of City records or equipment. I understand that my department head has the right to approve or deny this request.

Signature of Employee Wendy Heath-Gainer

Date 3/20/15

Part 4: APPROVED BY (if denied, attach reasons & include relevant section number from book):

Approved  Denied \_\_\_\_\_ Immediate Supervisor \_\_\_\_\_ Date \_\_\_\_\_

Approved  Denied \_\_\_\_\_ Bureau Director or Division Head \_\_\_\_\_ Date \_\_\_\_\_

Approved  Denied \_\_\_\_\_ Department Head \_\_\_\_\_ Date \_\_\_\_\_

 Name of Department or Agency Psychological Services

Request for Permission to Perform Outside Employment  
(Please type or print)

Part 1: Employee Information

Name (print) Wendy Heath-Gainer Employee ID \_\_\_\_\_

Job Classification Psychologist Bureau/Division Human Resources

Part 2: No Outside Job (to be completed by employee who are not engaged in outside employment)

I am not employed in any outside employment at this time and understand that I must file a written request with my department head before performing outside employment.

Signature of Employee \_\_\_\_\_ Date \_\_\_\_\_

Part 3: Outside Job (to be completed by employee who seek permission to perform an outside job)

Name of Employer Atlanta Psychologist Network Supervisor Dr. Marsha Sauls

Business Address 1864 Independence Square, Ste. Dunwoody, GA 30338

Telephone 770-668-0350 Type of Business private practice

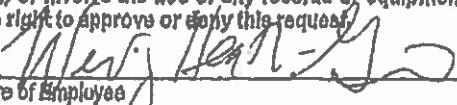
Duties Individual therapy

Days/Dates of Work \_\_\_\_\_ Hours per week 0-7

Daily start/end time \_\_\_\_\_ Length of job Undefinately # \_\_\_\_\_ weeks # \_\_\_\_\_ months

Location where you will work above address

I have reviewed the City of Atlanta's policies on outside employment on page 2 and agree that my outside job will not interfere with the performance of my official duties, involve a conflict of interest, or involve the use of city records or equipment. I understand that my department head has the right to approve or deny this request.

 3/20/15  
Signature of Employee \_\_\_\_\_ Date \_\_\_\_\_

Part 4: APPROVED BY (if denied, attach reasons & include relevant section number from back):

Approved  Denied

Immediate Supervisor \_\_\_\_\_ Date \_\_\_\_\_

Approved  Denied

Bureau Director or Division Head \_\_\_\_\_ Date \_\_\_\_\_

Approved  Denied

Department Head \_\_\_\_\_ Date \_\_\_\_\_

**Defendant's Brief in Support of Their Motion for Summary Judgment**

Ex. N

Order

*Harris v. City of Atl,*

No. 2015cv264583

IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA

CHRISTOPHER HARRIS,

Plaintiff,

v.

CITY OF ATLANTA,

Defendant.

CIVIL ACTION FILE NO. 2015CV264583

HON. KIMBERLY M. ESMOND ADAMS

**ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AND  
DENYING DEFENDANT'S MOTION TO COMPEL PRODUCTION OF  
PLAINTIFF'S UNEMPLOYMENT RECORDS**

The above-styled case came before the Court on Defendant City of Atlanta's ("City") Motion for Summary Judgment wherein Defendant asserts that there are no genuine issues of material fact to be tried on Plaintiff's claims that he was terminated in violation of the Georgia Whistleblower Act ("GWA"), O.C.G.A. § 45-1-4, and that Defendant violated his due process rights by failing to provide him with a name-clearing hearing, and for attorney's fees. Defendant also filed a Motion to Compel Production of Plaintiff's Unemployment Records. Upon consideration of the briefs and applicable authority, the Court hereby **GRANTS** Defendant's Motion for Summary Judgment.

**STATEMENT OF FACTS**

The undisputed material facts viewed in the light most favorable to Plaintiff as the non-moving party show that Plaintiff was promoted to Watershed Manager in the Department of Watershed Management's ("DWM") Water Distribution Section, Office of Linear Infrastructure, in 2011. When Plaintiff accepted this position he executed a memorandum entitled "Employee Acceptance of Unclassified Position," acknowledging that he understood he was accepting a

position as an unclassified employee. As a Watershed Manager, Plaintiff was responsible for identifying operational problems and improving the Department's overall performance. Plaintiff admits that DWM was experiencing a host of publicized or widely-known problems ranging from theft to failure to meet required service response times to employees abusing company time. To combat several of these issues Plaintiff recommended new system management protocols that were adopted by his supervisors. Moreover, Plaintiff disciplined subordinates for sleeping, drinking, and otherwise failing to perform their job duties as assigned. Specifically, Plaintiff identified two DWM employees he suspected of theft in a February 2012 letter to his supervisors regarding inventory management issues at the DWM Stonewall substation.

Following the implementation of these new management systems, approximately 30 subordinate employees, who were members of a local union, resisted the changes by retaliating against Plaintiff's reforms and falsely reporting that Plaintiff unlawfully received a \$20,000 customer bribe. As a result of this accusation, Plaintiff was placed on administrative leave in the fall of 2012. But Plaintiff was eventually cleared of these allegations and returned to work at the DWM. In December 2013, Plaintiff's subordinates submitted an email complaint about him to the City's Ethics and Compliance Employee Hotline raising a variety of allegations against Plaintiff, including claims that he threatened and intimidated employees, retaliated against his subordinates, and engaged in favoritism with respect to hiring and job assignments. In response to these actions, the City of Atlanta's Department of Human Resources ("DHR") initiated an investigation of Plaintiff's alleged actions. Prior to the completion of the investigation, DWM employees marched at City Hall protesting Plaintiff's management style. DWM employees also submitted a signed petition to DHR seeking Plaintiff's removal. Plaintiff was again placed on paid administrative leave on February 21, 2014 pending a full investigation into the new

allegations raised against him. Thereafter, Plaintiff sent a letter to the City's Chief Operating Officer, Michael Geisler, requesting that a neutral hear the allegations brought against him.

Thereafter, DHR conducted an investigation into the widespread allegations of mismanagement leveled against Plaintiff. DHR made the decision to terminate Plaintiff in August 2014 following findings that nearly 70 employees had raised complaints about Plaintiff's inappropriate and unprofessional management style.

Following Plaintiff's termination, Plaintiff's labor consultant, Gillespie, met with Mayor Kasim Reed and members of his staff. Plaintiff and Gillespie laid out the reasons why they felt Plaintiff's termination was unfair; however, this did not change DHR's final decision to terminate Plaintiff. Plaintiff received unemployment benefits in connection with the termination of his City employment.

Plaintiff filed his Complaint on August 14, 2015, and Defendant was served on September 10, 2015. Defendant filed its Answer and Motion to Dismiss on October 7, 2015 and denied Plaintiff's allegations. The Court denied Defendant's Motion to Dismiss on March 31, 2016. Defendant filed the instant motion on September 9, 2016 and Plaintiff timely filed his response in opposition on October 10, 2016.

## CONCLUSIONS OF LAW

### I. Defendant's Motion for Summary Judgment

#### A. Summary Judgment Standard

Summary judgment is proper when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." O.C.G.A. § 9-11-56. As the party who will not bear the burden of proof at trial,

the defendant may accomplish this either "(1) by presenting evidence which negates an essential element of plaintiff's claim, i.e., affirmatively disproving the element with evidence which makes it *impossible* for the plaintiff to prove the element at trial, or (2) by showing 'an absence of evidence to support the plaintiff's case' as to an essential element." Garrett v. NationsBank, 228 Ga. App. 114, 115 (1997) (emphasis in original) (quoting Lau's Corp. v. Haskins, 261 Ga. 491, 495 (1991)).

To establish a prima facie case of retaliation under the GWA, Plaintiff must establish that:

- (1) the employer falls under the statute's definition of 'public employer,'
- (2) the employee disclosed 'a violation of or noncompliance with a law, rule, or regulation to either a supervisor or government agency,'
- (3) the employee was then discharged, suspended, demoted, or suffered some other adverse employment decision by the public employer; and
- (4) there is some causal connection between (2) and (3).

Forrester v. Ga. Dept. of Human Servs., 308 Ga. App. 716, 722 (2011); O.C.G.A. § 45-1-4(d)(2).

Defendant alleges that Plaintiff cannot satisfy either the second or fourth element. In support of this argument, Defendant relies on the fact that the alleged misuse of the City's equipment and reports ranging from theft, to failure to meet required service response times, to employees failing to engage in productive work while on company time is not the type of communication encompassed by the GWA because these allegations were already widely known internally and externally.

#### *1. Plaintiff Did Not Engage in Protected Activity.*

Plaintiff's GWA claim fails because he cannot establish that he engaged in a "disclosure" of a "law, rule or regulation" within the meaning of the statute. The GWA defines a "law, rule or regulation" as including "any federal, state, or local statute or ordinance or any rule or regulation adopted according to any federal, state or local statute or ordinance." O.C.G.A. § 45-1-4(a)(2).

If Plaintiff "disclosed" the fact that DWM employees slept on the job or otherwise failed to

properly perform their duties, such disclosures do not constitute disclosure of a violation of a federal, state or local law as required by the statute. Further, with respect to Plaintiff's disclosures of theft, abuse of overtime, and/or DWM's alleged failure to meet required customer response times, this information was well known both within and outside the City long before Plaintiff raised his concerns. Because no evidence exists that Plaintiff "disclosed" any concerns that were not already common knowledge, his GWA claim fails. *See Forrester*, 308 Ga. App. at 724 (disclosure of something already widely known such as former employees of county Department of Children and Family Services who reported co-worker's abuse of prescription drugs where co-worker's problems were no secret is not communication encompassed by the whistle-blower statute). Accordingly, the Court finds that Plaintiff has failed to establish that he engaged in protected activity.

*2. There Is No Evidence of Causation.*

Even if Plaintiff were able to establish that his speech is protected under the GWA, Plaintiff still cannot establish the requisite element of causation under the GWA. To establish causation, Plaintiff "must provide[] sufficient evidence of knowledge of the protected expression and that there was a close temporal proximity between this awareness and the adverse action." *Freeman v. Smith*, 324 Ga. App. 426, 431 (2013) (quoting *Higdon v. Jackson*, 393 F.3d 1211, 1220 (11th Cir. 2004)). "Unless there is very close temporal proximity between the protected activity and the retaliatory conduct, the plaintiff must offer additional evidence to establish causation." *Id.* Accordingly, "[i]f there is a substantial delay between the protected expression and the adverse action in the absence of other evidence tending to show causation, the complaint of retaliation fails as a matter of law." *Id.* (quoting *Thomas v. Cooper Lighting, Inc.*, 506 F.3d 1361, 1364 (11th Cir. 2007).

Here, Plaintiff alleges that he engaged in whistleblowing activity from the beginning of his tenure at DWM. Plaintiff relies heavily on a letter that he sent to his superiors identifying theft in February 2012, approximately one month into his management role, as his primary protected disclosure. The record does not reflect that Plaintiff established a connection or temporal proximity between this letter and his 2014 termination. Plaintiff was placed on paid administrative leave for six days in October 2012 — eight months later — only after allegations of bribery were raised against him by one or more of his subordinates. The Court does not find that this precautionary measure of administrative leave pending an investigation constitutes an adverse employment action.

Further, Plaintiff was not terminated until August 15, 2014, more than two and a half years later following his alleged disclosure of protected activity under the GWA. This lapse exceeds any period of time found to constitute "very close" temporal proximity sufficient to evince causation. *See, e.g.,* Freeman, 324 Ga. App. at 431 ("a three to four month disparity between the statutorily protected expression and the adverse employment action is not enough."). Plaintiff has not identified any specific protected activity in which he engaged which is closely connected to the time he was terminated. Plaintiff cannot argue that either his interview with the City's outside counsel in May 2014 or his request to COO Geisler for a neutral review of the complaints raised against him triggered a causal connection, as those communications occurred after he was already placed on administrative leave and the investigation into his alleged misconduct had commenced. *See Forrester*, 308 Ga. App. at 728 (attempt to establish temporal proximity between termination and disclosures "is seriously undermined (if not eviscerated)" by fact that investigation leading to their termination had already begun at time disclosures were made). Absent temporal proximity, Plaintiff must present some other evidence of a causal

connection between his disclosures and the City's decision to place him on leave and terminate his employment.

Even if Plaintiff could establish a *prima facie* case, Plaintiff did not provide any evidence to overcome Defendant's legitimate, non-retaliatory reason for his termination. DHR's reasons for terminating Plaintiff were based on reports of Plaintiff's mismanagement and instances of Plaintiff's use of inappropriate, threatening and abusive language. Additionally, Plaintiff's subordinates submitted a signed petition calling for his removal. *See Hankins v. AirTran Airways, Inc.*, 237 Fed. Appx. 513, 522 (11th Cir. 2007) (employee's abusive language towards co-worker constituted legitimate non-retaliatory reason for termination). The record reflects that DHR's investigation revealed several employees who presented consistent accounts that Plaintiff had shown them nude photographs of a female DWM employee in violation of the City's sexual harassment policies. *See Snellgrove v. Teledyne Abbeville*, 117 F. Supp. 2d 1218, 1242 (M.D. Ala. 1999) (employee's inappropriate sexual conduct towards another employee constituted legitimate, non-retaliatory reason for termination). Finally, the record highlights instances when Plaintiff lied to DHR about ownership of a laptop in his possession and Plaintiff was dishonest about returning his City-issued cell phone with the battery removed. *See EEOC v. Total Sys. Servs., Inc.*, 221 F.3d 1171, 1176 (11th Cir. 2000) (employer's belief that employee had lied during internal investigation constituted legitimate, non-retaliatory reason for termination). DHR cited each of the above reasons as a basis for recommending Plaintiff's termination. The City relied on DHR's findings in its decision to terminate Plaintiff. Accordingly, the Court finds that there is insufficient evidence to establish that any of these reasons were a pretext for retaliation.

**B. Plaintiff's Due Process Claim Also Lacks Merit.**

*1. Plaintiff Has Neither Property Interest in His Employment Nor a Contractual Right to a Name-Clearing Hearing.*

Plaintiff cannot establish a due process claim concerning his City employment. First, as an unclassified, at-will employee, Plaintiff had no valid property interest in his employment. See Sykes v. City of Atl., 235 Ga. App. 345, 347 (1998) (unclassified employee had no property interest in her employment with the City, and thus no due process claim).

Plaintiff also cannot establish any right to a name-clearing hearing. He has not identified any document, handbook, regulation or other authority supporting such a right. Further, the Mayor's post-termination comments to Plaintiff's representative, Gillespie, do not establish such a right. Plaintiff cannot identify any legal authority showing that such comments could possibly bestow on Plaintiff a cognizable property interest in his employment contrary to the City Code, City Handbook, and written conditions of his employment. This is because such promises simply cannot "create a property interest contrary to state law." City of Buchanan v. Pope, 222 Ga. App. 716, 719 (1996) (any conduct that may create implied property rights in employment contrary to City's charter had no legal effect).

*2. Plaintiff Has No Evidence of Reputational Harm.*

To the extent Plaintiff brings a due process claim for reputational damage, this claim also fails. To sustain such a claim, Plaintiff must show:

- (1) a false statement (2) of a stigmatizing nature (3) attending a governmental employee's discharge (4) made public (5) by the governmental employer (6) without a meaningful opportunity for an employee name clearing hearing.

Warren v. Crawford, 927 F.2d 559, 565 (11th Cir. 1991). This claim also fails because Plaintiff cannot point to any "false statements of a stigmatizing nature" regarding his termination disclosed to the public by the City. The record does not contain any evidence that the City

disclosed the specific reasons for Plaintiff's termination. Further, none of the news articles identified by Plaintiff include any actionable disclosure. Accordingly, Plaintiff's claim for reputational damage fails.

Moreover, it is well-established, both in federal and state courts in Georgia, that "a procedural due process violation has not occurred when adequate state remedies are available." Joiner v. Glenn, 288 Ga. 208, 210 (2010). The Georgia Supreme Court has held that "a writ of mandamus is a procedural remedy which cures defendants' failure to provide plaintiff with a name-clearing hearing." Joiner, 288 Ga. at 210. As Plaintiff never sought this remedy prior to bringing this lawsuit, this claim also fails as a matter of law. Id.

### CONCLUSION

For the reasons fully discussed above, the Court does not find that any issue of material fact remains for the factfinder to decide as to Plaintiff's claims. Moreover, upon a review of the record and applicable authority, the Court finds no basis to award Plaintiff attorney's fees pursuant to O.C.G.A. 9-15-14 or O.C.G.A. 45-1-4(e)(2)(f). Accordingly, Defendant's Motion for Summary Judgment is hereby **GRANTED** and Defendant's Motion to Compel Production of Plaintiff's Unemployment Records is rendered **MOOT**.

SO ORDERED this 12<sup>th</sup> day of April, 2017.

  
HONORABLE KIMBERLY M. ESMOND ADAMS  
JUDGE, SUPERIOR COURT OF FULTON COUNTY  
ATLANTA JUDICIAL CIRCUIT

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