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February 16, 2025

Patrise Perkins-Hooker
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Dear Ms. Perkins-Hooker:

As you know, my firm was appointed as independent counsel by the Governing Board of the City of Atlanta's Office of Inspector General (OIG) on February 14, 2025, due to a conflict of interest on behalf of the City Attorneys' Office. Please accept this letter as OIG's formal response to your February 3, 2025 "cease and desist" letter, in which you state that OIG is in violation of a Georgia banking statute in its issuance of certain subpoenas for financial records.

Your letter contains numerous incorrect statements of the law and therefore is fundamentally misleading. It disturbs me that your letter has been the lynchpin of an aggressive media campaign by members of City leadership against the Inspector General. Your letter's assertion that OIG's subpoena practice "places the City of Atlanta at risk for potential liability for [an] intentional violation of Georgia's Banking and Finance laws" is an invitation for bad actors to bring suit against the City in an attempt to obtain financial settlements. It is a stunning "statement against interest" for a City Attorney to make, if you purport for your Office to represent OIG. Indeed, your letter is cited prominently in the February 6, 2025, lawsuit filed by Bernard Tokarz. I am insisting that you retract your office's incorrect statement and cease and desist from issuing further statements that would place OIG and its staff at legal peril.

Before addressing the specific points in your "cease and desist," I must address a recent email in which you stated to me, "Please be reminded that the OIG Governing Board engaged you to **advise** the IG, you are not the representative of the Office or the Board." As you know, the OIG board appointed my firm as conflict counsel on February 14, 2025, by a majority vote, as permitted under Section 8-101(l) of the City's

code. I prepared correspondence to the Board clearly outlining the conflict and the purpose for retaining my firm, which I attach hereto. The distinction you are trying to raise between "advise" and "represent" has no legal significance whatsoever.

Certainly, you do not contend that your Office represents OIG. You have taken an openly adverse position to OIG, as set forth above. Your February 3, 2025, "cease and desist" letter was disclosed to numerous third parties and blasted out with a press advisory; certainly, you did not intend that to be privileged communication between an attorney and her client. I would refer you to Professional Rule of Conduct 1.6 ("Confidentiality of Information") and 1.7 ("Conflict of Interest: General Rule") for the very basic principles that cannot be resolved with any notion that your office can fairly represent OIG with respect to the "banking subpoenas" issue.

You also stated in your email to me:

[M]y office represents everyone in litigation other than Ms. Manigault personally in her individual capacity. The Governing Board is not authorized to assign representation for her personally and my office has declined to do so. She will have to engage an attorney for herself at her expense once she is served in the Tokars matter.

In other words, the City's intention with respect to Ms. Manigault is to "throw her under the bus," saddling her and her family with legal expenses related to the performance of her duties to the City. I have been involved in numerous cases involving the City of Atlanta and other public entities, and in almost all instances, where the City is sued along with one of its officials, the City has offered legal counsel to the individual official. Your stated intention to do otherwise is discrimination against Ms. Manigault, and retaliation, in violation of Georgia's whistleblower protection law. Please take notice.

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I address the specific contents of your "cease and desist" letter.

You write:

On behalf of the City of Atlanta, I am demanding that your office cease the practice of adding disclosure notices on your subpoenas immediately. The specific language to be removed is "*Disclosure of the existence of this subpoena or its contents could impede the investigation being conducted and thereby interfere with the enforcement of law. Please do not notify.*" This language is designed to have financial institutions view this subpoena as

being one issued pursuant to O.C.G.A. Section 7-1-360 (3) as a part of a criminal or tax investigation of the depositor or customer of the financial institution. Your subpoenas are in the nature of those issued pursuant to O.C.G.A. Section 7-1-360 (2). The difference is the requirement of notice to be provided to the depositor or customer of the financial institution.

With respect to your statement that OIG's subpoenas for financial records are covered by O.C.G.A. § 7-1-360(2), as opposed to (3), I disagree. Here are the relevant portions of the statute in question, which is directed toward banks (and not, as many press statements would suggest, toward Inspectors General). As you know, the law requires banks to produce financial records:

(2) Where the records [. . .] are requested through subpoena or other administrative process issued by a state, federal, or local administrative agency [or . . .] pursuant to [. . .] an ongoing civil action; [or]

(3) Where the records [. . .] are requested in conjunction with an ongoing criminal or tax investigation of the depositor or other customer by a state or federal grand jury, taxing authority, or law enforcement agency. [. . .]

The law further provides:

(b) Unless directed otherwise by a court of competent jurisdiction, before disclosure, production, or examination of records produced under paragraph [. . .] (2) [. . .], the agency or other party seeking the disclosure or production of the records shall provide notification to the depositor or other customer of such request. Notification of the depositor or other customer under circumstances set forth in paragraph[] (3) [. . .] shall not be made without the consent of the requesting authority.

You have impliedly asserted the position that OIG is a "local administrative agency" under (2), as opposed to a "law enforcement agency" conducting a "criminal or tax investigation" under (3).

First, it is notable that there are few published decisions or regulations pertaining to O.C.G.A. § 7-1-360. There is no definition in the statute of "administrative agency" or "law enforcement agency," such that one could conclude, without careful analysis, that OIG meets one definition and not the other. Furthermore, with respect to the "notice" provision, there are no specific guidelines for what type of notice must be given.

OIG properly falls under section (3), and therefore may serve financial subpoenas without notice to the depositor. The City Code creating the Office of

Inspector General gives it numerous powers and responsibilities of a law enforcement agency, with jurisdiction over criminal violations.

For example, Section 8-106(b)(8) defines the "duties" of the Inspector General to include "Reporting, as appropriate, suspected criminal violations of a law, rule, regulation, or internal policy related to a matter under the Compliance Division to the local, state or federal law enforcement agency with proper jurisdiction."

Furthermore, under Section 8-106(a)(4), the Compliance Division possesses "non-exclusive jurisdiction to investigate and take appropriate action regarding: [. . .] Allegations of violations of Chapter 2, Article X; of Chapter 3; or Chapter 114 of the City Code of Ordinances."

Two of the three sections over which OIG has specific jurisdiction involve criminal law enforcement.

Chapter 2, Article X, which pertains to Procurement (e.g. the expenditure of City money), states, at Section 2-1488:

(a) *Criminal penalties.* To the extent that violations of the ethical standards of conduct set forth in this division constitute violations of state law or violations of the city standards of conduct set forth in section 2-807 of this Code, they shall be punishable as provided therein.

Chapter 3, Transparency, has criminal sanctions associated with violations, stating, at Section 3-2, "*Compliance with chapter required.* [. . .] In addition [to other penalties], violations of the requirements of this chapter by employees, vendors, or contractors may be referred to the appropriate authorities for criminal prosecution or civil enforcement."

Therefore, your conclusion that OIG is not a "law enforcement agency" and that its investigations are not "criminal investigations" is unsupported by the text of the Code.

*

You write, "This practice also subverts the provisions in Part I, (Charter and Related Laws), Subpart A, (Charter), Article 8, Section 8-101 (e) of the Municipal Code of the City of Atlanta which grants a party subject to a subpoena the right to file a motion with your board to seek to quash the subpoena. Without notice of the issuance of the subpoena, this right has been eviscerated."

This is also incorrect. The Section giving OIG subpoena power over the records of third parties does not mandate that an account-holder be notified of a financial subpoena. In fact, it states that OIG may take enforcement action against one who refuses to produce documents pursuant to a subpoena; and in that context, the receiver of the subpoena may challenge it, to wit:

[. . .] in furtherance of an investigation initiated pursuant to this Article, the Inspector General or the Ethics Officer may issue subpoenas to compel the production of documents and things including for books, records, documents, papers, automated data, and other written instruments. If any person duly subpoenaed shall fail or refuse to produce such documents and things, the Inspector General or the Ethics Officer shall report the failure or refusal to produce the documents and/or things to any court of record or judge thereof in accordance with applicable law, who may make such order as shall be proper for the production of any such documents and things. The Inspector General or the Ethics Officer may, after due notice and opportunity to be heard pursuant to this Article, punish them for failure to comply therewith.

Section 8-101(e)(7) refers in general to motions to quash, stating that such motions shall be heard by the Governing Board of the Office of the Inspector General. The right to move to quash subpoenas is in no way "eviscerated" by the failure to give notice to a depositor. To the contrary, the party to whom the subpoena is issued always has the right and power to file a motion to quash. In the context of financial subpoenas, it is the *banks* that are being subpoenaed, not the depositor, and the banks may move to quash.

Federal law specifically holds that an account holder does not have a constitutional privacy right with respect to his banking records when they are sought by subpoena as part of a lawful investigation. "The checks are not confidential communications but negotiable instruments to be used in commercial transactions. All of the documents obtained, including financial statements and deposit slips, contain only information voluntarily conveyed to the banks and exposed to their employees in the ordinary course of business. The lack of any legitimate expectation of privacy concerning the information kept in bank records was assumed by Congress in enacting the Bank Secrecy Act, the expressed purpose of which is to require records to be maintained because they "have a high degree of usefulness in criminal tax, and regulatory investigations and proceedings." 12 U.S.C. s 1829b(a)(1)."

United States v. Miller, 425 U.S. 435, 440-43 (1976).

Therefore, the fundamental premise of your letter, that these subpoenas are a violation of law that would subject the City to liability, is false. The very statute that you rely upon, O.C.G.A. § 7-1-360, contemplates that a bank is required to produce records pursuant to subpoena and is forbidden to notify the account-holder. Where that is the law, it cannot also be the law that a valid investigative subpoena will subject the investigating agency to liability for merely obtaining the records sought.

*

I hope you will consider this letter carefully. Again, we are insisting that you retract your statements to the effect that *OIG's subpoena practice, "places the City of Atlanta at risk for potential liability for this intentional violation of Georgia's Banking and Finance laws."* The statement is untrue. It is directly adverse, and has caused material harm, to the interest of *OIG*, which you purport to represent.

Sincerely,



James Radford

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cc:

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Attachment

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February 13, 2025 Letter to Governing Board
Re: Conflict of Interest and Appointment as Independent Counsel



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February 13, 2025

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Dear Ms. Manigault and Members of the Board:

I have been in communication with City of Atlanta Inspector General Shannon Manigault and members of her staff at the Office of Inspector General (OIG) regarding recent legal issues. Specifically, I have been made aware of a “cease and desist” letter sent to OIG on February 3, 2025, by the City Attorneys’ Office taking the position that OIG had intentionally violated state law in the issuance of subpoenas for banking records without certain notices to the deposit holders. I am in receipt of an “ante litem” notice dated February 6, 2025, sent on behalf of one Duvwon Robinson alleging claims arising from the banking subpoenas. I am also in receipt of a civil complaint dated February 6, 2025, brought on behalf of one Bernard Tokarz, alleging legal claims arising from the same banking subpoenas described in the February 3, 2025, “cease and desist.”

It is my opinion that a legal conflict exists between, on the one hand, OIG, and on the other hand, the City of Atlanta and the City Attorneys’ Office. The City Attorneys’ Office has taken an adverse legal position to OIG. The plaintiff in the February 6, 2025, civil complaint has cited the City Attorneys’ Office’s “cease and desist” letter as evidence of liability.

I have been requested to serve as independent counsel to OIG related to this issue. This is a circumstance contemplated by Comment 9 of Rule 1.13 of the Georgia Rules of Professional Conduct, where the “client” here would be OIG, even though it is a division of the City of Atlanta, to wit:

The duty defined in this rule applies to governmental organizations. Defining precisely the identity of the client and prescribing the resulting obligations of such lawyers may be more difficult in the government context and is a matter beyond the scope of these rules. See Scope [16]. Although in some circumstances the client may be a specific agency, it may also be a branch of government, such as the executive branch, or the government as a whole. **For example, if the action or failure to act involves the head of a bureau, either the department of which the bureau is a part or the relevant branch of government may be the client for purposes of this rule.** Moreover, in a matter involving the conduct of government officials, a government lawyer may have authority under applicable law to question such conduct more extensively than that of a lawyer for a private organization in similar circumstances. Thus, when the client is governmental organization, a different balance may be appropriate between maintaining confidentiality and assuring that the wrongful act is prevented or rectified, for public business is involved. In addition, duties of lawyers employed by the government or lawyers in military service may be defined by statutes and regulation. This rule does not limit that authority. See Scope [16].¹ (emphasis added).

I note that the February 6, 2025, lawsuit filed by Mr. Tokarz purports to sue Ms. Manigault in both her official and individual capacities. My initial review of these matters leads me to conclude that the legal interests of Ms. Manigault “individually” are aligned with those of OIG because the “individual capacity” claims are all based upon alleged actions taken by Ms. Manigault in furtherance of her duties for OIG. It is

¹ Scope [16] referred to in Comment [9] states:

Under various legal provisions, including constitutional, statutory and common law, the responsibilities of government lawyers may include authority concerning legal matters that ordinarily reposes in the client in private client-lawyer relationships. For example, a lawyer for a government entity may have authority on behalf of the government to decide upon settlement or whether to appeal from an adverse judgment. Such authority in various respects is generally vested in the attorney general and the state's attorney in state government, and their federal counterparts, and the same may be true of other government law officers. Also, lawyers under the supervision of these officers may be authorized by law to represent several government entities in intergovernmental legal controversies in circumstances where a private lawyer could not represent multiple private clients. They also may have authority to represent the “public interest” in circumstances where a private lawyer would not be authorized to do so. These rules do not abrogate any such authority.

my opinion that an ongoing attorney-client relationship between my firm and Ms. Manigault individually will further the interests of OIG by allowing us to gather information and have privileged communications with her with respect to the relevant issues. Therefore, pursuant to Rule 1.13(g) of the Georgia Rules of Professional Conduct, with Ms. Manigault's consent, we would represent her individually as well. Upon further review, if we developed reason to believe there was a conflict of interest, we would take appropriate actions to address said conflict in accordance with the Georgia Rules of Professional Conduct.

My law firm, and I personally, have substantial experience representing government officials in disputes with their appointing authority, both in the context of employment and in the context of interpreting state and local laws that define the rights and obligations of public officials and the entities they serve. We have considerable experience litigating claims and defenses that are unique to public officials and government entities, including the various immunities available under state and local law. While our consumer-facing marketing materials (e.g. our website) emphasize our work in employment law, we also have considerable experience in other areas, including constitutional torts and other civil rights litigation, complex consumer class actions, and state law litigation sounding in tort and contract.

As set forth above, in this matter, our client would be OIG, as opposed to the City. While we have often been involved in litigation where we are adverse to the City of Atlanta, we have developed a professional, respectful working relationship with the City Attorneys' Office even when our clients' interests are adverse. In this matter, there will be a need to both advocate against positions taken by the City Attorneys' Office, but also to collaborate and coordinate, where for example a certain defense may involve a common interest. I believe we would be well-positioned to do that.

We appreciate the opportunity to serve in this capacity as independent counsel to represent OIG with respect to the banking subpoenas issues and any other issues that arise therefrom. Thank you.

Sincerely,



James Radford

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February 13, 2025
*RE: Representation of
the Atlanta Office of Inspector General*
Page 4 of 4

cc: Roslynn Anderson
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