

**IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT, IN
AND FOR LEON COUNTY, FLORIDA**

SANDRA ALLEN MANNING,

Plaintiff,

v.

CITY OF TALLAHASSEE,

Defendant.

**CASE NO.: 19-CA-446
FLA BAR NO.: 0739685**

PLAINTIFF'S MOTION TO COMPEL TESTIMONY OF PATRICIA MCCRAY

Plaintiff, SANDRA ALLEN MANNING, through her counsel, files this Motion to Compel Testimony of Patricia McCray and states:

1. Plaintiff has set the deposition of Patricia McCray in this case and believes that she has information about the failure to place Plaintiff into the Communications Director position within Defendant.

2. Plaintiff cannot talk to Ms. McCray about her knowledge in this case because she executed a settlement agreement, attached hereto as Exhibit A.

3. Over the past several weeks, the undersigned has conferred with Defendant's Counsel, Michael Spellman, to see if he would stipulate that Ms. McCray can testify without violating her agreement if she is under subpoena. Ms. McCray was placed under subpoena for her deposition but Defendant, through its counsel, refused to consent and/or acknowledge that Ms. McCray would not be in violation of her agreement if she was under compulsion to testify.

4. Ms. McCray, consequently, refused to testify.

5. Through this Motion, Plaintiff is requesting that the Court order Ms. McCray to

appear for a deposition immediately and to give testimony and to rule that testimony given under subpoena is not violative of the attached agreement.

6. This Motion is not filed for the purpose of delay but is filed in good faith based on the representations made above.

WHEREFORE, Plaintiff respectfully requests that Patricia McCray be ordered to testify in this case and that an order be entered holding that Ms. McCray is not in violation of the settlement agreement if compelled to give testimony under subpoena, all for the reasons set forth more fully above.

Respectfully submitted,

/s/ Marie Mattox
Marie Mattox (FBN: 739685)
MARIE A. MATTOX, P.A.
203 North Gadsden Street
Tallahassee, Florida 32301
Primary Email: marie@mattoxlaw.com
Secondary Email: marlene@mattoxlaw.com
ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record via the Florida E-Filing Portal this 3rd day of January, 2022.

Michael P. Spellman
123 North Monroe Street
Tallahassee, Florida 32301
Mspellman@sniffenlaw.com

/s/ Marie Mattox
Marie Mattox

SEVERANCE AGREEMENT & GENERAL RELEASE

This Severance Agreement and General Release (hereinafter "General Release") has been entered into between the City of Tallahassee, its agents, employees and officers (hereinafter "City"), and Patricia McCray, Employee hereinafter Ms. McCray.

Whereas, Ms. McCray submitted her letter of resignation or retirement dated

Aug. 8, 2017, and

Whereas, effective August 3, 2017, Ms. McCray's employment with the City will be severed,

NOW, THEREFORE, in consideration of the following mutual promises, covenants and representations set forth herein, the sufficiency of which is being acknowledged, the City and Ms. McCray do hereby agree as follows:

1. The City agrees that:
 - a. Ms. McCray will be paid an amount equal to fourteen (14) weeks' pay. This lump sum severance payment will be made on the first regular payday following the effective date of this General Release as described in the last paragraph of this General Release and will be subject to all tax withholdings as required by law; and
 - b. Ms. McCray shall be paid an amount equal to three (3) months of the cost of current city-paid health insurance premium coverage.

EXHIBIT "A"

COT/McCray 000068

2. Ms. McCray agrees that:

a. I, Patricia McCray, for and in consideration of receipt of the salary and health insurance payments outlined above, the receipt and sufficiency of which is hereby acknowledged along with other good and valuable consideration outlined in this General Release, do hereby release and forever discharge the City of Tallahassee and its past, present and future agents, insurers, officers, directors, administrators, employees, commissioners, attorneys, and assigns (collectively referred to as "the City") or others who may be claimed to be liable through them, from any and all claims, demands, damages, actions, causes of action or suits of any kind or nature whatsoever, including any and all claims for attorney's fees and costs, that I may have, may have had, may now have, against the City by reason of any matter, cause, happening, or thing occurring up to the date of this General Release, including but not limited to, any matter or claim arising out of the facts and circumstances set forth and described in the following action: the employee's resignation/retirement from his/her position of Assistant to City Manager as reflected in the letter of resignation/retirement from City Manager Department, which is incorporated herein by reference (hereinafter the "Resignation") with the parties' agreed effective date of Aug. 8, 2017.

b. I, Patricia McCray, further agree to not file or pursue, a grievance or appeal under the City of Tallahassee's Policy and Procedures Manual or any action in any administrative, state or federal court or agency regarding any claims that I

EXHIBIT "A"

may have or had pertaining to my employment prior to the signing of this General Release, including the Resignation/Retirement, and to refrain from instituting, prosecuting, filing, or processing, assisting or cooperating with the instituting, prosecuting, filing or processing of any litigation, grievances or other claims or charges against the parties released herein, in any way related to or arising out of the Resignation/Retirement, or with respect to any other claims, charges or causes of action against the parties released hereto in any manner, whether arising out of alleged instances of discrimination, retaliation, or otherwise.

c. I, Patricia McCray, agree and represent that there is no person who has or may assert a claim for loss of consortium against the City, or any other released party.

d. I, Patricia McCray, understand that tax consequences, if any, are my sole and total responsibility. Neither the City, nor any other released party has made any representations and/or warranties regarding the taxability or lack of taxability of any of the severance proceeds.

e. I, Patricia McCray, represent and warrant that I am authorized and entitled to sign this General Release and that I own and have not sold, pledged, hypothecated, assigned or transferred the claims being released and that I agree to indemnify and hold the City and all other released parties harmless from any such claim that may

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be asserted against a settling party to this General Release by any other person or entity in contravention of the provisions of this paragraph.

f. I, Patricia McCray, understand and agree that the acceptance of this General Release is not to be construed as an admission of liability on the part of any party, but that the payment of fourteen (14) weeks' salary and payment of three (3) months of the current cost of city-paid health insurance premium coverage is in compromise and severance of any and all claims, which are not admitted but are denied and disputed; that this General Release is not executed in reliance upon any statement or representation made by the City or any other person; that said consideration is the sole consideration for this General Release, and is accepted in full compromise, settlement and satisfaction of any and every such claim, demand or cause of action, including all claims, demands and causes of action for or on account of all injuries, damages, consequences, attorney's fees and costs, which may become known, develop or accrue, as well as those already known, developed or accrued up to the effective date of this General Release as defined in the last paragraph of this General Release titled "**ADEA/OWBPA RIGHTS**;" that the terms of this General Release have been completely read and the tenor and effect of the release and indemnification contained therein are fully understood and accepted, having the benefit of my counsel; and that the terms of this General Release have been given voluntarily.

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2025 RELEASE UNDER E.O. 14176

g. Either party to this General Release shall have the right to bring an action of specific performance to enforce this General Release. In any dispute regarding the interpretation of or the enforcement of this General Release and the rights under it, the prevailing party shall be entitled to recover reasonable costs and attorney's fees from the non-prevailing party. This General Release extends and applies to, and also covers and includes all unknown, unforeseen, unanticipated and unsuspected injuries, damages, loss and liability, and the consequences thereof, as well as those now disclosed and known to exist.

h. Pursuant to Florida Statutes, Section 215.425, any severance pay provided may not exceed in an amount greater than twenty (20) weeks of compensation and may not be paid when an employee has been terminated for misconduct, as defined in Florida Statutes, Section 443.036(29).

ADEA/OWBPA RIGHTS

I, Patricia McCray, represent that I have carefully read this General Release and understand its terms and conditions without reservation. I, further acknowledge that I have had ample opportunity to consult with legal counsel of my choice regarding this General Release, that I have not relied on any representations or statements on behalf of any other party or other party's counsel with respect to the subject matter of this General Release, that I understand that this is a full, complete and final release and that I am forever

EXHIBIT "A"

relinquishing and releasing the claims I may have, may have had or may in the future have against the City as set forth in this General Release.

My execution of this General Release is knowing and voluntary. Specifically, I, Patricia McCray, have been advised of my rights under the Age Discrimination in Employment of 1967 (ADEA), and Older Workers Benefit Protection Act of 1990 (OWBPA), and understand the following:

I, Patricia McCray, am specifically waiving any claims and rights under the ADEA and OWBPA that I have against the City or any other released party.

I, Patricia McCray, am not waiving any rights or claims that may arise in the future.

I, Patricia McCray, have entered into this General Release in exchange for valuable consideration.

I, Patricia McCray, have had an opportunity to consult with an attorney before entering this General Release.

I, Patricia McCray, have forty-five (45) days from the date I received this General Release to consider and execute this General Release.

I, Patricia McCray, have been provided in writing, upon the receipt of this General Release: (1) The decisional unit for layoff effective August 3, 2017: City Manager Department, City of Tallahassee, and (2) a listing of the job titles and ages of all laid-off employees in the City Manager Department, City of Tallahassee, and a listing of the ages of all employees in the same job classification in the City Manager Department,

EXHIBIT "A"

City of Tallahassee, who were not laid-off.

I, Patricia McCray, have seven (7) days to revoke this General Release after signing it, and understand that the City will not take any other action required under the terms of this General Release until the expiration of this seven (7) day period. This General Release shall not become effective or enforceable until this seven (7) day revocation period has expired.

IN WITNESS WHEREOF, the Parties have executed this Release as of the dates hereinafter appearing.

Patricia McCray
Employee

Aug. 8, 2017
Date

Ricardo Fernandez
Ricardo Fernandez, City Manager
City of Tallahassee

8/8/2017
Date

Approved as to Form by:

Cassandra K. Jackson
Cassandra K. Jackson
Deputy City Attorney

8/8/2017
Date

STATE OF FLORIDA
COUNTY OF LEON

The foregoing General Release was acknowledged before me this 8th day of August, 2017 by Patricia McCray, who is personally known to me or produced n/a as identification.

Brian Smatt
Print, type name and expiration date

Brian Smatt
Notary Public

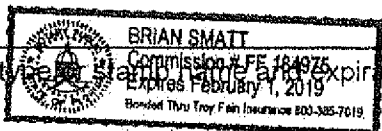


EXHIBIT "A"