

**IN THE MATTER of BZA Application No. 19593  
Washington DC**

**MOTION TO REMOVE BZA STAFF MEMBER FROM CASE DUE TO  
IMPROPER ACTIONS**

COMES NOW, Charlene Patton, by and through counsel, and states the following in support of her motion to remove Miss Brandice Elliott from the above styled case due to improper actions:

Charlene Patton was granted party status at the BZA public hearing on December 13, 2017. As we were leaving the second floor, my client noted that a member of the Office of Planning (OP), Brandice Elliott, was talking with the applicant.

Miss Elliott was overheard pointing out errors and defects in his Griffin's application and urging him to fix the problems since his application would be reviewed with "heightened scrutiny". I spoke with Miss Elliott and asked that as Mrs. Patton's attorney, I would appreciate being included in any conversations she has with the applicant. While polite, Miss Elliott was clearly offended by the request and did not consent, despite acknowledging the adversarial nature of the application.

When granting Mrs. Patton request for party status in opposition to application, BZA Chairman Hill asked if counsel understood the rights and responsibilities of being a party, including cross-examination of witnesses, submitting proposed findings of fact and conclusions of law, receiving a copy of the written decision of the BZA, and submitting Motions for Reconsideration or Rehearing. Miss Elliott was in the hearing room when those *adversarial* rights were explained.

Knowing that the application was opposed, that party status had been granted, and listening to an outline of the adversarial rights triggered by a party in opposition to the application, Miss Elliott put herself in a position which caused the appearance of impropriety by engaging in an *ex parte* conversation with applicant. Further, Miss Elliott's conversation with applicant was in the nature of coaching the applicant. She was heard discussing the "affidavit" with the applicant and within 24 hours of Elliott's coaching, the applicant attempted to cure his application by submitting a proof of posting affidavit. The conversation was in progress when Mrs. Patton and counsel first observed them, so it is unknown what was discussed prior to that time.

The OP staff has no role coaching and/or advising or assisting one party in an adversarial proceeding. For OP staff to engage in such conduct is improper and has prejudiced Mrs. Patton. There is no one from the OP advising me or my client. Applicant, Ed Griffin, is himself a long practicing and successful attorney (see Exhibit A). Miss Elliott's advice has ensured that the playing field is no longer level, to my client's detriment. Although counsel has talked to numerous people in OP, no coaching has been provided, nor has any one pointed out errors or omissions in Mrs. Patton's documents. Accordingly, my client and I are left wondering what other practice tips or pointers the OP has passed along to applicant.

Additionally, now that Mrs. Patton has been granted party status, the burden remains on applicant to demonstrate that the proposed addition shall not have a substantially adverse effect on the use or enjoyment of Mrs. Patton's property. The current OP memorandum fails to address this issue at all and is compelling rationale for striking the memorandum from the record.

Mrs. Patton is quite concerned that her opposition will be heard as a pro forma matter and that the decision to grant the application has already been made. Her concerns are naturally and considerably heightened after she witnessed applicant privately conversing with OP staff and overheard her telling him to fix his application.

MRS. PATTON PRAYS FOR the following relief:

That Miss Elliott be removed from this case;

That any applicant questions be submitted to OP and/or any other agency in writing and answers be submitted in writing, and provide a written copy of both the questions and answers to Mrs. Patton and her counsel;

That counsel for Mrs. Patton be afforded an opportunity to examine any notes, memorandums, emails or other writing, made by any member of the OP relating to this case;

That the current OP memorandum in support of applicant be struck from the record;

Even if the above proposed remedies are granted in full, it is not clear that the requested remedial measures will correct the prejudice caused to Mrs. Patton by the OP. Mrs. Patton remains open to any additional suggestions, remedies or equitable solutions the BZA may suggest and implement in an effort to cure the damages my client has sustained.

January 16, 2018

Charlene Patton

/s/ Denise Pitts

By Denise Pitts, Counsel for Mrs. Patton

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## Certificate of Service

I, Charlene Patton, by and through counsel, do hereby swear that on the 16<sup>th</sup> day of January, 2017, I emailed a true copy of this Motion to the distribution list below, that a true copy of this Motion was mailed to Applicant at his address of record via USPS first class mail.

January 16, 2018

Charlene Patton

/s/ Denise Pitts

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