

MEMORANDUM

TO: Charlotte City Council

FROM: Thomas M. Hitch, City Attorney

RE: **CITY ATTORNEY REPORT**

DATE: September 10, 2015

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The following is my report to the City Council on several issues in which our office has been engaged since the last Council meeting:

1. Rockafellow v City of Charlotte. On August 25, 2015, Judge Sauter, as I had previously informed the Council, heard the Motion for Summary Disposition which was brought by the City of Charlotte. In the Motion for Summary Disposition, the City was seeking the immediate dismissal of the lawsuit, without the necessity to proceed to trial. At the conclusion of the hearing, the judge granted the City's motion to dismiss the case.

Now that the case has been dismissed, I am in a position to more freely discuss the facts and circumstances behind the dismissal. As the Council was aware, Mr. Rockafellow filed a lawsuit claiming that the City discriminated against him based upon a handicap that was unrelated to his ability to perform the jobs of a laborer in the Department of Public Works. The City vigorously defended the lawsuit claiming that it had never discriminated against Mr. Rockafellow and that, due to an accident that occurred (which accident was unrelated to any work activity on the part of the City of Charlotte), he was unable to perform the essential functions of a laborer for the City of Charlotte.

Mr. Rockafellow filed a grievance but at some point abandoned that and sought to file suit against the City seeking money damages. Prior to filing suit, however, he made an application for disability under the Social Security Act. In filing for

disability, he submitted an application in which, under the penalty of perjury, he stated that he was unable to perform all the general physical activities – walk normal, run, use stairs easily, ride motorcycle, ride bicycle, snowboard, water ski, swim, play football, lift or carry anything heavy, or operate heavy equipment. He stated that he could only lift 25-30 pounds and could not walk with it.

The Social Security Administration adjudicator/examiner provided his disability determination which ultimately led to Mr. Rockafellow receiving long term social security disability benefits. Mr. Rockafellow told the Social Security Administration that his symptoms from his accident became significantly worse over time and the report noted that Mr. Rockafellow never had a time period when he did not have problems with his fingers curling up and spasming, getting spasms in the legs, and the like.

Given these conditions, as noted above, social security benefits were awarded. However, under the law, there are certain circumstances in which a party is precluded from maintaining inconsistent positions in separate forums. That is, as in this case, claiming disability before the Social Security Administration, but claiming that he is not disabled before the Circuit Court. The City presented this case law to the Circuit Court and based upon the case law and the admissions made by Mr. Rockafellow in seeking disability benefits, the judge concluded that no other result was appropriate, other than the dismissal of the lawsuit. With that dismissal, the case is completed before the trial court, pending appeal.

At this point, the City has received no notice of the filing of an appeal on behalf of Mr. Rockafellow. I will keep the Council advised on whether an appeal is filed.

TMH:ddy