

Andrea Kwiatkowski

From: William Collins <collinsw@assembly.state.ny.us>
Sent: Thursday, August 30, 2012 2:39 PM
To: 'Jonathan Rosen'; 'Michael Whyland'; 'James Yates'
Subject: RE: notes on assembly-AG communications

I don't want to get into a pissing match with Arlene Smoller - she helped us - but, there are certainly things left out. I didn't tell her all the facts but, gave her enough information about the type of conduct alleged so that she could offer advice, informally that a settlement "in the low six-figures" seemed rational to her based upon her experience. I thought she was helping us out and I did not know she was not reading drafts; in fact, when I forgot to attach the drafts I said I had attached (twice), she e-mailed me back saying she hadn't gotten them so I re-sent the e-mails with the drafts attached. When I sent her the second and third drafts the amounts and payment were in there. If, as she says, she "looked at the last draft", I'm not sure how she can say she "didn't know anything about any money"? I was told by OSC Counsel that the Comptroller's Office had consulted with the AG's office on settlements that the AG has NOT negotiated (the occasional state agency settlement on non-litigation matters) to see if the amount involved seemed reasonable. Counsel to the Comptroller gave me a specific example of such consultation (which I've forgotten). I had consulted with Arlene about the kinds of allegations and the opposing counsel and she indicated that the ballpark we were discussing seemed like a reasonable settlement range so I was comfortable that she would say that to OSC, if asked. It is true that Arlene sent me their boilerplate language that it was different from the language that we used, and that she never was asked to and never did approve our language.

From: Jonathan Rosen [mailto:Jonathan@berlinrosen.com]
Sent: Thursday, August 30, 2012 2:18 PM
To: Michael Whyland; 'James Yates'; 'William Collins'
Subject: RE: notes on assembly-AG communications

If this is factually untrue in any way – we should point out where it is factually untrue.

From: Michael Whyland [mailto:whylandm@assembly.state.ny.us]
Sent: Thursday, August 30, 2012 2:14 PM
To: 'James Yates'; Jonathan Rosen; 'William Collins'
Subject: FW: notes on assembly-AG communications

This is a pretty thorough accounting of what the AG's office claims is their involvement. Sort of gives credence to the claim I have heard from a number of reporters that they are beating us up pretty bad behind the scenes. How should we proceed?

From: Erik Kriss [REDACTED]
Sent: Thursday, August 30, 2012 1:43 PM
To: whylandm@assembly.state.ny.us
Subject: Fwd: notes on assembly-AG communications

As noted in my previous email to you, the following are my understanding of the interactions between the Assembly and the Attorney General's Office in regards to the Lopez settlement. I'm sending this because if there is anything inaccurate from your standpoint I want to give you the chance to provide your view/side of what happened. Also, if you can provide the emails in question, that would help; I've FOIL'ed them from the AG's office but have not yet received them:

The AG's lawyer got a call from Bill Collins at the Assembly in early May saying I've got an employment situation and was told you're the employment law expert - can I ask you questions as they arise?

She (the AG's lawyer) said yes, but I don't want specifics (because she did not want to make herself a witness in any way and put the AG's office in a position where it would have to go to outside counsel in the event of litigation because of a conflict).

There was a second conversation (between Collins and the AG lawyer) involving some discussion about taking this dispute to mediation.

She said in general when we are lawyers for the state we always try to pursue mediation so we can avoid the cost of litigation.

Next time he called he asked questions specifically about a proposed mediator, she told him what she knew, which wasn't much.

After that she was asked if she knew anything about the lawyers representing the victims - she said did not - did a google or online search - and that's last time they spoke on the phone.

So the phone conversations involved

1 mediation

2 could he (Collins) call for informal advice

3 did she know anything about these lawyers.

He sent her an email on may 29 that had some kind of draft of a settlement she never looked at the draft

may 30 he sent two follow-up emails with two drafts.

she looked only at the last draft she was sent.

she saw that an assembly member and not the assembly was listed as the employer. she told them the assembly and not the member should be listed as the employer.

she sent him back a model template agreement which contains neither a confidentiality provision nor any monetary element - was just boilerplate language.

What is the grand sum total.

She never got a follow up call or email following 5/30. never got a proposed settlement or agreement, never saw what was executed.

The Assembly obviously didn't use what the AG's office sent them this kind of courtesy is extended all the time.

at one point they asked her whether she thought the assembly had liability. she said i can't make an assessment unless i know what the conduct was. they gave her enough broad strokes about the conduct so she told them yes, assembly would have liability. she told them she thought it was incredibly important that the member in question pay himself (i.e. from his own pocket and not with state funds).

(in terms of why she didn't run this up the chain:) this is a non-political non-lawyer with expertise in employment law.

maybe it (the fact that the issue was an assembly member's misconduct) should have been (a red flag). we've talked to this person about the need to get this kind of information up the chain.

this is an administrative proceeding from another branch of government (i.e., ag's office was not required to nor did it officially review, vet, etc.).

AG's office didn't know anything about any money (to be paid out as part of the settlement).

AG's office has no role in saying yes to a money allocation or not - only the comptroller's office does. Never at any point did the AG's lawyer discuss with Assembly counsel the kinds of things that should be in any kind of settlement.

He sent drafts completely unsolicited asking her to take a look at it.

There was no discussion about potential settlement in any conversations.

Erik Kriss

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