IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

APRIL SESSIONS,

Plaintiff

v. **Case No. 1:20-cv-00606**

STATE OF NEW MEXICO; STATE OF NEW MEXICO ADMINISTRATIVE OFFICE OF THE COURTS ("NMAOC"); **ARTHUR PEPIN**, individually and as Director of NMAOC; and **YET-TO-BE-IDENTIFIED CO-CONSPIRATORS**,

Defendants.

COMPLAINT FOR GENDER AND AGE DISCRIMINATION AND RETALIATION IN VIOLATION OF THE UNITED STATES CIVIL RIGHTS ACT OF 1964 AND THE NEW MEXICO HUMAN RIGHTS ACT; VIOLATION OF THE AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967; VIOLATIONS OF 42 U.S.C., SECTIONS 1981a AND 1983; VIOLATIONS OF THE NEW MEXICO WHISTLEBLOWER PROTECTION ACT; BREACH OF EMPLOYMENT CONTRACT; BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING; INTENTIONAL INTERFERENCE WITH EMPLOYMENT CONTRACT; INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS; NEGLIGENT TRAINING AND SUPERVISION

COMES NOW the Plaintiff, April Sessions, by and through her legal counsel, Merit Bennett of the Bennett Law Group, LLC, and for her complaint against the Defendants, states as follows:

JURISDICTION

1. The Plaintiff brings this action pursuant to the United State Civil Rights Act of 1964, the New Mexico Human Rights Act and the New Mexico Whistleblower Protection Act.

2. Jurisdiction over the federal claims is proper under 28 U.S.C. § 1331. The Court has supplemental jurisdiction over state law claims, including the New Mexico Human Rights Act, the New Mexico Whistleblower Protection Act and other tort claims pursuant to 28 U.S.C. § 1367. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b).

PARTIES

3. Plaintiff April Sessions ("Ms. Sessions") is a female over fifty (50) yeas of age and was employed by the Defendant State of New Mexico at the State of New Mexico Administrative Office of the Courts ("NMAOC") as Program Manager for the Municipal Court Automation Program ("MCAP") and the Municipal Court Automation Fund ("MCAF") at the time of her illegal termination in 2019. Ms. Sessions is a resident of Bernalillo County, New Mexico.

4. "Defendants" include the State of New Mexico, the State of New Mexico Administrative Office of the Courts ("NMAOC") and its Director Defendant Arthur Pepin ("Defendant Pepin" or "Pepin"). "Defendants" also include other yet-to-be-identified individual co-conspirators.

ESSENTIAL FACTS

5. During her tenure at NMAOC, Ms. Sessions was subjected to a hostile work environment because of her gender (female) and age (63) and was illegally retaliated against because she blew the whistle on the illegal misconduct of the Director of the Administrative Office of the Courts, Defendant Arthur Pepin. Ms. Sessions was thereafter forced into early retirement, causing her to suffer a significant consequential loss of income and retirement benefits.

6. Around August of 2018, Ms. Sessions became aware of an initiative being promoted by NMAOC and the Supreme Court to "consolidate" municipal courts into magistrate courts. This in effect meant to "close" municipal courts. At that time only municipalities with populations under 1,500 could close their courts.

7. In January 2019, Senate Bill 173 was filed in the 2019 New Mexico State Legislature in support of this initiative. The bill allowed that **any** municipality could close its municipal court, instead of just those with populations under 1,500.

8. Ms. Sessions worked with NMMJA to gather and analyze information about SB173. The New Mexico Municipal League, of which NMMJA is a subdivision, eventually issued a resolution against SB173.

9. In early February of 2019, Ms. Sessions provided to NMAOC and NMMJA a list of costs that could result from the passage of SB173.

10. These costs had been evaluated in close coordination with the leadership of NMMJA and the Automation Committee. Ms. Sessions expected this cost information to be welcomed by NMAOC for the Fiscal Impact Report (FIR) for the legislature.

11. Ms. Sessions was fully qualified to generate this cost data because municipal court automation costs are/were her area of expertise.

12. On or about February 13, 2019, shortly after Ms. Sessions provided the cost data, she was called to a meeting with Mr. Pepin.

13. **At the February 13 meeting with Mr. Pepin, Ms. Sessions was instructed by Mr. Pepin to conceal the cost data from the legislature and the public.** Ms. Sessions was questioned by Mr. Pepin about where she got the information and to whom it had been sent. **Ms. Sessions was told by Mr. Pepin that the data put him "in a bad position" because NMAOC and the Supreme Court had already decided there would be no associated costs. Ms. Sessions was then ordered by Pepin to conceal the data**.

14. Mr. Pepin's order to Ms. Session to not disclose and to conceal the valid and true cost impact of the Senate Bill was an illegal act. It prevented the legislature and the public from knowing the true costs of the legislation and the court closures it would cause.

15. Mr. Pepin compelled Ms. Sessions to participate in his illegal activity by demanding that Ms. Sessions not further distribute those cost impacts to state legislators and other officials, also an illegal act.

16. After Ms. Sessions pointed out to Mr. Pepin that his orders to her were improper and illegal, Mr. Pepin then illegally retaliated and discriminated against her for blowing the whistle on him.

17. Mr. Pepin apparently thought that Ms. Sessions would be compliant with his illegal scheme because Ms. Sessions had long been a dedicated employee of the NMAOC. Further, because Ms. Sessions is an older woman, Pepin thought he could manipulate her into submission because of her age and gender by portraying himself as the dominate male in his role as the head of the Administrative Office of the Courts.

18. When Ms. Sessions refused to comply with Pepin's attempts to pressure her into submission and she began to blow the whistle on his illegal misconduct, Mr. Pepin targeted her for illegal discrimination and retaliation, and he attempted to silence her by generating false pretexts (illegal and false allegations) against Ms. Sessions in order to conjure a false justification to illegally terminate her employment.

19. The proposed termination action against Ms. Sessions had nothing to do with any wrongdoing on her part and everything to do with the fact that she was an older woman who had dared to stand up to the NMAOC's male-dominated hierarchy, including specifically Mr. Pepin, for

what she believed was morally and legally right and for the rights of her stakeholders, the municipal courts, and her termination was solely because Ms. Sessions refused to collude with or succumb to Mr. Pepin's orders while he engaged in improper and illegal activities to conceal the true costs of the municipal court closures, as was required by SB173, from the New Mexico State Legislature.

20. Mr. Pepin's intent to illegally terminate Ms. Sessions was made clear when she was cut off from access to her work email immediately after Pepin's delivery of a "proposed" termination letter on July 8, 2019, and when she was instructed to return equipment and collect her personal items by July 12, 2019; thus indicating that Pepin's "proposed action" to terminate her was, in fact, his "final action," regardless of any valid response to the false assertions in the termination letter that Ms. Sessions might be able to provide.

21. *See* Mr. Pepin's "Proposed Termination Letter" and Ms. Sessions detailed "Response to Proposed Termination Letter," dated July 8, 2019, attached hereto and incorporated herein as **Exhibit A** and **Exhibit B**, respectively.

22. It is clear that Ms. Sessions was being discriminated against and terminated because of her gender and her age, and in retaliation for her engagement in protected whistleblower activity and because of her refusal to collude with Mr. Pepin in his perpetration of illegal misconduct.

23. Mr. Pepin then terminated Ms. Sessions, assuming he would get away with discriminating against her, retaliating against her and terminating her because she was an older woman who had blown the whistle on his illegal misconduct and that she, because of her age and gender, would not therefore challenge his illegal decision to wrongfully terminate her. The harassment and hostile work environment to which Ms. Sessions was subjected to, up to and including Pepin's illegal termination of her employment, was perpetrated by Mr. Pepin because he

wanted to get rid of Ms. Sessions because of his illegally-motivated age and gender bias and discrimination levied against her and because Ms. Sessions had threatened to blow the whistle on his illegal misconduct (whistleblower retaliation), because Ms. Sessions was an older woman who dared to stand up to his illegal misconduct, and because Ms. Sessions was an easy target for termination because she was close to retirement, and Mr. Pepin therefore assumed that Ms. Sessions would be less likely to challenge his illegal discrimination and retaliation. In fact, Mr. Pepin admitted to all of the aforesaid misconduct alleged hereinabove by his silence in an email/letter exchange with Plaintiff's counsel from July 24 to July 28, 2019, attached hereto as **Exhibit C**.

24. Pepin was at all times herein acting individually and in his official capacity and in the course and scope of his employment as the Administrator of the Courts on behalf of the State of New Mexico, thus obligating his employer to compensate Plaintiff for her resulting damages.

25. On September 12, 2019, Ms. Sessions filed a Charge of Discrimination with the New Mexico Human Right Bureau ("NMHRB") and United States Equal Opportunity Commission ("EEOC"), attached hereto as **Exhibit D**.

26. On April 28, 2020, the New Mexico Human Right Bureau issued an Order of Non-Determination right-to-sue authorization attached hereto as **Exhibit E**, closing their file in order to allow Plaintiff to pursue her action in this Court.

27. Subsequently, on June 16, 2020, the EEOC issued a Notice of Right to Sue, attached hereto as **Exhibit F**, authorizing Plaintiff to file this action.

COUNT I
Gender Discrimination and Illegal Retaliation in Violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, as amended; the Civil Rights Act of 1991, 42 U.S.C. § 1981a and 42 U.S.C. §1983 (Plaintiff v. All Defendants)

28. Plaintiff incorporates and re-alleges all allegations of this Complaint as if fully set forth herein.

29. The above-described misconduct perpetrated by the Defendants constitutes gender discrimination, in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2(a), as amended ("Title VII of the Civil Rights Act") and the Civil Rights Act of 1991, 42 U.S.C. § 1981a, *et seq*. Defendants are therefore jointly and/or severally liable to Plaintiff for all of her statutory remedies, including actual, consequential and punitive damages and attorneys' fees.

30. Defendants wrongfully discriminated against Plaintiff and illegally retaliated against Plaintiff, forcing her into premature retirement because of her expressed opposition to Defendants' illegal discrimination and other illegal misconduct.

31. Defendants' discrimination and retaliation against Plaintiff violated Plaintiff's rights under Title VII of the Civil Rights Act of 1964 and the Civil Rights Act of 1991. Defendants are therefore liable to Plaintiff for all of her statutory remedies, including her actual and consequential damages, including for statutory attorneys' fees.

32. As a direct result of the aforesaid misconduct by the Defendants, Plaintiff has suffered and will continue to suffer embarrassment, humiliation, physical and emotional suffering and loss of employment and other damages, including loss of past and future earnings and will continue to incur these and other related damages.

33. The conduct of the Defendants set forth above was intentional, willful, malicious, reckless, wanton and/or grossly negligent and was undertaken with a total disregard for Plaintiff's rights and feelings, knowing that their actions or inactions would cause Plaintiff to suffer economic loss and severe and extreme emotional distress, thereby entitling Plaintiff to an additional award of punitive damages to punish the individual Defendants and to deter the Defendant(s) from considering similar reprehensible and illegal misconduct.

WHEREFORE, on Count I, Plaintiff requests that judgment be entered against Defendants, jointly and/or severally, awarding her compensatory and punitive damages, together with pre-judgment interest, post-judgment interest, costs, attorneys' fees and such further relief as the Court deems proper.

COUNT II
Age and Gender Discrimination and Illegal Retaliation in Violation of the New Mexico Human Rights Act, NMSA §28-1-7, *et seq*.
(Plaintiff v. All Defendants)

34. Plaintiff incorporates and re-alleges all allegations of this Complaint as if fully set forth herein.

35. The New Mexico Human Rights Act, NMSA §28-1-7, *et seq*., makes it an unlawful and discriminatory practice for an employer to discriminate in the terms and conditions or privileges of employment because of a person's age and/or sex to retaliate against a female employee of any age for making a protected complaint of discrimination.

36. The Defendants had a duty by law not to discriminate against Plaintiff because of her age and/or sex, nor to retaliate against her for reporting such illegal and discriminatory misconduct.

37. The Defendants violated this duty, as well as NMSA 1978, §28-1-7, *et seq*., by their aforementioned actions and inactions and by their actions in creating and perpetuating a hostile and age-discriminating and gender-discriminating work environment.

38. As a direct result of the aforesaid misconduct of the Defendants, Plaintiff has suffered and will continue to suffer embarrassment, emotional and physical pain and suffering, humiliation and loss of employment and other consequential damages. Further, as a direct result of the aforesaid conduct of the Defendants, Plaintiff has sustained loss of earnings and will continue to incur other related damages.

39. The misconduct of the Defendants set forth above was intentional, willful, malicious, reckless, wanton and/or grossly negligent and was undertaken with a total disregard for Plaintiff's rights and feelings, knowing that their actions or inactions would cause Plaintiff to suffer economic loss and emotional distress, thereby entitling Plaintiff to an additional award of punitive damages to punish Defendants and to deter the NMAOC from considering similar reprehensible and illegal misconduct.

WHEREFORE, on Count II, Plaintiff requests that judgment be entered against Defendants, jointly and severally, awarding Plaintiff compensatory and punitive damages, together with pre-judgment interest, post-judgment interest, costs, attorneys' fees and such further relief as the Court deems proper.

COUNT III
Age and Gender Discrimination and Deprivation of Federal and State Rights in Violation of Title 42 of The United States Code, Sections 1981a and 1983
(Plaintiff v. All Individual Defendants)

40. Plaintiff incorporates in this Count all of the allegations made throughout this Complaint as if fully set forth herein.

41. The indvidual Defendants engaged in unlawful and intentional discrimination and/or retaliation prohibited under federal and state law as set forth hereinabove and hereinbelow, with malice or reckless indifference to the federally protected rights of Plaintiff.

42. The Defendants perpetrated such misconduct under color of state law and, in doing so, have deprived Plaintiff of her rights, privileges and/or immunities secured by the United States and New Mexico Constitutions and federal and state laws, including, but not limited to, the federal and state statutes cited herein and the due process and equal protection clauses of the United States and New Mexico Constitutions.

43. Such violations of 42 U.S.C., Sections 1981a and 1983 (also including Sections 2000e-2 and/or 2000e-3(a)) have caused Plaintiff to suffer irreparable damage and harm, thus causing all Defendants to be jointly and/or severally liable to Plaintiff for all such resulting harm.

44. Such discrimination has caused the Plaintiff to suffer harm for which the individual Defendants are jointly and/or severally liable, entitling the Plaintiff to recover from the individual Defendants, jointly and/or severally, compensatory and punitive damages.

WHEREFORE, on Count III, Plaintiff requests that judgment be entered against the individual Defendants, jointly and severally, awarding Plaintiff compensatory and punitive damages,

together with pre-judgment interest, post-judgment interest, costs, attorneys' fees and such further relief as the Court deems proper.

COUNT IV
Age Discrimination in Violation of the Age Discrimination in Employment Act of 1967, 29 U.S.C., Section 621, *et seq.*
(Plaintiff v. All Defendants)

45. Plaintiff incorporates in this Count all of the allegations made throughout this Complaint as if fully set forth herein.

46. Defendants discriminated against Plaintiff because of her age (over 40) in violation of the Age Discrimination in Employment Act of 1967, 29 U.S.C., Section 621, *et seq.*

47. Such violations of 29 U.S.C., Section 621, *et seq.*, have caused Plaintiff to suffer irreparable damage and harm, thus causing all Defendants to be jointly and/or severally liable to Plaintiff for all such resulting harm.

48. Such discrimination has caused the Plaintiff to suffer harm for which the individual Defendant is jointly and/or severally liable, entitling the Plaintiff to recover from Defendants, jointly and/or severally, compensatory and punitive damages.

WHEREFORE, on Count IV, Plaintiff requests that judgment be entered against Defendants, jointly and severally, awarding Plaintiff compensatory and punitive damages, together with pre-judgment interest, post-judgment interest, costs, attorneys' fees and such further relief as the Court deems proper.

COUNT V
Violations of the New Mexico Whistleblower Protection Act,
NMSA 1978, Section 10-16c-1, *et seq.*
(Plaintiff v. All Defendants)

49. Plaintiff incorporates and re-alleges in this Count all of the allegations made throughout this Complaint as if fully set forth herein.

50. The New Mexico Whistleblower Protection Act, NMSA 1978, Section 10-16C-1, *et seq*., at Section 10-16C-3 provides, in part:

> Section 10-16C-3. Public employee retaliation action prohibited.
>
> A public employer shall not take any retaliatory action against a public employee because the public employee:
>
> > A. communicates to the public employer or a third party information about an action or a failure to act that the public employee believes in good faith constitutes an unlawful or improper act.

51. The Plaintiff communicated to the State of New Mexico, via the named Defendant and/or other state employees, the information set forth in this Complaint about the discriminatory, retaliatory and other illegal acts and failures to act of the named Defendants described herein and of other state employees, which acts and failures to act the Plaintiff believed in good faith to be unlawful and/or improper, to include but not limited to, Plaintiff's reporting of epidemic unlawful discrimination and retaliation.

52. All of the Defendants, either individually or in concert with one or more of the other Defendants, took retaliatory action against and/or failed to act to protect the Plaintiff from further retaliation in response to the Plaintiff's communications regarding the Defendants' respective illegal acts and failures to act described through this complaint, in direction violation of the New Mexico Whistleblower Protection Act.

53. Such acts of unlawful retaliation perpetrated by each and every complicit Defendant have caused the Plaintiff to suffer additional emotional and physical distress and other harm, economic loss, denial or disruption of her employment advancement, loss of back and front pay, loss of benefits and other actual and consequential damage, and all Defendants are therefore jointly and/or severally liable to Plaintiff for same.

54. The individual Defendants perpetrated said retaliation intentionally, willfully, wantonly and/or with reckless disregard for the Plaintiff's rights and feelings, therefore rendering the individual Defendants jointly and/or severally liable to the Plaintiff for an additional award of punitive damages.

55. Pursuant to the Whistleblower Protection Act, Plaintiff is also entitled to recover from Defendant State of New Mexico full reinstatement to the employment advancement position(s) denied to the Plaintiff as a consequence of the above-described retaliation, together with double back pay, interest, litigation costs and statutory attorneys' fees.

WHEREFORE on Count V, Plaintiff requests that judgment be entered against Defendants, jointly and severally, in an amount to be determined by the jury, for costs, double back pay, interest and statutory attorneys' fees and for such other and further relief as may be available, including, but not limited to, full reinstatement in the advancement positions denied to the Plaintiff as a consequence of the retaliation.

COUNT VI
Bad Faith Breach of Employment Contract
(Plaintiff v. Defendant State of New Mexico, dba NMAOC)

56. Plaintiff incorporates and re-alleges in this Count all of the allegations made throughout this Complaint as if fully set forth herein.

57. Defendants State of New Mexico and NMAOC, by and through the other named and unnamed complicit Defendants and their perpetration of the aforesaid misconduct against the Plaintiff as set forth above, breached the Plaintiff's contract of employment with the State of New Mexico in bad faith, causing the Plaintiff to suffer emotional and physical distress and other harm, economic loss, denial or disruption of her employment advancement, loss of back and front pay, loss of benefits and other actual and consequential damage, and the NMAOC, *ex rel.* the State of New Mexico, are liable to the Plaintiff therefor.

WHEREFORE on Count VI, the Plaintiff requests judgment in an amount to be determined by the jury, for costs and statutory attorneys' fees and for such and further relief as may be available.

COUNT VII
Breach of the Implied Covenant of Good Faith and Fair Dealing
(Plaintiff v. Defendants State of New Mexico and NMAOC)

58. Plaintiff incorporates and re-alleges in this Count all of the allegations made throughout this Complaint as if fully set forth herein.

59. Implied in Plaintiff's contract of employment with the State of New Mexico was a covenant of good faith and fair dealing, which required the State of New Mexico, by and through its agencies and managerial employees, to act at all times and in all matters pertaining to such contract of employment, and to deal with Plaintiff, fairly and in good faith, in order to ensure that the Plaintiff does not suffer unnecessary or unwarranted harm, including any harm resulting from violation of the law or regulation or from illegal acts of discrimination or retaliation, such as has occurred here.

60. Defendant NMAOC, by and through the other named and complicit individual Defendants and through other yet-to-be-named employees and as a result of its perpetration of the

aforesaid misconduct against the Plaintiff, violated this covenant of good faith and fair dealing, causing the Plaintiff to suffer emotional and physical distress and other harm, economic loss, denial or disruption of employment advancement, loss of back and front pay, loss of benefits and other actual and consequential damage, and the State of New Mexico is liable to Plaintiff therefor.

WHEREFORE on Count VII, the Plaintiff prays for judgment in an amount to be determined by the jury, for costs and statutory attorneys' fees and for such and further relief as may be available.

COUNT VIII
Intentional Interference With Employment Contract
(Plaintiff v. Defendant Pepin and Yet-to-be-identified Individual Defendants)

61. Plaintiffs incorporates and re-alleges in this Count all of the allegations made throughout this Complaint as if fully set forth herein.

62. The individual Defendants owed Plaintiff a duty not to interfere with Plaintiff's contract of employment with the State of New Mexico.

63. The individual Defendant Pepin (and other yet-to-be-identified individual defendants) breached said duty owed to Plaintiff by engaging in the acts and/or omissions set forth in this Complaint, thus rendering them liable to Plaintiff for all consequent harm suffered by Plaintiff.

64. Pepin and other yet-to-be-identified individual Defendants perpetrated said retaliation intentionally, willfully, wantonly and/or with reckless disregard for the Plaintiff's rights and feelings, therefore rendering the individual Defendants jointly and/or severally liable to the Plaintiff for an additional award of punitive damages.

WHEREFORE on Count VIII, the Plaintiff prays for judgment against Pepin (and other yet-to-be-identified individuals) in an amount to be determined by the jury, for costs and statutory attorneys' fees and for such and further relief as may be available.

COUNT IX
Intentional Infliction of Emotional Distress / Outrageous Misconduct
(Plaintiff v. State of New Mexico, Defendant Pepin and Yet-to-be-identified Individual(s))

65. Plaintiff incorporates and re-alleges in this Count all of the allegations made throughout this Complaint as if fully set forth herein.

66. By and through the acts and/or omissions described above, the individual Defendants, acting individually, as employees and agents of the State of New Mexico or in conspiracy with others, intended to and did, in fact, inflict upon Plaintiff severe and extreme emotional distress, constituting outrageous misconduct not to be tolerated in a civilized society, for which harm the culpable individual Defendant(s) and the State of New Mexico is/are jointly and/or severally liable to Plaintiff for all of her consequent harm.

67. The individual Defendants perpetrated said retaliation intentionally, willfully, wantonly and/or with reckless disregard for the Plaintiff's rights and feelings, therefore rendering the individual Defendants jointly and/or severally liable to the Plaintiff for an additional award of punitive damages.

WHEREFORE on Count IX, the Plaintiff prays for judgment in an amount to be determined by the jury, for costs and statutory attorneys' fees and for such and further relief as may be available.

COUNT X
Negligent Training and Supervision
(Plaintiff v. All Defendants)

68. Plaintiff incorporates and re-alleges in this Count all of the allegations made throughout this Complaint as if fully set forth herein.

69. All Defendants, including the State of New Mexico and the individual Defendant Pepin, owed Plaintiff a duty to train and/or supervise State of New Mexico employees and/or the named Defendant Pepin and/or other yet-to-be-identified individual defendants in order to monitor their job performance, to include especially their interactions with the Plaintiff, and especially following Plaintiff's complaints, to insure that there would be no further discrimination and/or retaliation perpetrated against Plaintiff in the terms, conditions and environment of Plaintiff's employment, to include the perpetration of such misconduct as is described hereinabove.

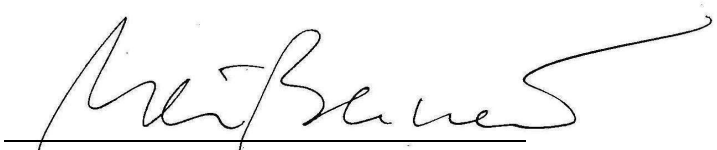
70. The Defendants breached this duty, allowing illegal discrimination and retaliation to be perpetrated against Plaintiff, which breach and other illegal misconduct has caused Plaintiff to suffer emotional and physical distress and financial harm, for which Defendants are jointly and/or severally liable.

71. The individual Defendants perpetrated said retaliation intentionally, willfully, wantonly and/or with reckless disregard for the Plaintiff's rights and feelings, therefore rendering the individual Defendants jointly and/or severally liable to the Plaintiff for an additional award of punitive damages.

WHEREFORE on Count X, the Plaintiff prays for judgment on this Count in an amount to be determined by the jury, for costs and statutory attorneys' fees and for such and further relief as may be available.

Respectfully submitted,

THE BENNETT LAW GROUP LLC



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July 8, 2019

April Sessions
2808 Arizona NE
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RE: Notice of Proposed Termination

In accordance with the New Mexico Judicial Branch Personnel Rules (NMJBPR), specifically Rule 9.05, Grieveable Disciplinary Action for Employees, this letter serves as a **Notice of Proposed termination.**

Just Cause for disciplinary action up to and including termination is defined in the NMJBPR to include;

(#1) "Failing to comply with federal and state constitutions, statutes, municipal ordinances, rules and regulations including the New Mexico Judicial Branch Personnel Rules or Policies,"
(#2) "Failing to comply with a lawful order or to accept a reasonable and proper assignment from an immediate supervisor or the Administrative Authority,"
(#3) "Performing assigned duties in an inefficient, incompetent, or negligent manner,"
(#4) "Failing or refusing to perform job requirements satisfactorily,"
(#5) "Using court property, equipment, or funds in a careless, negligent, or improper manner,"
(#7) "Being insubordinate,"
(#12) "Attempting to use undue influence for a promotion, leave, favorable assignment, other individual advantage,"
(#16) "Making knowingly false statements to judges or court staff regarding court business,"
(#24) "Participating in unauthorized political activity,"
(#23) "Acting in a manner that reflects poorly upon the integrity of the Judicial Branch,"
(#28) "Failing to comply with the provisions contained in the NMJBPR or applicable policies," and
(#35) "Failing to follow and abide by the New Mexico Judicial Branch Code of Conduct". [Attachment A]

You signed and acknowledged on November 1, 2006, and again on September 3, 2013, receipt of and responsibility for reviewing and adhering to the NMJBPR and the NMJB Code of Conduct or Canons. [Attachment B]

You have been an employee of the Administrative Office of the Courts (AOC) Judicial Information Division for approximately thirteen (13) years. With your experience and knowledge of the NMJBPR, policies and procedures and the Code of Conduct or Canons, your conduct as I will outline below is not only disappointing but also inexcusable. You have demonstrated a deliberate disregard toward the reasonable and clear directives I have given to you.

Due to the egregious nature of your behavior and conduct and as a consequence of the breach of trust you have demonstrated while working in your position, I no longer have confidence in your ability to manage the Municipal Court Automation Program. I have grave concerns with the severity of your behavior and performance, and due to the potential ongoing negative effect I believe you would have should you remain an employee of the AOC, I propose to immediately terminate you from employment with the Judiciary.

The basis for this proposed action of termination includes, but is not limited to, the following:

SENATE BILL 173
You have demonstrated a repeated disregard for the directives you have been given related to Senate Bill 173. You actively worked against the New Mexico Judicial Branch and the Supreme Court's efforts related to the passage of the Judiciary Unified Budget Bill, Senate Bill 173 (SB173), both before and after I directed you in person to cease these efforts.

You emailed Municipal Judge Elise Larsen in August 2018, informing her you sent Ms. Deborah Dungan, Attorney Assistant to the Chief Justice, and Ms. Celina Jones, the AOC General Counsel "Potential costs & questions" related to SB173. You provided additional documents to Judger Larson that you state you prepared and compiled for the purpose of stopping SB173 from passing. You indicate in your email that you would not be sharing them with the AOC until they are ready "for prime time," and that they are "all good points summarizing concerns," related to SB173.

The first of the three attachments consists of five pages. In the first page you claim that SB173 stems from the "reengineering" study conducted by the National Center of State Courts, which includes an initiative to merge municipal courts into magistrate courts on a voluntary basis. This is apparently a reference to the October 1, 2011 Report of the New Mexico Reengineering Commission to the New Mexico Supreme Court. You call the goal "lofty" and state the premise is based "in faulty methodology." You go on to write several times that the "goal" of SB173 "appears to be the eventual closure of all municipal courts," and the closing of municipal courts "could have a devastating effect on municipalities," citing loss of jobs, loss of revenues, loss of confidence in the justice system, a lowered level of local ordinance enforcement, reduced business investments in the local economy and a reduced quality of life for residents. Your communication is intended to cause and create alarm as you immediately go into the "devastating effect" the closure of "even one" municipal court could have on a community, and state it could lead to the ultimate "demise of the fund altogether."

The second of the three attachments is titled, "Consideration re AOC proposal to close municipal courts by removing the 1,500 population threshold from NMSA 35-14-1. It contains a footer disclosing your authorship and states in part that "costs have not been adequately analyzed," falsely stating that the "costs for magistrate courts to gear up for the increase workload"…"would be significant," and require "additional judges, additional staff and equipment, incremental IT and HR work, setup and training, data conversion, equipment. The list goes on referencing an even more "detailed list."

You write that what the Supreme Court is considering has not been well vetted, would be "reinventing the wheel" and be at "great expense." These are all inaccurate statements drafted and communicated by you, against a piece of legislation that Supreme Court adopted through the unified budget process. You further criticize the Reengineering Committee's report stating municipal stakeholders were not adequately represented, and that the report's facts are erroneous. You suggest repeatedly that should SB173 be passed "justice" would "be delayed" "and thus denied," due to what you call "triage" and the ultimate effect on the "rule of law" within the community. You state the proposed legislation would lead to increased "potential for error" by judges due to the consolidation, and the "local employment" would be affected due to a corresponding reduction in local jobs. You refer to the consolidation as a "re-engineering" that would "thereby eroding separation of powers." Despite these strong and adversarial statements in your first two attachments, the last and the one you provided to the AOC listed instead innocuous questions and brief fragments regarding potential costs. [Attachment C] These communications demonstrate your duplicitous approach to undermining SB173, which your behavior has consistently undermined.

On Sunday, December 2, 2018, Ms. Jones forwarded you the proposed legislation language for SB173. On Wednesday, December 5, 2018, you sent an email to the municipalities reminding them of the February 22, 2018 automation committee meeting, and informed them of an "important topic" to be "discussed" to include "judge-to-legislator outreach" necessary "during the upcoming session." You instruct the municipal judges "a big showing of municipal judges at these events will do much to help the cause," i.e., derailing the passing of SB173, and instructed them to the attend the State of the Judiciary Address and to attend Municipal Day. [Attachment D]

On December 14, 2018, at 2:18 p.m. you sent an email to Judge Larsen that included in part a statement that the municipal judges and you needed to "band together to fight" SB173, "even if it is an uphill battle." [Attachment E] Later that evening you sent Judge Larsen talking points to use against the bill, and suggest that you need a slogan to help fight the bill. You continue to raise concerns stating the communities that close their municipal court will face a "downward spiral for the community." You write that "lesser" crimes will "languish in the judicial system," "eroding the quality of life for residents." One slogan you propose is "keep justice local to keep communities healthy." You write about the lack of protection the bill "provides" from a court closing based on "political motives," and then state that the "promises made" by the Supreme Court, specifically "that the Supreme Court will have the municipal judges' backs – is again nothing more than a verbal agreement." You write that there is no commitment from the Supreme Court that they will use "factual data." [Attachment F] All of your advocacy against this legislative proposal occurred long after the Supreme Court adopted this as an approved initiative in the Unified Budget. All versions of the Unified Budget book included this initiative since at least November 5, 2018.

On January 2, 2019, you sent an email to municipal judges and staff requesting they complete a survey, and state in your email that as they know, "Chief Justice Nakamura is pushing forward with the 'merge' proposal that would allow any municipality to petition the Supreme Court to close its municipal court." What I find striking is while outlining arguments against the bill you refer to them as "**our** arguments against." Despite being a New Mexico Judicial Branch employee, you actively worked against and aligned yourself entirely against the legislation approved by the Supreme Court. [Attachment G] [Emphasis added]

On January 3, 2019, you sent an email to Judge Larsen informing her SB173 is "a bad deal." [Attachment H]

Then on January 8, 2019, you emailed Judge Larsen that you were able to discuss some of your concerns related to the bill with Senator Ivey-Soto and Representative Figueroa and provided them talking points you drafted that are against the bill. Judge Larson asked if she can share "your" talking points, and thanks you for the significant amount of time you have put into your activities against SB173, including the drafting of the talking points. You respond that she is free to use "my talking points list," that you will take more time on additional talking points you are working on, and then write you "don't think there are any lies in," them, but state it is "probably better to just get something out there." [Attachment I]

On January 15, 2019, you contacted the Program Director for the New Mexico Municipal League and suggested she add to the Municipal Court Clerks Board Meeting agenda a discussion of the pending legislation. You offer to share what you know of SB173, and state you will put together a handout for the Clerks. [Attachment J] On January 18, 2019, you inform Judge Larson that you met with the Clerks Association earlier that day, and state they are standing by, ready to reach out to their Representatives in opposition of the bill. You write, "Our best bet will be getting it shut down (or amended) in committee." [Attachment K]

On January 23, 2019, Judge Larson informed you that she scheduled a meeting with the Chief Justice to discuss concerns with SB173, and requests you attend. Your response indicates you may have realized your attendance directly aligned against the Supreme Court's Unified Budget Bill, as an AOC employee this might not be appropriate; you write, "Gulp… yes," you would attend if she wants you to, though the day of the meeting you called in sick and did not attend. [Attachment L]

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MEETING ON FEBRUARY 13, 2019:

After becoming aware of your grossly inappropriate and adversarial activities and campaign against SB173, Ms. Dungan and I scheduled a meeting with you that was held on February 13, 2019. At that meeting, I informed you that I was aware that you had been actively campaigning against SB173, that this was inappropriate, needed to stop, and I had serious concerns about your actions and behavior. I reminded you that you were an AOC employee, and gave you a clear directive that you were not to work against or oppose SB173, or any legislation that was part of the Judiciary's Unified Budget process. You were told that your duty was to support the legislation approved by the Supreme Court. You were clearly instructed to not send out any directive regarding the municipal courts and in particular related to legislation without my approval. I walked you through why what you had done by taking a position that was contrary to the Court's was not acceptable and you told me you understood. At the conclusion of this meeting, I instructed you to not ever send out communications that could be conceived as contrary to the Judiciary's. I specifically reminded you in that meeting that you worked for me, not the municipal judges. I informed you that should you believe it appropriate to communicate with Municipal courts about SB173 you must receive my prior approval first. Ms. Dungan and I both believed you clearly understood the content of the meeting, as well as this directive and the message was clear; do not do this again.

ACTIVE OPPOSITION AGAINST THE BILL AFTER MEETING HELD ON FEBRUARY 13, 2019:

Between February 20, 2019 and March 15, 2019, you were part of an email string discussion regarding the Municipal League's amendments to SB173. Specifically discussed by the Municipal Judges was

the fact that since reaching agreement on the amendments with the Chief Justice, the Municipal League could no longer oppose the legislation, or the bill. Despite the meeting I had with you in February, on March 15, 2019, you sent an email to the Municipal Judges instructing them that they had one "final opportunity to have" their "voice heard," and then provided a list of issues that you wrote, "I feel are critical to the arguments AGAINST the bill." You state that you are "between a rock and a hard place," and that as an "AOC employee" "cannot speak out publicly against this bill", but state that they "can and I hope you will." You then write that the Fiscal Impact Report and analysis is incorrect. This alone would be sufficient to support the propose action. This behavior is completely unacceptable and unbecoming of a New Mexico Judicial Branch employee. [Attachment M]

On March 18, 2019, you sent out another email to all the Municipal Judges describing the situation as a "fight," and then encouraged the Municipal Judges to reach out to Governor. You write that should the Municipal Judges reach out to the Governor it could make a difference but alert them that is would need to "happen fast." You inform them that the Governor was quoted in the Albuquerque Journal saying she would veto a bill if there was a "substantive flaw, the math doesn't work or another significant issue." You immediately state that the "Fiscal Impact Report was definitely flawed (potentially the math not working?)". You then list two numbered items, writing, "might the following be significant flaws?" Included in your "significant flaws" is a statement that the judicial branch is "being allowed to 'make law' that it will use to further an agenda," and then suggest the Open Meetings Act was violated by the Legislature and accuse them of essentially playing "just politics."

You conclude your email stating that you will help the municipal courts "unite" and "fight these battles", writing, "I will commit whatever resources I can as well, from gathering factual data, to generating cost estimates, to letter-writing, and whatever else is within my power." [Attachment N]

The statements you put into writing, are a flagrant and egregious violation of the New Mexico Judicial Branch Code of Conduct or Canons. It is reprehensible that you would commit AOC and NMJB resources, and time towards actively working against your employer. These actually are more egregious given my personal directive to you in February not to do so.

On March 19, 2019, a Municipal Judge sent an email (same email string you were on) suggesting that the all the Municipal Judges approach the Governor in a group to encourage her to veto SB173. You respond writing this act might violate the "agreement" the Municipal Judges had with the Chief Justice, stating you, "only wish I could have done more, that there was something more to be done." [Attachment O]

ANGEL FIRE MEETING HELD ON MAY 2, 2019:

On May 2, 2019, the Municipal Court Judges and the Automation Committee met in Angel Fire, New Mexico. At this meeting, you shared proposed policy and policy changes as well as a 1996 memo from a former Municipal Judge. The proposed policy you developed and shared titled "May 2019 Protection of the Municipal Court Automation Fund (MCAF) Ref. court closure per NMSA 35-14-1 as modified by SB173-2019" reflects you continued to actively work to undermine SB173. The policy was drafted without my approval or authorization from the Supreme Court The language attempts to use coercion or fear that should a Municipal Court consider consolidation, they will not be eligible for MCAF reimbursement. The policy also states that they must agree to not petition for court closure within a certain time. Your proposed language states that should a municipality express intent to

close the court within that time frame, they would be required to repay MCAP reimbursements. The language further limits reimbursements by stating no major expenditure would be approved for a municipality that is within so many months of its municipal election. You do not have the authority to create such a policy.

You write that the "goals of the proposed policies are to prevent a municipality continuing to tap the fund after announcing intent to close its court, a municipality (or AOC) attempting to use the fund for closure expenses, and a municipality receiving significant funding (for computers, for example), then closing their court. You go on to state that "**we** simply cannot afford to throw good money after bad by funneling dollars to municipalities that do not support their court," and that, "establishing written policies will let everyone know what to expect as **"we"** go forward (and help municipalities better gauge the consequences of closing their court)". [Emphasis added]

Fortunately, I became aware of the proposed policies you intended to present, and that had been shared with the Municipal Judges. At that meeting, I informed the judges and attendees that if there were to be any policy changes they would come from me, as the AOC Director and not from the Automation Committee and not from an AOC employee. I clarified the misinformation you were intent upon sharing. While I spoke to the Municipal Judges and the attendees at the committee meeting you sat in the audience and shook your head vehemently at what I was saying, essentially communicating to the room that my comments were not correct. Your behavior is consistently inappropriate and unprofessional as is your behavior toward me.

EMAILING OUT PROPOSED POLICIES ON MAY 24, 2019:
On May 24, 2019, you emailed out the same documents and proposed draft policies that I had directly and publicly stated were not approved for distribution, and sent them to the Municipal Judges. Your email communication to the Municipal Judges informed them that you had been "called to a meeting" with the AOC HR Director and me. You wrote that you "suspect it's about the proposed policies I provided to the committee at the May 1st meeting, since this was clearly a concern for Mr. Pepin in his May 2nd address to the NMMJA (where he erroneously stated they had been emailed to municipalities)." (I should note, that despite you having stated you shared these at the meeting on May 1, 2019 meeting, when I met with you on May 31, 2019, you insisted you had not shared the policies with all of the judges but only with those on the Automation Committee.) Despite being clearly aware that I did not approve the draft policies and despite my communications directing you to act otherwise, you used this as an introduction to then share the policies and documents.

You additionally provided the judges with a 1996 internal memorandum addressed to the Municipal Judges, which does not reflect receipt nor approval by the judges, nor receipt, agreement or approval by the AOC. You state that this internal memorandum demonstrates that your position was created as an "agent" for the MCAF, and go on to write that the "AOC program staff work for YOU to help accomplish the committee's work." You write that you have provided the policies to them seeking their feedback and state you spoke to Mr. Randy Van Vleck who did not "see any reason the committee couldn't set policies such as these." Again, this is directly following my discussion with the Municipal Judges with you present that no one would set policy for the MCAF other than the AOC Director. [Attachment P]

The proposed policies you crafted and distributed against my clear directive outline who would be ineligible for reimbursement should they chose to exercise their right to close a municipal court under

the new law – SB173. The overall intent of your proposed policies was to have the chilling effect of deterring a municipal court from closing. Under your proposed policy, "once a municipality expresses intent to close its court, it will no longer be eligible for MCAF reimbursements," or funds. You included a requirement that in order for a municipal court "to be eligible for reimbursement" they would need to "agree to not petition for court closure within a certain frame," which you proposed be two or four years. The policy states its intent was to prevent a municipality from reaping the benefits from the automation fund prior to a closure and imposes a punishment on any municipality choosing to exercise a legally authorized transfer. The policy also states that it will not reimburse costs associated with the transfer. The policy would restrict a municipal court from exercising their right under SB173 should they have received any reimbursement above a certain threshold. You wrote that you "feel strongly that leaving this matter to chance, and simply addressing situations as they arise, will not suffice," and that you would have "no way to know a municipality's intent when they request a reimbursement." You write that the "free money" should come with conditions, if a municipality should "take the bait." You specifically compare Municipal Court closures to "the sky" falling, and write that you cannot "afford to throw good money after bad by funneling dollars to municipalities that do not support their own court".

The 2006 New Mexico Statues Section 34-9-12 titled "*Municipal court automation fund created; administration distribution",* states in part, that all payments shall be approve by the director of the administrative office of the courts. [Attachment Q] You do not have the authority to deny requests or make threats to not pay legitimate requests should a municipal court chose to close.

MEETING ON MAY 31, 2019:
I met with you again on May 31, 2019, with AOC HR Director Ms. Lynette Paulman-Rodriguez present. As had been stated in several communications to you, this meeting was regarding work-related concerns and your continued efforts to negate SB173. At that meeting, you refused to answer my questions, and when I tried to ask a specific question would respond that you were "done" implying our meeting was over. During the meeting, I asked about the MCAF disapproval process. When I asked you to outline the denial and appeal process, you outlined a process as though it was currently in place and being followed. When asked if there were many appeals you stated they were rare. As I asked more specific questions related to the process for denials or appeals, you admitted to not having ever received an appeal and that no formal appeal process was actually developed. When asked who had the authority to approve or deny an MCAF refund request you acknowledged it was the AOC Director but then claimed I had never attended an MCAF meeting. I reminded you that I had been at a meeting earlier the same month.

I asked you about your email of May 24, 2019, of which you had a copy and specifically about your statements that Anthony and Clayton are two "known targets for closure". You confirmed this belief stating that was what you heard the Chief Justice say repeatedly. When asked if you if believed it to be a bad idea, you said not necessarily, and that it might be appropriate to close some and it might not be. When I asked you what your purpose of mentioning this to the automation committee was, instead of answering me you started packing up your belongings quickly and abruptly stating that you were "done here". Despite my informing you that I had a lot of questions and things that I needed to understand your response was that you felt like you were "being set up," "you" did not "like it," and did not "deserve to be treated that way."

I told you that before you left there was something very important that I needed to ensure you knew. I reminded you of the meeting Ms. Dungan and I had with you on February 13, 2019, and asked

what you recalled being discussed; you stated, "Cost figures." I reminded you that we had discussed a great deal more than "cost figures," and you did acknowledge and recall my direct instructions for you not to work in opposition of a bill that the judiciary supported. You argued that you did not believe or understand how SB173 was part of the Unified Budget, and then argued you did not work to defeat the bill, stating instead that you were only providing "requested information."

That is an inaccurate reflection of your communications and activities prior to and following my meetings with you. You told me that once the Municipal League came out with the amendment, "our association was pretty much obligated to follow it through," and "they did not oppose it after that." You did state that you probably had some communications but had not come out "publicly" against the bill. Despite saying this, the communications I have outlined above reflect you actively working to incite the Municipal League to work against SB173. You repeatedly refused to answer my direct questions, specifically when I asked if you believed it was appropriate for an employee to actively work against a bill, or work to defeat a bill that the Supreme Court and the Chief Justice had approved. You waivered, would not answer, responded that you did "nothing wrong," that you "only" provided information opposed to the bill and that you considered it your duty to protect the fund. When I specially asked if from February 13, 2019, forward if you did nothing to defeat the bill, you stated you had no idea, asked if that was the day the bill was agreed upon with the Municipal League, and said "I don't really know." In your written response to our meeting, dated June 2, 2019, and despite your insistence that the February meeting was about cost figures, you wrote "after" the February 13, 2019, meeting you "took great pains to comply," with my directives, and "did not further distribute the cost data, did not attend hearings, and did not speak publicly against the legislation." [Attachment R]

DIRECTIVE REGARDING WORK LOCATION:
At the conclusion of the May 31, 2019, meeting I handed you a letter and read the contents to you to ensure your understanding of job requirements. Specifically, that you were being instructed by me to report to the Judicial Information Division in Santa Fe, New Mexico the following Monday, June 3, 2019, and that this remained your designated work location. [Attachment S] You argued with me stating you had been approved to work from home for years, and that was the agreement upon your hire. When you asked why I would not allow you to work from home, I told you sufficient reason all by itself was your failure to comply with a direct statement from me made on February 13th that you would support SB173, and you would not work against it. I told you there was more than sufficient evidence, including evidence I had witnessed myself and of which I had seen on paper that you paid no attention whatsoever to my directive, except that you did not make statements "publically" as observed by me or the Chief Justice. I informed you that this is was serious problem and believed it reflected a need for me, and my agency, the AOC, to more carefully attend to how you work. While you refused to acknowledge my concerns, you did acknowledge that it was completely appropriate for me to require that you show up for work.

You insisted that you been working from home with approval. When I asked you what you would say if I told you Mr. Saunders acting as your direct supervisor had a different recollection you amended your statement to say that then CIO Mr. Greg Saunders had actually denied your request to work from home but informed you of an appeal process.

I am providing you copies of your employment offer letters, which do not include specific approval to work from home as you claim. I am also providing you a copy of a letter dated August 10, 2015, from Mr. Saunders, which states in part, "this letter serves as notice of cancellation of your work from

home privilege." You confirmed in our meeting that you knew Mr. Saunders had denied your request, and then appealed the decision. Your "appeal" consisted of an email to me for which you received no reply. When I asked why that would change the decision that you could not work from home. You would not answer my question, and instead became angry and said you were leaving ending our meeting. [Attachment T]

As you were leaving I confirmed that you would be reporting to JID the following Monday to which you stated you would not, that you had roofers coming to your house. I asked if you had requested leave from your direct supervisor CIO Mr. David Wasson and you responded that you "guessed" you would have to and made a comment that I was "starting up again," and you "were leaving." I asked Ms. Paulman-Rodriguez if she wanted to ask you anything before you left. Ms. Paulman-Rodriguez said she thought it is grossly insubordinate for you to not answer my questions. I stated it was consistent with the behavior I had experienced from you to which you responded, if that was what I thought that was fine. I stated that you were refusing to answer my questions, so I would not ask any more and you were free to go. At the conclusion of that meeting, you were so angry and uncontrolled in your behavior that as you were leaving you grabbed the AOC conference room door swinging it and slamming it as hard as you could. I immediately went and opened the door and told you that your behavior was grossly inappropriate and not to do that again.

GROSSLY INAPPROPRIATE ACT:
You slammed the door so hard that it shook the entire AOC office, and the emergency door next to the conference room released from the electronic magnet system causing that door to also slam making a sound described by those outside of the conference room as akin to a gunshot. You sent me an apology in part for your unprofessional conduct, though I am not confident you realize just how unacceptable your behavior was. [Attachment U]

CONTINUED OPPOSITION TO DIRECTIVE – WORK LOCATION:
I have since been informed by Mr. Wasson, that you have actively tried to convince him to allow you to work from home going so far as to completely disregard my directive, and without approval worked from home anyway. On June 11, 2019, you emailed Mr. Wasson asking if you could work from home on Friday, June 14, 2019. This request was denied. Then on Friday, June 14, 2019, while on annual leave you sent an email to Mr. Wasson stating, "This is to let you know I logged two hours on Thursday and Friday," (June 13th and June 14"), "as callback time from my annual leave." You informed Mr. Wasson that you "responded to numerous emails and calls these two days" despite having been specifically instructed otherwise, the two hours of unapproved worked time or "call back" were removed from your timesheet and replaced with annual leave. [Attachment V]

Due to your inability and unwillingness to comply, your remote access (VPN) to AOC records and files was suspended. You have continued to attempt to work from home, despite being out on leave communicating via instant message, and your personal Gmail account. You have sent requests to Mr. Wasson asking to have your VPN access reinstated so that you can work from home. Mr. Wasson has responded several times and to each informing you that it is not negotiable, and that my letter to you was clear that you were to work from JID. [Attachment W]

I understand you went into the office this past Friday, July 5, 2019. AOC HRD received a text from an employee at approximately 1:45 p.m. stating you had a "huge" dog in the JID building who was running down the hallway after an employee and barking. Mr. Wasson approached you after receiving this message and requested you take the dog and leave for the day. It was only at 5:15

p.m. that same day that Mr. Wasson discovered you had not done as he instructed and rather had someone pick up your dog at some point, and stayed to work. This is yet another example of your disregard for any directive or communication management gives you with which you disagree. It is in direct violation of not only the Just Cause provisions for discipline listed above, and attached, but also a flagrant violation of the Code of Conduct or Canons you and all employees are bound to uphold.

The New Mexico Judicial Branch Code of Conduct or Canons state in part:

Canon 1 states in part that the judicial employees shall uphold the integrity and independence of the Judicial Branch, maintain high standards of conduct, integrity, honesty, and truthfulness so that the independence of the judiciary is preserved and to ensure the public's confidence in the Judicial Branch.

Canon 2 states in part that judicial employees shall avoid impropriety and the appearance of impropriety in all their activities for the judicial branch; it states judicial employees shall respect and comply with all personnel rules, policies and these canons. The Canon states judicial branch employees are required to act at all times in a manner that promotes the public's confidences in the integrity and the impartiality of the Judicial Branch, and when faced with conflicting loyalties, judicial employees shall seek first to maintain the public's trust. Employees must exercise discretion in their comments to avoid the appearance of partiality or abuse of position. Judicial employees are strictly prohibited from not using or attempting to use their position or information gained in their employment in order to influence or secure special privileges or exemptions for themselves or any other person. It states judicial employees may only use judicial resources, property, equipment and funds in a judicial manner.

Canon 3 states in part that Judicial Employees shall be respectful, dignified, patient, prompt and courteous to everyone, including co-workers, supervisors, and others who come in contact with the Judicial Branch; Judicial Employees shall perform their duties impartially, and shall not be influenced by social or economic status, political interests, public opinion or fear of criticism or reprisal.

Canon 4 states in part that Judicial Employees shall conduct their outside activities as to minimize conflicts with their employment responsibilities, stating that judicial employees shall manage personal and business matters to avoid situations that may lead to conflict, or the appearance of conflict in the performance of their employment for the Judicial Branch. Each judicial employee has a legal and moral obligation to identify, disclose, and avoid any conflict of interest. A potential conflict of interest exists when an official action or decision in which a judicial employee participates may specially benefit or harm a personal, business or employment interest, and includes when the outside activity is detrimental to the interests of the judicial entity or the judicial branch.

Canon 5 states in part that Judicial Employees shall refrain from inappropriate political activities; engaging in any political activity shall be done as a private citizen and in accordance with Judicial

Branch rules and policies. NMJBPR Section 7 governs political activity and should be referenced in regard to the Canons.

A full copy of the New Mexico Judicial Branch Code of Conduct or Canons including the detailed commentary are attached for your reference. [Attachment X]

Your willful repeated violations of the NMJBPR, Canons, and my directives are just cause for discipline. Due to your considerable breach of trust and repeated, intentional disregard of my directives, I have lost confidence in your ability to perform your job duties successfully. Due to the seriousness of your actions, and rule and policy violations, as well as the behavior and conduct outlined, there is above sufficient cause for bypassing any further progressive disciplinary action. I propose your termination from employment.

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Pursuant to NMJBPR 9.05 A (2) and 9.05 B, you may respond to this proposed termination in writing or request an informal hearing with me within five (5) business days from service of this notice. In the hearing or written response, you may provide mitigating information regarding the proposed disciplinary action. At your own expense, you may select a representative to respond in writing to the notice. If you request an informal hearing, that hearing shall be held within five (5) business days of the request. You may select, at your own expense, a representative to speak on your behalf at the hearing.

You are immediately placed on paid administrative leave until this personnel matter is resolved. I have directed Mr. Wasson to hold your FY2019 performance evaluation until the outcome of this action is complete. All work related documents and files that you have in your possession must be returned to the AOC by the close of business the date of this letter. If you have questions or wish to request an informal hearing, please call AOC Human Resources Director, Ms. Lynette Paulman-Rodriguez at 505/827-4773. Please carefully attend to the requirement that any request for a hearing be made within five working days.

Sincerely,

Arthur W. Pepin, Director
Administrative Office of the Courts

cc: David Wasson, CIO
Employee Personnel File

Attachments

April Sessions
July 15, 2019

I have responded below to each item in the proposed termination letter provided to me on July 8, 2019. However, I will first provide some essential background information. I will also detail the reasons why my proposed termination is illegal.

Introduction

1. I am a long-term employee of the Administrative Office of the Courts (AOC) with a stellar work record – no disciplinary actions, consistently high marks and praise on performance evaluations. I have earned the respect of municipal judges and court staff around the state, as well as others with whom I've worked successfully for almost 13 years.

2. I have since 2010 served in the role of Program Manager for the Municipal Court Automation Program (MCAP) and the Municipal Court Automation Fund (MCAF). The fund, defined by statute, provides money to municipalities to help courts comply with the legal mandate that they be automated.

3. Since taking the management role in 2010 I have worked directly with the New Mexico Municipal Judges Association (NMMJA) and its Automation Committee to manage the day to day work of the program and the MCAF.

4. In 1996 management of the MCAF was delegated to the NMMJA and its Automation Committee by the Judicial Information Systems Council (aka JIFFY) and AOC's Judicial Information Division (JID). I mention this because Mr. Pepin stated in our May 31 meeting that he "might not agree with that."

5. With the exception of physical office space, program costs including staff salaries are funded by the municipal courts through a statutory fee collected by the courts and remitted to the AOC.

6. The process of working on behalf of the municipal courts and NMMJA has always been a function of my job. I was never given a reason to believe it should be different in FY19.

7. In my 12+ years with the agency I never received any instruction or coaching from Mr. Pepin. He never took even a passing interest in the workings of the municipal courts and our program, or reached out to any of the municipal judges or NMMJA.

Senate Bill 173

1. Around August of 2018 the municipal court community, and I, became aware of an initiative being promoted by AOC and the Supreme Court to "consolidate" municipal

courts into magistrate courts. This in effect meant "close" municipal courts. At that time only municipalities with population under 1,500 could close their court.

2. In January 2019 Senate Bill 173 was filed in the 2019 New Mexico State Legislature in support of this initiative. The bill allowed that *any* municipality could close its municipal court, instead of just those with population under 1,500. I worked with NMMJA to gather and analyze information about SB173. The New Mexico Municipal League, of which NMMJA is a subsection, eventually issued a resolution against SB173.

4. In early February I provided to AOC and NMMJA a list of costs that could result from the passage of SB173. These costs had been developed in close coordination with the leadership of NMMJA and the Automation Committee. I expected this cost information to be welcomed by AOC for the Fiscal Impact Report (FIR) for the legislature. Because municipal court automation costs are my area of expertise, I was fully qualified to generate this cost data.

5. Shortly after I provided the cost data, I was called to a meeting with Mr. Pepin. At this Feb. 13 meeting I was asked to conceal the cost data from the legislature and the public. I was quizzed about where I got it and who it had been sent to. I was told by Mr. Pepin that it put him **"in a bad position"** because AOC and the Supreme Court had already decided there would be no costs. I was told to not further distribute this cost data.

Illegal acts

Mr. Pepin has retaliated against me because I blew the whistle on his improper and illegal acts, and further, he has discriminated against me on the basis of my age and gender. The harassment and hostile work environment to which I have been subjected, up to and including proposed termination of my employment, are retaliation for me exposing having exposed Mr. Pepin's illegal acts.

Mr. Pepin's refusal to incorporate the valid and true cost impacts of Senate Bill was an illegal act. It prevented the legislature and the public from knowing the true costs of the legislation and the court closures it would cause. He compelled me to participate in his illegal activity by demanding that I not further distribute those cost impacts, also an illegal act. He conjured up accusations against me and has now threatened termination, all in retaliation.

The proposed termination action against me has nothing to do with wrongdoing on my part. It has everything to do with the fact that I am an older woman who stood up to the AOC's male-dominated hierarchy for what I believed was right, and for the rights of my stakeholders, the municipal courts, and because:

- I refused to collude with Mr. Pepin in his improper and illegal activities to conceal the true costs of municipal court closures per SB173 from the legislature

and the public.

• I refused to participate when Mr. Pepin demanded that I support Senate Bill 173, knowing that I, along with the municipal court community, believed that passage of the bill would result in harm to municipalities and municipal courts, with the burden of that harm – reduced access to justice being one example – falling squarely on the shoulders of citizens in smaller municipalities who already suffer from the lack of services in their communities, and often, poverty.

• It is to keep me from further working with the Municipal League and Judges Association to prevent improper use of the Municipal Court Automation Fund.

• It is to keep me from providing factual data to help courts defend their existence when faced with potential closure due to the new law.

Mr. Pepin's retaliation against me is a violation of New Mexico and federal Whistleblower Protection laws.

Rebuttal summary

Responses to the individual accusations begin after the rebuttal summary.

1. All actions I took relative to the 2019 legislative session were in performance of my job duties as I believed them to be, as I learned them from my predecessor and from prior supervisor AOC Deputy Director Patrick Simpson, and as documented as recently as my FY18 performance evaluation. These duties include necessary tasks to support the municipal judges and courts, and to manage the Municipal Court Automation Fund and program in conjunction with, and on behalf of, the NMMJA and Automation Committee.

Work I did to collect and disseminate information before, during, and after the legislative session was solely to assist the New Mexico Municipal Judges Association and Automation Committee. These functions have always been a primary and essential part of my job and I had no reason to believe I should not perform them. During the session I assisted the judges in documenting concerns they had about the legislation, which they believed would harm their courts and communities. Afterward I assisted them in documenting ways they might protect the fund from inappropriate expenditures when and if courts began to close after the new law took effect.

2. Based on discussions with judges and others over a long period of time (years, actually and going back to the 2011 NCSC study), most believed that "merging" or "consolidating"(to wit, closing) municipal courts would hurt their communities. NMMJA leadership and the Automation Committee expressed to me on numerous occasions

their concerns that such measures would also harm the MCAF and possibly even result in its demise.

3. After the Feb. 13 meeting with Mr. Pepin I complied with his demand that I not further distribute the cost data for SB173. I stepped back from active involvement with the legislation and as directed at the Feb. 13 meeting, did not speak out publicly against the legislation.

4. Since there was no objection or to my involvement in the 2018 legislature, there should have been none in 2019 either. Mr. Pepin was well aware of my involvement in the 2018 session and from as far back as August 2018, the 2019 session as well. I had no reason to believe my involvement in 2019 should be any differently than my involvement in 2018. In January we spoke about the initiative and even discussed possible amendments. Yet I received no guidance from him with regard to my role going forward. He made no attempt to further communicate with me about the legislation, to include me in meetings, to ask for my help.

5. AOC acted inappropriately by working to make law that it would then benefit from financially: fines that currently go to the municipality would under the new law go to the state; automation and education fees that currently support municipal courts would also under the new law go to the state.

6. In my email of March 15 I wrote that the "Fiscal Impact Report and analysis is incorrect" because this is true. I provided to Mr. Pepin, based on my expert opinion, valid estimates of costs that could, and likely would, be incurred in the course of court closure. **He deliberately concealed this information from the legislature and the public. And at the Feb. 13 meeting he compelled me to do the same.**

Direct automation costs are my area of expertise. I have worked with these costs for over 10 years and I stand by my estimates. Indirect costs were a compilation of concerns I had gathered by listening to judges and court staff over a long period of time (as far back as the 2011 NCSC study).

7. Mr. Pepin retaliated against me, first for having provided the data, second for having shared it with the NMMJA, and third for not rallying behind his position on SB173. This is a violation of the New Mexico Whistleblowers Protection Act.

8. I was left hanging for a full five weeks after the May 31 meeting with Mr. Pepin to learn what the accusations against me actually were. I was anxious to resolve matters and had requested mediation, but these requests were ignored. It is clear that Mr. Pepin is interested only in laying blame and punishing me, in retaliation for me having exposed his illegal acts, and in discriminating against me because I am an older woman who dared to expose these acts. To retaliate against me is illegal and is just plain wrong.

Responses to Individual Items

Below are my responses to the individual accusations in the Proposed Termination Letter ofJuly 8. 2019

- Text from the letter has been copied here.
- My responses are in dark red or as footnotes.
- Yellow highlighting indicates there is a related footnote.
- Green highlighting indicates a mls-quote also accompanied by a footnote.

SENATE BILL 173

You have demonstrated a repeated disregard for the directives you have been given related to Senate Bill 173.[1] You actively worked against the New Mexico Judicial Branch[2] and the Supreme Court's efforts related to the passage of the Judiciary Unified Budget Bill, Senate Bill 173 (SB173), both before[3] and after I directed you in person to cease these efforts.

You emailed Municipal Judge Elise Larsen in August 2018, informing her you sent Ms. Deborah Dungan, Attorney Assistant to the Chief Justice, and Ms. Celina Jones, the AOC General Counsel "Potential costs & questions" related to SB173. You provided additional documents to Judger Larson that you state you prepared and compiled for the purpose of stopping SB173 from passing[4]. You indicate in your email that you would not be sharing them with the AOC until they are ready "for prime time," and that they are "all good points summarizing concerns," related to SB173. [5]

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[1] The only "directive" I was given with regard to SB173 was at the Feb. 13 meeting. At that meeting, as I have repeatedly stated, I took away two things: 1) that I was not to further distribute the cost data, and 2) that I was not to speak out publicly against the legislation. I complied with both of these, and as well did not attend any further hearings on the matter. I was not given any written "directive" or instruction at or after that meeting.

[2] I did not work "against" the Judicial Branch; I worked in support of the municipal judges and their interests, as I have always done, and as I understood it was my duty to do.

[3] Any actions I took before our Feb. 13 meeting are irrelevant to this discussion. At no time was I ever given coaching or instruction from Mr. Pepin as to what my role should be, in spite of the fact that he was well aware of my interest in the initiative as far back as August 2018 at the Roswell Municipal League meeting.

[4] **Incorrect quote;** nowhere in my August 27 email to Judge Larsen did I say this. The legislature was not in session at that time and SB173 did not yet exist.

[5] **Incorrect quote;** what I said was (ref. att C, p 1 of 9): "This is the only thing I am sending them for now; the rest I figure will need to be mulled over and updated before being ready for prime time – but all good points summarizing concerns of NMMJA." No harm was done by the information being thoroughly reviewed before being sent out.

The first of the three attachments consists of five pages. In the first page you claim that SB173 stems from the "reengineering" study conducted by the National Center of State Courts,[6] which includes an initiative to merge municipal courts into magistrate courts on a voluntary basis. This is apparently a reference to the October 1, 2011 Report of the New Mexico Reengineering Commission to the New Mexico Supreme Court. You call the goal "lofty" and state the premise is based "in faulty methodology."[7] You go on to write several times that the "goal" of SB173 "appears to be the eventual closure of all municipal courts," and the closing of municipal courts "could have a devastating effect on municipalities," citing loss of jobs, loss of revenues, loss of confidence in the justice system, a lowered level of local ordinance enforcement, reduced business investments in the local economy and a reduced quality of life for residents. Your communication is intended to cause and create alarm as you immediately go into the "devastating effect" the closure of "even one" municipal court could have on a community,[8] and state it could lead to the ultimate "demise of the fund altogether."

The second of the three attachments is titled, "Consideration re AOC proposal to close municipal courts by removing the 1,500 population threshold from NMSA 35-14-1. It contains a footer disclosing your authorship and states in part that "costs have not been adequately analyzed,"[9] falsely stating that the "costs for magistrate courts to gear up for the increase workload"…"would be significant," and require "additional judges, additional staff and equipment, incremental IT and HR work, setup and training, data conversion, equipment. The list goes on referencing an even more "detailed list." You write that what the Supreme Court is considering has not been well vetted, would be "reinventing the wheel" and be at "great expense."[10] These are all inaccurate

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[6] A quick read-through of the NCSC study's Initiative Three reveals that the legislation that later became SB173 very closely mirrors the initiative. No harm was done by pointing this out.

[7] SB173 did not exist at the time this document was drafted. No harm is done by calling a goal lofty. I stated that the study was flawed because it was. A major flaw was that it did not include municipal stakeholders in the survey. No municipal judge was invited to serve on the Working Group even though the actions being considered would severely impact their courts. See attachment C, page 6 of 9a for further details, including the errors of fact.

[8] **Incorrect quote;** my statement was about the devastating effect that "closure of even one of the larger municipal courts could have on the **MCAF**…" Further detail is in Att C page 2 of 9. These statements reflect the thinking of the municipal court community at that time.

[9] I was not included in the process whereby the legislation was developed, so my speculations were based on worst-case thinking. (To my knowledge no municipal judges were included either.) This document provided information to the judges summarizing their concerns. It was not my intent to sway or influence them – to imply so is an insult to them. Costs had **not** been adequately explored, and in fact **never were**.

[10] The effort to re-establish dozens or in some cases hundreds of municipal ordinances, with their own fine and fee structures, in the state's case management system would require significant effort, in effect

statements drafted and communicated by you, against a piece of legislation that Supreme Court adopted through the unified budget process. You further criticize the Reengineering Committee's report stating municipal stakeholders were not adequately represented, and that the report's facts are erroneous.[11]

You suggest repeatedly that should SB173 be passed "justice" would "be delayed" "and thus denied," due to what you call "triage" and the ultimate effect on the "rule of law" within the community. You state the proposed legislation would lead to increased "potential for error" by judges due to the consolidation, and the "local employment" would be affected due to a corresponding reduction in local jobs. You refer to the consolidation as a "re-engineering" that would "thereby eroding separation of powers." Despite these strong and adversarial statements in your first two attachments, the last and the one you provided to the AOC listed instead innocuous questions and brief fragments regarding potential costs. [Attachment C] These communications demonstrate your duplicitous approach to undermining SB173, which your behavior has consistently undermined.

On Sunday, December 2, 2018, Ms. Jones forwarded you the proposed legislation language for SB173. On Wednesday, December 5, 2018, you sent an email to the municipalities reminding them of the February 22, 2018 automation committee meeting, and informed them of an "important topic" to be "discussed" to include "judge-to-legislator outreach" necessary "during the upcoming session." You instruct the municipal judges "a big showing of municipal judges at these events will do much to help the cause," i.e., derailing the passing of SB173, and instructed them to the attend the State of the Judiciary Address and to attend Municipal Day.[12] [Attachment D]

On December 14, 2018, at 2:18 p.m. you sent an email to Judge Larsen that included in part a statement that the municipal judges and you needed to "band together to fight" SB173[13], "even if it is an uphill battle." [Attachment E] Later that evening you sent Judge Larsen talking points to use against the bill, and suggest that you need a slogan to help fight the bill. You continue to raise concerns stating the communities that close their municipal court will face a "downward spiral for the community." You write that

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reinventing the wheel, and would absolutely come at a cost. The effort to re-input or convert historical cases would be significant as well, and would also come at a cost.

[11] These are facts: municipal stakeholders were not represented and there were errors of fact in the report. See Att C, page 6 of 9a.

[12] **Incorrect quote;** at no time did I state "the cause" to be derailment of SB173, which did not even exist in December. I did not "instruct" anyone to attend anything (and it is insulting to our judges to suggest such). I was merely providing a reminder of the events, as I commonly do when communicating with courts.

[13] I referred to the situation as a fight because that is how many of the judges referred to it. In August they were assured by Chief Justice Nakamura that she would not pursue the legislation if they were opposed to it, yet she did.

"lesser" crimes will "languish in the judicial system," "eroding the quality of life for residents." One slogan you propose is "keep justice local to keep communities healthy." You write about the lack of protection the bill "provides" from a court closing based on "political motives," and then state that the "promises made" by the Supreme Court, specifically "that the Supreme Court will have the municipal judges' backs – is again nothing more than a verbal agreement." You write that there is no commitment from the Supreme Court that they will use "factual data."[14] [Attachment F] All of your advocacy against this legislative proposal occurred long after the Supreme Court adopted this as an approved initiative in the Unified Budget. All versions of the Unified Budget book included this initiative since at least November 5, 2018.[15] On January 2, 2019, you sent an email to municipal judges and staff requesting they complete a survey[16], and state in your email that as they know, "Chief Justice Nakamura is pushing forward with the 'merge' proposal that would allow any municipality to petition the Supreme Court to close its municipal court." What I find striking is while outlining arguments against the bill you refer to them as "**our** arguments against."[17] Despite being a New Mexico Judicial Branch employee, you actively worked against and aligned yourself entirely against the legislation approved by the Supreme Court.[18]
[Attachment G] [Emphasis added]

On January 3, 2019, you sent an email to Judge Larsen informing her SB173 is "a bad deal."
[Attachment H]
Then on January 8, 2019, you emailed Judge Larsen that you were able to discuss some of your concerns related to the bill with Senator Ivey-Soto and Representative Figueroa and provided them talking points you drafted that are against the bill[19]. Judge Larson asked if she can share "your" talking points, and thanks you for the significant amount

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[14] **Incorrect quote:** I stated "there is not even a requirement that the **municipality** will include the municipal judge in the process or collect factual data before proceeding. All of this was true at the time. Later a provision was added to have a committee, to include a municipal judge, review closure requests.

[15] I was not, and to my knowledge none of our judges were, included in development of the stated "Budget Book" (nor was I even aware it existed until much later, as described in my June 2 letter). To say I should have pledged fealty to this publication when I was not even aware it existed is absurd.

[16] This was one of many surveys I was asked to complete for the Supreme Court and is not an issue.

[17] I was acting in support of the municipal judges and in support of their organization. I was never advised that I was not to work with them. I was not aware that an initiative had been "approved" by the Supreme Court. If an effort had been made to include me and/or the NMMJA in discussions perhaps this misunderstanding could have been avoided.

[18] I was working in support of the municipal judges as I have always done; I and they had no way of knowing at that time that agreements had been made to move this legislation forward.

[19] I was working in support of the municipal courts as I have always done.

of time you have put into your activities against SB173, including the drafting of the talking points. You respond that she is free to use "my talking points list," that you will take more time on additional talking points you are working on, and then write you "don't think there are any lies in," them, but state it is "probably better to just get something out there." [Attachment I]

On January 15, 2019, you contacted the Program Director for the New Mexico Municipal League and suggested she add to the Municipal Court Clerks Board Meeting agenda a discussion of the pending legislation. You offer to share what you know of SB173, and state you will put together a handout for the Clerks. [Attachment J] On January 18, 2019, you inform Judge Larson that you met with the Clerks Association earlier that day, and state they are standing by, ready to reach out to their Representatives in opposition of the bill. You write, "Our best bet will be getting it shut down (or amended) in committee." [Attachment K]

On January 23, 2019, Judge Larson informed you that she scheduled a meeting with the Chief Justice to discuss concerns with SB173, and requests you attend. Your response indicates you may have realized your attendance directly aligned against the Supreme Court's Unified Budget Bill, as an AOC employee this might not be appropriate; you write, "Gulp… yes," you would attend if she wants you to, though the day of the meeting you called in sick and did not attend.[20] [Attachment L]

[20] I was naturally intimidated by a proposed meeting with the Chief of the Supreme Court, as I expect most anyone would be. It did not mean I "knew I was doing wrong." Judge Larsen had asked me if I would attend and I told her I would if it was OK with the Chief. She and I figured the meeting would be about the cost data I had prepared and the numerous surveys I had been working on for the Supreme Court. I envisioned my role as a consultant should questions arise about this data. It turned out this was not the purpose and that I would thus not be needed. **It was known well in advance that I would not attend and Judge Larsen set about finding another person to attend.**

MEETING ON FEBRUARY 13, 2019: -- see general statement below in addition to individual item responses

After becoming aware of your grossly inappropriate and adversarial activities and campaign against SB173, Ms. Dungan and I scheduled a meeting with you that was held on February 13, 2019. At that meeting, I informed you that I was aware that you had been actively campaigning against SB173, that this was inappropriate, needed to stop, and I had serious concerns about your actions and behavior. I reminded you that you were an AOC employee, and gave you a clear directive that you were not to work against or oppose SB173, or any legislation that was part of the Judiciary's Unified Budget process. You were told that your duty was to support the legislation approved by the Supreme Court. You were clearly instructed to not send out any directive regarding the municipal courts and in particular related to legislation without my approval. I walked you through why what you had done by taking a position that was contrary to the Court's was not acceptable and you told me you understood. At the conclusion of this meeting, I instructed you to not ever send out communications that could be conceived as contrary to the Judiciary's. I specifically reminded you in that meeting that you worked for me, not the municipal judges. I informed you that should you believe it appropriate to communicate with Municipal courts about SB173 you must receive my prior approval first. Ms. Dungan and I both believed you clearly understood the content of the meeting, as well as this directive and the message was clear; do not do this again.

Mr. Pepin knew of my interest and involvement on behalf of the municipal judge with SB173, dating back as far as the August meeting in Roswell, and extending to the JID management meeting in January where we discussed possible amendments . Yet he never included me or the municipal judges in any planning meetings or discussions. He never provided me with guidance or coaching about what exactly my role should have been. I was doing my job the way I understood it was to be done, and the way I was trained – support the municipal courts.

ACTIVE OPPOSITION AGAINST THE BILL AFTER MEETING HELD ON FEBRUARY 13, 2019:

Between February 20, 2019 and March 15, 2019, you were part of an email string discussion regarding the Municipal League's amendments to SB173. Specifically discussed by the Municipal Judges was the fact that since reaching agreement on the amendments with the Chief Justice, the Municipal League could no longer oppose the legislation, or the bill.[21] Despite the meeting I had with you in February, on March 15, 2019, you sent an email to the Municipal Judges instructing them that they had one "final opportunity to have" their "voice heard," and then provided a list of issues that you wrote, "I feel are critical to the arguments AGAINST the bill." You state that you are "between a rock and a hard place," and that as an "AOC employee" "cannot speak out publicly against this bill", but state that they "can and I hope you will."[22] You then write that the Fiscal Impact Report and analysis is incorrect. This alone would be sufficient to support the propose action. This behavior is completely unacceptable and unbecoming of a New Mexico Judicial Branch employee.[23] [Attachment M]

On March 18, 2019, you sent out another email to all the Municipal Judges describing the situation as a "fight," and then encouraged the Municipal Judges to reach out to Governor. You write that should the Municipal Judges reach out to the Governor it could make a difference but alert them that is would need to "happen fast." You inform them that the Governor was quoted in the Albuquerque Journal saying she would veto a bill if there was a "substantive flaw, the math doesn't work or another significant issue." You immediately state that the "Fiscal Impact Report was definitely flawed (potentially the math not working?)".[24] You then list two numbered items, writing, "might the following be significant flaws?" Included in your "significant flaws" is a statement that the judicial branch is "being allowed to 'make law' that it will use to further an agenda," and then suggest the Open Meetings Act was violated by the Legislature and accuse them of essentially playing "just politics."

You conclude your email stating that you will help the municipal courts "unite" and "fight these battles",[25] writing, "I will commit whatever resources I can as well, from

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[21] I was merely cc'd and not a participant for most of this email thread; it is thus not applicable to this discussion.

[22] This is true; it was my understanding based on the Feb. 13 meeting that the only limitation I faced was that I could not speak out publicly against the legislation, and that I could not further distribute the cost data. Statements I made were within the limited email distribution of the municipal judges and not to the public. I was providing a service to them by summarizing points that had been made throughout the legislative session. It is within my rights to provide such a service to the group to whom I have historically provided such services and who funds our program, including staff salaries.

[23] The FIR was and is incorrect.

[24] Math does not "work" when costs have not been adequately considered.

[25] My reference in the March 18 email about helping courts fight battles and providing data referred to what would occur after the legislation was signed into law, when proposals would come up for

gathering factual data, to generating cost estimates, to letter-writing, and whatever else is within my power." [Attachment N]

The statements you put into writing, are a flagrant and egregious violation of the New Mexico Judicial Branch Code of Conduct or Canons. It is reprehensible that you would commit AOC and NMJB resources, and time towards actively working against your employer.[26] These actually are more egregious given my personal directive to you in February not to do so.

On March 19, 2019, a Municipal Judge sent an email (same email string you were on) suggesting that the all the Municipal Judges approach the Governor in a group to encourage her to veto SB173. You respond writing this act might violate the "agreement" the Municipal Judges had with the Chief Justice[27], stating you, "only wish I could have done more, that there was something more to be done." [Attachment O]

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individual courts to close. Municipalities would need and appreciate full disclosure of costs to make an educated decision about whether or not to close their courts. This data would include funds the municipality received from automation, fee amounts they had remitted, and estimates for items such as data entry or conversion, moving of physical files, etc. In many cases municipalities do not offset their court's budget with automation funds received (depositing them instead to their general fund). Without counting this inflow, it can look like the court costs more to run than it actually does. I have on many occasions had to provide an explanation of this to municipal officials and envisioned having to do so even more when court closure proposals arise.

[26] Resources for program activities, including staff salaries, come from the municipal courts. The municipal court program is funded by the automation fees remitted by municipal courts. It would be reprehensible to have used their resources in support of legislation that they believed would harm their communities.

[27] **Incorrect quote;** it was the judge, not me, who questioned whether an action might violate the association's "agreement" with the Chief Justice. If I am not mistaken she was completely within her rights to have asked that question and in my opinion it was wise of her to have made that point; she also stated that they would not want to do that.

ANGEL FIRE MEETING HELD ON MAY 2, 2019: -- see general statement below

On May 2, 2019, the Municipal Court Judges and the Automation Committee met in Angel Fire, New Mexico. At this meeting, you shared proposed policy and policy changes as well as a 1996 memo from a former Municipal Judge. The proposed policy you developed and shared titled "May 2019 Protection of the Municipal Court Automation Fund (MCAF) Ref. court closure per NMSA 35-14-1 as modified by SB173-2019" reflects you continued to actively work to undermine SB173. The policy was drafted without my approval or authorization from the Supreme Court. The language attempts to use coercion or fear that should a Municipal Court consider consolidation, they will not be eligible for MCAF reimbursement. The policy also states that they must agree to not petition for court closure within a certain time. Your proposed language states that should a municipality express intent to close the court within that time frame, they would be required to repay MCAP reimbursements. The language further limits reimbursements by stating no major expenditure would be approved for a municipality that is within so many months of its municipal election. You do not have the authority to create such a policy.

You write that the "goals of the proposed policies are to prevent a municipality continuing to tap the fund after announcing intent to close its court, a municipality (or AOC) attempting to use the fund for closure expenses, and a municipality receiving significant funding (for computers, for example), then closing their court. You go on to state that "**we** simply cannot afford to throw good money after bad by funneling dollars to municipalities that do not support their court," and that, "establishing written policies will let everyone know what to expect as **"we"** go forward (and help municipalities better gauge the consequences of closing their court)". [Emphasis added]

Fortunately, I became aware of the proposed policies you intended to present, and that had been shared with the Municipal Judges. At that meeting, I informed the judges and attendees that if there were to be any policy changes they would come from me, as the AOC Director and not from the Automation Committee and not from an AOC employee. I clarified the misinformation you were intent upon sharing. While I spoke to the Municipal Judges and the attendees at the committee meeting you sat in the audience and shook your head vehemently at what I was saying, essentially communicating to the room that my comments were not correct. Your behavior is consistently inappropriate and unprofessional as is your behavior toward me.

The proposed policies were not an effort to "undermine SB173." SB173 is over - you won. The proposed policies were an attempt to protect the fund from improper expenditures that might come about if municipalities decide to close their courts. The fund's lawful purpose is to "establish and maintain" a court automation system; basic logic dictates that this does not include efforts to dismantle said system.

The proposed policies were simply that: PROPOSED policies. They went ONLY to the committee, in hard copy, at their May 1 meeting and only as PROPOSED policies. They reflected concerns that had been expressed to me by the committee and others. This seems to me a case of shooting the messenger, and for a message that wasn't even a message, it was only a proposal. AND that proposal never even made it to the table

due to the late hour and other priorities. I use the word we because as manager of the fund for the past 10 years, I have an interest in ensuring its proper use and in its long-term health for the benefit of the courts that rely upon it.

The Automation Committee is the body that (by virtue of the 20+ year agreement with JID/JIFFY) makes decisions for the program and fund. It was evident to me that your statement that you intend to make fund decisions (and the implication that you would use municipal funds to close down municipal courts) clearly did not sit well with the judges. These judges, with their staffs, work hard every day to provide money for the fund and they should have the right and responsibility to decide how those funds are used.

It is a fact that Mr. Pepin has never attended an Automation Committee meeting, nor taken an interest in the workings of the Automation Committee or municipal courts in general. He presented information at the general assembly of the Municipal Judges Association on May 2; this is very different from the small gathering of judges that takes place quarterly and that last took place on May 1.

I was shaking my head during your presentation because much of what Mr. Pepin said was wrong. He stated that policies had gone to municipalities without his permission. The proposed policies went ONLY to the committee and only in hard copy, with one copy emailed to Municipal League counsel who could not attend the meeting. The majority of judges in the audience had no idea what he were talking about because they had never even seen the proposed policies. I am flattered that Mr. Pepin thinks the judges could be swayed by me shaking my head, but they are quite capable of coming to their own conclusions on the matter.

At no time did I convey that I had the right to "make policy." I do however have the right and the responsibility to present to the committee items they wish to discuss at their meeting. The financial impact to the fund from the new law has been a major topic of concern among the committee and others. The fund has seen unprecedented declines in recent years and the committee is naturally concerned about "throwing good money after bad" by funding purchase for courts that will soon close their doors. It's important to have written policy so that everyone knows where they stand.

No discussion of this topic would be complete without making the point that if costs to move a municipal court's work to a magistrate court are so minimal, as Mr. Pepin claimed in the Fiscal Impact Report, why is he even concerned about them and why would he insist on using MCAF money for them?

EMAILING OUT PROPOSED POLICIES ON MAY 24, 2019: -- see general statement below in addition to individual item responses

On May 24, 2019, you emailed out the same documents and proposed draft policies that I had directly and publicly stated were not approved for distribution, and sent them to the Municipal Judges. Your email communication to the Municipal Judges informed them that you had been "called to a meeting" with the AOC HR Director and me. You wrote that you "suspect it's about the proposed policies I provided to the committee at the May 1st meeting, since this was clearly a concern for Mr. Pepin in his May 2nd address to the NMMJA (where he erroneously stated they had been emailed to municipalities)." (I should note, that despite you having stated you shared these at the meeting on May 1, 2019 meeting, when I met with you on May 31, 2019, you insisted you had not shared the policies with all of the judges but only with those on the Automation Committee.) Despite being clearly aware that I did not approve the draft policies and despite my communications directing you to act otherwise, you used this as an introduction to then share the policies and documents.

You additionally provided the judges with a 1996 internal memorandum[28] addressed to the Municipal Judges, which does not reflect receipt nor approval by the judges, nor receipt, agreement or approval by the AOC. You state that this internal memorandum demonstrates that your position was created as an "agent" for the MCAF, and go on to write that the "AOC program staff work for YOU to help accomplish the committee's work." You write that you have provided the policies to them seeking their feedback and state you spoke to Mr. Randy Van Vleck who did not "see any reason the committee couldn't set policies such as these." Again, this is directly following my discussion with the Municipal Judges with you present that no one would set policy for the MCAF other than the AOC Director.[29] [Attachment P]

The proposed policies you crafted and distributed against my clear directive outline who would be ineligible for reimbursement should they chose to exercise their right to close a municipal court under the new law – SB173. The overall intent of your proposed policies was to have the chilling effect of deterring a municipal court from closing.[30] Under your proposed policy, "once a municipality expresses intent to close its court, it will no longer be eligible for MCAF reimbursements," or funds. You included a requirement that in order for a municipal court "to be eligible for reimbursement" they would need to "agree to not petition for court closure within a certain frame," which you proposed be two or four years. The policy states its intent was to prevent a municipality from reaping the benefits from the automation fund prior to a closure and imposes a punishment on any municipality choosing to exercise a legally authorized

[28] The 1996 memo from Las Vegas Municipal Judge Trujillo has long been a defining document for the municipal court program; perhaps you would like to take the matter up with him.

[29] Mr. Pepin's proclamation that he will now set policy for the MCAF would upend a 23-year precedent for the purpose of using the MCAF in an inappropriate manner.

[30] Mr. Pepin's intent to pay court closure costs (that you claimed in the FIR did not exist) has the chilling effect of improper use of public funds.

transfer. The policy also states that it will not reimburse costs associated with the transfer. The policy would restrict a municipal court from exercising their right under SB173 should they have received any reimbursement above a certain threshold. You wrote that you "feel strongly that leaving this matter to chance, and simply addressing situations as they arise, will not suffice," and that you would have "no way to know a municipality's intent when they request a reimbursement." You write that the "free money" should come with conditions, if a municipality should "take the bait." You specifically compare Municipal Court closures to "the sky" falling, and write that you cannot "afford to throw good money after bad by funneling dollars to municipalities that do not support their own court".

The 2006 New Mexico Statues Section 34-9-12 titled "*Municipal court automation fund created; administration distribution",* states in part, that all payments shall be approve by the director of the administrative office of the courts. [Attachment Q] You do not have the authority to deny requests or make threats to not pay legitimate requests should a municipal court chose to close.

Mr. Pepin took a set of PROPOSED policies, in effect a brainstorming document, and blew it completely out of proportion. These were only PROPOSED policies. The Automation Committee would thoroughly vet before anything could become policy.

MEETING ON MAY 31, 2019: -- this has already been discussed at length - see items 7 and 12 of my rebuttal summary, my June 2 letter as attachment 6, and meeting transcription within attachment 5.

I met with you again on May 31, 2019, with AOC HR Director Ms. Lynette Paulman-Rodriguez present. As had been stated in several communications to you, this meeting was regarding work-related concerns and your continued efforts to negate SB173. At that meeting, you refused to answer my questions, and when I tried to ask a specific question would respond that you were "done" implying our meeting was over. During the meeting, I asked about the MCAF disapproval process. When I asked you to outline the denial and appeal process, you outlined a process as though it was currently in place and being followed. When asked if there were many appeals you stated they were rare. As I asked more specific questions related to the process for denials or appeals, you admitted to not having ever received an appeal and that no formal appeal process was actually developed. When asked who had the authority to approve or deny an MCAF refund request you acknowledged it was the AOC Director but then claimed I had never attended an MCAF meeting. I reminded you that I had been at a meeting earlier the same month. I asked you about your email of May 24, 2019, of which you had a copy and specifically about your statements that Anthony and Clayton are two "known targets for closure". You confirmed this belief stating that was what you heard the Chief Justice say repeatedly. When asked if you if believed it

to be a bad idea, you said not necessarily, and that it might be appropriate to close some and it might not be. When I asked you what your purpose of mentioning this to the automation committee was, instead of answering me you started packing up your belongings quickly and abruptly stating that you were "done here". Despite my informing you that I had a lot of questions and things that I needed to understand your response was that you felt like you were "being set up," "you" did not "like it," and did not "deserve to be treated that way." I told you that before you left there was something very important that I needed to ensure you knew. I reminded you of the meeting Ms. Dungan and I had with you on February 13, 2019, and asked what you recalled being discussed; you stated, "Cost figures." I reminded you that we had discussed a great deal more than "cost figures," and you did acknowledge and recall my direct instructions for you not to work in opposition of a bill that the judiciary supported. You argued that you did not believe or understand how SB173 was part of the Unified Budget, and then argued you did not work to defeat the bill, stating instead that you were only providing "requested information." That is an inaccurate reflection of your communications and activities prior to and following my meetings with you. You told me that once the Municipal League came out with the amendment, "our association was pretty much obligated to follow it through," and "they did not oppose it after that." You did state that you probably had some communications but had not come out "publicly" against the bill. Despite saying this, the communications I have outlined above reflect you actively working to incite the Municipal League to work against SB173. You repeatedly refused to answer my direct questions, specifically when I asked if you believed it was appropriate for an employee to actively work against a

bill, or work to defeat a bill that the Supreme Court and the Chief Justice had approved. You waivered, would not answer, responded that you did "nothing wrong," that you "only" provided information opposed to the bill and that you considered it your duty to protect the fund. When I specially asked if from February 13, 2019, forward if you did nothing to defeat the bill, you stated you had no idea, asked if that was the day the bill was agreed upon with the Municipal League, and said "I don't really know." In your written response to our meeting, dated June 2, 2019, and despite your insistence that the February meeting was about cost figures, you wrote "after" the February 13, 2019, meeting you "took great pains to comply," with my directives, and "did not further distribute the cost data, did not attend hearings, and did not speak publicly against the legislation." [Attachment R]

DIRECTIVE REGARDING WORK LOCATION:

At the conclusion of the May 31, 2019, meeting I handed you a letter and read the contents to you to ensure your understanding of job requirements. Specifically, that you were being instructed by me to report to the Judicial Information Division in Santa Fe, New Mexico the following Monday, June 3, 2019, and that this remained your designated work location. [Attachment S] You argued with me stating you had been approved to work from home for years, and that was the agreement upon your hire. When you asked why I would not allow you to work from home, I told you sufficient reason all by itself was your failure to comply with a direct statement from me made on February 13th that you would support SB173, and you would not work against it. I told you there was more than sufficient evidence, including evidence I had witnessed myself and of which I had seen on paper that you paid no attention whatsoever to my directive, except that you did not make statements "publically" as observed by me or the Chief Justice. I informed you that this is was serious problem and believed it reflected a need for me, and my agency, the AOC, to more carefully attend to how you work. While you refused to acknowledge my concerns, you did acknowledge that it was completely appropriate for me to require that you show up for work. You insisted that you been working from home with approval[31]. When I asked you what you would say if I told you Mr. Saunders acting as your direct supervisor had a different recollection you amended your statement to say that then CIO Mr. Greg Saunders had actually denied your request to work from home but informed you of an appeal process. I am providing you copies of your employment offer letters, which do not include specific approval to work from home as you claim[32]. I am also providing you a copy of a letter dated August 10, 2015, from Mr. Saunders, which states in part, "this letter serves as notice of cancellation of your work from home privilege." You confirmed in our meeting that you knew Mr. Saunders had denied your request, and then appealed the decision. Your "appeal" consisted of an email to me for which you received no reply. When I asked why that would change the decision that you could not work from home. You would not answer my question, and instead became angry and said you were leaving ending our meeting.[33] [Attachment T]

As you were leaving I confirmed that you would be reporting to JID the following Monday to which you stated you would not, that you had roofers coming to your house. I asked if you had requested leave from your direct supervisor CIO Mr. David

---

[31] **Incorrect quote;** I stated that it was part of the original agreement when I came to work for the agency

[32] **Incorrect quote;** I never claimed this. See note above.

[33] My appeal was ignored for almost 4 years. Clearly if my working from home was so bad surely someone would have noticed and said something. On the contrary it has never been an issue for the judges I served all those years, and even Mr. Saunders in his evaluation of me acknowledged that although my position was outside the scope of usual JID business I handled it well (see attachment 2) and part of this was my ability to work remotely. I did comply with Mr. Saunders letter for some time, but began to notice that others were listing remote work on the calendar, and sending emails about occasional work from home. I thus began incorporating remote work again. It created no problems.

Wasson and you responded that you "guessed" you would have to and made a comment that I was "starting up again," and you "were leaving." I asked Ms. Paulman-Rodriguez if she wanted to ask you anything before you left. Ms. Paulman- Rodriguez said she thought it is grossly insubordinate for you to not answer my questions. I stated it was consistent with the behavior I had experienced from you to which you responded, if that was what I thought that was fine. I stated that you were refusing to answer my questions, so I would not ask any more and you were free to go. At the conclusion of that meeting, you were so angry and uncontrolled in your behavior that as you were leaving you grabbed the AOC conference room door swinging it and slamming it as hard as you could. I immediately went and opened the door and told you that your behavior was grossly inappropriate and not to do that again.

GROSSLY INAPPROPRIATE ACT:
You slammed the door so hard that it shook the entire AOC office, and the emergency door next to the conference room released from the electronic magnet system causing that door to also slam making a sound described by those outside of the conference room as akin to a gunshot. You sent me an apology in part for your unprofessional conduct, though I am not confident you realize just how unacceptable your behavior was. [Attachment U]

As stated previously I was very upset by the meeting. I apologized for my action as best I could and at great length. This the first I have heard reference to a sound like a gunshot; it was not a gunshot and saying it sounded like that makes it seem like something far worse. It was a door slam. I apologized.

CONTINUED OPPOSITION TO DIRECTIVE – WORK LOCATION:
I have since been informed by Mr. Wasson, that you have actively tried to convince him to allow you to work from home going so far as to completely disregard my directive, and without approval worked from home anyway. On June 11, 2019, you emailed Mr. Wasson asking if you could work from home on Friday, June 14, 2019. This request was denied. Then on Friday, June 14, 2019, while on annual leave you sent an email to Mr. Wasson stating, "This is to let you know I logged two hours on Thursday and Friday," (June 13th and June 14"), "as callback time from my annual leave." You informed Mr. Wasson that you "responded to numerous emails and calls these two days"[34] despite having been specifically instructed otherwise, the two hours of unapproved worked time or "call back" were removed from your timesheet and replaced with annual leave. [Attachment V]

Due to your inability and unwillingness to comply, your remote access (VPN) to AOC records and files was suspended. You have continued to attempt to work from home,[35] despite being out on leave communicating via instant message, and your personal Gmail account. You have sent requests to Mr. Wasson asking to have your VPN access reinstated so that you can work from home. Mr. Wasson has responded several times

[34] Because it was our fiscal year deadline I fielded many calls and emails on those days. I felt it would be inappropriate to ignore people asking for my help, especially when it was my deadline they were complying with! To have forwarded the requests to Charles would probably have taken just as long, as I would have had to forward the requests and brief him on the concerns and what had already been done – at that point it is easier to just do it myself and I really don't mind responding to concerns and solving problems. It should be noted here that I had not taken the annual leave time by choice. I was forced to take it when I normally would have worked from home to accommodate times my husband had medical appointments. In addition I completed the evaluation for Charles. I wanted to ensure that his paperwork was turned in on time to ensure his eligibility for the raise (notably, no one took the same consideration for me). By sending the form on Thursday with a due date of Friday Mr. Wasson effectively directed me to work during my annual leave time. This makes his changing of my timesheet that much more unacceptable.

[35] I don't know what to say to this; I was attempting to get things done that needed to be done.

and to each informing you that it is not negotiable, and that my letter to you was clear that you were to work from JID. [Attachment W]

I understand you went into the office this past Friday, July 5, 2019. AOC HRD received a text from an employee at approximately 1:45 p.m. stating you had a "huge" dog in the JID building who was running down the hallway after an employee and barking[36]. Mr. Wasson approached you after receiving this message and requested you take the dog and leave for the day.[37] It was only at 5:15 p.m. that same day that Mr. Wasson discovered you had not done as he instructed and rather had someone pick up your dog at some point, and stayed to work. This is yet another example of your disregard for any directive or communication management gives you with which you disagree. It is in direct violation of not only the Just Cause provisions for discipline listed above, and attached, but also a flagrant violation of the Code of Conduct or Canons you and all employees are bound to uphold.

[36] At no point was my dog "running down the hallway and barking." My dog Maisey is 6 years old and part-Bassett Hound, so while she is wide she is not tall, and is not a threatening or especially active animal. For the most part she was lying quietly in my office. She was never out of my sight and certainly not running wild. She barked on two occasions, when people came near my office; this is further addressed in the email I sent to Mr. Wasson (attachment 7).

[37] I had no reason to believe it was wrong to bring a dog because there have been many other dogs in the office, some even for days at a time. This is not an egregious offense by any stretch of the imagination and is further evidence of the continued harassment and retaliation against me.

Administrative Office of the Courts

Supreme Court of New Mexico

Arthur W. Pepin, Director

237 Don Gaspar, Room 25
Santa Fe, NM 87501
(505) 827-4800
(505) 827-4824 (fax)

July 28, 2019

Merit Bennett
460 St. Michael's Drive, Suite 703
Santa Fe, New Mexico 87505

Re: April Sessions

Mr. Bennett,

You appear to have overlooked that part of my letter which states, "I respect the legal protections provided to all employees with regard to whistleblower, age, sex, and other unacceptable basses for an employee disciplinary action. Those protections have been fully respected in this process."

Characterizing the action taken in the letter as "final" has a specific meaning within the New Mexico Judicial Branch Personnel Rules (NMJBPR). The offer to which you refer is only intended to indicate a willingness to consider that Ms. Sessions might want to retire without a final action of termination for cause in her personnel file. In exchange I would require her agreement not to initiate needless litigation against me or the Administrative Office of the Courts. The tone and content of your email appear to make that unlikely so I expect that the process will proceed as is outlined in the letter of final action.

You sent your email to a host of persons who are not involved in the NMJBPR process. I would appreciate you respecting in the future the confidential nature with which I view the matter. If you choose to file suit I will defend this action in as professional and respectful a manner as possible.

Very truly yours,

/s/

Arthur W. Pepin

Fax: (505) 983-9836
Hawai'i Office:
1050 Bishop Street, Ste. 302
Honolulu, Hawai'i 96813
Colorado Office:
1624 Market Street, Suite 226 #19008
Denver, Colorado 80202-2523
www.thebennettlawgroup.com

On 7/28/2019 3:29 PM, Artie Pepin wrote:

> Mr. Bennett - The attached letter responds to your emails on behalf of former AOC employee April Sessions sent July 24, 2019, and July 26, 2019. I am out of state on business and will mail a signed copy upon my return later this week.
>
> On Fri, Jul 26, 2019 at 4:51 PM Merit Bennett <mb@thebennettlawgroup.com> wrote:
>
> > Mr. Pepin,
> >
> > Your failure to respond to Ms. Sessions' allegations of discrimination and retaliation set forth below and to clarify your "willingness to discuss a resolution" in lieu of your illegal termination of Ms. Sessions constitute an admission of all of the misconduct described in my email of two days ago (see below).
> >
> > Thank you for confirming your illegal intent by your silence.
> >
> > Accordingly, in view of your apparent preference, Ms. Sessions will now file a Charge of Discrimination with the EEOC and the New Mexico Department of Workforce Solutions and then proceed with public litigation to expose your malevolent and illegal misconduct, deliberately perpetrated while purportedly serving the people of the State of New Mexico.
> >
> > Merit Bennett
> >
> > *Merit Bennett*
> >
> > ***New Mexico Office:***
> > 460 St. Michael's Drive, Suite 703
> > Santa Fe, New Mexico 87505
> > Phone: (505) 983-9834
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> > Denver, Colorado 80202-2523
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PLEASE NOTE: If you are a client, do not forward this email to anyone, because doing so may cause you to waive the attorney-client privilege or your right to maintain the privacy of other protected communications.

On 7/24/2019 1:37 PM, Merit Bennett wrote:

Mr. Pepin,

This office represents Ms. April Sessions, **who has been illegally discriminated against because of her age** (in violation of the Federal Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C., Section 621, *et seq.*, and the New Mexico Civil Rights Act, NMSA 1978, Section 28-1-7, *et seq.*) **and gender** (in violation of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C., Section 2000e, *et seq.*, and the New Mexico Civil Rights Act, NMSA 1978, Section 28-1-7, *et seq.*) **and** who has been retaliated against **for whistleblowing regarding your misconduct** (in violation of the New Mexico Whistleblower Protection Act, NMSA 2017, Section 10-16C-1, *et seq.*), all as is set forth in Ms. Sessions' July 15, 2019, response to your termination letter dated July 8, 2019, a copy of which response is attached hereto without exhibits.

Following Ms. Sessions' July 15 response, you authored a July 22, 2019, letter to Ms. Sessions, a copy of which is also attached to this email. This email is now in response to your letter, as you have requested.

In your July 22, 2019, letter, you somehow conclude that Ms. Sessions' response "does not negate the just cause described in the proposed termination," despite Ms. Sessions' clear documentation of the gender and age discrimination and whistleblower retaliation that you, individually and through others, have perpetrated against Ms. Sessions, to include your illegal effort to terminate her employment. (Because of this discrimination and retaliation, Ms. Sessions has suffered severe and extreme emotional distress, forcing her to announce her early retirement from her position of service.)

It is telling that your July 22 letter abjectly fails to specifically address or respond to any of your illegal misconduct described by Ms. Sessions in considerable detail in her July 15 response. We will therefore assume that all of Ms. Sessions' allegations regarding such misconduct is deemed to be admitted.

You then threaten Ms. Sessions by inappropriately, and illegally, directing her, **"You should specifically recant your assertions of illegal conduct by me."** This further attempt to silence a victim of discrimination and a whistleblower of your misconduct is yet another illegal act confirming your illegal and retaliatory animus toward Ms. Sessions.

You also state, "This action [Ms. Sessions' termination] is made final." Yet, you then incongruously indicate, **"I am willing to discuss a resolution that does not require the grievance process to go forward ... I do not want you to mistakenly**

conclude that this letter of final action prevents you from discussing with me or the AOC HRD some other resolution."

Because your illegal misconduct and mistreatment of Ms. Sessions has forced her early retirement, she will suffer a significant consequential loss of income and retirement benefits as a result. We therefore assume that your proposed "resolution" includes compensation to Ms. Sessions for this financial loss.

If not, what "resolution" do you have in mind? It surely could not contemplate her continued employment with the court system, as the hostile work environment that you have created unfortunately precludes her continued exemplary service to our state's courts.

Accordingly, if the "resolution" that you are proposing does not sufficiently address the financial harm that your misconduct has inflicted, Ms. Sessions will be filing a Charge of Discrimination against you personally, the Administrative Office of the Courts, the New Mexico Supreme Court and the State of New Mexico - for illegal age and gender discrimination and for illegal retaliation for her engagement in protected whistleblower activity - with the United States Equal Opportunity Commission and with the New Mexico Human Rights Bureau, Department of Workforce Solutions.

We will withhold the filing of such Charge and the pursuit of public litigation until you advise this office of the nature and extent of the "resolution" that you are proposing or, if such proposed "resolution" is inadequate to address the damage you have inflicted upon Ms. Sessions, until a "resolution" by the State of Ms. Sessions' claims has been attempted and failed.

Therefore, please communicate your proposed "resolution" to this office by no later than close of business this Friday, July 26. (Also include a statement of your authority to implement any such "resolution" on behalf of the State of New Mexico.)

Ms. Sessions will also consider any "resolution" proposed by the State to "resolve" this unfortunate situation.

Sincerely,

Merit Bennett

--

Merit Bennett

New Mexico Office:
460 St. Michael's Drive, Suite 703
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--

Arthur W. Pepin
Director, NM Administrative Office of the Courts
237 Don Gaspar, Room 25
Santa Fe, NM 87501
505-827-4802 (desk)
505-470-3183 (cell)

EEOC Form 5 (11/09)

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented To: ☐ FEPA ☐ EEOC

Agency(ies) Charge No(s):

New Mexico Dept of Workforce Solutions, Human Rights Bureau and EEOC

State or local Agency, if any

Name *(indicate Mr., Ms., Mrs.)*	Home Phone *(Incl. Area Code)*	Date of Birth
Ms. April Sessions	**(505) 379-3292**	**05/07/1956**

Street Address	City, State and ZIP Code
2808 Arizona Street NE	**Albuquerque, New Mexico 87110**

Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (*If more than two, list under PARTICULARS below.*)

Name	No. Employees, Members	Phone No. *(Include Area Code)*
New Mexico Administrative Office of the Courts and Director of Admin Office of the Courts: Arthur Pepin	**>500**	**505-827-4800**

Street Address	City, State and ZIP Code
237 Don Gaspar	**Santa Fe, New Mexico 87501**

DISCRIMINATION BASED ON *(Check appropriate box(es).)*

☐ RACE ☐ COLOR ☒ SEX ☐ RELIGION ☐ NATIONAL ORIGIN

☒ RETALIATION ☒ AGE ☐ DISABILITY ☐ GENETIC INFORMATION

☒ OTHER *(Specify)* Whistleblower

DATE(S) DISCRIMINATION TOOK PLACE

Earliest: **02/13/2019** Latest: **07/26/2019**

☐ CONTINUING ACTION

THE PARTICULARS ARE *(If additional paper is needed, attach extra sheet(s)):*

Statement of Harm: I am a long-term employee of the New Mexico Administrative Office of the Courts (AOC). Since 2010 I have served in the role of Program Manager for the Municipal Court Automation Program (MCAP) and the Municipal Court Automation Fund (MCAF). I have been discriminated against because of my gender (female) and age (63) and retaliated against because I blew the whistle on illegal misconduct of the Director of the Admin Office of the Courts, Arthur Pepin, and, as a direct consequence of this gender and age discrimination and in retaliation for being a whistleblower, I have been illegally forced into early retirement, causing me to suffer a significant consequential loss of income and retirement benefits as a result.

Around August of 2018, the municipal court community and I became aware of an initiative being promoted by AOC and the Supreme Court to "consolidate" municipal courts into magistrate courts. This in effect meant to "close" municipal courts. At that time only municipalities with populations under 1,500 could close their court.

In January 2019, Senate Bill 173 was filed in the 2019 New Mexico State Legislature in support of this initiative. The bill allowed that any municipality could close its municipal court, instead of just those with population under 1,500. I worked with NMMJA to gather and analyze information about SB173. The New Mexico Municipal League, of which NMMJA is a subsection, eventually issued a resolution against SB173.

In early February I provided to AOC and NMMJA a list of costs that could result from the passage of SB173. These costs had been developed in close coordination with the leadership of NMMJA and the Automation Committee. I expected this cost information to be welcomed by AOC for the Fiscal Impact Report (FIR) for the legislature. Because municipal court automation costs are my area of expertise, I was fully qualified to generate this cost data.

RECEIVED
SEP 12 2019
HUMAN RIGHTS BUREAU

EEOC Form 5 (11/09)

CHARGE OF DISCRIMINATION	Charge Presented To:	Agency(ies) Charge No(s):
This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.	☐ FEPA ☐ EEOC	

New Mexico Dept of Workforce Solutions, Human Rights Bureau and EEOC

State or local Agency, if any

THE PARTICULARS ARE *(If additional paper is needed, attach extra sheet(s))*:

Shortly after I provided the cost data, I was called to a meeting with Mr. Pepin. At this Feb. 13 meeting, I was asked to conceal the cost data from the legislature and the public. I was quizzed about where I got it and to whom it had been sent to. I was told by Mr. Pepin that it put him "in a bad position" because AOC and the Supreme Court had already decided there would be no costs. I was told to not further distribute this cost data.

Mr. Pepin has retaliated against me because I blew the whistle on his improper and illegal acts, and further, he has discriminated against me on the basis of my age and gender. The harassment and hostile work environment to which I have been subjected, up to and including the proposed termination of my employment, are retaliation for me having exposed Mr. Pepin's illegal acts and because Mr. Pepin wanted to get rid of me because of his illegally-motivated age and gender discrimination, because I was the older woman who dared to stand up to his illegal misconduct.

Mr. Pepin's refusal to incorporate the valid and true cost impacts of the Senate Bill was an illegal act. It prevented the legislature and the public from knowing the true costs of the legislation and the court closures it would cause. He compelled me to participate in his illegal activity by demanding that I not further distribute those cost impacts, also an illegal act. He thought that I would be compliant because I am an older woman whom he thought he could manipulate because of my age and gender, as he saw himself as the dominate male as head of the Administrative Office of the Courts. He thought that I, because of my age and gender, was an easy target to silence, and he therefore conjured up false accusations (illegal pretexts) against me and has now terminated my employment, because I am an older woman who dared to stand up to him and in retaliation for blowing the whistle on his illegal acts.

The proposed termination action against me had nothing to do with any wrongdoing on my part and everything to do with the fact that I am an older woman who dared to stand up to the AOC's male-dominated hierarchy for what I believed was right, and for the rights of my stakeholders, the municipal courts, and because I refused to collude with or succumb to Mr. Pepin while he engage in improper and illegal activities to conceal the true costs of municipal court closures per SB173 from the legislature.

I refused to participate when Mr. Pepin attempted to bully me and demanded that I support Senate Bill 173, knowing that I, along with the municipal court community, believed that passage of the bill would result in harm to municipalities and municipal courts, with the burden of that harm – reduced access to justice being one example – falling squarely on the shoulders of citizens in smaller municipalities who already suffer from the lack of services in their communities, and often, from poverty.

Mr. Pepin's intent to illegally terminate me was further signaled when I was cut off from my work email access immediately after delivery of the proposed termination letter on July 8 and was instructed to return equipment and collect my personal items by July 12. Thus indicating that the "proposed action" was, in fact, final, regardless of any response I might be able to provide.

It is clear that I was being discriminated against because of my gender and age, and in retaliation for being an older female whistleblower.

Please see my detailed account in the produced Response to Proposed Termination Letter dated July 8, 2019, and corresponding Proposed Termination Letter incorporated herein.

EEOC Form 5 (11/09)

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented To: Agency(ies) Charge No(s):

☐ FEPA

☐ EEOC

New Mexico Dept of Workforce Solutions, Human Rights Bureau and EEOC

State or local Agency, if any

THE PARTICULARS ARE *(If additional paper is needed, attach extra sheet(s))*:

Also see emails between my attorney, Merit Bennett, and Respondent Pepin produced herewith, wherein Pepin tacitly and otherwise admits the discrimination and retaliation that he perpetrated against me.

Respondents' reasons for Adverse Action: Please see my detailed account in the attached Response to Proposed Termination Letter dated July 8, 2019, and corresponding Proposed Termination Letter incorporated herein.

Statement of Discrimination: I believe that I have been discriminated against because of my gender (female), age (63) and retaliated against for being a whistleblower, in violation of Title VII of the Civil Rights Act of 1964, as amended, and in violation of the New Mexico Whistleblower Protection Act.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the above is true and correct.

9/4/19

Date

Charging Party Signature

NOTARY – *When necessary for State and Local Agency Requirements*

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
(month, day, year)

HRB # 19-09-27-0362

Department of Workforce Solutions
Human Rights Bureau
1596 Pacheco Street, Suite 103, Santa Fe, NM 87505
Phone: (505) 827-6838 Fax: (505) 827-6878

NMAC 9.1.1.8(I) | **Order of Non-Determination**

April 28, 2020

Merit Bennett
The Bennett Law Group LLC
460 St. Michaels Drive, Ste.703
Santa Fe, NM 87505

Re: April Sessions vs. NM Administrative Office of the Courts/Arthur Pepin
EEOC # 39B-2019-01161

Dear Ms. Sessions:

As authorized by Section 28-1-10 (D) of the New Mexico Human Rights Act and the Work Sharing Agreement between the Equal Employment Opportunity Commission and the New Mexico Human Rights Bureau, this letter constitutes an **Order of Non-Determination** as to your complaint. In accordance with *Mitchell-Carr, Smith, Vaughn and Herrera v. Office and Professional Employees International Union Local 251*, 1999-NMSC-025, ¶ 10, 127 N.M. 282, this Order of Non-Determination is issued to afford you the right to pursue your complaint under the Human Rights Act in state district court.

By issuing this Order of Non-Determination, the Bureau has closed this Charge administratively, *with prejudice*. Therefore, you may not file this complaint again with this Bureau. You may obtain a new trial however, by appealing this Order of Non-Determination to the proper district court. According to Section 28-1-13 (A) of the New Mexico Human Rights Act, **you have ninety (90) days** from the date of service of this Order of Non-Determination to file notice of appeal in the district court of the county where the alleged discriminatory practice occurred or where the respondent does business.

The Bureau should not be named as a party to the appeal, unless you have an independent and separate claim against the Bureau. Section 28-1-13 (A) of the Act also requires that you serve a copy of the notice of appeal personally or by certified mail, return receipt requested, at the last known address of all parties. You also must serve a copy of the notice of appeal on the Bureau

Department of Workforce Solutions
Human Rights Bureau
1596 Pacheco Street, Suite 103, Santa Fe, NM 87505
Phone: (505) 827-6838 Fax: (505) 827-6878

office in Santa Fe. To properly serve the parties, you must comply with any other service of process requirements set forth in the New Mexico Rules of Civil Procedure at 1-004.

If you do not timely file a notice of appeal with the appropriate district court, and if you do not properly serve the notice, your right to appeal this order of non-determination to the district court will expire.

If you have any question concerning this Order, contact the Human Rights Bureau.

Dr. Deborah Williamson-Scott
Deborah Williamson, Ph.D.
Labor Relations Director

cc: Steve Shanor, Attorney

U.S. Department of Justice
Civil Rights Division
NOTICE OF RIGHT TO SUE WITHIN 90 DAYS

VIA EMAIL

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

June 16, 2020

Ms. April Sessions
c/o Merit Bennett, Esquire
The Bennett Law Group
460 St. Michaels Drive
Suite 703
Santa Fe, NM 87505

Re: EEOC Charge Against New Mexico Administrative Office of the Courts, et al.
No. 39B201901161

Dear Ms. Sessions:

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 Phoenix District Office, Phoenix, AZ.

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 /s/ Karen L. Ferguson
Karen L. Ferguson
Supervisory Civil Rights Analyst
Employment Litigation Section

cc: Phoenix District Office, EEOC
New Mexico Administrative Office of the Courts, et al.

EEOC Form 161-B (11/16)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

NOTICE OF RIGHT TO SUE *(ISSUED ON REQUEST)*

To: **April Sessions**
2808 Arizona Street Ne
Albuquerque, NM 87110

From: **Phoenix District Office**
3300 North Central Ave
Suite 690
Phoenix, AZ 85012

☐ *On behalf of person(s) aggrieved whose identity is CONFIDENTIAL (29 CFR §1601.7(a))*

EEOC Charge No.	EEOC Representative	Telephone No.
39B-2019-01161	**Robin Campbell, State, Local & Tribal Program Manager**	**(602) 661-0041**

(See also the additional information enclosed with this form.)

NOTICE TO THE PERSON AGGRIEVED:

Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act (ADA), or the Genetic Information Nondiscrimination Act (GINA): This is your Notice of Right to Sue, issued under Title VII, the ADA or GINA based on the above-numbered charge. It has been issued at your request. Your lawsuit under Title VII, the ADA or GINA **must be filed in a federal or state court WITHIN 90 DAYS of your receipt of this notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

☐ More than 180 days have passed since the filing of this charge.

☐ Less than 180 days have passed since the filing of this charge, but I have determined that it is unlikely that the EEOC will be able to complete its administrative processing within 180 days from the filing of this charge.

☐ The EEOC is terminating its processing of this charge.

☐ The EEOC will continue to process this charge.

Age Discrimination in Employment Act (ADEA): You may sue under the ADEA at any time from 60 days after the charge was filed until 90 days after you receive notice that we have completed action on the charge. In this regard, **the paragraph marked below applies to your case:**

☒ The EEOC is closing your case. Therefore, your lawsuit under the ADEA **must be filed in federal or state court WITHIN 90 DAYS of your receipt of this Notice.** Otherwise, your right to sue based on the above-numbered charge will be lost.

☐ The EEOC is continuing its handling of your ADEA case. However, if 60 days have passed since the filing of the charge, you may file suit in federal or state court under the ADEA at this time.

Equal Pay Act (EPA): You already have the right to sue under the EPA (filing an EEOC charge is not required.) EPA suits must be brought in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

If you file suit, based on this charge, please send a copy of your court complaint to this office.

On behalf of the Commission

Elizabeth Cadle,
District Director

June 16, 2020
(Date Mailed)

Enclosures(s)

cc: **NM ADMINISTRATIVE OFFICE OF THE COURTS**
237 Don Gaspar
Santa Fe, NM 87501

Merit Bennett
THE BENNETT LAW GROUP LLC
460 St. Michael's Drive, Suite 703
Santa Fe, NM 87505

Enclosure with EEOC
Form 161-B (11/16)

INFORMATION RELATED TO FILING SUIT UNDER THE LAWS ENFORCED BY THE EEOC

*(This information relates to filing suit in Federal or State court under Federal law.
If you also plan to sue claiming violations of State law, please be aware that time limits and other provisions of State law may be shorter or more limited than those described below.)*

PRIVATE SUIT RIGHTS -- Title VII of the Civil Rights Act, the Americans with Disabilities Act (ADA), the Genetic Information Nondiscrimination Act (GINA), or the Age Discrimination in Employment Act (ADEA):

In order to pursue this matter further, you must file a lawsuit against the respondent(s) named in the charge **within 90 days of the date you *receive* this Notice**. Therefore, you should **keep a record of this date**. Once this 90-day period is over, your right to sue based on the charge referred to in this Notice will be lost. If you intend to consult an attorney, you should do so promptly. Give your attorney a copy of this Notice, and its envelope, and tell him or her the date you received it. Furthermore, in order to avoid any question that you did not act in a timely manner, it is prudent that your suit be filed **within 90 days of the date this Notice was *mailed* to you** (as indicated where the Notice is signed) or the date of the postmark, if later.

Your lawsuit may be filed in U.S. District Court or a State court of competent jurisdiction. (Usually, the appropriate State court is the general civil trial court.) Whether you file in Federal or State court is a matter for you to decide after talking to your attorney. Filing this Notice is not enough. You must file a "complaint" that contains a short statement of the facts of your case which shows that you are entitled to relief. Courts often require that a copy of your charge must be attached to the complaint you file in court. If so, you should remove your birth date from the charge. Some courts will not accept your complaint where the charge includes a date of birth. Your suit may include any matter alleged in the charge or, to the extent permitted by court decisions, matters like or related to the matters alleged in the charge. Generally, suits are brought in the State where the alleged unlawful practice occurred, but in some cases can be brought where relevant employment records are kept, where the employment would have been, or where the respondent has its main office. If you have simple questions, you usually can get answers from the office of the clerk of the court where you are bringing suit, but do not expect that office to write your complaint or make legal strategy decisions for you.

PRIVATE SUIT RIGHTS -- Equal Pay Act (EPA):

EPA suits must be filed in court within 2 years (3 years for willful violations) of the alleged EPA underpayment: back pay due for violations that occurred **more than 2 years (3 years) before you file suit** may not be collectible. For example, if you were underpaid under the EPA for work performed from 7/1/08 to 12/1/08, you should file suit before 7/1/10 – *not* 12/1/10 -- in order to recover unpaid wages due for July 2008. This time limit for filing an EPA suit is separate from the 90-day filing period under Title VII, the ADA, GINA or the ADEA referred to above. Therefore, if you also plan to sue under Title VII, the ADA, GINA or the ADEA, in addition to suing on the EPA claim, suit must be filed within 90 days of this Notice and within the 2- or 3-year EPA back pay recovery period.

ATTORNEY REPRESENTATION -- Title VII, the ADA or GINA:

If you cannot afford or have been unable to obtain a lawyer to represent you, the U.S. District Court having jurisdiction in your case may, in limited circumstances, assist you in obtaining a lawyer. Requests for such assistance must be made to the U.S. District Court in the form and manner it requires (you should be prepared to explain in detail your efforts to retain an attorney). Requests should be made well before the end of the 90-day period mentioned above, because such requests do not relieve you of the requirement to bring suit within 90 days.

ATTORNEY REFERRAL AND EEOC ASSISTANCE -- All Statutes:

You may contact the EEOC representative shown on your Notice if you need help in finding a lawyer or if you have any questions about your legal rights, including advice on which U.S. District Court can hear your case. If you need to inspect or obtain a copy of information in EEOC's file on the charge, please request it promptly in writing and provide your charge number (as shown on your Notice). While EEOC destroys charge files after a certain time, all charge files are kept for at least 6 months after our last action on the case. Therefore, if you file suit and want to review the charge file, **please make your review request within 6 months of this Notice**. (Before filing suit, any request should be made within the next 90 days.)

IF YOU FILE SUIT, PLEASE SEND A COPY OF YOUR COURT COMPLAINT TO THIS OFFICE.