

Andrea Kwiatkowski

From: William Collins <collinsw@assembly.state.ny.us>
Sent: Friday, August 31, 2012 12:33 PM
To: yatesj@assembly.state.ny.us
Cc: 'Carolyn Kearns'
Subject: conversations with OSC Counsel's Office

[Nancy Groenwegen is my personal friend. I have known her for almost 30 years. I respect her so much as a person and attorney that I have recommended her for significant positions in NYS government. I do not want to get into a personal pissing match with her and do not believe she would ever lie about or misconstrue a conversation with me.]

Shortly after the notion of a potential mediated settlement with the state paying some money was considered, I took it upon myself to touch base with Nancy informally. I talked to her about a hypothetical situation in which the AG was not representing the Assembly or a Member (so, this was probably **after** my initial phone conversation(s) with Arlene because I knew they wouldn't be appearing). I discussed the notion of a settlement agreement and how OSC would adjudge whether the amount of any such settlement was a fiscally prudent expenditure of state monies. I broadly spoke about the kind of case and the potential legal forums into which the Assembly and a Member may be dragged. She said that in an earlier state agency matter - I think maybe SUNY - in which litigation had not been commenced and the AG did not represent the agency, the reasonableness of a settlement amount had been "run-by" the AGs office. I believe I used the term "honest broker" but, that was certainly the concept. The AGs litigation experts - we both agreed that Arlene Smoler was such a person - had been consulted and would likely be consulted. That was all we discussed.

I called her months later, as we were in mediated negotiations, and reminded her of our earlier conversation. She quickly recalled that we had had such a discussion. I do not recall whether it was in this conversation or in the earlier conversation in which I actually mentioned the potential order-of-magnitude of a settlement as being in the low-six-figures and that Arlene Smoler hadn't considered that unreasonable under the circumstances I had described to her. I told her I'd keep her posted. At this point, I was thinking maybe OSC would have to actually see the final agreement (they, ultimately, neither saw it nor asked for it).

Finally, on May 30, as we were getting closer to finishing our negotiations, I called Nancy and said I was e-mailing a draft (and subsequently, another draft) agreement. She said she was forwarding this stuff to John Dalton - known by me to be a very experienced OSC lawyer with whom I had dealt on issues over the course of 35 years. John got the draft and asked for time to look at it. Although I was getting antsy because I thought the parties were on the brink of concluding the deal, I had always said in mediation and in negotiations that final language and concepts would be subject to some OSC and AG review (I really didn't know how much review but, I wanted to give us room for changes that either of those offices might want). John and Maryann Tommaney (another lawyer at OSC and my law school classmate) got back to me with a lot of questions about what the state money represented. If it was an amount equal to frontpay or backpay, OSC might have to withhold taxes before they paid on the settlement. I assured them that these monies were for alleged pain and suffering. Ultimately, after more discussion than I wanted to have under what I conceived to be time pressure to close the deal while the parties were ready to close, they suggested some changes to the method of payment clauses which I adopted.

I never had any discussion with any OSC lawyer about the confidentiality clause. I believe Nancy directly forwarded my drafts to John Dalton to handle technical advice and she told me she didn't look at my drafts. I believe her.