

September 5, 2018

Stephen Deere  
The Atlanta Journal-Constitution  
223 Perimeter Center Parkway  
Atlanta, GA 30346

Re: Paul Hastings Conflict of Interest Analysis

Dear Mr. Deere:

As you have requested, I have reviewed documents obtained by the AJC pursuant to Georgia's Open Records Act to analyze whether work conducted by the Paul Hastings law firm for the City of Atlanta has been done in violation of Georgia Rules of Professional Conduct prohibiting conflicts of interest. This analysis indicates, based on the information available to me, that the Paul Hastings law firm has collected over a million dollars from the City of Atlanta for work that it was probably prohibited from doing by the mandatory rules governing lawyers. The extent of prohibited work may well be much greater than a million dollars.

In this analysis I have looked in particular at two Paul Hastings partners:

William K. Whitner, who served as the primary client contact for Paul Hastings' work regarding the Atlanta airport at the same time his wife was Vice President of a company earning in excess of \$50 million in annual gross revenues from Atlanta airport restaurant concessions, and

Dennis Ellis, who has had an ownership interest in a restaurant at the Atlanta airport.

### Summary

The Georgia Rules of Professional Conduct have been approved by the Supreme Court of Georgia to govern the conduct of lawyers in Georgia.

Rule 1.7 – Conflict of Interest – states: "A lawyer shall not ... continue to represent a client if there is a significant risk that the lawyer's own interests ... will materially and adversely affect the representation of the client" unless a client has given informed consent to continued representation. In order to obtain such informed consent a lawyer must first give to the client "in writing reasonable and adequate information about the material risks" of continued representation.

Georgia Rule of Professional Conduct 1.10 states: "While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rule [ ] 1.7: Conflict of Interest."

Thus, if at any time either William Whitner or Dennis Ellis would have been prevented by conflict of interest from representing the City of Atlanta, the entire Paul Hastings law firm

could also have been disqualified at that time from representing the City.

On August 28, 2018 the Atlanta Mayor's Office of Communication was asked by the AJC whether either Dennis Ellis or William K. Whitner had provided the City with any written disclosures pursuant to Rule 1.7. The answer was: "To the best of our knowledge, we are not aware of any disclosures made in writing." Appendix – page 1 **(App-1)**

On February 12, 2018 the AJC had asked the following questions to the Atlanta Mayor's Office of Communication:

"5. From 2011 to Dec. 2016, William K. Whitner's wife, Tayna [sic] Hairston-Whitner, served as vice president and general counsel for Concessions International, an airport contractor. During this time, William K. Whitner, a Paul Hastings attorney, provided legal advice to the city on matters pertaining to Hartsfield-Jackson International Airport. Did Concessions International disclose to the city or airport the relationship between its vice president and general counsel and William K. Whitner?

6. Was the city or the airport aware of Whitner's wife's position at Concessions International at the time Whitner was advising the city on airport related matters?

7. Did William K. Whitner provide the city with legal advice on matters concerning Concessions International?"

The AJC received the following response:

"The City will answer questions 5, 6 and 7 together:

Paul Hastings' work was completely unrelated to Concessions International. Regardless, we do not hold firms or attorneys at a disadvantage for their marital relationships. This question demonstrates a failure to grasp an attorney's professional obligations to their client and the Code of Ethics for all attorneys with active memberships with the State Bar of Georgia." **(App-2)**

As detailed below, contrary to the City's response from last February, Paul Hastings' work for the City has in fact been related to Concessions International. The most significant example is that William Whitner acting on behalf of Paul Hastings billed the City for over a million dollars of legal work during the summer of 2016 even though it was clear that the matter included review of a procurement process whose legitimacy was being questioned by the former airport general manager, a process that ultimately led to the award of a lucrative contract to Concessions International.

My analysis assumes that William Whitner had a significant personal interest in the wealth brought into his marriage due to his wife's position as Vice President of Concessions International from 2011-2016. This personal interest might have been particularly strong in 2016 given that on September 25, 2015 a federal tax lien in the amount of \$746,071 was filed against William K. Whitner and Tanya-Hairston Whitner. **(App-3)**

At least as early as June 2016, and quite possibly as early as February 2011, William Whitner should have provided to the City in writing information about his family's interest in Concessions International. That personal interest not only created a risk that his advice and actions on behalf of the City would favor or protect Concessions International but also that the integrity of the airport's procurement process and business practices would be questioned if Whitner was known to be involved in decisions even indirectly affecting the profitability of Concessions International.

If the required written disclosure had been made, it is hard to imagine that the City would have given informed consent to the continued role of Paul Hastings as airport outside counsel with Whitner continuing to serve as the primary client contact between Paul Hastings and the City. At a minimum, informed consent to continued representation should have included a requirement that Whitner be completely cut off from knowledge of or involvement in legal work that might involve or affect Concessions International.

If, as the City has indicated to the AJC, Whitner never provided written information about the risks to the City of being represented by him in relation to the airport and if no informed consent based on that written information was provided, then under Georgia Rule of Professional Conduct 1.10 the entire law firm could have been prohibited from representing the City to the same extent as Whitner.

The same analysis applies to the personal interest that Dennis Ellis apparently has as a co-founder of a restaurant company doing business at the Atlanta airport. Ellis billed the City for 2 hours on December 15, 2017 for a telephone conference and "meeting with client" (i.e. the City) apparently in relation to one or more of the federal grand jury subpoenas investigating suspected city corruption. (This billing appears in a January 19, 2018 invoice submitted by Whitner for "Document Request Advice.") The subject matter of the Ellis entry has been redacted so it is not possible to determine whether his work related to the grand jury's investigation of airport restaurant concessions. **(App-4)**

It is difficult to determine the extent of Whitner's or Ellis' involvement in airport legal work that might have affected either Concessions International or Ellis' restaurant. This difficulty is not only caused by the cursory descriptions provided by Paul Hastings invoices (compounded by the redaction of much relevant information through the Open Record Act production process) but also by the very unusual extent of flat rate billing by Paul Hastings. Between 2014 and 2017 Paul Hastings collected more than \$2,275,000 from the City --- all billed against airport revenue - based on invoices that merely stated monthly flat rates for either "legal research" or "litigation consultation" with no further description of work done.

### Detailed Analysis

On January 4, 2010 Kasim Reed was sworn into office as Atlanta's new mayor.

According to Notices of New Matter dated November 10, 2010 the City Attorney, Cathy Hampton, engaged Paul Hastings for "Aviation General/Transactional Counseling" and "Risk Assessment/General Litigation Counseling." The designated "Principal Client Contact" for both Matters was William K. Whitner. **(App-11)** I am informed by the AJC that under the administration of former Mayor Shirley Franklin, selection of outside law firms for airport related matters was handled by the airport general manager, not the City Attorney. Kasim Reed was an attorney at Paul Hastings for seven years, until 2003.

In February 2011 the wife of William K. Whitner, Tanya Hairston-Whitner, joined Concessions International, Inc. as Vice President and General Counsel. She had previously been employed as a partner at Kilpatrick Stockton, an international law firm with offices on three continents. According to the CI website she was "a member of the

Company's executive management team" and her areas of responsibility included "management of airport relationships." Her employment continued through December 2016. **(App-15)**

On March 18, 2011 the City issued RFPs for new food and beverage concessions at the airport. Package 2 related to concessions for Concourse B. The City described this as "one of the largest airport procurements in North America." (News Release, Jan 3, 2012).

Bids in response to these RFPs were due by June 27, 2011.

On September 2, 2011 Atlanta Chief Procurement Officer Adam Smith cancelled the initial RFPs.

On September 17, 2011 Atlanta Chief Procurement Officer Adam Smith reissued RFPs for new food and beverage concessions at the airport. By reissuing the same RFPs after receiving initial bids, Smith was presumably in a position to share initial bid information with one or more competitors for the concession contracts. Smith is currently in federal prison for accepting bribes in connection with his duties as Chief Procurement Officer.

On January 3, 2012 the Atlanta City Council approved 125 food and beverage concessions at the airport. Of the 17 large food and beverage packages, 10 were new companies to the airport.

One of the new concessions to benefit from the 2011 procurement process was LowCountry Restaurants operating in partnership with Hojeij Branded Foods. According to the LowCountry website, it was co-founded by "T.C. Mosby Investments, LLC and Chef G. Garvin." **(App-17)** A corporate filing dated January 31, 2012 shows that the president of T.C. Mosby Investments, LLC is Dennis Sean Ellis, a Paul Hastings partner based in their LA office. **(App-20)** Ellis is described in the media as "Mayor Reed's close friend," which is consistent with the fact that they graduated from Howard Law School in the same class and then both started their legal careers together at Paul Hastings. **(App-21)**

According to a Concessions International press release dated April 15, 2014, CI in partnership with H&H Hospitality opened 11 different food concessions on Concourse B between 2012 and early 2014.

On January 13, 2012 SSP America, Inc, an unsuccessful bidder for the 2011 food and beverage RFPs, filed a lawsuit against Adam Smith, Mayor Kasim Reed, the City of Atlanta and the airport general manager, alleging that improper procurement methods were used. SSP is one of the largest airport restaurant companies in the world.

A second lawsuit against the city challenging the procurement process was filed by Midfield Concession Enterprises, Inc. Midfield operates over 50 airport restaurants.

Paul Hastings submitted monthly invoices to the City of Atlanta with the description "SSP America Inc." from March 2012 through August 2012. Additional invoices were submitted in October 2012, January 2012 and February 2013. The total amount invoiced was \$99,436.17, all billed against airport funds. **(App-23)**

Paul Hastings submitted monthly invoices to the City of Atlanta with the description "Midfield Concession Enterprises Inc." from February 2012 through June 2012. The total amount invoiced was \$9,038.70, all billed against airport funds. **(App-24)**

The SSP and Midfield Concession litigation continued until at least early December 2012. ("SSP America, Inc. Dismisses Airport Procurement Litigation," News Release, Dec 19, 2012, City of Atlanta, [www.atlantaga.gov/Home/Components/News/News/1557/672?arch=1&npage=56](http://www.atlantaga.gov/Home/Components/News/News/1557/672?arch=1&npage=56) )

For calendar year 2015 Concessions International in partnership with H&H Hospitality collected gross revenues of \$52,014,369 from their concessions at the Atlanta airport. **(App-25)**

On January 7, 2015 Atlanta Chief Procurement Officer Adam Smith issued Request for Proposal FC-7845: "Branded Hamburger Concession – Concourse A." **(App-26)**

On March 18, 2015 Concessions International in partnership with H&H Hospitality submitted a bid in response to RFP FC-7845. (Tab Sheet, Line 5). **(App-29)**

On August 7, 2015 RFP FC-7845 was canceled by Adam Smith.

On October 22, 2015 Adam Smith issued Request for Proposal FC-8511: "Branded Hamburger Concession – Concourse A." **(App-30)** In doing so, Smith repeated his conduct in September 2011 regarding airport concession contracts eventually awarded in 2012, including contracts received by Concessions International. As noted above, by cancelling and reissuing the same RFP Smith was presumably in a position to share initial bid information with one or more competitors on the second round of bids. Smith is currently in federal prison for accepting bribes in connection with his duties as Chief Procurement Officer. As noted below, Concessions International was ultimately the successful bidder on FC-8511.

On October 22, 2015 Adam Smith issued Request for Proposal FC-8512: "Branded Hamburger Concession – Concourse B." **(App-34)**

On January 13, 2016 Concessions International in partnership with H&H Hospitality submitted a bid in response to RFP FC-8511. ("Shake Shack" Tab Sheet, Line 5). **(App-33)**

On January 13, 2016 Concessions International in partnership with H&H Hospitality submitted a bid in response to RFP FC-8512. ("Shake Shack" Tab Sheet, Line 8). **(App-37)**

A Notice of New Matter dated January 15, 2016 from the City Attorney to William K. Whitner at Paul Hastings titled "General/Transactional Counseling – Aviation Matters" indicated that "Paul Hastings will provide advice and counsel on general and transactional Airport matters." The designated "Principal Client Contact" was Whitner, who would charge at the rate of \$950/hour subject to a 10-20% discount. The Notice contained this language: "We ask that you certify (by executing this document) that your firm is not aware of any actual or potential conflict of interest in undertaking the required work for this matter." Whitner signed the Notice on February 5, 2016. **(App-38)**

According to a May 31, 2016 letter from Lee Parks, attorney for Miguel Southwell (dismissed by Mayor Reed as airport general manager on May 19, 2016) to Mayor Kasim Reed:

“Beginning in January 2016, Mr. Southwell's City emails, as well as the emails of all members of his concessions management team, his management assistant and secretary, have been continuously monitored without their permission by persons acting on behalf of the City, including City Attorney Cathy Hampton.” **(App-41)**

A collaborative scoring session was held on RFP FC 8511 on March 25, 2016.

According to the May 31, 2016 Parks letter:

“Beginning on or about April 1, 2016, Mr. Southwell and his management staff have received direction from senior officials of the City's Procurement Department to take a number of actions that would impact the award of active procurements of concession and construction contracts at Hartsfield Jackson Atlanta International Airport by causing the contracts to be awarded to companies other than the highest-ranked bidder in the procurement process, and those same senior officials represented that these directions were originating from the "second floor" or "the Mayor". **(App-41)**

The next entry on the FC 8511 timeline sheet is dated May 17, 2016 and indicates “Waiting on final scores from DOP [Department of Procurement].” Every entry thereafter, for 5/31/16, 6/21/16, 7/6/16, and 7/20/16, indicates only “No change in status.” **(App-45)**

On May 31, 2016, Lee Parks, the attorney for former airport general manager Miguel Southwell, submitted to Mayor Reed a series of requests under the Georgia Open Records Act, including requesting copies of

“7. Concourse A, Band C Food & Beverage Concessions (RFP FC-8511, FC-8512, FC-8484)

Provide all documents and communications since April 1, 2016, to, from or between any member/official/employee of the Mayor's Cabinet, the City's Procurement Department and/or any member/official/employee of the Department of Aviation including, without limitation, Mayor Reed, Candace Byrd, Katrina Taylor Parks, Dan Gordon, Cathy Hampton, Melissa Mullinax, Adam Smith, Girard Geeter, Roosevelt Council, Keith Brooks, Michael Smith, Vivica Brown, Charles Ewing, and Devin Judd, that identify, refer or relate to the top ranked firm(s) for all four Requests for Proposals (RFPs) that were reissued since October 22, 2015, and which proposals were submitted since January 13, 2016 for Concourses A, B, and C.

8. Provide all documents and communications since January 2016, from, to or between any member/official/employee of the Mayor's Cabinet or the City of Atlanta and any official or employee of Atlanta Information Management (AIM) including, without limitation, Mayor Reed, Candace Byrd, Katrina Taylor Parks, Dan Gordon, Cathy Hampton, and Melissa Mullinax, directing such AIM officials/employees to provide copies or summaries of communications made or received by officials/employees of the Department of Aviation concessions hierarchy, including but not limited to Miguel Southwell, Marcia Brown and Yvette Beeks, Michael Smith, Vivica Brown, Charles "Chili" Ewing, and Devin Judd. Provide any communication of/by same parties that refer to, relate to, or justify such monitoring and whether such monitoring was still in effect through April 2016.” **(App-47)**

On June 10, 2016 Southwell's lawyers released a statement to the media stating: "The truth is that Mayor Reed fired Mr. Southwell because he was unwilling to bend the knee to the Mayor's 'Friends and Family' contracting program."

As early as June 7, 2016 Paul Hastings began work on behalf of the City in response to Open Records Act requests and allegations in the two May 31 letters from Southwell's attorney. For example, Whitner billed the City for a one hour "Conference regarding ORR [Open Record Request]" on June 8. Whitner billed the City for a total of 24 hours for work in June all described as "conference[s] regarding ORR." **(App-51)**

Followup email correspondence regarding the May 31, 2016, Open Records Act requests was sent to Whitner by Southwell's lawyers. (Sherice M. Dunham to William K. Whitner, July 18, 2016, Subject: May 31, 2016 ORA – Southwell v City of Atlanta.) **(App-58)**

Paul Hastings submitted 8 invoices to the City over Whitner's signature for work on the Southwell matter between June and September 2016 for a total amount of \$1,057,450.19. **(App-60)**

On September 6, 2016 the media received a "Joint Statement of City of Atlanta and Miguel Southwell," stating that "Mayor Reed and Mr. Southwell ... both now agree that neither of them engaged in any civil or criminal wrongdoing, and any statements they made that could have been interpreted to the contrary are disavowed. ... Mr. Southwell has recognized that neither the Mayor nor any other city official engaged in any improper activity." Investigative work by the AJC has revealed that the September 6, 2016 "Joint Statement" was based on a secret settlement agreement signed August 30, 2016 by lawyers representing Southwell and Mayor Reed.

Three days after the "Joint Statement" was released, on September 9, 2016, a federal grand jury subpoena was served on City Attorney Cathy Hampton. Paragraph 6 directed production of "All records and communications from September 2015 to January 30, 2016 related to RFP FC-8511, FC-8512, and FC-8484." **(App-61)** Concessions International's proposals in response to FC-8511 and FC-8512 were still pending at this time.

Paul Hastings submitted 4 invoices to the City over Whitner's signature for work on the September 9 grand jury subpoena (still described as "airport personnel") between September and December 2016 for a total amount of \$89,955.93 **(App-65)**

The contracting process for new airport restaurants was put on hold after the Parks' May 31 letter was sent and not resumed until after the settlement statement was issued in September 2016. (Kelly Yamanouchi, "Contract delays leave empty spots at Atlanta airport," AJC, Nov 11, 2016.)

On November 16, 2016 the Concessions International/H&H bid in response to RFP FC-8511: "Branded Hamburger Concession – Concourse A" was approved by the Atlanta City Council transportation committee. (Kelly Yamanouchi, "Shake Shack coming to Hartfield-Jackson," AJC, Nov 16, 2016).

The information available to me indicates that William Whitner directly participated in the very extensive work done for the City by Paul Hastings in the summer of 2016 to

respond to allegations by Miguel Southwell's attorneys that the airport restaurant procurement process was irregular if not corrupt, the same procurement process that led to a major concessions contract being awarded to his wife's company at the end of 2016. Indeed Whitner may have directed the entire project.

I have already pointed out the apparent absence of any written disclosure of "reasonable and adequate information about the material risks" of continued representation by Whitner or Ellis required by Georgia Rule of Professional Conduct 1.7. Since November 3, 2011 Rule 1.7 has also required that any consent by the client to continued representation be confirmed in writing; no such written consent has been produced to the AJC so far. But even further, Rule 1.7 prohibits a lawyer from even asking for consent if the representation "involves circumstances rendering it reasonably unlikely that the lawyer will be able to provide adequate representation." In my opinion, this provision would apply to any involvement by Whitner in representing the City in relation to investigation either by counsel for Miguel Southwell or the federal grand jury of the RFP FC-8511 procurement process (that led to the restaurant contract awarded to Concessions International) or the RFP FC-8512 process (which also included a bid from Concessions International).

This analysis is limited to the information available to me at this time. If the AJC receives additional information relevant to whether Paul Hastings complied with the requirements of the Georgia conflict of interest rules, I will review such information and adjust my analysis if appropriate.

Sincerely,



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Attached: Appendix