

MICHAEL J. ROSE
860-748-4662
Mrose@fordharrison.com

June 28, 2016

Diane Ferguson
Personnel Director
City of Bristol
111 North Main Street
Bristol, CT 06010

Re: Sexual Harassment Investigation

Dear Ms. Ferguson:

I have completed my investigation into complaints made by [REDACTED] against Mayor Kenneth Cockayne. I have concluded that Mayor Cockayne engaged in at least one substantive act of retaliation against [REDACTED] for raising her concerns of perceived sexual harassment. I do not believe that there is substantial evidence to warrant [REDACTED] claim that she was retaliated against for political activity.

Finally, I do not believe that [REDACTED] was sexual harassed *per se*, in that she has herself acknowledged that this is not the focus of her claim, and the two individuals involved had a personal relationship during the period in question.

I have fully briefed you on my investigation and findings and believe that it is in the best interest of [REDACTED] for that analysis to remain confidential and subject to the work-product privilege. Moreover, since you initially retained our firm to investigate the matter, I believe these discussions more appropriately remain as attorney-client communication. My rationale with respect to this proposal is not based on any desire to protect any public official, but rather to protect the complainant from the specific matters discussed in the inquiry. I believe you can remedy the issues without disclosing the specific content of the analysis.

I have made a series of recommendations for your review. They are as follows:

A. Cockayne's Acknowledgement of Wrongdoing in Threatening [REDACTED] and Attorney Lacey.

The first step in remedying the situation is the Mayor's acknowledgement that his attempt to steer [REDACTED] away from pursuing her claim and threatening Attorney Lacey was wrong and violated Bristol's anti-retaliation policy. It was a grievous error on his part that in many professions would cost him his employment. His embarrassment, shame and fear do not justify a transferral of that anxiety to [REDACTED] or Attorney Lacey. Unless he can sincerely recognize the

June 28, 2016

errors involved, a toxin will permeate throughout the City of Bristol, and the City Council will be forced to evaluate its legal obligations to manage or discipline the Mayor.

B. Establishment of an Anti-Retaliation (Ombudsman) Protocol under which [REDACTED] and Attorney Lacey can Report Issues.

Bristol must recognize that claims against the Mayor, who is the City's Chief Executive, cannot credibly be investigated by the Personnel Director, who is also appointed by the Mayor. In this case, you attempted to solve that problem internally, but later wisely recognized that outside, independent assistance was necessary. Similarly, in order to comply with the anti-retaliation provisions of state and federal law, as well as its own internal policies, Bristol should appoint a circuit-breaker, or ombudsman, to whom Attorney Lacey, [REDACTED] or any other participant in this investigation can report any retaliation that is being directed to him/her by the Mayor or anyone else.

I would recommend that the Ombudsman be retained for a period of two (2) years and be required to investigate any claim of retaliation related to this investigation. The Ombudsman should also be responsible for making findings of fact and recommendations for resolution of any issue brought before him/her. Findings and recommendations should be made in writing, and a report should go to Personnel and City Council. The Ombudsman's first goal would be to mediate and remedy any alleged retaliation, and only issue a report if a voluntary resolution cannot be reached.

C. Establish Intensive Training for Supervisors and Staff and Ensure it is Repeated Biannually.

Training is an obvious need in any organization and will be beneficial to all supervisors who face the same difficult circumstances faced by Attorney Lacey and Ms. Ferguson. I recommend several hours of training on harassment, retaliation, and concerted action/free speech rights of public employees.

D. Restore any Sick Time Used by [REDACTED] from November, 2015 through May, 2016.

[REDACTED] took leave from work during the course of this investigation. Her physician indicated that her work environment was affecting her health. [REDACTED] learned of the Mayor's comments in late March, 2016 and shortly thereafter began her leave. As such, her leave seems to flow directly from the Mayor's conduct. It makes sense to provide her restitution for those days as part of the remedial process.

Additionally, [REDACTED] has advised me that she expected "compensation," and she has threatened to institute legal proceedings. Those threats are themselves protected, and remedies should be offered irrespective of the fact that [REDACTED] anger may be difficult to ameliorate.

June 28, 2016

E. EAP for Cockayne.

In order to prevent future occurrences of similar behavior, and to show an attempt to change Mayor Cockayne's behavior, use of Bristol's EAP program could be beneficial. EAP can address any animosity that Mayor Cockayne has regarding the complaint and advise him to best maintain a professional relationship with [REDACTED], Attorney Lacey, Ms. Ferguson and all other participants in this investigation. EAP often can also provide specific training with respect to employer/employee and supervisor/employee relationships and the boundaries that should be set between them.

In conclusion, it is my hope that with time and compassion, and with honest introspection, Mayor Cockayne can recognize that, to the extent he wishes to continue to lead Bristol, he must address this problem with contrition. [REDACTED] must be made to feel that her concerns have been heard, and have been responded to.

Sincerely,
Michael J. Rose
MICHAEL J. ROSE

MJR/ktb