

Arlene Smoler

From: Arlene Smoler
Sent: Wednesday, May 30, 2012 2:31 PM
To: 'William Collins'; NGroenwegen@osc.state.ny.us
Cc: 'Carolyn Keams'; 'James Yates'
Subject: RE: SECOND draft settlement agreement- other suggested provisions
Attachments: Lopez.doc

In addition to modifying the agreement so that the Assemblyman is not described or identified as an "employer," I'm attaching a sample pre-litigation settlement agreement (with names and agency deleted) which contains most of the provisions that I would include if I had negotiated a pre-litigation settlement agreement. This doesn't include any provisions regarding money but this addresses other concerns that I prefer to cover. Please feel free to call me if you have any questions about why I would typically use these types of provisions.

Arlene

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From: William Collins [mailto:collinsw@assembly.state.ny.us]
Sent: Wednesday, May 30, 2012 1:02 PM
To: Arlene Smoler; NGroenwegen@osc.state.ny.us
Cc: 'Carolyn Kearns'; 'James Yates'
Subject: RE: SECOND draft settlement agreement

No, you are accurately assessing that I frequently forget to "attach" attachments. How about this time?

From: Arlene Smoler [mailto:Arlene.Smoler@ag.ny.gov]
Sent: Wednesday, May 30, 2012 12:49 PM
To: 'William Collins'; NGroenwegen@osc.state.ny.us
Cc: 'Carolyn Kearns'; 'James Yates'
Subject: RE: SECOND draft settlement agreement

Bill- I don't see an attachment of the SECOND draft. Am I missing something?

Arlene

8/29/2012

SMOLER0090

From: William Collins [<mailto:collinsw@assembly.state.ny.us>]
Sent: Wednesday, May 30, 2012 12:08 PM
To: Arlene Smoler; NGroenwegen@osc.state.ny.us
Cc: 'Carolyn Kearns'; 'James Yates'
Subject: SECOND draft settlement agreement

Arlene and Nancy,

I have recieved recommended changes from Assemblyman Lopez' counsels and our outside employment law consultant and amended our draft accordingly. This has not been shared with complainants counsels. If you have time (we probably will end up keeping thes two folks on until the end of the payroll period - 6/6/12 - as we negotlate the terms), we'd appreciate your identification of anything you see as particularly problematic.

Bill

8/29/2012

SMOLER0091

SETTLEMENT AGREEMENT AND GENERAL RELEASE

This is an agreement by and between _____ and
_____ ("_____").

WHEREAS, the parties wish to resolve the differences they have, and have had all of the terms and conditions of this Agreement clearly explained, and now freely consent to enter into this Agreement, such consent not having been induced by fraud, duress or any other undue influence; and

NOW, THEREFORE in consideration of the mutual undertakings and promises contained in this Agreement, and solely by way of compromise and in full settlement of any dispute they have or may have, the parties hereby stipulate and agree as follows:

1. **Resignation-** _____ resigns from her position with _____ effective close of business on Wednesday, June __, 2012, and the official date of her separation from New York State service shall be on the same date, Wednesday, June __, 2012. A copy of _____ irrevocable letter of resignation from _____ dated May __, 2012 is annexed as Exhibit A.

2. **Return and Deletion of Documents by _____** - To the extent she has retained any within her possession, custody or control, _____ agrees to (a) return to _____ "hard copies" of all documents that concern, refer, and/or relate to her employment by _____, including all such documents she may have provided to any third parties, including counsel, and (b) permanently delete all copies of any such documents she has retained in electronic form in any computer, including her personal computer(s), as well as arrange for the deletion of all copies of any such documents she may have provided in electronic form to

any third parties, included counsel.

3. **Accruals**- After this Agreement has been fully executed by both parties, within two business days of the effective date of _____ resignation, _____ shall send notification to the Office of the Comptroller of the State of New York ("OSC") that _____ has resigned from _____. To the extent that _____ has accrued any unused annual leave time, payable upon separation, the OSC will be notified of this fact at the time it is notified of _____'s resignation.

4. **Release of Withheld Salary**- Effective upon this Agreement being fully executed by both parties, in accordance with the regulations of the OSC, two full pay periods after _____ has been separated from New York State service, _____ shall notify the OSC that the five days of salary withheld from _____ when she commenced working for _____ should be released to her.

5. **Future Employment by _____** - _____ agrees that she will not seek, apply for or accept employment or contracted work at _____ at any time in the future, and hereby waives any claims that may accrue to her from rejection of any application for employment or contracted work at the _____. _____ acknowledges that the _____ has no obligation, contractual or otherwise, to hire, employ or contract her in the future. Should _____, in violation of this provision, seek, apply for, or accept employment or contracted work at the _____ and initiate any form of legal claim or action based thereupon against _____, the parties agree that said claim or action will be subject to dismissal with prejudice pursuant to this paragraph.

6. **Letter Confirming Dates of OAG Employment:** _____ shall provide _____ with a letter on _____ letterhead signed by the Director of Human

Resources addressed "To Whom It May Concern" which specifies only _____'s title, salary, and dates of employment.

7. **Requests for Employment References-** _____ agrees that all prospective employers seeking a job reference for her shall be directed by her to the _____'s Director of Human Resources Management Bureau (currently _____), who will be the only individual authorized by _____ to provide information to prospective employers regarding _____'s employment by _____. Upon being contacted by any prospective employers of _____, the _____'s Director of Human Resources shall provide no information regarding _____'s employment at the _____ other than to state that she resigned voluntarily and to identify her title, salary, and dates of employment. Neither the _____ nor any of it's current or former agents or employees shall be liable for any breach of this provision if any current or former employees of the _____ other than it's Director of Human Resources are asked for, and provide, any information or opinions about _____ and/or her job performance at the _____ to a prospective employer of _____.

8. **No Other Action Commenced.** _____ represents that she has not commenced, maintained, prosecuted or participated in any action, charge, complaint or proceeding of any kind, including any administrative proceeding, against the State of New York or _____, including, but not limited to, all its subdivisions and components, and any individual or official employed by or affiliated with _____ in their individual and official capacities, that currently is pending in any court, or before any administrative or investigative body or agency, and acknowledges that this representation constitutes a material inducement for the _____ to enter into this Settlement Agreement and General

Release.

9. **General Release**- For and in consideration of good and valuable consideration, the sufficiency of which is hereby acknowledged, and except for the rights and obligations set forth in this Agreement, _____ voluntarily, and after having the opportunity to consult with an attorney of her own choosing, on behalf of herself, her heirs, executors, administrators, successors and assigns (collectively "the Releasing Parties"), hereby releases and forever discharges the _____ and all of its present and former principals, employees, agents, attorneys, insurers, subdivisions, heirs, administrators and assigns (collectively "the Released Parties"), from all manner of actions, injuries, proceedings, causes of action, grievances, suits, debts, obligations, dues, sums of money, accounts, contracts, controversies, agreements, promises, damages, judgments, claims, and demands whatsoever, direct or indirect, known or unknown, discovered or undiscovered, that the Releasing Parties ever had, now have, or shall or may have in the future against some, any or all of the Released Parties, for or by reason of any act, transaction, occurrence, omission, cause, matter or thing whatsoever up to and including the date of this Agreement, including but not limited to any and all claims arising under 42 U.S.C. § 1983; Titles I and II the Americans With Disabilities Act of 1990 ("ADA"), 42 U.S.C. §§ 12101 et seq.; Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e et seq.; the Age Discrimination in Employment Act of 1967 ("ADEA"), 29 U.S.C. §§ 621 et seq.; N.Y. Executive Law ("the New York State Human Rights Law") §§292 et seq.; the New York City Human Rights Law, N.Y.C. Admin. Code § 8-101 et seq.; N.Y. Civil Service Law §75-b; the United States Constitution; and the New York State Constitution.

10. **Successors and Assigns**- The terms and conditions of this Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of each party hereto.

11. **Authority**- Each signatory to this Agreement hereby represents and warrants that he, she or it has the requisite authority to enter into this Agreement and has not previously assigned or transferred any rights or interests with respect to the matters covered by this Agreement.

12. **Voluntary Agreement**- Each of the parties hereto executes and delivers this Agreement voluntarily after being fully informed of its terms, contents and effect, and acknowledges that he, she or it understands its terms, contents and effect. Each of the parties hereto acknowledges that he, she or it is aware, and is advised, of his, her or its right to seek the, advice of an attorney and that he, she or it has been represented by counsel of his, her or its own choosing before agreeing to any settlement or release, and no promise or representation of any kind, other than as set forth or referred to herein, has been made to any party hereto or anyone acting on behalf of such party.

13. **Entire Agreement**- This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes and embodies, merges and integrates all prior and current agreements and understandings of the parties hereto with respect to the subject matter of this Agreement, and may not be clarified, modified, changed or amended except in a writing duly executed by the parties hereto or an authorized representative of the parties hereto.

14. **Governing Law**- The terms of this Agreement shall be governed by, and construed in accordance with, the laws of the State of New York applicable to contracts

to be performed wholly within the State of New York, except to the extent that federal law applies to [REDACTED] release and waiver of federal claims pursuant to paragraph 4 of this Agreement.

15. **Severability**- If any provision of this Agreement shall be held by a court of competent jurisdiction to be invalid, void or unenforceable in whole or in part, such decision shall not invalidate the remaining portion or affect its validity.

16. **Implementation**- The parties shall take such other and further steps as are necessary to implement the terms of this Agreement.

Dated: _____

Dated: _____

By: _____

Director of Human Resources