

**IN THE UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF GEORGIA  
MACON DIVISION**

RACHEL MOSBY,

Plaintiff,

v.

CITY OF BYRON, GEORGIA,

Defendant.

Civil Action No.:

5:20-cv-00163

**JURY TRIAL DEMANDED**

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**COMPLAINT**

COMES NOW Plaintiff Rachel Mosby and brings this action against Defendant City of Byron, Georgia, pursuant to Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, *et seq.*, (hereinafter, “Title VII”), Title I of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. §12101, *et seq.*, (hereinafter, “ADA”), the Constitution of the United States, and the Constitution and Code of State of Georgia, and respectfully shows the Court the following:

**JURISDICTION AND VENUE**

1.

This Court has original jurisdiction over the subject matter of this civil action pursuant to 28 U.S.C. §§ 1331 & 1343 and the enforcement provisions of Title VII of the Civil Rights Act of 1964 and the Americans with Disabilities Act.

2.

Venue is proper in this judicial district because Plaintiff was employed and the events underlying this action occurred in Peach County, Georgia, which is located in this judicial district, pursuant to 28 U.S.C. § 1391 and 42 U.S.C. § 2000e-5(f)(3).

## **PARTIES**

3.

Plaintiff Rachel Mosby (hereinafter, “Plaintiff” or “Chief Mosby”) is a citizen of the United States and a resident of Georgia. Chief Mosby is a covered employee under all laws referenced herein.

4.

Defendant City of Byron, Georgia, (hereinafter, “Defendant”) is a municipality that may be served by delivering a copy of the Summons and Complaint to Mayor Michael Chidester, pursuant to Section 2.21 of Defendant’s Code of Ordinances, located at the Byron Municipal Complex, 401 Main Street, Byron, Peach County, Georgia 31008.

5.

Defendant employed far in excess of fifteen employees every week of the current and preceding years and is otherwise a covered entity and employer within the meaning of Title VII and the ADA.

## **STATEMENT OF FACTS**

6.

Plaintiff hereby pleads and incorporates by reference all of the allegations contained in Paragraphs 1 through 6, as if the same were set forth herein.

7.

Chief Mosby, who was assigned male at birth, identifies as a female.

8.

As described herein, Chief Mosby is affected by several conditions in her right ankle and lower back-lumbar.

9.

Said conditions substantially limit and impair several of Chief Mosby's major life activities such as her mobility as well as standing, sitting, sleeping, and working, among other activities.

10.

Moreover, Chief Mosby became further disabled in February 2019, when she sustained injuries to her left hip, left wrist, and mid-back thoracic in an on-the-job motor vehicle accident, for which Chief Mosby was not at fault.

11.

Similarly, said injuries to her hip, wrist, and mid-back thoracic have left her impaired for an indefinite duration, and these injuries further substantially limit Chief Mosby's major life activities such as her mobility as well as standing, sitting, sleeping, and working, among other activities.

12.

Chief Mosby began her employment with Defendant on September 4, 2007, as the City's Fire Marshal.

13.

At that time, Defendant was served by the Byron Volunteer Fire Department.

14.

In January 2008, the City established its first professional Fire Department, and, shortly thereafter, Defendant appointed Chief Mosby as its first Fire Chief.

15.

During her eleven years as Chief, Chief Mosby's performance was exemplary.

16.

Chief Mosby oversaw the growth of the number of professional employees in the Fire Department.

17.

Chief Mosby contributed to the drafting of proposed City Ordinances.

18.

Chief Mosby developed Strategic Plans.

19.

Chief Mosby improved the quality of the Department's equipment.

20.

Chief Mosby incorporated a number of successful cost-cutting measures for Defendant.

21.

Chief Mosby obtained far more than \$500,000 in grants for her Department.

22.

Chief Mosby's tenure was marked by many other accomplishments, accolades, and awards.

23.

Prior to Chief Mosby's tenure, the City had been rated by the Insurance Service Office ("ISO") as Class 7.

24.

A fire district receives an ISO rating from 1-10, with Class 10 being the lowest, which indicates that the fire district failed to meet ISO minimum requirements. These ratings directly impact property owners' and municipalities' insurance rates and premiums, and can, thereby impact economic growth or lack thereof.

25.

Chief Mosby successfully led Defendant through two ISO surveys and lowered Defendant's ISO rating from Class 7 to Class 4 within only four years.

26.

At the time of her separation, Defendant was on-track to be rated as Class 3 due to Chief Mosby's leadership.

27.

City officials have acknowledged this critical success.

28.

For example, Mayor Pro Tem Michael Chidester made the following endorsement to a local media outlet after Chief Mosby's termination: "Chief Mosby was charged with working to improve the ISO rating for the city of Byron and I will say that he, and subsequently she, did a great job."

29.

Prior to the events described herein, Chief Mosby had only received one written reprimand during her tenure, although she was not otherwise disciplined, for uttering a profane word while she was on the scene of a fire emergency.

30.

In the last performance evaluation that she received, Chief Mosby's performance was described as "EXCEEDS STANDARDS," with only a few areas identified for improvement.

31.

Chief Mosby had been struggling with gender dysphoria for most of her life.

32.

In or around Fall 2016, she began her medical transition in order to allow herself to properly present as female.

33.

Initially, Chief Mosby attempted to transition inconspicuously; however, by Summer 2017, Chief Mosby realized that other employees of Defendant were circulating rumors about Chief Mosby and her appearance.

34.

In September 2017, Chief Mosby felt that it was necessary to inform the employees that she supervised of her transition.

35.

Soon thereafter, Chief Mosby came out to the City Administrator, the Mayor, and her fellow department heads.

36.

Thereafter, Chief Mosby presented entirely as female beginning in or around January 2018.

37.

While she initially thought that this news had been well-received, Chief Mosby often experienced microaggressions and other intentional harassment from her employees, fellow department heads, and members of the City Council.

38.

As an example of one such comment subtly expressing prejudice of which she was subjected was shortly after she came out when Councilman Michael Chumbley told Chief Mosby

that he did not have a problem with her transition but that he would if she showed up to work in a dress.

39.

Around the same time, the then-Mayor Pro Tem Michael Chidester also told Chief Mosby that the City could still use a performance review to get rid of her.

40.

Shortly after coming out, Chief Mosby was conducting interviews for an open position when she happened to interview a qualified candidate who was transgender.

41.

The City Council learned of this interview and enacted a hiring freeze *the day after* this candidate was interviewed.

42.

Despite the hiring freeze, Defendant still allowed other departments to continue hiring, such as the Public Works and Police Departments.

43.

Coincidentally, the hiring freeze was lifted shortly after Defendant fired Chief Mosby.

44.

On a number of instances after September 2017, Chief of Police Wesley Cannon and members of City Council intentionally referred to Chief Mosby with male pronouns in their communications with her and statements to the media.

45.

For example, Councilman Michael Chumbley always greeted Chief Mosby by saying, “hey man,” even after Chief Mosby had politely corrected him on a number of occasions after September 2017.

46.

In an October 2018 meeting of department heads, Police Captain Bill Lavender referred to Chief Mosby as male a number of times during the meeting, and when Chief Mosby corrected the Captain, he sarcastically responded “whatever, dude.”

47.

Although City Administrator Derick Hayes heard Captain Lavender’s remarks, he refused to take any corrective or disciplinary action or to accept Chief Mosby’s formal complaint against Captain Lavender.

48.

Administrator Hayes was Defendant’s designated equal employment officer at all relevant times alleged herein.

49.

On several occasions, Administrator Hayes refused to accept or address Chief Mosby’s complaints of other employees engaged in sexual harassment and homophobic or transphobic conduct.

50.

There were other instances when Councilmembers, such as Councilman Rusty Adams, blatantly refused to speak to Chief Mosby.

51.

On one occasion, Councilman Adams ignored Chief Mosby, leaving the City's designated table at a local Chamber of Commerce dinner as soon as she sat down.

52.

The treatment of Chief Mosby began to change drastically and dramatically around April 29, 2019, when local media outlet 13WMAZ ran a story, on both its evening news broadcast and online about Chief Mosby coming out as transgender. (Doc. 1-1.)

53.

When the news outlet approached Chief Mosby about participating in the interview there was nothing in City policy or practice that prevented Chief Mosby from making public statements about this or other topics, as she had on prior occasions.

54.

For almost all of Chief Mosby's tenure, she was not required to wear a uniform. Instead, the City Budget generally included a line item for a clothing allowance for such attire.

55.

Chief Mosby was permitted to wear professional attire such as khaki pants, button-up shirts, and suits and ties. In 2018, the City budgeted \$1,200 for Chief Mosby to use to purchase said professional attire.

56.

In Spring 2018, Chief Mosby sought to purchase professional attire that is considered more-traditionally female. She spent approximately \$600 on clothing, which had been approved in advance by the appropriate authority.

57.

However, when Chief Mosby stopped by the Municipal Complex and was seen wearing a skirt for the first time, the City issued her a written reprimand for allegedly making an unauthorized purchase.

58.

Defendant had no uniform policy governing Chief Mosby's dress at the time of the citation. Defendant also required that Chief Mosby pay back the money.

59.

Subsequently, Defendant's City Council passed a "uniform policy" on May 14, 2019.

60.

Around the same time that Chief Mosby had used her clothing allowance, another female employee of Defendant, who does not identify as transgender, was permitted to make similar clothing purchases, was not disciplined for such purchases, and was not required to pay any money back for the purchases.

61.

Moreover, after this "uniform policy" was enacted, other public safety supervisors, such as the Command Staff of the Police Department and its detectives, were exempted from the policy and permitted to wear non-uniform, professional attire.

62.

The "uniform policy" and subsequent exception such that it seemingly only applied to Chief Mosby evidences a problem that the City Council had with Chief Mosby wearing traditionally-female attire, just as Councilman Chumbley previously suggested that they would.

63.

In Summer 2018, one of Chief Mosby's reserve firefighters called Chief Mosby a "he-she" to her face.

64.

Because of this incident, as well as a prior complaint of sexual harassment made by another employee against the same individual, Chief Mosby decided to terminate the reserve (or "volunteer") firefighter.

65.

Chief Mosby received prior approval from the City Attorney to terminate the employee

66.

Chief Mosby's decision was upheld by Administrator Hayes.

67.

However, Defendant later granted the reserve firefighter's request to appeal in November.

68.

Despite initially upholding the termination, Administrator Hayes, now as the officer hearing the appeal, reversed the termination and reinstated the reserve firefighter.

69.

Administrator Hayes notified Chief Mosby of the appeal via a November 13, 2018 email, in which he initially stated that Defendant would follow the appeal procedures in an unapproved personnel policy that had been proposed, but not yet approved, by City Council.

70.

This was the first time that Chief Mosby had ever seen the proposed revisions that removed *only* a department heads' right to appeal any disciplinary actions taken against them or any employees under their supervision.

71.

The *old* policy did not allow for reserve firefighters to appeal a termination.

72.

Yet, Administrator Hayes told Chief Mosby that she could not appeal the reinstatement because of this *new* policy that was not yet approved or legally in effect.

73.

The new policy was enacted through an ordinance passed and made effective on January 14, 2019. (Doc. 1-2.)

74.

In early 2019, Chief Mosby had the opportunity to review her personnel file, and she found that it did not contain anything about her complaint against the reserve firefighter and found that Defendant failed to revise her file to reflect her legal name change, as she had previously been assured that it would.

75.

On June 4, 2019, the City Administrator sent Chief Mosby an email asking to meet with her that afternoon. When Chief Mosby arrived, the Administrator Hayes provided her with written notice of her termination, effective immediately. (Doc. 1-3.)

76.

This was the first indication that the City ever gave Chief Mosby that she was going to be terminated or that her job was in jeopardy in any way.

77.

Chief Mosby was immediately escorted to her office by the Chief of Police at where she found that the locks had already been changed, and she was forced to pack all of her belongings and leave the premises that same afternoon.

78.

While Defendant stated that the termination was for lack of performance, the examples that it cites are inaccurate and false.

79.

Moreover, Defendant's stated reasons are not valid reasons for termination.

80.

Specifically, Chief Mosby's conduct did not result in the failure of Defendant to "release new/renewal business licenses" in a timely manner.

81.

Alternatively, if Chief Mosby had been the cause for any delay in approval in business licenses, it would have been due to the time that she was forced to take off of work and attend physical therapy because of the injuries that she suffered from her on-the-job injuries.

82.

Defendant failed to take any action to address the delay in issuing business licenses with Chief Mosby, including issuing any warning or disciplinary action.

83.

The allegation that Chief Mosby only attended five of the classes offered during a Georgia Association of Fire Chiefs conference in March and April 2019, is not correct and is based on inaccurate information at best.

84.

Moreover, the amount of time that elapsed between this conference and Chief Mosby's termination indicates that this was not the true cause of her termination.

85.

The third and final reason that Defendant provided for Chief Mosby's termination was that she failed to maintain an Arson Investigator Certification.

86.

Arson Investigations and the certification were things that Defendant expressly removed from the job duties of this position and a certification that Chief Mosby never had.

87.

Chief Mosby's lack of an Arson Investigations Certification is not Defendant's real reason for terminating her employment.

88.

Instead, Defendant terminated Chief Mosby's employment due to Defendant's discriminatory animus based on her sex, gender identity, and notions of sex stereotyping.

89.

Some of the information used to terminate Chief Mosby was communicated from Josh Riley, who was Chief Mosby's second in command, to Administrator Hayes and members of Council.

90.

Josh Riley had a personal interest in Chief Mosby's removal as he stood to be promoted, to fill the vacant position, and he has been serving in the position of Interim Chief since Chief Mosby's termination.

91.

The misinformation related to the conference in Savannah was apparently based on Chief Mosby's private Facebook page that someone who was necessarily "friends" with her on the platform obtained.

92.

After the termination, Administrator Hayes sent Chief Mosby's termination letter to the Peach County Fire Chief and asked him to tell everyone.

93.

This letter was subsequently sent to hundreds of people, including many elected officials and many public safety employees in Peach County and surrounding municipalities and counties.

94.

Due to the January 2019 change in the personnel policy, Chief Mosby was not provided with an opportunity to request any reconsideration, appeal, or review of her termination.

95.

Accordingly, Chief Mosby is the first, and still only, department head who has been discharged by Defendant over the last several years.

96.

Chief Mosby is also the first and only City employee who has been terminated without the right to request an appeal.

97.

Prior to filing a Charge of Discrimination with the Equal Employment Opportunity Commission (hereinafter, "EEOC"), Chief Mosby provided written notice to Defendant of her claims pursuant to Title VII and the ADA on June 19, 2019, and requested an immediate and unconditional offer of reinstatement.

98.

Defendant failed to provide any written response to this correspondence whatsoever and refused to allow her to appeal the termination.

99.

Since her termination, Chief Mosby's reputation has been tarnished.

100.

Chief Mosby also remains unable to obtain a similar or equivalent position in this field.

101.

As a result of the termination, Chief Mosby lost her salary and all fringe benefits of her employment.

102.

Chief Mosby intended to remain in this position until her retirement, which was expected to be approximately four years from her termination.

103.

As a result of the termination, Chief Mosby will not be fully-vested in her retirement benefits.

Procedural/Administrative Background

104.

On June 28, 2019, Chief Mosby filed her Charge of Discrimination (Charge No. 410-2019-06614) with the Equal Employment Opportunity Commission (hereinafter, "EEOC"), alleging that Defendant subjected her to discrimination by way of harassment, a hostile work environment, and disparate treatment, which ultimately led to her termination, in violation of Title VII and the ADA. (Doc. 1-4.)

105.

To Plaintiff's knowledge, by October 22, 2019, the EEOC failed to take any substantive action as it related to her Charge, having not even confirmed its receipt of her Charge.

106.

While it is clear from correspondence that Defendant received notice and a copy of Chief Mosby's Charge, it is unclear whether the EEOC requested that Defendant submit a position statement.

107.

Upon her request, the EEOC subsequently informed Plaintiff of the individual assigned to investigate her Charge, but it remains unclear whether any action was even taken by that investigator.

108.

On December 19, 2019, when nearly 180 days had elapsed since she filed her Charge, Chief Mosby requested a "Right to Sue Letter."

109.

The Department of Justice subsequently issued a Notice of Right to Sue Within 90 Days dated February 12, 2020, which Chief Mosby received, through counsel on February 18, 2020. (Doc. 1-5.)

110.

Accordingly, Chief Mosby has exhausted her administrative remedies for her Charge of Discrimination alleging discrimination and harassment in violation of Title VII and the ADA, and she is filing the instant litigation with 90 days of receiving her right to sue from the EEOC.

**COUNT I:  
HARASSMENT AND HOSTILE WORK ENVIRONMENT  
IN VIOLATION OF TITLE VII OF THE CIVIL RIGHTS ACT**

111.

Plaintiff hereby pleads and incorporates by reference all of the allegations contained in Paragraphs 1 through 110, as if the same were set forth herein.

112.

Under Title VII of the Civil Rights Act, it is unlawful for an employer to discriminate against or harass any of its employees because of sex. *See* 42 U.S.C. § 2000e-2(a).

113.

“Sex discrimination including discrimination against a transgender person for gender nonconformity.” *Chavez v. Credit Nation Auto Sales, LLC*, 641 Fed. App’x 883, 884 (11th Cir. 2016) (citing *Glenn v. Brumby*, 663 F.3d 1312, 1316-17 (11th Cir. 2011)).

114.

As alleged herein, Defendant and Plaintiff are a covered, non-exempt employer and employee under Title VII, respectively. *See* 42 U.S.C. §§ 2000e & 2000e-1.

115.

Plaintiff is a member of a protected class in that she is a transgender female.

116.

As alleged herein, Defendant's employees, particularly several of Plaintiff's direct supervisors subjected Plaintiff to conduct that was subjectively offensive and unwelcomed.

117.

Plaintiff personally found such conduct and words extremely offensive.

118.

The conduct in question was directly connected to Plaintiff's sex, gender identity, and notions of stereotyping based on sex.

119.

As alleged herein, the conduct was severe and pervasive enough to create a hostile work environment that a reasonable person would consider intimidating, hostile, and abusive.

120.

Not only did Plaintiff's supervisors fail to address, correct, or provide Plaintiff with the opportunity to engage in any preventative or corrective measures, Plaintiff's direct supervisors were the source of much of the offensive conduct.

121.

Defendant is liable for the conduct of its non-supervisory employees as Defendant knew about the harassment of Plaintiff by its non-supervisory employees and as Defendant failed to take prompt and appropriate corrective measures.

122.

Defendant is unable to articulate any legitimate, nondiscriminatory reason for the offensive conduct.

123.

Plaintiff has been injured by Defendant's harassment and hostile work environment, and Plaintiff is entitled to all damages allowed under Title VII of the Civil Rights Act, including attorney's fees and costs of litigation, in an amount to be proven at trial.

**COUNT II:  
WRONGFUL TERMINATION  
IN VIOLATION OF TITLE VII OF THE CIVIL RIGHTS ACT**

124.

Plaintiff hereby pleads and incorporates by reference all of the allegations contained in Paragraphs 1 through 110, as if the same were set forth herein.

125.

Under Title VII of the Civil Rights Act, it is unlawful for an employer to discharge any employee on the basis of sex. *See* 42 U.S.C. § 2000e-2(a).

126.

“Sex discrimination including discrimination against a transgender person for gender nonconformity.” *Chavez v. Credit Nation Auto Sales, LLC*, 641 Fed. App'x 883, 884 (11th Cir. 2016) (citing *Glenn v. Brumby*, 663 F.3d 1312, 1316-17 (11th Cir. 2011)).

127.

As alleged herein, Defendant and Plaintiff are a covered, non-exempt employer and employee under Title VII, respectively. *See* 42 U.S.C. §§ 2000e & 2000e-1.

128.

Plaintiff is a member of a protected class in that she is a transgender female.

129.

Plaintiff's job performance during her nearly eleven-year tenure as Defendant's Fire Chief was satisfactory to exemplary.

130.

Defendant terminated Plaintiff because of her sex, gender identity, and notions of sex stereotyping.

131.

Defendant's stated reasons for terminating Plaintiff are inaccurate and pretextual to hide Defendant's discriminatory animus.

132.

Plaintiff has been injured by Defendant's wrongful termination of her, and Plaintiff is entitled to all damages allowed under Title VII of the Civil Rights Act, including an award of back pay, reinstatement and/or front pay, compensatory and punitive damages, if available, and attorney's fees and costs of litigation, all in an amount to be proven at trial.

**COUNT III:  
WRONGFUL TERMINATION  
IN VIOLATION OF THE AMERICANS WITH DISABILITIES ACT**

133.

Plaintiff hereby pleads and incorporates by reference all of the allegations contained in Paragraphs 1 through 110, as if the same were set forth herein.

134.

The Americans with Disabilities Act prohibits covered entities from “discriminating against a qualified individual on the basis of disability in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.” 42 U.S.C. § 12112(a).

135.

Discrimination based on disability includes an employer’s failure to make “reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity.” 42 U.S.C. § 12112(b)(5)(A).

136.

As alleged herein, Defendant and Plaintiff are a covered, non-exempt employer and employee under the Americans with Disabilities Act, respectively. *See* 42 U.S.C. § 12111.

137.

Plaintiff has a disability and was perceived by Defendant as having a disability that substantially limits a number of major life activities. Specifically, her disability includes conditions in her right ankle and lower back lumbar and conditions in her left hip, left wrist, and mid-back thoracic caused by an on-the-job injury.

138.

Defendant was aware of these conditions, and therefore, Plaintiff was perceived by Defendant as having a disability.

139.

As alleged herein, Plaintiff had been satisfactorily performing the duties of the role of Fire Chief, and she was otherwise qualified to perform the essential functions of this job, with or without a reasonable accommodation.

140.

Defendant terminated Plaintiff due to these disabilities.

141.

Defendant replaced Plaintiff with an individual without a disability.

142.

Plaintiff has been injured by Defendant's discrimination due to her disability, and Plaintiff is entitled to all damages allowed under the Americans with Disabilities Act, including an award of back pay, reinstatement and/or front pay, compensatory and punitive damages, if available, and attorney's fees and costs of litigation, all in an amount to be proven at trial.

**COUNT IV:  
FAILURE TO PROVIDE REASONABLE ACCOMMODATION  
IN VIOLATION OF THE AMERICANS WITH DISABILITIES ACT**

143.

Plaintiff hereby pleads and incorporates by reference all of the allegations contained in Paragraphs 1 through 110, as if the same were set forth herein.

144.

The Americans with Disabilities Act prohibits covered entities from "discriminating against a qualified individual on the basis of disability in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment." 42 U.S.C. § 12112(a).

145.

Discrimination based on disability includes an employer's failure to make "reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity." 42 U.S.C. § 12112(b)(5)(A).

146.

As alleged herein, Defendant and Plaintiff are a covered, non-exempt employer and employee under the Americans with Disabilities Act, respectively. *See* 42 U.S.C. § 12111.

147.

Plaintiff has a disability and was perceived by Defendant as having a disability that substantially limits a number of major life activities. Specifically, her disabilities include conditions in her right ankle and lower back lumbar and conditions in her left hip, left wrist, and mid-back thoracic caused by an on-the-job injury.

148.

Defendant was aware of these conditions, and therefore, Plaintiff was perceived by Defendant as having a disability.

149.

As alleged herein, Plaintiff had been satisfactorily performing the duties of the role of Fire Chief, and she was otherwise qualified to perform the essential functions of this job, with or without a reasonable accommodation.

150.

Defendant's stated reasons for terminating Plaintiff included certain reasons that were caused or delayed due to Plaintiff's disabilities and/or time in which she was seeking treatment for said conditions; specifically, time in which she was out of the office for doctor's appointments, physical therapy, and breaks that Plaintiff was required to take to avoid sitting or standing for long periods of time.

151.

Accordingly, Defendant failed to provide Plaintiff with a reasonable accommodation for her conditions and injuries that are considered disabilities under the Americans with Disabilities Act.

152.

Plaintiff has been injured by Defendant's failure to provide a reasonable accommodation, and Plaintiff is entitled to all damages allowed under the Americans with Disabilities Act, including an award of back pay, reinstatement and/or front pay, compensatory and punitive damages, if available, and attorney's fees and costs of litigation, all in an amount to be proven at trial.

**COUNT V:  
DEPRIVATION OF DUE PROCESS  
IN VIOLATION OF THE FIFTH AND FOURTEENTH AMENDMENTS**

153.

Plaintiff hereby pleads and incorporates by reference all of the allegations contained in Paragraphs 1 through 110, as if the same were set forth herein.

154.

Pursuant to the Fifth and Fourteenth Amendments of the Constitution of the United States, Plaintiff has the right to due process of law.

155.

Due process of law is denied when an arm of the state acts directly against an individual's property and deprives her of it without notice or an opportunity to be heard.

156.

As a transgender female, Plaintiff is a member of several suspect classifications, and the Court should apply a heightened standard of review to Defendant's actions.

157.

Plaintiff had a property interest in her continued employment as well as the compensation resulting therefrom including all fringe benefits of said employment.

158.

As alleged herein, in January 2019, Defendant changed its long-standing personnel policy to remove the right for heads of departments to appeal adverse employment actions taken against them.

159.

Plaintiff was terminated without any prior notice, and she was not provided with any opportunity to be heard, appeal, or otherwise challenge this action.

160.

Defendant's actions were without any justification and were entirely arbitrary and capricious.

161.

Defendant has deprived Plaintiff of her property interest in continued employment without due process of law, as defined by the Constitution of the United States, and Plaintiff is entitled to all damages available to her in an amount to be proven at trial.

**COUNT VI:  
DEPRIVATION OF DUE PROCESS  
IN VIOLATION OF THE GEORGIA CONSTITUTION**

162.

Plaintiff hereby pleads and incorporates by reference all of the allegations contained in Paragraphs 1 through 110, as if the same were set forth herein.

163.

“The due process clause of the Georgia Constitution, while mirroring the language of the due process clause of the fourteenth amendment, afford greater protection than does federal due process.” *Fields v. Rockdale Cnty.*, 785 F.2d 1558, 1561 (11th Cir. 1986).

164.

Due process of law is denied when an arm of the state acts directly against an individual’s property and deprives her of it without notice or an opportunity to be heard.

165.

Defendant changed its policies to remove the right of a department head to appeal an adverse employment action.

166.

Defendant’s removal of this right was done to target Plaintiff.

167.

As a transgender female, Plaintiff is a member of several suspect classifications, and the Court should apply a heightened standard of review to Defendant's actions.

168.

Plaintiff had a property interest in her continued employment as well as the compensation resulting therefrom including all fringe benefits of said employment.

169.

As alleged herein, in January 2019, Defendant changed its long-standing personnel policy to remove the right for heads of departments to appeal adverse employment actions taken against them.

170.

Plaintiff was terminated without any prior notice, and she was not provided with any opportunity to be heard, appeal, or otherwise challenge this action.

171.

Defendant's actions were without any justification and were entirely arbitrary and capricious.

172.

Defendant has deprived Plaintiff of her property interest in continued employment without due process of law, as defined by the Constitution of the State of Georgia, and Plaintiff is entitled to all damages available to her in an amount to be proven at trial.

**COUNT VII:  
DEFAMATION IN VIOLATION OF O.C.G.A. §§ 51-5-1 & 51-5-4**

173.

Plaintiff hereby pleads and incorporates by reference all of the allegations contained in Paragraphs 1 through 110, as if the same were set forth herein.

174.

Defendant and its representatives, agents, and employees made and published false verbal statements to the media and other third parties that consisted of false charges against Plaintiff in reference to her trade, office, and profession.

175.

Defendant and its representatives, agents, and employees made false written statements to the media and other third parties, which consisted of false charges against Plaintiff in reference to her trade, office, or profession.

176.

These false statements were calculated to injure Plaintiff and her reputation.

177.

These statements concerning Plaintiff's trade, office, or profession imputed to Plaintiff a want of integrity and misfeasance in her office.

178.

As a result of Defendant's acts, Plaintiff and her reputation have been injured, which has also caused her damages including but not limited to a complete inability to secure similar employment in her field.

179.

Defendant is liable for its defamation of Plaintiff, including both libel and slander, and Plaintiff has been damaged by this conduct in an amount to be proven at trial.

### **JURY DEMAND**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff demands a trial by jury on all issues so triable.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Rachel Mosby respectfully prays for the following relief:

- 1) That Summons and Process be issued to Defendant City of Byron, Georgia and said Defendant be served as provided by law;
- 2) That this matter be tried before a jury;
- 3) That judgment be awarded for and in favor of Plaintiff and against Defendant on Count I for harassment and hostile work environment, granting Plaintiff all relief allowable under Title VII of the Civil Rights Act of 1964;
- 4) That judgment be awarded for and in favor of Plaintiff and against Defendant on Count II for wrongful termination, granting Plaintiff all relief allowable under Title VII of the Civil Rights Act of 1964;
- 5) That judgment be awarded for and in favor of Plaintiff and against Defendant on Count III for wrongful termination, and grant Plaintiff all relief allowable under the Americans with Disabilities Act;
- 6) That judgment be awarded for and in favor of Plaintiff and against Defendant on Count IV for Defendant's failure to provide Plaintiff with a reasonable accommodation, granting Plaintiff all relief allowable under the Americans with Disabilities Act;

7) That judgment be awarded for and in favor of Plaintiff and against Defendant on Count V for Defendant's deprivation of due process in violation of the Fifth and Fourteenth Amendments to the United State Constitution and grant Plaintiff all relief allowable;

8) That judgment be awarded for and in favor of Plaintiff and against Defendant on Count VI for Defendant's deprivation of due process in violation of the Constitution of the State of Georgia and grant Plaintiff all relief allowable;

9) That judgment be awarded for and in favor of Plaintiff and against Defendant on Count VII for Defendant's defamation of Plaintiff and grant Plaintiff all relief allowable;

10) For such other relief as this Court shall deem just and proper.

Respectfully submitted, this 28<sup>th</sup> day of April, 2020.

  
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Georgia Bar No. 142447  
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# 'I've never seemed happier in my life:' Transgender Byron fire chief shares her journey



Author: Suzanne Lawler  
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CHAPTER 1

'It's important to have visibility for those that can't'

EXPLORE

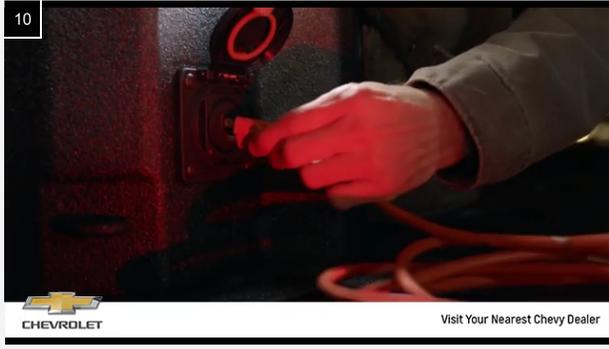


CHAPTER 1

# 'It's important to have visibility for those that can't'

In the small Peach County town of Byron, the same person has led the fire department for the last 11 years.

Same leadership, same skills on the job, but one noticeable change -- Chief Rachel Mosby is transgender, taking the steps to go from a man to a woman during her time in one of the city's top jobs.

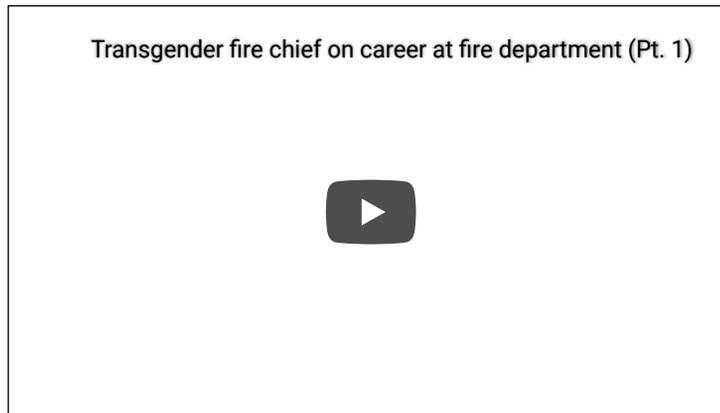


**Laura Dern Wants One More Appeal In 'Trial By Fire'**

**RELATED:** [Here's the 'Good News' that happened in Central Georgia: April 21-27](#)

"It was just organized chaos and everybody working together putting a fire out, and I've been doing it ever since," Rachel said. For most of her working career and half her life, Rachel Mosby has worn a uniform. "In 2004, became a district chief," she recalled.

She came to Byron three years later as a fire marshal. "In 2008, they nominated and voted for me to be the fire chief," she said.

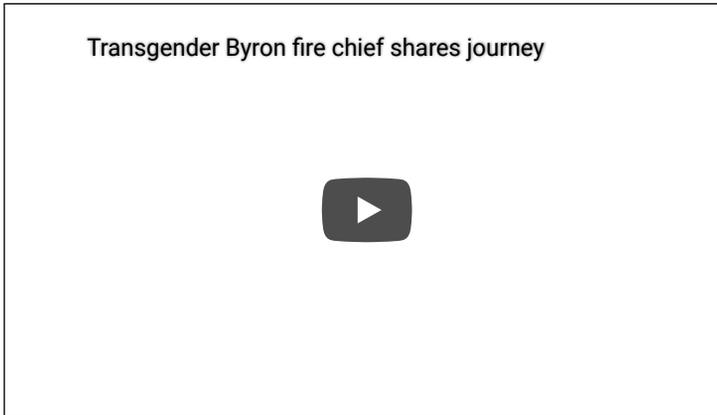


She was a different person back then. "It started in 2016, I started medically transitioning," Rachel said.

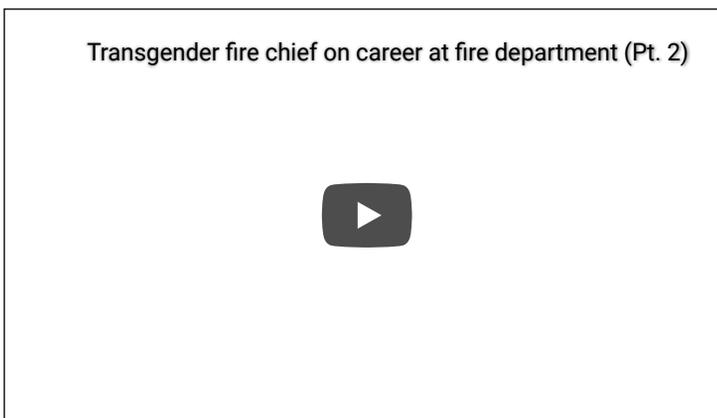
Rachel is transgender. Uncomfortable as a man, she began the journey to becoming a woman. "I mostly grew up in a small town, smaller than the one I live in now, and information wasn't available and it wasn't something you just went and asked grownups about. there just wasn't information sources for this stuff," she explained.

We asked Rachel about the man she was before the transition and she didn't really want to go into that. For her, he simply doesn't exist anymore.

But he existed to the guys at the fire station, and in a profession where very few women, much less transgender individuals, fill the ranks, Rachel had some intense conversations ahead of her.



"I needed to be able to trust them with this the way that I ask them to trust me every day when they come to work," Rachel said. "These people are like my family here at the fire department. We're all family, and it's the same thing like going to family with that, and I think that the majority of the reluctance on my part had to do with my own underestimation of their character, and in the end, it wound up not being as big of a deal as I thought it was."



You can't hide transitioning from a man to a woman, and as the fire chief, Rachel had to expand those conversations to city department heads -- a perceived tough task in a small town in the Bible Belt. "What I've found is that allies and friends have come from some of the most unexpected places," she said.



**'I've never seemed happier in my life:' Transgender Byron**

**fire chief shares her journey**

LOCAL

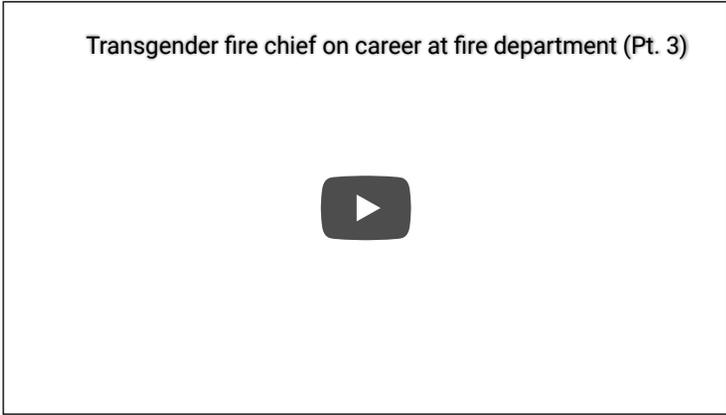
'It's important to have visibility for those that can't'

CHAPTER 1

And then she went one step further -- she talked to us. She didn't have to share her story, but she felt a need. "It's important to have visibility for those that can't. There's a lot of folks that are unable to be visible with their transition because of a lot of different reasons," she said. "And then there's people that are afraid of everything that goes with it -- it's not always smooth for everyone that follows this path."

These days, Rachel says she is at peace, comfortable in her own skin, and feels proud to take a leadership role in the transgender community.

"Everybody who knows me or has known me for some time says I've never seemed happier in my life," she said with a smile.



**RELATED:** [Here's the 'Good News' that happened in Central Georgia: April 14-20](#)

Rachel has served on several panels in the transgender community. As for logistics in the firehouse, the sleeping arrangements haven't changed – the guys and Rachel just change clothes in the bathroom. Both of the bathrooms are unisex.

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# City of Byron Personnel Policies

Policy Number: 8.1

Subject: Disciplinary Actions

Effective Date: April 29, 2005

Number of Pages: 6

Revised Dates: March 15, 2012

Distribution: All Employees of

December 11, 2012

the City of Byron

August 8, 2016

January 14, 2019

Special Instructions: None

**AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF BYRON, GEORGIA TO REPEAL POLICY NO. 8.1 OF THE CITY OF BYRON PERSONNEL POLICIES (SUBJECT: DISCIPLINARY ACTIONS) AND SUBSTITUTE IN ITS PLACE A NEW PERSONNEL POLICY NO. 8.1 TO PROVIDE FOR DISCIPLINARY ACTIONS AGAINST AND APPEAL PROCEDURES FOR EMPLOYEES, TO DISTINGUISH THE STATUS OF APPOINTIVE OFFICERS, DEPARTMENT HEADS AND DIRECTORS, AND TO PROVIDE FOR NAME CLEARING HEARINGS, AND FOR OTHER PURPOSES.**

**BE IT ORDAINED BY THE MAYOR AND COUNCIL** of the City of Byron, Georgia, and it is hereby so ordained that Policy No. 8.1 of the City of Byron Personnel Policies is hereby repealed in its entirety and a new Policy No. 8.1 (Subject: Disciplinary Actions) substituted in its place as follows:

**A. GENERAL**

It shall be the duty of all City employees to comply with and assist in carrying out the provisions of the City's personnel rules and regulations. No employee shall be disciplined except for violation of established rules and regulations, and such discipline shall be in accordance with procedures established by the personnel rules and regulations.

It shall be the duty of each employee to maintain high standards of conduct, cooperation, efficiency, and economy in his/her work with the City. Whenever work habits, attitude, production, or personal conduct of any employee falls below the accepted norm for all employees, supervisors should point out those behavioral deficiencies to the employee at the time they are observed or a reasonable time thereafter. Corrections and suggestions should be presented in a constructive and helpful manner in an effort to elicit cooperation and goodwill from all employees. Supervisors shall assist employees in attaining competence through on-the-job training and additional training as required. Whenever possible, oral and/or written warnings shall precede formal discipline.

**B. EMPLOYEE AND SUPERVISOR RESPONSIBILITIES**

(1) It is the duty of every employee to correct any faults in performance when called to his/her attention and to make every effort to avoid conflict with the City's rules and regulations.

(2) It is the duty of **EXHIBIT B PAGE 1 OF 7** every supervisor to discuss proper or inadequate performance

with the employee in order to correct deficiencies and to avoid the need to exercise disciplinary action. Discipline shall be in the hands of the Department Head and should be of an increasingly progressive nature. The steps of progression shall generally be oral reprimand, written reprimand, suspension, demotion and finally dismissal. However, this is not to say that the Department Head should not immediately terminate an employee for any one of the reasons listed in this policy. Discipline should correspond to the offense.

**C. DISCIPLINARY ACTION**

Disciplinary action shall be taken as expeditiously as possible and as soon as a final determination is made that a violation has occurred. This normally should not require more than five days after the occurrence is established or after a determination is made that discipline is to be based on multiple violations which have occurred over a period of time. If disciplinary action is delayed for administrative review or investigation purposes, the employee should normally be notified and advised that the Imposition of disciplinary action is being considered.

**D. GROUNDS FOR DISCIPLINARY ACTION**

The following are declared to be grounds for oral reprimand, written reprimand, demotion, suspension, or removal of an employee. (However, this is not intended to be an exhaustive listing of all grounds for disciplinary action):

- (1) conviction of a felony or other crime involving moral turpitude or involving alcoholic beverages or drugs.
- (2) Incompetent, negligent or inefficient performance of the duties of the position held.
- (3) Absence without leave.
- (4) Insubordination which creates a serious breach of discipline.
- (5) Intentional failure or refusal to carry out instructions.
- (6) Misappropriation, destruction, theft, conversion, or misuse of City property.
- (7) Employee subsequently becomes physically or mentally unfit for the performance of his/her essential functions.
- (8) Acts of misconduct while on duty.
- (9) Willful disregard of orders.
- (10) Habitual tardiness and/or absenteeism.
- (11) Falsification of any information required by the City for employment purposes.
- (12) Failure to properly report on-the-job accidents or personal injuries.

- (13) Neglect or carelessness resulting in damage to City property or equipment.
- (14) Repeated convictions during employment of misdemeanor and/or traffic charges.
- (15) Introduction, possession, or use on City property or in City equipment, or working under the influence of intoxicating liquor, wine, malt beverages, or any schedule drugs without prescription.
- (16) Wantonly offensive conduct or language toward the public or city officials or employees.
- (17) Violations of the City Charter, City Ordinances, personnel rules and regulations or department rules; and
- (18) An accumulation of violations or infractions which indicate an employee's inability or unwillingness to conform to appropriate standards of performance or conduct.
- (19) Failure to become or remain approved as an acceptable driver by the city's insurer whenever driving a city owned vehicle is required for the position.

Employees shall be subject to the following alternatives for disciplinary action as determined by their department head; or, in the case of department heads, as determined by the City Administrator:

- (1) Written reprimand;
- (2) Reduction in pay to the extent permitted by law;
- (3) Suspension without pay for up to 90 days or shift equivalent to the extent permitted by law;
- (4) Demotion;
- (5) Discharge.

**E. WRITTEN REPRIMANDS**

- (1) Notice: The employee to be reprimanded shall be provided with a written notice of reprimand stating any and all reasons for the reprimand. A reprimand need not include statements of witnesses or other supporting documents, but shall set forth the circumstances in sufficient detail to permit the employee to understand the nature and basis of the action. Written responses shall be placed in the employee's personnel file.
- (2) Response: The employee shall have the right to submit a written response to the reprimand within fifteen (15) days of receipt of notice of written reprimand. The employee's response will be placed in the employee's personnel file.

**F. NOTIFICATION OF SUSPENSION, REDUCTION IN PAY, DEMOTION, AND TERMINATION**

The employee against whom disciplinary action is taken shall be provided with a written notice stating the reasons for the disciplinary action. The written notification should contain the effective date of the action, the specific charges or reasons for the action, the specific action, and a statement informing the employee of his or her right to appeal the action as well as the procedure for doing so. The employee shall also

receive notification that failure to submit an appeal will result in the loss of the opportunity to appeal the adverse action.

#### **G. COMPUTATION OF TIME**

When a period of time measured in days, weeks, months, years, or other measure of time except hours is prescribed for the exercise of any privilege or the discharge of any duty, the first day shall not be counted, but the last day shall be counted; and, if the last day falls on a Saturday, Sunday, or legal holiday, the party having such privilege or duty shall have through the next day which is not a Saturday, Sunday or legal holiday to exercise the privilege or discharge the duty. When a period of time is less than seven (7) days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.

#### **H. APPEALS**

##### **(1) Filing an Appeal**

- a. Except as otherwise provided in this policy, any employee, other than a department head that reports directly to the City Administrator, who is disciplined shall have the right to appeal such disciplinary action to the City Clerk who will schedule a hearing with the City Administrator. The appeal shall be in writing and must be received in the Office of the City Clerk within five (5) days following the notice confirming imposition of discipline. Department heads that report directly to the City Administrator are not entitled to an appeal.
- b. There shall be no right for any employee to appeal a written reprimand or for a probationary employee to appeal any disciplinary action.

##### **(2) Hearing**

- a. The City Administrator shall conduct an informal fact-finding hearing. Extensions of time until the hearing or continuances of hearings may be approved by the City Administrator.
- b. The employee who has requested review shall proceed first. The employee shall offer testimony and documentary evidence which rebuts the reason given for the proposed adverse action and/or which challenges the severity of the proposed adverse action. The employee bears the burden of establishing that the reason or the adverse action is untrue and/or that the severity of the adverse action is inappropriate given the facts and circumstances.
- c. The employee's supervisor or Department Head shall next be permitted to offer evidence in support of the proposed action and/or in response to evidence offered by the employee.
- d. A hearing may be continued by the appointing authority pending the need to gather additional information.
- e. A designee may be appointed to hear the appeal at the discretion of the appointing authority.

f. In arriving at a decision, the City Administrator shall consider the testimony and documents presented in the hearing as well as any other relevant information. The City Administrator may approve, reject, or modify the proposed adverse action and make a written decision within five (5) business days of the hearing. This decision shall be final.

(3) Any employee, including department heads and appointive officers, who alleges they have been subject to an action that damages their name, reputation, or integrity, may request a public name-clearing hearing before the Mayor and Council. Such hearing may be requested by filing notice with the City Clerk who will schedule a hearing to include the affected employee. In the event the City Clerk shall desire such a hearing, he or she shall submit the notice directly to the mayor. For good cause, the Mayor and City Council can continue a hearing for up to 20 days past its originally scheduled date. Such hearings shall not serve as appeals of the appointing authority's decision regarding continued employment or discipline.

**I. EMPLOYEE INDICTED, CHARGED OR BOUND OVER**

- (1) If an employee is arrested and bound over to a grand jury or indicted for a felony or serious misdemeanor, the department head shall consult with the City Attorney to determine the appropriate status of the employee during the pendency of the criminal charges.
- (2) Normally, if the conduct resulting in the criminal charges is also an offense against the employment relationship with the city, the appropriate disciplinary action shall be instituted and the employee discharged if appropriate.
- (3) If the conduct resulting in the criminal charges does not relate directly to the duties of the position held, but is of a serious and aggravated nature so as to interfere with the employer-employee relationship or embarrass the city, the employee may be suspended pending disposition of charges.
- (4) If the conduct resulting in the criminal charges is completely unrelated to city employment and will not be likely to damage the employment relationship, the employee should usually be allowed to continue working.
- (5) An employee suspended pending the disposition of criminal charges shall not report to work or be present in his/her normal work site during the period of suspension.
- (6) If the criminal charges are disposed of in favor of the employee, he/she shall be reinstated with back pay from the date of suspension less any compensation received from any other source during the period of suspension.
- (7) If a suspended employee is not available for work within 30 days of the institution of criminal charges, the position may be declared vacant and filled in the normal course of filling vacancies. Any employee who is unable to report to work for reasons other than suspension is subject to the requirements specified for absenteeism.

**J. PROBATIONARY EMPLOYEES**

Employees who have not completed twelve months of employment are probationary employees and have no guarantee of continued employment and no protected property interest or rights requiring procedural safeguards. Probationary employees may be terminated for any reason with no right to a due process hearing. In order to terminate a probationary employee, the department head must deliver a notice to the employee that his/her employment is terminated as an "unsatisfactory probationary employee", and send a copy to the City Clerk.

**K. APPOINTIVE OFFICERS AND DIRECTORS**

Pursuant to Article III, Section 3.10 (e) of the City Charter, all appointive officers and directors shall be employees at-will and subject to removal or suspension at any time by the appointing authority unless otherwise provided by law or ordinance.

SO ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF BYRON, GEORGIA, on the 14<sup>th</sup> day of January, 2017.

CITY OF BYRON, GEORGIA

Mayor:

\_\_\_\_\_  
Lawrence C. Collins

\_\_\_\_\_  
Michael L. Chidester, Mayor Pro-Tem

\_\_\_\_\_  
James Richardson, Council Member

\_\_\_\_\_  
Russell G. Adams, Council Member

\_\_\_\_\_  
Michael S. Chumbley, Council Member

\_\_\_\_\_  
(Absent)  
Alan C. Dorsey, Council Member



Attest:

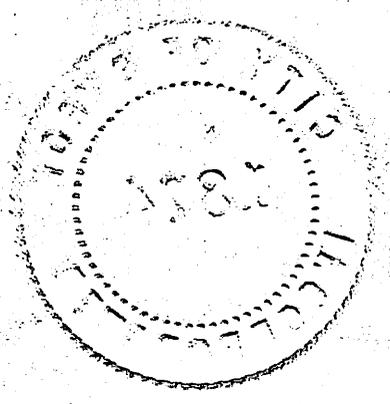
\_\_\_\_\_  
Telina Allred, City Clerk

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# The City of Byron

Chief Mosby  
1473 Newell Road  
Byron, GA 31008

Chief Mosby,

I regret to inform you that your employment with the City of Byron is hereby terminated immediately. The City no longer has confidence in your ability to lead our Fire Department.

Some of the most recent indicators of lack of performance are listed below:

- (1) Failure to release new/renewal business licenses for approval in a timely manner, causing undue delays in processing customers' requests. This has been an issue since late in 2018 and you have been notified several times via email and in Staff Meetings.
- (2) The GAFC Conference was in Savannah between 03/30/2019 - 04/03/2019. You were in Savannah during the time of the entire conference, but only attended five (5) classes out of twenty-one (21) offered. The first two (2) full days in attendance, you didn't take any classes, which cost travel monies that should not have been spent.
- (3) Failure to maintain the Fire Investigator certification required by the Fire Chief job description. You have attended the Arson Investigator class no less than two (2) times at the expense of the City but have failed to maintain the certification.

The foregoing constitute the following grounds for disciplinary action (including discharge) under the City's personnel policy: 8.1 D (2), (5), and (9).

Pursuant to policy: 8.1 H (1), as a department head, you are not entitled to an appeal. However, 8.1 H (3) authorizes a public name clearing at your request before the mayor and council. The purpose of such a hearing is not to offer an appeal of this decision but is to provide you with an opportunity to clear your name, reputation, and integrity. If you desire such a hearing, you must file a notice with the City Clerk.

This termination is effective immediately (June 4, 2019).

Sincerely,

Derick W. Hayes  
City Administrator

The Rosewood (478) 841-9007 tel  
170 College Street (478) 841-9002 fax  
Macon, Georgia 31201 cooperbarton.com



KENNETH E. BARTON  
KEB@COOPERBARTON.COM

June 28, 2019

**VIA CERTIFIED MAIL &  
VIA FACSIMILE: (404) 562-6909**

Equal Employment Opportunity Commission  
Atlanta District Office  
100 Alabama Street, S.W., Suite 4R30  
Atlanta, Georgia 30303

**Re: Charge of Discrimination**

*Rachel J. Mosby v. City of Byron, Georgia*  
Equal Employment Opportunity Commission (Charge No. TBD)  
*Cooper, Barton & Cooper File No.: 15918.0001*

To Whom It May Concern:

Our law firm has been retained to represent Ms. Rachel J. Mosby, and we wish to file a Charge of Discrimination on her behalf. Enclosed, please find a true and correct copy of a Notice in which Chief Mosby has designated me and our law firm as her legal representative. The Equal Employment Opportunity Commission will find that, while Chief Mosby was employed with the City of Byron, Georgia, she was subjected to harassment and hostile work environment, disparate treatment, and termination due to her sex and disabilities, in violation of Title VII of the Civil Rights Act and the Americans with Disabilities Act.

Ms. Mosby (hereinafter, "Chief Mosby") was employed as the Chief of the Fire Department, located at 103 GA Highway 49 South, Byron, Peach County, Georgia 31008. The City of Byron was Chief Mosby's employer, which is located at 401 Main Street, Byron, Peach County, Georgia 31008. The City of Byron has employed in excess of fifteen (15) employees for each working day in 2019 and in previous years.

Chief Mosby identifies as a transgender female, and she was one of the first openly-transgender fire chiefs in the world, if not the very first. As described herein, Chief Mosby also suffers from several conditions, especially in her right ankle and lower back-lumbar, that substantially limit her major life activities and are considered disabilities under the Americans with Disabilities Act. Moreover, Chief Mosby became further disabled in Spring 2019, when she sustained additional injuries to her left hip, left wrist, and mid-back thoracic in an on-the-job motor vehicle accident, in which Chief Mosby was not at fault.

Chief Mosby began her employment with the City of Byron on September 4, 2007, as the City's Fire Marshal. At that time, the City was served by the Byron Volunteer Fire Department. In January 2008, the City established its first professional Fire Department, and, shortly thereafter, Chief Mosby was appointed as its first Chief. Prior to Chief Mosby's tenure, the City had been rated by the Insurance Service Office ("ISO") as Class 7. A fire district receives an ISO rating from 1-10, with Class 10 being the lowest, which

Equal Employment Opportunity Commission

June 28, 2019

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indicates that the fire district failed to meet ISO minimum requirements. These ratings directly impact property owners' and municipalities' insurance rates and premiums, and can, thereby impact growth.

During her eleven years as Chief, Chief Mosby's performance was exemplary. Chief Mosby oversaw the growth of the number of professional employees in the Fire Department, contributed to the drafting of proposed City Ordinances, developed Strategic Plans, and improved the quality of the Department's equipment, among other accomplishments. Moreover, Chief Mosby successfully lead the City through two ISO surveys and lowered the City's ISO rating from Class 7 to Class 4 within only four years. She believes that the City will soon be rated as Class 3 due to her efforts. Prior to the events described herein, Chief Mosby only recalls receiving one written reprimand, although she was not otherwise disciplined, for using a profane word while on the scene of a fire. In the last performance evaluation that she received, Chief Mosby's performance was described as exemplary, with very few areas, if any, identified for improvement.

Unbeknownst to her employer, Chief Mosby had been struggling with gender dysphoria for most of her life. In or around Fall 2016, she began her medical transition in order to allow herself to properly present as female. Initially, Chief Mosby attempted to transition quietly; however, in Summer 2017, Chief Mosby realized that other City employees were circulating rumors about Chief Mosby and her appearance. In September 2017, Chief Mosby felt that it was necessary to "come out" (or, "go public," in her words) to her employees. Soon thereafter, Chief Mosby also came out to the City Administrator, the Mayor, and her fellow department heads, and Chief Mosby would describe herself as presenting entirely as female in or around January 2018.

While she initially thought that this news had been well-received, Chief Mosby often experienced microaggressions and other intentional harassment from her employees, fellow department heads, and even members of the City Council. Shortly after she came out, one Councilmember told Chief Mosby that he did not have a problem with her transition but that he would if she showed up to work in a dress. Another Councilman told Chief Mosby that the City could still use a performance review to get rid of her.

Subsequently, when Chief Mosby was conducting interviews for an open position, the City enacted a hiring freeze *the day after* Chief Mosby had interviewed a qualified candidate who also happened to be transgender, although the City allowed the Public Works and Police Departments to continue hiring. On a number of instances, the Chief of Police and members of City Council intentionally referred to Chief Mosby with male pronouns in their communications with her and statements to the media. In an October 2018 meeting of department heads, the Police Captain intentionally referred to Chief Mosby as male a number of times, and when Chief Mosby corrected the Captain, he responded "whatever dude." Although the City Administrator (and the City's designated equal employment officer) heard the Captain's remarks, he refused to take any corrective or disciplinary action or accept Chief Mosby's complaint. There were other instances when Councilmembers either blatantly refused to speak to Chief Mosby, and even one Councilman who left the City's designated table as soon as she sat down at a local Chamber of Commerce dinner.

The EEOC will note that the treatment of Chief Mosby began to change drastically and dramatically around the time she was featured in a story by the local press. On April 29, 2019, local outlet 13WMAZ

Equal Employment Opportunity Commission

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ran a story, on both its evening news broadcast and online, specifically about Chief Mosby coming out as transgender. A true and correct copy of the story is attached hereto and marked as “Exhibit A.” Critically, the news outlet approached Chief Mosby about participating in the interview, and there was nothing in City policy or practice that prevented Chief Mosby from making public statements about this, or other topics on prior occasions.

For almost all of Chief Mosby’s tenure, she was not required to wear a uniform. Instead, Chief Mosby was permitted to wear professional attire such as khaki pants, button-up shirts, and suits and ties, and the City Budget generally included a line item for a clothing allowance. In 2018, the City budgeted \$1,200 for Chief Mosby to use to purchase said professional attire. In Spring 2018, Chief Mosby sought to purchase professional attire that is considered more-traditionally female. She spent approximately \$600 on clothing, which had been approved by the appropriate person. However, shortly after Chief Mosby was seen wearing a skirt to work for the first time, the City issued her a written reprimand for allegedly making an unauthorized purchase. The City also required that Chief Mosby pay back the money. Unfortunately, a City employee decided to leak this information to the press. Critically, Chief Mosby only started wearing a uniform before she came out because this unisex option helped her manage her dysphoria. Around the same time that Chief Mosby used her clothing allowance, another female employee of the City was also permitted to make similar purchases, but she was not disciplined or otherwise required to pay anything back. Moreover, after Chief Mosby wore the skirt to work, the City changed its policy, making it mandatory that firefighters wear uniforms. The policy change appeared to target Chief Mosby, as the Police Chief and detectives remained exempted from this policy and allowed to wear non-uniform, professional attire.

In Summer 2018, one of Chief Mosby’s reserve firefighters called Chief Mosby a “he-she” to her face. Because of this incident, as well as a prior complaint of sexual harassment made by another employee against the same individual, Chief Mosby decided to terminate the reserve firefighter. Chief Mosby received approval from the City Attorney to terminate the employee, and her decision was upheld by the City Administrator. However, the City granted the reserve firefighter’s request to appeal in November. Despite initially upholding the termination, the City Administrator, now as the officer hearing the appeal, reversed the termination and reinstated the reserve firefighter.

The City Administrator notified Chief Mosby of the appeal via a November 13, 2018 email, and he initially stated that the City would follow the appeal procedures in an unapproved personnel policy that had been proposed but in no way approved. This was the first time that Chief Mosby had seen the proposed revisions – revisions that took away *only* department heads’ right to appeal any disciplinary actions taken against them or other employees. Not only did the *old* policy not actually allow for reserve firefighters (i.e., volunteers) to appeal a termination, the City Administrator told Chief Mosby that she could not appeal the reinstatement because of the *new* policy not yet in effect. The new policy was enacted through an ordinance passed and made effective on January 14, 2019. A true and correct copy of the newly-enacted personnel policy is attached hereto and marked as “Exhibit B.”

On June 4, 2019, the City Administrator sent Chief Mosby an email asking to meet with her that afternoon. When Chief Mosby arrived, the City Administrator provided her with notice of her termination, effective immediately. This was the first indication that the City ever gave her that she was going to be terminated, or that her job was in jeopardy in any way. A true and correct copy of the termination letter is

Equal Employment Opportunity Commission

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attached hereto and marked as “Exhibit C.” Chief Mosby was immediately escorted to her office by the Chief of Police, where she found that the locks had already been changed, and she was forced to pack all of her belongings and leave the premises that afternoon.

While the City stated that the termination was for lack of performance, the examples that it cites are inaccurate and/or not indicators of her lack of performance, or much less, valid reasons for termination. The reasons provided are as follows:

- First, the City states that Chief Mosby failed to “release new/renewal business licenses for approval in a timely manner.” In late 2018, the City incorporated new software for the Fire Department to use for its part of the business licenses approval process. Because of the new system, the Fire Department was required to enter all information about existing business licenses into the system by hand. Chief Mosby has long been expressing her concerns about the delays this was causing and made suggestions on how the process could be improved, as the City Administrator had instituted a new workflow process without consulting the department heads and was specifically cumbersome on the Fire Chief. The City failed to take her suggestions, and Chief Mosby and one other employee were forced to enter this information into the system manually when they were not performing their regular duties. Critically, the City was aware that Chief Mosby’s Department was understaffed due to a hiring freeze and that her personal schedule was limited due to frequent physical therapy sessions that she was receiving for a work-related accident. This is one example of how the City took efforts to make Chief Mosby’s duties difficult or impossible, especially in light of Chief Mosby’s disabilities and work-related injuries. Moreover, Chief Mosby was never counseled, coached, warned, nor given a negative evaluation on this issue.
- Second, the City alleges that Chief Mosby only attended five of the classes offered during a Georgia Association of Fire Chiefs conference from March 30 through April 3, 2019. The City alleged that this was a waste of its resources. However, the EEOC will find that Chief Mosby took full-advantage of training opportunities and conferences that she attended, including at this conference. The evidence will show that this allegation is not true, and the City never even asked Chief Mosby about the accuracy of this information. Moreover, the evidence will reflect that this inaccurate information about her conference attendance was reported by at least two individuals with discriminatory animus against Chief Mosby.
- Third, the City states that Chief Mosby failed to maintain the Arson Investigator certification, as required by her job description. However, Chief Mosby maintained all necessary training and certifications, and in evidence will show that the City never actually required this certification for the position.

In fact, the inclusion of the requirement for a fire investigator certification in the fire chief job description was a mistake *made by Chief Mosby, herself*, when she wrote the original fire chief job description adopted by the city. It was an error that she attempted to correct over the years; this was recognized by her superiors, as evidenced by her never having been notified that this was an issue during her nearly twelve-year tenure, until her termination. Moreover, the evidence will show that the City officially removed fire investigations from being one of the Fire Chief’s duties in 2009 and 2010.

Equal Employment Opportunity Commission

June 28, 2019

Page 5 of 5

Due to the January 2019 change in the personnel policy, Chief Mosby does not have the right to request any reconsideration, appeal, or review of her termination. She is the first department head who has been discharged by the City over the last several years, and she is the first and only City employee who has been terminated without the right to request an appeal. In hindsight, the City had taken countless actions in late 2018 through 2019 that made it apparent that the City planned to remove Chief Mosby. Since her termination, the City has taken additional steps to humiliate Chief Mosby and further damage her career. One Councilman has given interviews to the local media in which he has *intentionally* referred to Chief Mosby using both female and male pronouns.

Accordingly, for the above and foregoing reasons, Chief Rachel J. Mosby seeks to file a Charge of Discrimination against the City of Byron, Georgia, as follows:

(1) Beginning in January 2018 and continuing through June 4, 2019, Chief Mosby was subjected to harassment, hostile work environment, and disparate treatment due to her sex and gender identity, in violation of Title VII of the Civil Rights Act;

(2) On June 4, 2019, Chief Mosby was terminated due to her sex and gender identity in violation of Title VII of the Civil Rights Act;

(3) On June 4, 2019, Chief Mosby was terminated due to her disabilities, as described herein, in violation of the Americans with Disabilities Act; and,

(4) As described herein, Chief Mosby was terminated for reasons connected to her disabilities known to her employer, without first being provided with a reasonable accommodation, in violation of the Americans with Disabilities Act.

Please do not hesitate to reach out to us if you have any questions, or need additional information, documentation, or the names of witnesses. We appreciate the EEOC's time and attention to this matter.

Sincerely yours,



KENNETH E. BARTON

KEB/nagm

Enclosures

cc: Ms. Rachel J. Mosby (via email)  
Joshua A. Carroll, Esq. (via email)

159180001.L03.EEOC Charge

The Rosewood (478) 841-9007 tel  
170 College Street (478) 841-9002 fax  
Macon, Georgia 31201 cooperbarton.com



**Notice of Designation of Attorney**

Effective Date: June 6, 2019

I, RACHEL MOSBY, do hereby designate the individual(s) and law firm(s) named below to act as my attorney/representative in all matters pertaining to my formal Charge of Discrimination to be filed with the Equal Employment Opportunity Commission.

**Charging Party:**

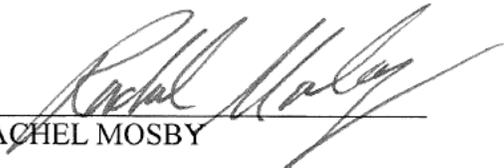
Rachel Mosby



**Attorney/Representative:**

Kenneth E. Barton, Esq.  
COOPER, BARTON & COOPER, LLP  
170 College Street  
Macon, Georgia 31201  
(478) 841-9007- telephone  
(478) 841-9002- facsimile  
keb@cooperbarton.com

I understand that I, or any other individual that I so delegate, may cancel this notice, and that I am responsible for notifying the Office of Equal Employment Opportunity in writing in the event of a cancellation.

  
\_\_\_\_\_  
RACHEL MOSBY

  
\_\_\_\_\_  
DATE

# 'I've never seemed happier in my life:' Transgender Byron fire chief shares her journey



Author: Suzanne Lawler  
Published: 11:36 PM EDT April 29, 2019  
Updated: 11:51 PM EDT April 29, 2019

LOCAL 1 ART

CHAPTER 1

'It's important to have visibility for those that can't'

EXPLORE

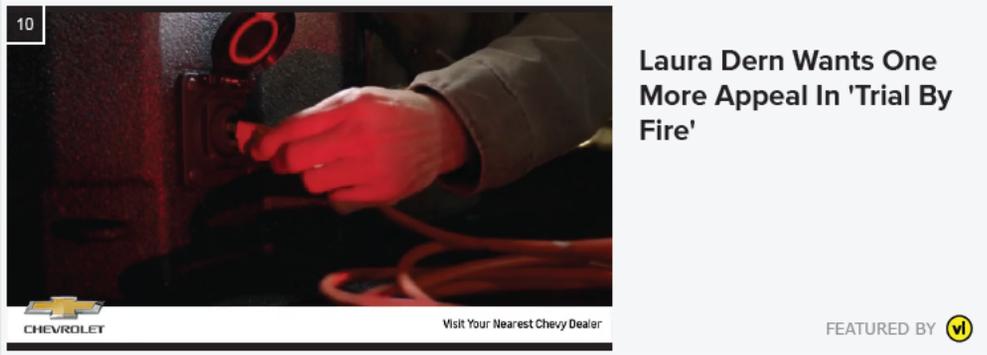


CHAPTER 1

# 'It's important to have visibility for those that can't'

In the small Peach County town of Byron, the same person has led the fire department for the last 11 years.

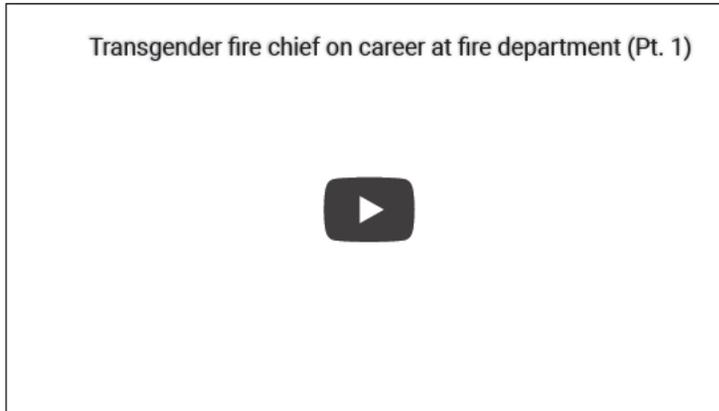
Same leadership, same skills on the job, but one not ceasing to change -- Chief Rache Mosby is transgender, taking the steps to go from a man to a woman during her time in one of the county's top jobs.



RELATED: [Here's the 'Good News' that happened in Central Georgia: April 21-27](#)

"It was just organized chaos and everybody working together putting a fire out, and 'I've been doing it ever since,'" Rache said. For most of her working career and half her life, Rache Mosby has worn a uniform. "In 2004, became a district chief," she recalled.

She came to Byron three years later as a fire marshal. "In 2008, they nominated and voted for me to be the fire chief," she said.



She was a different person back then. "It started in 2016, started medical transition," Rache said.

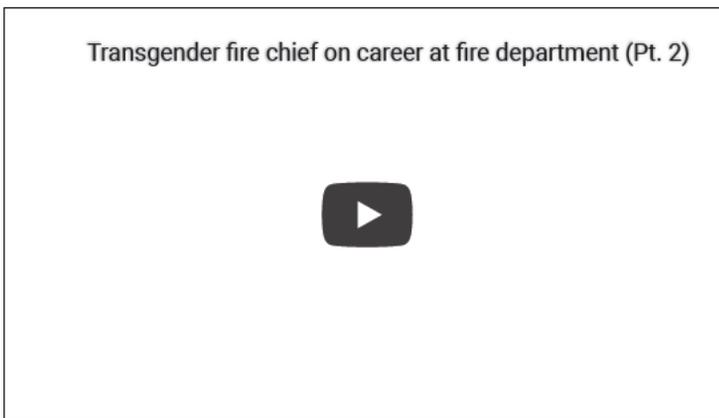
Rache is transgender. Uncomfortable as a man, she began the journey to becoming a woman. "I mostly grew up in a small town, smaller than the one I live in now, and information wasn't available and it wasn't something you just went and asked grownups about. There just wasn't information sources for this stuff," she explained.

We asked Rache about the man she was before the transition and she didn't really want to go into that. For her, he simply doesn't exist anymore.

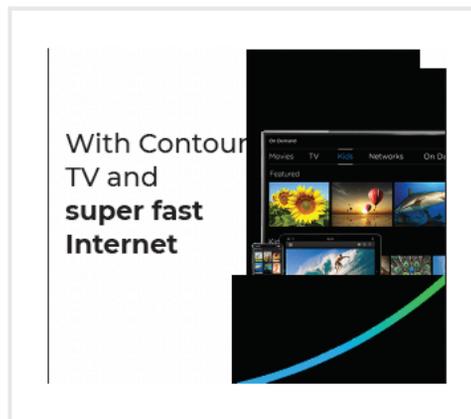
But he extended to the guys at the fire station, and in a profession where very few women, much less transgender individuals, fill the ranks, Rache had some intense conversations ahead of her.



"I needed to be able to trust them with this the way that I ask them to trust me every day when they come to work," Rache said. "These people are like my family here at the fire department. We're a family, and it's the same thing like going to family with that, and I think that the majority of the reluctance on my part had to do with my own understanding of the character, and in the end, it wound up not being as big of a deal as I thought it was."



You can't hide transition from a man to a woman, and as the fire chief, Rache had to expand those conversations to city department heads -- a perceived tough task in a small town in the Bible Belt. "What we found is that allies and friends have come from some of the most unexpected places," she said.



**'I've never seemed happier in my life:' Transgender Byron fire chief shares her journey**

LOCAL

'It's important to have visibility for those that can't'

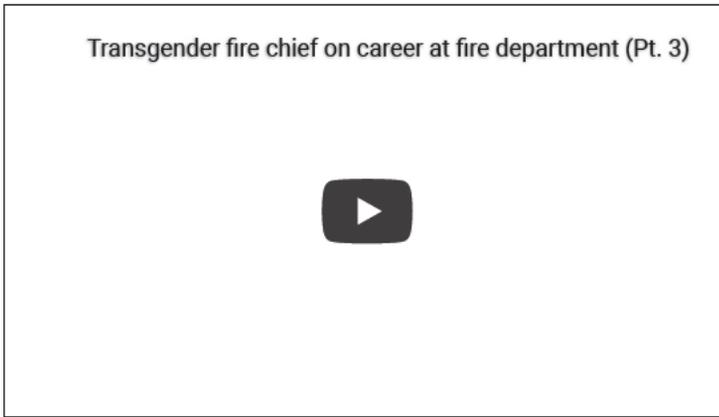
CHAPTER 1



And then she went one step further -- she talked to us. She didn't have to share her story, but she felt a need. "It's important to have visibility for those that can't. There's a lot of folks that are unable to be visible with the transition because of a lot of different reasons," she said. "And then there's people that are afraid of everything that goes with it -- it's not a way smooth for everyone that follows this path."

These days, Rache says she's at peace, comfortable in her own skin, and feels proud to take a leadership role in the transgender community.

"Everybody who knows me or has known me for some time says 'I've never seemed happier in my life,'" she said with a smile.



**RELATED:** [Here's the 'Good News' that happened in Central Georgia: April 14-20](#)

Rache has served on several panels in the transgender community. As for logistics in the firehouse, the sleeping arrangements haven't changed – the guys and Rache just change clothes in the bathroom. Both of the bathrooms are unisex.

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# City of Byron Personnel Policies

Policy Number: 8.1

Subject: Disciplinary Actions

Effective Date: April 29, 2005

Number of Pages: 6

Revised Dates: March 15, 2012

Distribution: All Employees of

December 11, 2012

the City of Byron

August 8, 2016

January 14, 2019

Special Instructions: None

**AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF BYRON, GEORGIA TO REPEAL POLICY NO. 8.1 OF THE CITY OF BYRON PERSONNEL POLICIES (SUBJECT: DISCIPLINARY ACTIONS) AND SUBSTITUTE IN ITS PLACE A NEW PERSONNEL POLICY NO. 8.1 TO PROVIDE FOR DISCIPLINARY ACTIONS AGAINST AND APPEAL PROCEDURES FOR EMPLOYEES, TO DISTINGUISH THE STATUS OF APPOINTIVE OFFICERS, DEPARTMENT HEADS AND DIRECTORS, AND TO PROVIDE FOR NAME CLEARING HEARINGS, AND FOR OTHER PURPOSES.**

**BE IT ORDAINED BY THE MAYOR AND COUNCIL** of the City of Byron, Georgia, and it is hereby so ordained that Policy No. 8.1 of the City of Byron Personnel Policies is hereby repealed in its entirety and a new Policy No. 8.1 (Subject: Disciplinary Actions) substituted in its place as follows:

**A. GENERAL**

It shall be the duty of all City employees to comply with and assist in carrying out the provisions of the City's personnel rules and regulations. No employee shall be disciplined except for violation of established rules and regulations, and such discipline shall be in accordance with procedures established by the personnel rules and regulations.

It shall be the duty of each employee to maintain high standards of conduct, cooperation, efficiency, and economy in his/her work with the City. Whenever work habits, attitude, production, or personal conduct of any employee falls below the accepted norm for all employees, supervisors should point out those behavioral deficiencies to the employee at the time they are observed or a reasonable time thereafter. Corrections and suggestions should be presented in a constructive and helpful manner in an effort to elicit cooperation and goodwill from all employees. Supervisors shall assist employees in attaining competence through on-the-job training and additional training as required. Whenever possible, oral and/or written warnings shall precede formal discipline.

**B. EMPLOYEE AND SUPERVISOR RESPONSIBILITIES**

- (1) It is the duty of every employee to correct any faults in performance when called to his/her attention and to make every effort to avoid conflict with the City's rules and regulations.
- (2) It is the duty of **EXHIBIT B PAGE 1 OF 7** supervisors to discuss improper or inadequate performance

with the employee in order to correct deficiencies and to avoid the need to exercise disciplinary action. Discipline shall be in the hands of the Department Head and should be of an increasingly progressive nature. The steps of progression shall generally be oral reprimand, written reprimand, suspension, demotion and finally dismissal. However, this is not to say that the Department Head should not immediately terminate an employee for any one of the reasons listed in this policy. Discipline should correspond to the offense.

**C. DISCIPLINARY ACTION**

Disciplinary action shall be taken as expeditiously as possible and as soon as a final determination is made that a violation has occurred. This normally should not require more than five days after the occurrence is established or after a determination is made that discipline is to be based on multiple violations which have occurred over a period of time. If disciplinary action is delayed for administrative review or investigation purposes, the employee should normally be notified and advised that the Imposition of disciplinary action is being considered.

**D. GROUNDS FOR DISCIPLINARY ACTION**

The following are declared to be grounds for oral reprimand, written reprimand, demotion, suspension, or removal of an employee. (However, this is not intended to be an exhaustive listing of all grounds for disciplinary action):

- (1) conviction of a felony or other crime involving moral turpitude or involving alcoholic beverages or drugs.
- (2) Incompetent, negligent or inefficient performance of the duties of the position held.
- (3) Absence without leave.
- (4) Insubordination which creates a serious breach of discipline.
- (5) Intentional failure or refusal to carry out instructions.
- (6) Misappropriation, destruction, theft, conversion, or misuse of City property.
- (7) Employee subsequently becomes physically or mentally unfit for the performance of his/her essential functions.
- (8) Acts of misconduct while on duty.
- (9) Willful disregard of orders.
- (10) Habitual tardiness and/or absenteeism.
- (11) Falsification of any information required by the City for employment purposes.
- (12) Failure to properly report on-the-job accidents or personal injuries.

- (13) Neglect or carelessness resulting in damage to City property or equipment.
- (14) Repeated convictions during employment of misdemeanor and/or traffic charges.
- (15) Introduction, possession, or use on City property or in City equipment, or working under the influence of intoxicating liquor, wine, malt beverages, or any schedule drugs without prescription.
- (16) Wantonly offensive conduct or language toward the public or city officials or employees.
- (17) Violations of the City Charter, City Ordinances, personnel rules and regulations or department rules; and
- (18) An accumulation of violations or infractions which indicate an employee's inability or unwillingness to conform to appropriate standards of performance or conduct.
- (19) Failure to become or remain approved as an acceptable driver by the city's insurer whenever driving a city owned vehicle is required for the position.

Employees shall be subject to the following alternatives for disciplinary action as determined by their department head; or, in the case of department heads, as determined by the City Administrator:

- (1) Written reprimand;
- (2) Reduction in pay to the extent permitted by law;
- (3) Suspension without pay for up to 90 days or shift equivalent to the extent permitted by law;
- (4) Demotion;
- (5) Discharge.

**E. WRITTEN REPRIMANDS**

- (1) Notice: The employee to be reprimanded shall be provided with a written notice of reprimand stating any and all reasons for the reprimand. A reprimand need not include statements of witnesses or other supporting documents, but shall set forth the circumstances in sufficient detail to permit the employee to understand the nature and basis of the action. Written responses shall be placed in the employee's personnel file.
- (2) Response: The employee shall have the right to submit a written response to the reprimand within fifteen (15) days of receipt of notice of written reprimand. The employee's response will be placed in the employee's personnel file.

**F. NOTIFICATION OF SUSPENSION, REDUCTION IN PAY, DEMOTION, AND TERMINATION**

The employee against whom disciplinary action is taken shall be provided with a written notice stating the reasons for the disciplinary action. The written notification should contain the effective date of the action, the specific charges or reasons for the action, the specific action, and a statement informing the employee of his or her right to appeal the action as well as the procedure for doing so. The employee shall also

receive notification that failure to submit an appeal will result in the loss of the opportunity to appeal the adverse action.

**G. COMPUTATION OF TIME**

When a period of time measured in days, weeks, months, years, or other measure of time except hours is prescribed for the exercise of any privilege or the discharge of any duty, the first day shall not be counted, but the last day shall be counted; and, if the last day falls on a Saturday, Sunday, or legal holiday, the party having such privilege or duty shall have through the next day which is not a Saturday, Sunday or legal holiday to exercise the privilege or discharge the duty. When a period of time is less than seven (7) days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.

**H. APPEALS**

**(1) Filing an Appeal**

- a. Except as otherwise provided in this policy, any employee, other than a department head that reports directly to the City Administrator, who is disciplined shall have the right to appeal such disciplinary action to the City Clerk who will schedule a hearing with the City Administrator. The appeal shall be in writing and must be received in the Office of the City Clerk within five (5) days following the notice confirming imposition of discipline. Department heads that report directly to the City Administrator are not entitled to an appeal.
- b. There shall be no right for any employee to appeal a written reprimand or for a probationary employee to appeal any disciplinary action.

**(2) Hearing**

- a. The City Administrator shall conduct an informal fact-finding hearing. Extensions of time until the hearing or continuances of hearings may be approved by the City Administrator.
- b. The employee who has requested review shall proceed first. The employee shall offer testimony and documentary evidence which rebuts the reason given for the proposed adverse action and/or which challenges the severity of the proposed adverse action. The employee bears the burden of establishing that the reason or the adverse action is untrue and/or that the severity of the adverse action is inappropriate given the facts and circumstances.
- c. The employee's supervisor or Department Head shall next be permitted to offer evidence in support of the proposed action and/or in response to evidence offered by the employee.
- d. A hearing may be continued by the appointing authority pending the need to gather additional information.
- e. A designee may be appointed to hear the appeal at the discretion of the appointing authority.

f. In arriving at a decision, the City Administrator shall consider the testimony and documents presented in the hearing as well as any other relevant information. The City Administrator may approve, reject, or modify the proposed adverse action and make a written decision within five (5) business days of the hearing. This decision shall be final.

(3) Any employee, including department heads and appointive officers, who alleges they have been subject to an action that damages their name, reputation, or integrity, may request a public name-clearing hearing before the Mayor and Council. Such hearing may be requested by filing notice with the City Clerk who will schedule a hearing to include the affected employee. In the event the City Clerk shall desire such a hearing, he or she shall submit the notice directly to the mayor. For good cause, the Mayor and City Council can continue a hearing for up to 20 days past its originally scheduled date. Such hearings shall not serve as appeals of the appointing authority's decision regarding continued employment or discipline.

**I. EMPLOYEE INDICTED, CHARGED OR BOUND OVER**

- (1) If an employee is arrested and bound over to a grand jury or indicted for a felony or serious misdemeanor, the department head shall consult with the City Attorney to determine the appropriate status of the employee during the pendency of the criminal charges.
- (2) Normally, if the conduct resulting in the criminal charges is also an offense against the employment relationship with the city, the appropriate disciplinary action shall be instituted and the employee discharged if appropriate.
- (3) If the conduct resulting in the criminal charges does not relate directly to the duties of the position held, but is of a serious and aggravated nature so as to interfere with the employer-employee relationship or embarrass the city, the employee may be suspended pending disposition of charges.
- (4) If the conduct resulting in the criminal charges is completely unrelated to city employment and will not be likely to damage the employment relationship, the employee should usually be allowed to continue working.
- (5) An employee suspended pending the disposition of criminal charges shall not report to work or be present in his/her normal work site during the period of suspension.
- (6) If the criminal charges are disposed of in favor of the employee, he/she shall be reinstated with back pay from the date of suspension less any compensation received from any other source during the period of suspension.
- (7) If a suspended employee is not available for work within 30 days of the institution of criminal charges, the position may be declared vacant and filled in the normal course of filling vacancies. Any employee who is unable to report to work for reasons other than suspension is subject to the requirements specified for absenteeism.

**J. PROBATIONARY EMPLOYEES**

Employees who have not completed twelve months of employment are probationary employees and have no guarantee of continued employment and no protected property interest or rights requiring procedural safeguards. Probationary employees may be terminated for any reason with no right to a due process hearing. In order to terminate a probationary employee, the department head must deliver a notice to the employee that his/her employment is terminated as an "unsatisfactory probationary employee", and send a copy to the City Clerk.

**K. APPOINTIVE OFFICERS AND DIRECTORS**

Pursuant to Article III, Section 3.10 (e) of the City Charter, all appointive officers and directors shall be employees at-will and subject to removal or suspension at any time by the appointing authority unless otherwise provided by law or ordinance.

SO ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF BYRON, GEORGIA, on the 14<sup>th</sup> day of January, 2017.



CITY OF BYRON, GEORGIA

Mayor:

Lawrence C. Collins

Michael L. Chidester, Mayor Pro-Tem

James Richardson, Council Member

Russell G. Adams, Council Member

Michael S. Chumbley, Council Member

(Absent)  
Alan C. Dorsey, Council Member

Attest:

Telina Allred

Telina Allred, City Clerk

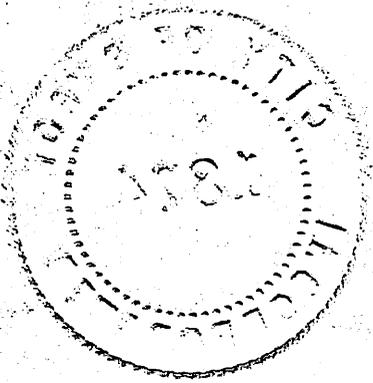
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Third paragraph of faint, illegible text.

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# The City of Byron

Chief Mosby  
[REDACTED]  
[REDACTED]

Chief Mosby,

I regret to inform you that your employment with the City of Byron is hereby terminated immediately. The City no longer has confidence in your ability to lead our Fire Department.

Some of the most recent indicators of lack of performance are listed below:

- (1) Failure to release new/renewal business licenses for approval in a timely manner, causing undue delays in processing customers' requests. This has been an issue since late in 2018 and you have been notified several times via email and in Staff Meetings.
- (2) The GAFC Conference was in Savannah between 03/30/2019 - 04/03/2019. You were in Savannah during the time of the entire conference, but only attended five (5) classes out of twenty-one (21) offered. The first two (2) full days in attendance, you didn't take any classes, which cost travel monies that should not have been spent.
- (3) Failure to maintain the Fire Investigator certification required by the Fire Chief job description. You have attended the Arson Investigator class no less than two (2) times at the expense of the City but have failed to maintain the certification.

The foregoing constitute the following grounds for disciplinary action (including discharge) under the City's personnel policy: 8.1 D (2), (5), and (9).

Pursuant to policy: 8.1 H (1), as a department head, you are not entitled to an appeal. However, 8.1 H (3) authorizes a public name clearing at your request before the mayor and council. The purpose of such a hearing is not to offer an appeal of this decision but is to provide you with an opportunity to clear your name, reputation, and integrity. If you desire such a hearing, you must file a notice with the City Clerk.

This termination is effective immediately (June 4, 2019).

Sincerely,

Derick W. Hayes  
City Administrator

---

Byron Municipal Complex  
401 Main Street • Byron, Georgia 31008  
Office: 478-956-3600 • Fax: 478-956-5299  
[www.byronga.com](http://www.byronga.com)



U.S. Department of Justice  
Civil Rights Division

NOTICE OF RIGHT TO SUE WITHIN 90 DAYS

CERTIFIED MAIL

7018 1830 0000 1244 9758

950 Pennsylvania Avenue, N.W.  
Karen Ferguson, EMP, PHB, Room 4701  
Washington, DC 20530

February 12, 2020

Ms. Rachel J. Mosby  
c/o Kenneth E. Barton, Esquire  
Law Offices of Cooper, Barton & Cooper  
The Rosewood  
170 College Street  
Macon, GA 31201

**RECEIVED KEB**

**FEB 18 2020**

Re: EEOC Charge Against City of Byron  
No. 410201906614

Dear Ms. Mosby:

Because you filed the above charge with the Equal Employment Opportunity Commission, and more than 180 days have elapsed since the date the Commission assumed jurisdiction over the charge, and no suit based thereon has been filed by this Department, and because you through your attorney have specifically requested this Notice, you are hereby notified that you have the right to institute a civil action under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e, et seq., against the above-named respondent.

If you choose to commence a civil action, such suit must be filed in the appropriate Court within 90 days of your receipt of this Notice.

The investigative file pertaining to your case is located in the EEOC Atlanta District Office, Atlanta, GA.

This Notice should not be taken to mean that the Department of Justice has made a judgment as to whether or not your case is meritorious.

Sincerely,

Eric S. Dreiband  
Assistant Attorney General  
Civil Rights Division

by   
Karen L. Ferguson  
Supervisory Civil Rights Analyst  
Employment Litigation Section

cc: Atlanta District Office, EEOC  
City of Byron

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

RACHEL MOSBY

(b) County of Residence of First Listed Plaintiff Peach (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Kenneth E. Barton III, Cooper, Barton & Cooper, LLP 170 College Street, Macon, Georgia 31201 | 478-841-9007

DEFENDANTS

CITY OF BYRON, GEORGIA

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

Thomas F. Richardson, City Attorney 401 Main Street, Byron, Georgia 31008

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Large table with columns: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories and checkboxes.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Title VII of the Civil Rights Act, 42 U.S.C. 2000e, et seq.

Brief description of cause: Employment Discrimination (Title VII and ADA), violation of Constitutional Right to Due Process, etc.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

04/28/2020

SIGNATURE OF ATTORNEY OF RECORD

Handwritten signature of Kenneth E. Barton III

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Middle District of Georgia

RACHEL MOSBY

Plaintiff(s)

v.

CITY OF BYRON, GEORGIA

Defendant(s)

Civil Action No. 5:20-cv-00163

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) CITY OF BYRON, GEORGIA
c/o Hon. Michael Chidester, Mayor
Byron Municipal Complex
401 Main Street
Byron, Peach County 31008

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Kenneth E. Barton III, Cooper, Barton & Cooper, LLP, 170 College Street, Macon, Georgia 31201

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: \_\_\_\_\_

Signature of Clerk or Deputy Clerk

Civil Action No. 5:20-cv-00163

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_ .

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_ , who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify)*:

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 \_\_\_\_\_ .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc: