

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF NORFOLK

SOLOMON H. ASHBY, JR.,)	
)	
Plaintiff,)	
)	
v.)	CASE NO.: CL 20_____
)	
JOHN L. ROWE, JR.,)	
)	
Serve: John L. Rowe, Jr.)	
5017 Dogwood Trail)	
Portsmouth, Virginia 23703)	
)	
Defendant.)	

COMPLAINT

For his Complaint under Rule 3:2 of the Rules of the Supreme Court of Virginia, the plaintiff, Solomon H. Ashby, Jr., by counsel, states as follows:

NATURE OF THE CASE

1. This matter involves a common law claim for defamation of character based on statements the defendant, John L. Rowe, Jr., made to reporters for ABC News TV-13 and potentially others, which were published on television and online.

PARTIES, JURISDICTION & VENUE

2. Solomon H. Ashby, Jr. ("Ashby") resides in the City of Portsmouth, Virginia.

3. John L. Rowe, Jr. ("Rowe" or "defendant") resides in the City of Portsmouth, Virginia, is a member of the Portsmouth City Council, and is the current Mayor of Portsmouth.

4. The City of Portsmouth is a political subdivision of the Commonwealth of Virginia.

5. This Court has personal jurisdiction over the defendant as he works and resides in the Commonwealth of Virginia. In addition, the court has personal jurisdiction over the defendant pursuant to Va. Code § 8.01-328.1(A)(3) as he has caused tortious injury in Virginia.

6. Venue is proper in the Circuit Court for the City of Norfolk, as the defamatory statements that form the subject of this lawsuit were published in Norfolk, Virginia.

FACTUAL ALLEGATIONS

7. In October 2015, the members of the Portsmouth City Council voted to hire Ashby as the City Attorney for the City of Portsmouth. Prior to that, he had served as an Assistant City Attorney in the Suffolk City Attorney's office for four years.

8. The position of City Attorney is one permitted by and established pursuant to the Virginia Code. See Va. Code § 15.2-1542. In relevant part, section 15.2-1542(A) states:

Every county, city or town, not otherwise authorized to create the office, may create the office of county, city or town attorney. Such attorney shall be appointed by the governing body to serve at the pleasure of the governing body. He shall serve at a salary or at an hourly rate to be fixed by the governing body and shall be allowed to recover his reasonable costs expended. ... In the event of the appointment of such attorney, the attorney for the Commonwealth for such locality shall be relieved of any duty imposed upon him by law in civil matters of advising the governing body and all boards, departments, agencies, officials and employees of the locality, of drafting or preparing ordinances, of defending or bringing actions in which the local government or any of its boards, departments or agencies, or officials or employees, thereof, shall be a party, and in any other manner advising or representing the local government, its boards, departments,

agencies, officials and employees, and all such duties shall be performed by the local government attorney.

Va. Code § 15.2-1542(A).

A. HISTORY OF PLAINTIFF ASHBY AS PORTSMOUTH CITY ATTORNEY

9. From November 2015 to September 2020, Ashby served as the City Attorney for the City of Portsmouth.

10. The defendant was elected Mayor for the City of Portsmouth in November 2016 and began serving as Mayor in January 2017. He has served as the mayor for the City of Portsmouth since that time.

11. In early September, Ashby sent an email to the members of the Portsmouth City Council related to whether they should dismiss the then-serving City Manager, Lydia Pettis Patton.

12. Ashby wrote the email because several community members were calling for council to fire Pettis at a city council meeting. The citizens were apparently upset Pettis had placed Angela Greene, the Portsmouth Police Chief, on administrative leave while an internal investigation of Greene's actions was being conducted.

13. A true and accurate copy of the content of Ashby's email to City Council is attached hereto as Exhibit A.

14. Several days after Ashby sent the email, the City Council voted 4-3 to terminate its contract with Ashby.

15. Thereafter, the defendant Rowe gave a telephonic interview to Evan Watson and/or Ali Weatherton, reporters with Channel 13 TV – ABC News, also known as 13 News Now.

16. During the interview, the defendant stated that a majority of City Council had “lost confidence” in City Attorney Solomon Ashby and City Manager Dr. Lydia Pettis Patton, that they – meaning the City Council – were not included in big decisions, that communication was a problem and that the City attorney gave unbalanced advice.

17. In the interview, the defendant stated “That [– referring to the email –] was the straw that broke the camel’s back. I have never seen an opinion like that before. It just did not make any sense and it doesn’t make any sense now.”

18. The defendant also stated: “It’s what we thought was not very balanced and good advice, and that shakes your confidence.”

19. Finally, the defendant stated “Culminating in an opinion that you can’t fire the city manager, that the city manager is bulletproof, and that just does not hold up.”

20. The defendant’s statement that Ashby gave an opinion that said “you can’t fire the city manager, that the city manager is bulletproof” is false and was false when made by the defendant.

21. Videos containing audio of the interviews with the defendant Rowe along with transcripts of the stories were posted online at

<https://www.13newsnow.com/article/news/local/mycity/portsmouth/portsmouth-mayor-john-rowe-says-city-council-fired-city-attorney-over-unbalanced-advice-communication/291-3cc7160c-e8bc-406a-9cb7-75c09f8c11d8> and

<https://www.13newsnow.com/article/news/local/mycity/portsmouth/mayor-city-attorney-fired-after-sending-letter-to-city-council-warning-of-possible-charges/291-7c0135e1-f689-40a6-a249-b518ae52a106>, where they can be viewed to this day.

22. The statement by the defendant to the TV reporter contained in paragraph 19 above was false when made and the defendant either knew it was false, or he acted recklessly in failing to ascertain its truth.

23. According to Ashby's employment contract with the City, he could be terminated for cause if he committed "a material breach of his responsibilities as City Attorney." Ashby was terminated without cause and paid his severance.

COUNT I - DEFAMATION

24. Ashby repeats and re-alleges his factual allegations contained in paragraphs 1 – 23 as if fully set forth herein.

25. The statement by the defendant to the reporters for ABC News Now and/or WVEC Channel 13 TV that "Culminating in an opinion that you can't fire the city manager, that the city manager is bulletproof, and that just does not hold up" was false when made and the defendant knew that such statement was false when he made it. Alternatively, when the defendant made the above statement, he acted recklessly in failing to ascertain its truth.

26. The statement made by the defendant was defamatory *per se* as it:

- a) imputed to Ashby an unfitness to perform the duties of his position with the City of Portsmouth or a want of integrity to discharge such duties; and/or
- b) prejudiced Ashby in his occupation, profession or trade.

27. As a result of the defamatory statements by the defendant, Ashby has suffered injury and harm to both his good personal reputation and his good business reputation, as well as great humiliation, shame, vilification, exposure to public infamy, scandal, and disgrace.

28. Finally, when the defendant made the above-referenced defamatory statements to the media, he knew these statements to be false or acted so recklessly as to amount to a willful disregard of the truth. Consequently, Ashby is also entitled to punitive damages.

29. Ashby demands a trial by jury.

WHEREFORE, Solomon H. Ashby, Jr. moves this Honorable Court for judgment against John L. Rowe, Jr., personally, in the amount of One Million Five Hundred Thousand Dollars (\$1,500,000.00) in compensatory damages, Five Hundred Thousand Dollars (\$500,000.00) in punitive damages, prejudgment and post-judgment interest, court costs and other expenses expended on his behalf.

SOLOMON H. ASHBY, JR.

By _____
Counsel

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Solomon H. Ashby, Jr.

ATTORNEY CLIENT PRIVILEGED COMMUNICATION
ATTORNEY WORK PRODUCT

Mayor, Vice Mayor and Councilmembers,

I am writing to advise you and implore you to resist any inclination to act in a manner that may be in violation of the law or in a manner that would be in furtherance of a violation of the law. As we all know, there is some public urging to take some employment action against Dr. Patton given her decision to place Chief Greene on unpaid leave. Should you do so in this current environment, a citizen of Portsmouth may take out a warrant against you? What follows is my advice and my admonishment for the best interests of the City of Portsmouth and the City Council.

What should the City Council do in light of the recent actions of Dr. Patton as it relates to Chief Greene?

The Portsmouth City Council should take no action as it concerns Dr. Patton. The Portsmouth City Council should acknowledge that the recent actions concerning Chief Greene are a personnel matter and that you have no comment. This advice is consistent with prior advice and prior practice of many of you during your tenure as councilmembers. As I stated in a prior memorandum, City Council should direct all legal questions and operational discussions as it pertains to the appointment or removal of employees or the day to day operation of the city to me so as not to be construed as violating the law.

What would be the ramifications if councilmembers sought to take some action against Dr. Patton?

Any action taken against Dr. Patton could be construed as an attempt to interfere in the day-to-day operations of the city and the employment status of Dr. Patton's subordinate, Chief Greene. Those who would vote for such an action could be found to have violated Portsmouth City Code Sections 3.11 and 2-33, Noninterference in appointments or removals and Interference with appointees of city manager, respectively. A violation of either code section is a misdemeanor.

In addition, any action taken against Dr. Patton could be construed as being in furtherance of the previously disclosed actions of Councilwoman Psimas who may have already violated Portsmouth City Code Sections 3.11 and 2-33. Those who would vote for such an action could be found to be assisting in the violation of the aforementioned code sections, a misdemeanor.

A public vote or motion to take action against Dr. Patton could result in a citizen filing a charge against you with the magistrate.

It should also be noted that action taken by you as councilmembers could cause you to be excluded from coverage under the City of Portsmouth Risk Management Fund Finance Policy.

Exhibit A

ATTORNEY CLIENT PRIVILEGED COMMUNICATION
ATTORNEY WORK PRODUCT

What is your obligation if the City Council considers taking action against Dr. Patton?

As City Attorney, I am ethically obligated to provide counsel and advice to the departments and individuals as constituents of the City of Portsmouth unless I am ethically bound to withdraw from representation.

If I suspect that you, individually or collectively, are engaged in action or intend to act in a manner that is a violation of the city charter, or a violation of law, I will notify you that I represent the organization and not you. It is my hope that this communication will ensure that I will not have to provide such a notification to any of you.

In my representation of the City and City Council, I cannot counsel or assist in conduct that is associated with the interference with day-to-day operations of the city and the performance of city manager appointees.

If I can't convince you to cease from materially furthering a course of conduct to take action against Dr. Patton, I may have to withdraw from representing the City. I may also be required to give notice of the fact of withdrawal, and I may also have to disaffirm any opinion, document, affirmation, or the like that suggest my departure was for reasons other than my obligation to resist assisting City Council or its membership from violating the law.

I am required to avoid furthering any attempt to interfere with the day-to-day operations or the employment of the city manager's employees. To the extent that I reasonably believe it is necessary, I am required to promptly reveal the intention of a City Council, as stated by the City Council, to commit a crime reasonably certain to result in death or substantial bodily harm to another or substantial injury to the financial interests or property of another and the information necessary to prevent the crime.

What would have the City Attorney believe that any action taken by the City Council would be in violation of the law as it pertains Portsmouth City Code Sections 3.11 and 2-33?

The Portsmouth City Council accepted Dr. Patton's retirement plan less than thirty days ago. The Mayor, on behalf of the City Council, provided several laudatory statements concerning Dr. Patton. An attempt to remove her, at a time when there is public outcry to do so, would appear to result from the public rationale, actions taken related to Chief Greene's status.

If City Council takes action against Dr. Patton, what actions would you be obligated to take in your role as City Attorney or otherwise?

I must proceed as is reasonably necessary in the best interest of the City of Portsmouth. All things considered, I must take measures to minimize disruption of the City. This communication is one of those measures in as much as I am requesting you reconsider taking any action against Dr. Patton. As is the case in the previously disclosed Psimas matter, I would

ATTORNEY CLIENT PRIVILEGED COMMUNICATION
ATTORNEY WORK PRODUCT

have to forward the facts of City Council's action to the Commonwealth Attorney's Office for consideration.

A motion or vote to take action against Dr. Patton could substantially injure the City of Portsmouth by action of councilmembers that is in violation of law. The Rules of Professional Conduct provides that "it may be essential to obtain an independent legal opinion" from the Commonwealth Attorney.

A lawyer ordinarily must decline or withdraw from representation if the client demands that the lawyer engage in conduct that is illegal or violates the Rules of Professional Conduct or other law. The lawyer is not obliged to decline or withdraw simply because the client suggests such a course of conduct; a client may make such a suggestion in the hope that a lawyer will not be constrained by a professional obligation.

My obligations to the City of Portsmouth would extend beyond even my term as City Attorney. I may be required to disclose a fact when it is necessary to avoid assisting the City Council in violating the law. The advice provided herein is given after considering the moral and ethical issues at play and the public interest. See Virginia Supreme Court Rules Part 6, Section II, Rules 1.2, 1.6, 1.13, 1.16 and 4.1

Let me reiterate, I implore you to resist any inclination to act in a manner that may be in violation of the law or in a manner that would be in furtherance of a violation of the law.

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