

## Andrea Kwiatkowski

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**From:** William Collins <collinsw@assembly.state.ny.us>  
**Sent:** Friday, August 31, 2012 11:10 AM  
**To:** yatesj@assembly.state.ny.us  
**Cc:** 'Carolyn Kearns'  
**Subject:** my conversations/communication with AG's office about settlement

Shortly after we got Mariann Wang's January 12 letter seeking a mediated settlement on behalf of her clients, you called me to tell me that you had spoken to Neil Kwatra and he suggested that I speak to Deputy Attorney General Arlene Smoler. I believe I had heard her name before but, I had no previous knowledge that she was an expert in sexual harassment / sex discrimination law. I initially called Ms. Smoler because I was told that she possessed legal expertise about some issues which I didn't and for consultation as a legal colleague. I do not have dates of my early telephone conversations with Ms. Smoler. I have a slip of paper which appears to evidence my first contact with her (in fact, my note with her phone number says "Eileen Smoler"; I really didn't know her). We had, at least, two early (probably mid- or late-January) conversations about:

1. The shortcomings of the Assembly Policy in that it required a "written complaint" She said **any** complaint of any sort to anyone in a significant position in the institution needed "prompt and timely investigation" We didn't get to how prompt but, she saw this as some downside risk for us in potential litigation.
2. Whether the AG would represent us or Lopez in this matter. I was assuming they wouldn't absent litigation triggering section 17 but asked anyway. She confirmed my notion; the AG would not represent the Member (I hadn't identified him) or the Assembly.
3. The applicability of the various laws and potential judicial/administrative resources in relation to the Assembly as defendant/respondent and/or the Member as defendant/respondent. We talked about some immunity from punitive damages for the Assembly but, exposure for the Member under some of these laws. We talked about indemnification against individual liability under section 17 in relation to a finding against a supervisor which included punitive damages. She mentioned a specific case (CSEA v. Parks) which was settled, in part, with section 17 funds but, in part, with state agency funds.
4. We talked about the employees lawyers, the mediation process and a mediator who had been suggested. She was going to "Google" the law firms. She didn't think Allred was a very good lawyer but, clearly "high-profile". She thought that mediation, on balance, was a very good idea but, warned that it was also a form of "free discovery" for **both** sides.

As we got closer to the actual mediation process, I called Ms. Smoler again (once on March 27 according to our phone records). I wanted to discuss some strategy and what she thought might be a ballpark reasonable settlement. At some point - either in this conversation or earlier - she thought that there may have been some possibility of a "mid-six-figures" judgment with attorneys fees and that a "low-six-figures" settlement may be a reasonable final outcome of our process. Again, she was **not** "representing" us in any sense; just lawyer-to-lawyer conversation. By this point, I had spoken to Nancy Groenwegen, OSC Counsel, about how OSC would be able to assess - other than my word - that our potential agreed-upon expenditure of state dollars was a reasonable settlement. As I'll explain in a separate e-mail, Nancy told me that in a matter like this - where the AG was not representing us - OSC would be inclined to touch base with the AG's office (particularly, Arlene) to get a read on the reasonableness of the amount of state dollars being expended.

At some point, in a telephone conversation with Arlene, she said "You know, we've been talking about this all hypothetically. Can you tell me who the Member is?" Now believing that the agreement would probably be shared with Arlene by OSC for "vetting", I told her it was Vito Lopez.

I recall sharing at least two drafts with Arlene via e-mail. According to my e-mails that happened on May 30. From our phone records, it appears that I also placed a call to her on that date. I apologized to her twice in e-mails for making the same mistake twice - which she caught twice - in not actually attaching the referenced attachments. She ultimately got

both drafts. She read at least part of the first one because she said that Vito should not be identified as the "employer". I corrected that at her suggestion. I never got feedback from her on any other language of the draft other than her sending me a settlement template that the AG's office used so that I could consider whether any of their boilerplate language/clauses were better than our draft language/clauses.

Throughout our conversations, I was aware that - some years back - the AG had stopped doing "confidential" settlement agreements. I never asked her about our confidentiality clause or whether she thought doing a confidential settlement agreement was a good idea. We never discussed that.

My initial discussions with Arlene were clearly hypothetical and dealt with applicable law, mediation/settlement theory and practice, etc. As we got closer to closing the agreement, I wanted to share its terms with her because I thought OSC might want her input on the reasonableness of the deal insofar as it involved the expenditure of state dollars. That was my motivation though I do not believe I shared that with her and I never asked her for actual "approval" or "sign-off"; I was just trying to get her comfortable, in case she was asked by anyone, that she wouldn't need to "disapprove" of this settlement.