

**IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA**

THOMAS COFFIN,	:	
	:	
Plaintiff,	:	Civil Action
	:	: File No.:
	:	
vs.	:	<u>Jury Trial Demanded</u>
	:	
CITY OF ATLANTA,	:	
	:	
Defendant.	:	

**VERIFIED COMPLAINT**

This is a whistle-blower case arising from the termination of Dr. Thomas Coffin, Plaintiff, as Senior Arborist for the City of Atlanta, after he raised concerns about the failure of several arborists to enforce Atlanta’s Tree Protection Ordinance. By and through counsel, he hereby shows this Honorable Court the following:

**JURISDICTION AND VENUE**

1. This is a civil action arising under O.C.G.A. §§ 45-1-4(d), and Article 1, Section 1, paragraphs 3, 5 and 9 of the Georgia Constitution.
2. Venue is proper because the Defendant, City of Atlanta, is located in Atlanta, Fulton County, Georgia which is located in the Atlanta Judicial Circuit.

**PARTIES**

3. Plaintiff Thomas Coffin is a resident of Atlanta, Fulton County, Georgia. During all times relevant to this Complaint, Plaintiff was an employee of the City of Atlanta and served as Senior Arborist. He was a public employee of a local governmental entity that receives funds from the State of Georgia and state agencies.

4. Defendant City of Atlanta, employed Plaintiff, and terminated him as a result of his raising concerns about the failure of several arborists to enforce Atlanta's Tree Protection Ordinance. Defendant receives funds from the State of Georgia and its agencies.

#### **FACTUAL ALLEGATIONS**

5. Tom Coffin served as an arborist for the City of Atlanta for the years 2000 to 2008. Over this time, Coffin witnessed disproportionate enforcement of Atlanta's Tree Protection Ordinance. Some arborists enforced the ordinance, and protected trees under the ordinance, while other often failed to follow and enforce the legal requirements of the ordinance.

6. In the summer of 2007, Dr. Coffin applied for the newly created position of Arborist Senior.

7. When interviewed, he urged that the arborist division of the department needed effective operational and performance standards and needed implementation of employee accountability of those standards.

8. Dr. Coffin informed the interviewers that if hired he would anticipate holding himself and his subordinates accountable to the Tree Protection Ordinance of the City of Atlanta, and to the established Standards of Practice.

9. In late September of 2007, Dr. Coffin was promoted to the position of Senior Arborist, and was thereby assigned supervisory duties over other arborists in the division.

10. According to the rating system used to rate Dr. Coffin's job performance, one of Dr. Coffin's "critical job elements" was to "follow and ensure that arborist [sic] follow the Standards of Practice as required."

11. When Dr. Coffin was promoted, the day to day operations of the arborist division were to be conducted by the staff of the division in accordance with the Standards of Practice which had been promulgated for such purposes prior to February of 2006.

12. In April of 2008, Ainsley Caldwell, Arboricultural Manager of the Arborist Division of the Department of Planning and Community Development of the City of Atlanta re-released "Standards of Practice" to the Division.

13. Although Caldwell's transmittal memo in April of 2008 characterized the Standards as having been "revised and updated," the Standards of Practice re-released by Caldwell were the same set of Standards which had been previously in place for the Arborist Division.

14. Said Standards of Practice provided guidelines by which to ensure that the staff of the Arborist Division complied with the requirements of the City of Atlanta's Tree Protection Ordinance.

15. Attached hereto and incorporated herein as if fully set forth is a true and correct copy of the Caldwell memo described above. Said memo directed that "staff shall adhere to the Standards of Practice."

16. Training of the arborists was instituted by Mr. Caldwell.

17. Both before and after the promulgation of the memo from Mr. Caldwell, Mr. Coffin engaged in conduct which constituted the reporting by him to his supervisors of actions being taken by other arborists employed by the City of Atlanta which were in violation of or noncompliance with the laws, rules or regulations of the City of Atlanta.

18. On or about May 1, 2008, Paul Lewkowicz was working as an arborist for the City of Atlanta. Mr. Lewkowicz was issued an Oral Admonishment for an improper "Preliminary Posting" in violation or noncompliance with the rules and regulations of the Division. A "Preliminary Posting" references the placing of a sign on property that is subject to a building permit application requiring the removal of trees. When a property is "posted" such action indicates that the submitted site plan matches the site and is in compliance with the applicable provisions of the Tree Protection Ordinance of the City of Atlanta.

19. In late May of 2008, Mr. Michael Franklin met with Dr. Coffin and Mr. Caldwell. The meeting was conducted as a result of reports by Mr. Coffin to Mr. Caldwell to the effect that Mr. Franklin had engaged in conduct which was in violation of or constituted noncompliance with a law, rule or regulation of the City of Atlanta including, but not limited to, the Standards of Practice, the Department of Planning and Community Development's Code of Code of Conduct, and the City of Atlanta Code of Ordinances.

20. Following the May, 2008 report by Coffin, Dr. Coffin reported additional breaches of the Standards of Practice on Mr. Franklin's part to Mr. Caldwell in late June of 2008. Mr. Franklin received a verbal reprimand for failure to follow City procedures.

Other deficiencies in Franklin's adherence to the laws and regulations of the City were reported by Dr. Coffin to Mr. Caldwell.

21. In late April of 2008, Dr. Coffin reported conduct on the part of arborist Janelle Bazile which he believed to constitute a violation of or non-compliance with the laws, rules or regulations of the City of Atlanta, including the Standards of Practice. Dr. Coffin reported both the facts of Ms. Bazile's conduct and her refusal to cooperate with his inquiry as to her conduct, despite his capacity as her supervisor, and despite Department of Planning and Community Development's Code of Conduct mandating employees to cooperate with requests for information from their supervisors. Dr. Coffin's efforts to obtain explanations from Ms. Bazile as to her actions which were the subject of Dr. Coffin's reports to his supervisors were rebuffed.

22. In the course of reporting the violations of the Standards of Practice on the part of other arborists, Dr. Coffin recommended that admonishments be issued to other members of the staff of the department.

23. Dr. Coffin recommended admonishments of other arborist division employees for mis-classifying trees to permit their removal, which constituted a direct violation of the Division's Standards of Practice.

24. On or about July 14, 2008, Dr. Coffin submitted a report to his supervisor, Mr. Caldwell, in which Dr. Coffin pointed out that a survey of the performance on the part of the staff of the Arborist Division reflected that Dr. Coffin was the only field arborist engaged in systematic enforcement of the Tree Protection Ordinance through application of and compliance with the Standards of Practice. The survey reflected that

other staff routinely failed to enforce the tree protection ordinance and sanctioned removal of trees that should have been protected under the Tree Protection Ordinance.

25. On or about July 11, 2008, Dr. Coffin sought to obtain a meeting with Mr. Caldwell to discuss the possibility of discipline to be imposed on Division employees. On July 14, 2008, Dr. Coffin met with Mr. Caldwell and provided him with an analysis of arborist production and enforcement activities. On July 18, 2008, Dr. Coffin again made a request to Mr. Caldwell for a meeting to be attended by Caldwell, Bazile and Franklin.

26. On July 21, 2008, Mr. Caldwell responded to Dr. Coffin that Bazile and Franklin had asked to meet with Mr. Maslamani.

27. On July 25, 2008, Dr. Coffin again asked for a meeting with Mr. Caldwell to which he could submit additional proposed oral admonishments to Bazile and Franklin.

28. After Dr. Coffin's reporting of such violations of the Standards of Practice to his supervisors, the three staff members of the arborists department about whom Dr. Coffin had complained met with Mr. Caldwell and with Mr. Maslamani, Mr. Caldwell's supervisor.

29. Mr. Maslamani received the reports that Dr. Coffin had been reporting non-compliance with the City's Standards of Practice and Tree Protection Ordinance on the part of the other three staff members of the arborists department.

30. Mr. Maslamani decided to terminate Dr. Coffin as a direct result of Mr. Maslamani's receipt of the reports from other staff that Dr. Coffin had been reporting violations of, and non-compliance with, the laws and regulations of the City of Atlanta.

31. Dr. Coffin was terminated despite the fact that the rating of Dr. Coffin's job performance conducted closest in time to his eventual termination rated him as "effective" in his job performance.

32. Dr. Coffin was terminated despite the fact that he had not engaged in conduct which constituted the violation of, or non-compliance with, the Standards of Practice established and promulgated for the operations of the Arborist Division.

**CLAIMS FOR RELIEF -  
VIOLATION OF O.C.G.A. § 45-1-4**

33. The foregoing paragraphs are realleged and incorporated herein by reference.

34. Section 45-1-4(d) of the Georgia Code provides that "[n]o action against any public employee shall be taken or threatened by any public employer who has authority to take, direct others to take, recommend, or approve any personnel action as a reprisal for making a complaint or disclosing information to the public employer . . . ." The Section 45-1-4 (c)(2) provides as well that "No public employer shall retaliate against a public employee for disclosing a violation of or noncompliance with a law, rule, or regulation to either a supervisor or a government agency, unless the disclosure was made with knowledge that the disclosure was false or with reckless disregard for its truth or falsity."

35. Plaintiff had reasonable cause to believe a violation of or non-compliance with a law, rule, or regulation: He reported that arborists employed by the City of Atlanta were failing to enforce the Atlanta Tree Protection Ordinance. In doing so, he disclosed violations of or noncompliance with a laws, rules, or regulations to his supervisor and government agencies.

36. On information and belief, Defendant disclosed Plaintiff's identity as a provider of information, without the written consent of Plaintiff, and such disclosure was not necessary and unavoidable during the course of a investigation. Plaintiff was not notified in writing at least seven days prior to such disclosure.

37. Defendant terminated Plaintiff from his position as Senior Arborist after Plaintiff reported that arborists employed by the City of Atlanta were failing to enforce the Atlanta Tree Protection Ordinance.

38. Defendant's action of terminating Plaintiff was in retaliation for Plaintiff reporting that arborists employed by the City of Atlanta were failing to enforce the Atlanta Tree Protection Ordinance.

39. As a result of Defendant's retaliatory actions, Plaintiff was wrongfully terminated from his position as Senior Arborist, and lost wages and all benefits that he had accrued up until the time of his termination, including sick time, compensatory time and accumulated pension vesting time.

## **COUNT TWO**

### **VIOLATION OF RIGHT TO FREE SPEECH UNDER THE GEORGIA CONSTITUTION**

40. The foregoing paragraphs are re-alleged and incorporated herein by reference.

41. Plaintiff reported that arborists employed by the City of Atlanta were failing to enforce the Atlanta Tree Protection Ordinance.

42. Plaintiff's statements regarding the failure to enforce the Atlanta Tree Protection Ordinance were a matter of public concern and protected speech under Georgia Constitution, Article 1, Section 1, paragraphs 3, 5 and 9.

43. Plaintiff's speech was a substantial motivating factor in Defendants' decision to terminate Plaintiff from his position as Senior Arborist.

44. The Defendant's action of terminating Plaintiff constitutes violation of the Georgia Constitution, Article 1, Section 1, paragraphs 3, 5 and 9.

45. The Defendant's action of terminating Plaintiff was done with malice and/or reckless disregard for Plaintiff's constitutional rights. The Defendants' actions were intentional and taken in bad faith.

46. As a result of the Defendant's retaliatory actions against Plaintiff for exercising his constitutional rights, Plaintiff has suffered monetary loss, loss of reputation, emotional pain and suffering, inconvenience, mental anguish, and loss of enjoyment of life.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests judgment against the Defendants as follows:

a. Reinstatement to his position as Senior Arborist, or a comparable position;

b. Reinstatement of all benefits that Plaintiff accrued up until his wrongful termination and would have accrued had he not been terminated,

including lost wages, dental health insurance, retirement benefits, all fringe benefits and seniority status;

c. Compensatory damages against the Defendant in an amount reasonable and commensurate with the loss of reputation, emotional pain and suffering, inconvenience, mental anguish, and loss of enjoyment of life imposed upon him by the Defendants' unlawful acts;

d. An injunction restraining violations of O.C.G.A. § 45-1-4;

e. Trial by jury;

f. Reasonable attorney's fees, court costs, and expenses; and

g. Such other relief that this Court deems proper and just.

Post Office Box 5391  
Atlanta, Georgia 31107  
Phone: (404) 522-0507  
[wgerryweber@gmail.com](mailto:wgerryweber@gmail.com)

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Gerald Weber  
Georgia Bar No. 744878

1126 Ponce de Leon Avenue  
Atlanta, Georgia 30306  
(404) 872-7086  
[bspears@mindspring.com](mailto:bspears@mindspring.com)

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Brian Spears  
Georgia Bar No. 670122

Attorneys for Plaintiff