

A PROFESSIONAL CORPORATION  
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March 19, 2018

**Via U.S. Certified Mail**

**Receipt No. 7016 3560 0000 2752 3146**

Newton County Board of Commissioners  
The Honorable Marcello Banes  
1124 Clark Street SW  
Covington, Georgia 30014

**Via U.S. Certified Mail**

**Receipt No.: 7016 3560 0000 2752 3153**

The Honorable Mayor Ronnie Johnston  
City Hall  
2116 Stallings St., NW  
Covington, Georgia 30014

**Via U.S. Certified Mail**

**Receipt No.: 7016 3560 0000 2752 3160**

Danny Stone  
476 Byrd Road  
Oxford, Georgia 30054

**Via U.S. Certified Mail**

**Receipt No.: 7016 3560 0000 2752 3177**

Josh McKelvey  
C/O Robert Stansfield  
Greer, Stansfield & Turner, LLP  
1118 Conyers Street  
P.O. Box 1617  
Covington, Georgia 30014

**Via U.S. Certified Mail**

**Receipt No.: 7016 3560 0000 2752 3184**

Stan Edwards  
280 5<sup>th</sup> Avenue  
Mansfield, Georgia 30055

*Via U.S. Certified Mail*

*Receipt No.: 7016 3560 0000 2752 3191*

Tim Fleming  
2149 Floyd Street  
Covington, Georgia 30014

*Via U.S. Certified Mail*

*Receipt No.: 7016 3560 0000 2752 3207*

Julius Hays  
1509 Woodlawn Road  
Covington, Georgia 30014

*Via U.S. Certified Mail*

*Receipt No.: 7016 3560 0000 2752 3214*

Scheree Howard  
23 Valley Trail  
Covington, Georgia 30014

*Via U.S. Certified Mail*

*Receipt No.: 7016 3560 0000 2752 3221*

Steve Rhodes  
45 Havenwood Ct.  
Covington, Georgia 30016

RE: Ante Litem Notice Pursuant to O.C.G.A. § 36-11-1 (Newton County)  
Ante Litem Notice Pursuant to O.C.G.A. § 36-33-5 (City of Covington)  
Our Client: Anthony Avery  
Date of Loss: January 30, 2018  
Incident Site: The Newton County Recreation Commission

Greetings:

As you are aware, our firm represents Mr. Anthony Avery in regards to several civil rights and personal injury claims. The purpose of this letter is to comply with any and all statutory ante litem notice requirements.

On Friday, March 9, 2018, Mr. Anthony Avery's Termination Appeal (the "Hearing") was held before Hearing Official Logan Butler. The witnesses called to testify in the Hearing were Chairman Marcello Banes of the Newton County Board of Commissioners, Former Newton County Recreation Commission Board ("NCRC Board") Chairman Danny Stone, Newton County Recreation Commission ("NCRC") Financial Officer Greg Sullivan, NCRC Senior Administrative Clerk Tammy Cheek, NCRC Board Member Flemmie Pitts, Former NCRC Board Member Andre Cooper and Former NCRC Director Anthony Avery. Based upon information obtained prior to and during the hearing, it is our contention that Mr. Avery has numerous cause of actions against the City of Covington, Newton County, Georgia, Danny Stone, Joshua McKelvey, Scheree Howard, Tim Fleming, Steve Rhodes, Stan Edwards and other

potential representatives of Newton County and Newton County Board of Commissioners arising out of the employment of and the wrongful and unlawful termination of Anthony Avery.

Pursuant to O.C.G.A. §§ 36-11-1 and 36-33-5, as counsel for Anthony Avery, I am presenting his state claims for general and special damages, both past and future, including but not limited to lost wages, pain and suffering and any other damages allowed under Georgia and ancillary federal law within the twelve-month period required by statute. To the extent that you require us to provide a dollar value for this claim, we believe that the value of Mr. Avery's claim in totality may exceed \$2,000,000 (Two Million Dollars). If you contend this letter does not provide you with sufficient notice pursuant to O.C.G.A. §§ 36-11-1 and 36-33-5, or comply with any notice provision statute, please advise me immediately in writing, and we will correct any deficiencies. As you are aware, O.C.G.A. § 36-11-1 and 36-33-5 are not applicable to the federal law claims asserted.

**TITLE VII OF THE CIVIL RIGHTS ACT OF 1964**  
**42 USC § 2000 et seq.**

Title VII prohibits discrimination on the basis of race, color or nation. Pursuant to 42 USC §2000e,

It shall be an unlawful employment practice for an employer -

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

It is our contention, strongly supported by the evidence and anticipated testimony, that the motive for Anthony Avery's termination was motivated by his race.

**42 USC § 1983 AND STATE CONSTITUTIONAL**  
**DUE PROCESS VIOLATION**

In pertinent party 42 USC § 1983 states that

“Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress...”



In this instant matter, we are alleging that Danny Stone, Joshua McKelvey, Scheree Howard, Julius Hays, Steve Rhodes, Stan Edwards and Tim Fleming conspired to terminate Anthony Avery without affording him due process. Here, it is undisputed that at the November 27, 2018 NCRC Board Member Joshua McKelvey knew that Anthony Avery due process rights were being violated when he motioned for Mr. Avery's termination. Upon information and belief, this motion was made after NCRC Board Chairman Danny Stone provided a detailed Performance Improvement Plan to the NCRC Board at the direction of Keyra Fray, Newton County Human Resource Director. This motion was second by NCRC Board Member Tim Fleming allowing for the measure to terminate Anthony Avery to go before the NCRC Board for a vote. Based upon the conduct of NCRC Board Members, text messages, emails and sworn testimony, it is our contention that NCRC Board Members Joshua McKelvey, Tim Fleming, Scharee Howard and Julius Hays, in concert with District 1 Commissioner Stan Edwards of the Newton County Board of Commissioners, conspired to deprive Anthony Avery of federal and state due process rights.

### **COUNTY AND MUNICIPAL LIABILITY**

As is well known that local governments and governmental entities may be the targets of actions where official policy or governmental custom is responsible for a deprivation of rights protected by the Constitution. Monell v. New York City Department of Social Services, 436 U.S. 658 (1978); City of Oklahoma City v. Tuttle, 471 U.S. 808 (1985). In order to attribute liability to the County and City of Covington, we must identify and produce direct evidence of (1) the existence of some policy, custom or practice (2) attributable to the municipality and/or County (3) that was the "moving force" behind (4) a constitutional injury. Id.

The NCRC tantamounts to a joint venture between the City of Covington and Newton County. It has operated since 1995 without defined policies and procedures. Anthony Avery alleges that the City of Covington and Newton County have promulgated a custom and practice of allowing the NCRC to govern autonomous from the City of Covington and Newton County. NCRC has governed without checks and balances, in derogation of the policies governing city and county departments, without direction and/or instruction to adhere to constitutional protections governing employment practices. This custom of practice established by the NCRC and ratified by both the City of Covington and Newton County, include but is not limited to the improper notion that the NCRC Board has the authority to terminate the NCRC Director and the absence of a clear observance of the human resource standards governed by the City of Covington and Newton County. This custom of practice allowed for the NCRC Board to initiate unlawful and reckless decisions that was the moving force behind the constitutional violations sustained by Anthony Avery.

### **HOSTILE WORK ENVIRONMENT**

To demonstrate a hostile work environment and thus a materially adverse employment action, a plaintiff must show that his workplace was permeated with "intimidation, ridicule, and insult, that is sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment." Gowski v. Peake, 682 F.3d 1299, 1311 (11th Cir. 2012) (quotation marks omitted). The objective severity of alleged harassment is evaluated under the totality of the circumstances, including "(1) the frequency of the conduct; (2) the severity of the

conduct; (3) whether the conduct is physically threatening or humiliating, or a mere offensive utterance; and (4) whether the conduct unreasonably interferes with the employee's job performance." *Id.* at 1312 (quotation marks omitted).

Upon information and belief, we contend that the NCRC Board created a hostile work environment in which unreasonably interfered with the job performance of Anthony Avery.

### **HARASSMENT**

Pursuant to Par. 3.306A of the Newton County Employment Personnel Policy *Applicable to Employees Hired Prior to May 1, 2016*, Newton County is committed to a professional work environment that treats each employee with dignity and respect. To that end, the County strictly prohibits unlawful harassment. It is our contention that the NCRC Board violated this statutory policy and procedure by allowing the conduct of Matt Taylor to persist. Although Mr. Avery repeatedly reported Matt Taylor's behavior and conduct to the NCRC Board, the NCRC Board failed to act. Specifically, the NCRC Board failed to comply with Par. 3.306A(4) and Par. 3.306A(5).

### **LIBEL AND SLANDER**

Under Georgia law, "libel is a false and malicious defamation of another, expressed in print, writing, pictures, or signs, tending to injure the reputation of the person and exposing him to public hatred, contempt, or ridicule." O.C.G.A. § 51-5-1. Slander is oral defamation which includes, "uttering any disparaging words productive of special damage which flows naturally therefrom." O.C.G.A. § 51-5-4. Anthony Avery is alleging that NCRC Board Members committed libel and slander.

### **OTHER UNKNOWN CLAIMS**

The outlined causes of action identified herein are not to be construed as conclusive or exhaustive. As discovery of facts continue in this matter, Anthony Avery may develop additional claims. However, said claims shall derive from the unlawful termination of his employment.

### **QUALIFIED IMMUNITY PRECLUDED**

Qualified immunity protects officials performing discretionary functions from individual claims, if their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. Personal liability is triggered when discretionary actions are taken by the public official with the scope of their official authority and done with wilfulness, malice, or corruption.

Georgia law is very clear on this subject. If a public official intentionally violates an individual's statutory or constitutional right, they are subject to personal liability for said violation. 42 USC § 2000, 42 USC § 1983 and their state statutory equivalents are all clearly established constitutional rights. We contend and it is strongly supported by the evidence obtained thus far in this matter, that NCRC Board Chairman Danny Stone, Members Joshua



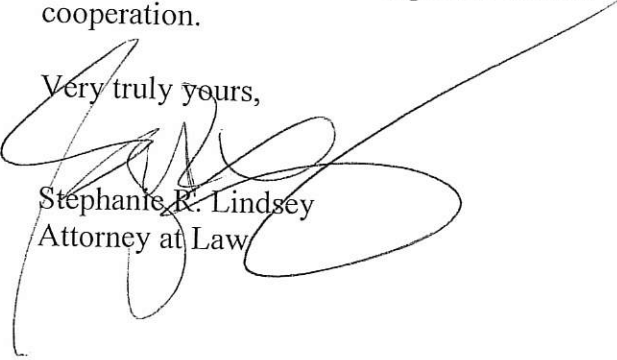
McKelvey, Tim Fleming, Scharce Howard, Steve Rhodes, Julius Hays and District 1 Commissioner Stan Edwards intentionally, deliberately, conspired willfully and with malice to violate Anthony Avery's constitutional rights. These officials are all subject to personal liability associated with their involvement in the termination of former NCRC Director Anthony Avery. As we intend to proceed against these individuals in their personal capacity, we also intend to file for punitive damages against these individuals in our effort to pursue the compensation that is justly due to Anthony Avery.

Please accept this as a request for all insurance information that may cover any aspect of these claims.

In the past we have discussed the possibility of pre-litigation resolution in this case. We initially demanded \$750,000 to settle Anthony Avery's claim. This demand was tendered at the earlier phase of this case. As we have obtained additional evidence in this matter, it is our belief that the posture of this case has strongly shifted even more in our favor. In addition, based upon the interview of witnesses, in preparation for the Appeal Hearing, several individuals are prepared to testify that the outlined causes for the termination of Anthony Avery were pretextual and the motive was, undoubtedly race driven. Accordingly, we are rescinding our demand to settle this matter in the amount of \$750,000 and tender an offer to settle Mr. Avery's claim for **\$1,500,000**. Relative to all state law claims, notice is hereby given that our demand of **\$1,500,000.00** pursuant to the requirements of O.C.G.A. § 51-12-14, the Unliquidated Damages Interest Act. We will seek prejudgment interest at the maximum legal rate on the claimed sum in the event the claim is not paid within thirty (30) days.

Should this case not settle by April 1, 2018, we will file our complaint with the Equal Employment Opportunity Commission to commence a Title VII violation investigation. Should you wish to discuss this matter further, please contact me. Thanking you in advance for your anticipated cooperation.

Very truly yours,



Stephanie R. Lindsey  
Attorney at Law