

IN THE IOWA DISTRICT COURT FOR SCOTT COUNTY

<p>LYNN WASHBURN-LIVINGSTON,</p> <p>Plaintiff,</p> <p>vs.</p> <p>CITY OF DAVENPORT, IOWA and CORRIN SPIEGEL, individually,</p> <p>Defendants.</p>	<p>CASE NO. CL</p> <p>PETITION AT LAW AND JURY DEMAND</p>
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COMES NOW the Plaintiff, Lynn Washburn-Livingston (hereinafter “Plaintiff” or “Washburn-Livingston”), in support of her Petition at Law against Defendants City of Davenport, Iowa (hereinafter “the City”) and Corrin Spiegel (hereinafter “Spiegel”), states as follows:

I. INTRODUCTION

1. This is an action by the Plaintiff against the Defendants alleging that Plaintiff was discriminated against, harassed, retaliated against, and terminated because of her sex and age, which created a hostile work environment, in violation of the Iowa Civil Rights Act, Iowa Code Chapter 216. Plaintiff further alleges that Defendants disclosed personal information in violation her right to privacy and that Defendants intentionally inflicted and caused her emotional distress.

II. PARTIES

2. Plaintiff was at material times hereto a resident of Davenport, Iowa, and an employee of Defendants.

3. Defendant City of Davenport, Iowa is organized under the laws of the State of Iowa, doing business in Scott County, Iowa.

4. Defendant Spiegel, upon information and belief, was at all material times hereto a resident of Scott County, Iowa and employed by the City of Davenport, Iowa.

III. JURISDICTION AND VENUE

5 This Court has jurisdiction over this matter as the value exceeds the small claims jurisdictional amount.

6. Venue is appropriate in this court as the Defendants are doing business in Davenport, Scott County, Iowa.

IV. PROCEDURAL PREREQUISITES

7. Plaintiff timely filed her administrative complaint with the Iowa Civil Rights Commission and was issued a right to sue letter.

V. FACTS

8. Plaintiff was employed by the City from October 3, 2011, until the date Defendants terminated her employment on July 27, 2017.

9. At the time Plaintiff was fired she was 59-years old.

10. Plaintiff was hired by the City as the Fire Chief for the Davenport Fire Department.

11. As Fire Chief for the Davenport Fire Department, Plaintiff is in charge of the Davenport Fire Department and all of its employees.

12. Spiegel was employed by the City, named interim City Administrator in July of 2015, and started as City Administrator in July of 2016.

13. As City Administrator, Spiegel was Plaintiff's direct supervisor.

14. Spiegel subjected Plaintiff to frequent harassment and bullying.

15. The harassment and bullying that Plaintiff was subjected to included:

- a. ignoring her;;
- b. giving her the silent treatment;
- c. making critical remarks about Plaintiff to Plaintiff's subordinates;
- d. belittling or degrading Plaintiff in front of peers and elected officials;
- e. assigning job duties that were part of Plaintiff's ordinary duties to others;
- f. circumventing Plaintiff by directing Plaintiff's subordinates; and
- g. making false accusations about Plaintiff.

16. During weekly department head meetings, Spiegel would not greet or speak to Plaintiff unless Plaintiff spoke to her first.

17. On or about February 2, 2016, at a department head bowling event, Spiegel refused to speak with Plaintiff but interacted with others at the event.

18. During the City Administration open house in December of 2016, Spiegel ignored Plaintiff but greeted Plaintiff's two Assistant Chiefs. Spiegel continued to visit with Plaintiff's staff and never spoke to Plaintiff.

19. At the end of December 2016, Plaintiff found a package on her work desk that had been sent anonymously through the mail. Inside the package was a note that read, "Eat a bag of dicks," as well a small package of gummy, penis-shaped candies.

20. Plaintiff reported the incident to human resources the first week of January 2017. The Human Resourced Director suggested that Plaintiff file a police report and on the same date set-up a meeting between Plaintiff, the Human Resources Director, and representatives from the Davenport Police, including the Chief and Assistant Chief.

21. On March 13, 2017 Plaintiff made a formal report of the same incident to Spiegel and legal counsel for the City who informed Plaintiff that an internal investigation would be conducted.

22. From the beginning of 2017, Spiegel began circumventing the fire department chain of command by talking directly with Plaintiff's subordinate assistant chiefs in order to schedule meetings, conduct meetings without Plaintiff, and exclude Plaintiff from projects and decision-making.

23. During March or April of 2017, Plaintiff became aware that Spiegel's assistant, Mallory Merritt, then approximately 29 years of age, was scheduling consultant visits and ride-alongs with fire department personnel without informing Plaintiff. Merritt had no experience in fire-fighting, let alone managing a major fire department.

24. Plaintiff told Merritt that she, the Fire Chief, needed to be informed of events impacting her department. Merritt's response was condescending and indicated Merritt did not intend to comply with Plaintiff's request.

25. Plaintiff's assistant chiefs later got phone calls from Spiegel asking why Plaintiff had been so "shitty," Plaintiff believes related to her admonition to Merritt about being kept in the loop.

26. During April and May of 2017, an operational study of fire and police departments was being conducted by Spiegel's assistant who met with Plaintiff's assistant chief, rather than Plaintiff, effectively excluding her from the project.

27. In the months leading up to Independence Day 2017, Plaintiff was communicating with fire chiefs from across the state in order to prepare a comprehensive report for the Davenport City Council. At a special meeting of the city council, scheduled regularly and for

public discussion, the issue of fireworks was on the agenda. During the meeting Spiegel's assistant commanded the presentation, making it clear that the assistant had been tasked with a project that was Plaintiff's responsibility as fire chief.

28. On or about May 15, 2017, Plaintiff overheard fire department staff discussing a meeting they were to attend that day. Plaintiff asked the staff about the meeting and they informed her the meeting was scheduled to discuss the fire department's transition to a new record management system.

29. The transition to a new record management system was a project in which Plaintiff had been intimately involved throughout and a meeting at this critical juncture should have included Plaintiff.

30. Plaintiff attended the meeting despite the fact that she had not been invited and immediately became aware that Merritt had organized and was running the meeting.

31. Plaintiff learned during the meeting that Merritt and others in city staff had made decisions impacting the fire department without her knowledge or input. Plaintiff voiced concern about being left out of the loop on issues discussed at the meeting which caused Merritt to act defensively because she had been questioned again.

32. On or about May 16, 2017, Plaintiff attended a City Council management update because the topic of updated fire codes was on the agenda. Plaintiff attended the meeting and was prepared to give the update. When the issue of fire codes came up, Spiegel asked Merritt to give the fire codes update—an issue that would ordinarily be discussed by the Fire Chief or Fire Marshall, not an untrained assistant to the City Manager.

33. On or about May 25, 2017, Spiegel and Merritt came to the administrative offices of the fire department to present a birthday cake to one of the assistant chiefs. When they arrived,

an announcement was made to invite all the staff in or around the area to come to the kitchen and celebrate that assistant chief's birthday. While there, Spiegel ignored Plaintiff even when standing right by her. One of Plaintiff's assistant chiefs later remarked that it was clear Spiegel was ignoring Plaintiff.

34. On or about June 14, 2017, Plaintiff conducted a work plan meeting with Spiegel. In the meeting, Spiegel accused Plaintiff of being insubordinate several months prior, not getting along with other department heads, and being away from Davenport too much for professional development.

35. Plaintiff denied the accusations as false, stated that Spiegel's alleged concerns had never been brought to Plaintiff's attention or documented in Plaintiff's personnel file.

36. In the same meeting, Spiegel informed Plaintiff that, due to these perceived performance failures, Plaintiff was being stripped of her duties as Fire Chief.

37. On June 15, 2017 Spiegel presented Plaintiff a succession agreement requesting Plaintiff to resign as Fire Chief.

38. Plaintiff told Spiegel she was going to have an attorney review the document, but her attorney was unavailable for the next twelve days.

39. Spiegel told Plaintiff that twelve days was unreasonable but relented.

40. Beginning in late June, Plaintiff's attorney began negotiating a potential resignation as Fire Chief.

41. On or about July 5, 2017, Plaintiff attended a Committee of the Whole meeting where a member of the committee asked for the fire staff to explain a street beautification project for Central Fire Station. When Plaintiff stood up to present her prepared explanation, Spiegel

stated that a Public Works staff member, not Plaintiff, would explain the project to the committee.

42. On or about July 18, 2017, Plaintiff attended another City Council management update because the topic of fireworks was being discussed. As Chief, Plaintiff again had considerable data and information prepared, but Merritt once again was asked to give the presentation she was substantially less qualified than the Fire Chief or Fire Marshall to give.

43. On or about July 19, 2017, Plaintiff was presented with what purported to be a final succession agreement in which Plaintiff would agree to resign from her position as Fire Chief.

44. On July 24, 2017, Plaintiff submitted a formal complaint to the Human Resources Director outlining Spiegel's conduct and alleging harassment and other bad behavior which undermined Plaintiff and made it impossible for Plaintiff to do her job.

45. On the same date, one hour after Spiegel was informed that Plaintiff would not sign the succession agreement, Plaintiff was placed on paid administrative leave.

46. Spiegel emailed Plaintiff informing her that she was being placed on administrative leave. Spiegel also informed Plaintiff in the same email she was "providing [Plaintiff] with the opportunity to meet . . . to consider your continued employment" to be held on July 27.

47. Plaintiff responded to the email stating that she would be out of town on the 27th and therefore unavailable to meet.

48. Spiegel knew that Plaintiff would be out of town on July 27 as Plaintiff was attending a planned professional development activity that was on her signed work plan.

49. On the night of July 27, 2017, Plaintiff received a call from the Human Resources Director who asked Plaintiff how she was doing. Plaintiff responded she was “great.” The Human Resources Director then asked if Plaintiff knew that she had been terminated that morning. Plaintiff was unaware that she had been fired.

50. On July 28, 2017, an article announcing Plaintiff’s termination was published in the Quad City Times.

51. On July 31, 2017, Plaintiff, still having not been formally notified of her termination, went to human resources to request copies of the termination documents.

52. In these documents Plaintiff found her termination Notice of Action. The Notice of Action stated Plaintiff was “unfit or unsuitable for continued employment” with no further explanation. The document also stated, “see personnel memo dated 7/27/17.”

53. The personnel memo dated July 27, 2017 states, on “July 24, 2017 [Spiegel] also advised [Plaintiff] that [Spiegel] scheduled a pre-disciplinary meeting with her on Monday, July 27, 2017 at 9 AM . . . providing her an opportunity to discuss her continued employment.”

54. Spiegel never informed Plaintiff that the meeting was “pre-disciplinary,” but rather considered it “an opportunity to meet.”

55. The personnel memo dated July 27, 2017 is the sole disciplinary document in Plaintiff’s personnel file. Further, Plaintiff’s personnel file contained no other documented concerns during her five years of employment.

56. After Plaintiff’s termination, an alderman asked Spiegel why Plaintiff was terminated and she stated Plaintiff was unfit or unsuitable for continued employment and that Plaintiff was difficult in meetings. That council member then asked other department heads of

the validity of the accusations against Plaintiff and each department head, on information and belief, disputed the accusations.

57. One department head is quoted in the Quad City Times stating, “She was very professional in an unprofessional environment.” That article was amended the same day by deleting the comment.

58. Over the course of several months during the relevant timeframe, Spiegel was reassigning Plaintiff’s administrative duties to Spiegel’s assistant without informing Plaintiff.

59. In the year before Plaintiff’s termination, two coworkers, the Public Works Director and the Information Technology Director, both in their 50s, were removed from their positions by Spiegel.

60. Spiegel used similar tactics, including bullying and undermining them in front of their subordinates, to remove them from office.

61. Both directors were replaced by people in their 30s.

62. After Plaintiff’s termination, the Department Director of Human Resources, a 40-year-old female, had her role restructured so that she was subordinate to a younger male with no Human Resource education or experience.

63. Around the same time the Communications Director, a 59-year-old female who held the position for twenty years was demoted and had her salary reduced. This Director’s subordinate was reassigned to report directly to Spiegel’s assistant.

64. None of the demoted or discharged individuals had received any previous disciplinary action.

65. On April 11, 2018, an article entitled “City of Davenport Responds to Former Fire Chief’s Complaint” was published in the Quad City Times.

66. The article included a separate document titled "Position Statement."

67. The position statement was the City's official response to Plaintiff's complaint to the Iowa Civil Rights Commission.

68. The proceedings of the Iowa Civil Rights Commission prior to any administrative hearing are confidential and not available to the public.

69. None of the documents provided to the Iowa Civil Rights Commission by the parties constitute a public document or record.

70. The City's position statement was provided to the Iowa Civil Rights Commission in response to the Commission's questionnaire sent to both Plaintiff and the City by the Iowa Civil Rights Commission.

71. Among the documents included in the position statement, which was available for public download in its entirety on the Quad City Times website, were exhibits, allegations of misconduct, correspondence, interviews, disciplinary action, and a synopsis of Plaintiff's alleged misconduct.

72. These documents, taken collectively, represent personal information in confidential personnel records, none of which would have been available to the public.

73. The documents were compiled as a means to justify Plaintiff's termination and they did not express Plaintiff's side of the story.

74. None of the documents published were composed of or reflected Plaintiff's submissions to the Civil Rights Commission.

75. The documents included in the position statement and published are exempt from disclosure under Iowa Code Chapter 22.

76. Such documents were not authorized for release to the public by any rule or policy of the Iowa Civil Rights Commission.

77. Subsequent to her termination from the City of Davenport, Plaintiff was identified as a finalist for two positions, Battle Creek, Michigan and Ames, Iowa Fire Chief.

78. While Plaintiff was being considered for the positions, numerous articles in the Quad City Times referenced Plaintiff's ongoing legal situation and specifically made mention of accusations from the position statement released illegally by the City of Davenport.

79. On August 16, 2018, Battle Creek informed Plaintiff she was not selected and on August 27, 2018, the City of Ames announced that Plaintiff was not selected for its fire chief position.

80. Despite persistent efforts—in excess of twenty two applications--to find a new job, Plaintiff has been unable to gain employment with another fire department since July 28, 2017.

81. As a proximate result of Defendants' conduct as outlined above, Plaintiff has been harmed and requests relief as set forth in more detail below.

VI. CAUSES OF ACTION

COUNT I

AGE DISCRIMINATION IN VIOLATION OF THE IOWA CIVIL RIGHTS ACT, IOWA CODE CHAPTER 216

82. Plaintiff incorporates paragraphs 1 through 81 of this Petition as if fully set forth herein.

83. Under the Iowa Civil Rights Act, it is unlawful for a person, including an employer to discriminate against an employee on the basis of age.

84. Defendants violated the Iowa Civil Rights Act and discriminated against Plaintiff with respect to the terms and conditions of her employment by discharging her from employment, because of her age.

85. As a proximate result of Defendant's actions, as outlined above, Plaintiff has in the past and will in the future suffer mental and emotional harm, anguish, humiliation, embarrassment, lost wages and benefits, and lost earning capacity.

86. Plaintiff requests relief as more fully set forth below.

COUNT II

SEX DISCRIMINATION AND SEXUAL HARASSMENT IN VIOLATION OF THE IOWA CIVIL RIGHTS ACT, IOWA CODE CHAPTER 216

87. Plaintiff incorporates paragraphs 1 through 86 of this Petition as if fully set forth herein.

88. Under the Iowa Civil Rights Act, it is unlawful for a person, including an employer to discriminate against an employee on the basis of her sex, either by engaging in disparate treatment based upon sex or by creating a sexually hostile workplace.

89. Plaintiff was sexually harassed, subjected to a hostile work environment, and terminated from her position as Fire Chief because of her sex.

90. As a proximate result of Defendants' actions, as outlined above, Plaintiff has in the past and will in the future suffer mental and emotional harm, anguish, humiliation, embarrassment, lost wages and benefits, and lost earning capacity.

91. Plaintiff requests relief as more fully set forth below.

COUNT III

RETALIATION IN VIOLATION OF THE IOWA CIVIL RIGHTS ACT, IOWA CODE CHAPTER 216

92. Plaintiff incorporates paragraphs 1 through 91 of this Petition as if fully set forth herein.

93. Under the provisions of the Iowa Civil Rights Act, it is unlawful for a person, including an employer to retaliate against an employee because she engaged in activity protected under the Iowa Civil Rights Act.

94. Plaintiff engaged in protected activity by complaining about a hostile environment and disparate treatment.

95. Defendants retaliated against Plaintiff by reassigning her official duties, bullying her, sending her sexually explicit material, placing her on administrative leave, and eventually terminating her because she engaged in protected activity.

96. As a proximate result of Defendants' actions, as outline above, Plaintiff has in the past and will in the future suffer mental and emotional harm, anguish, humiliation, embarrassment, lost wages and benefits, and lost earning capacity.

97. Plaintiff requests relief as more fully set forth below.

COUNT IV

INVASION OF PRIVACY

98. Plaintiff incorporates paragraphs 1 through 97 of this Petition as if fully set forth herein.

99. Iowa Code § 22.7 makes it unlawful for public entities to release personal information contained in confidential personnel records for public viewing.

100. Iowa Code § 22.7 requires that personal information in confidential records of government bodies relating to identified or identifiable individuals who are officials, officers, or employees of those government bodies be kept confidential.

101. Plaintiff was an employee of the City of Davenport.

102. The documents released by Defendants to the Quad City Times and subsequently published on April 11, 2018, constitute confidential records under the statute.

103. Defendants were not authorized to release Plaintiff's confidential records.

104. Plaintiff had a right to expect and maintain her privacy in documents and information kept by the city and protected by Iowa law.

105. Defendants' conduct in releasing to the general public information and facts about Plaintiff, without her consent or approval, constitutes an unreasonable and offensive invasion of Plaintiff's right to privacy.

106. Defendant Spiegel's actions causing invasion of Plaintiff's privacy were undertaken with actual malice or willful, wanton, and reckless misconduct.

107. As a proximate result of Defendants' actions, as outlined above, Plaintiff has in the past and will in the future suffer mental and emotional harm, anguish, humiliation, embarrassment, lost wages and benefits, and lost earning capacity.

108. Plaintiff requests relief as more fully set forth below.

COUNT V

BLACKLISTING OF EMPLOYEE IN VIOLATION OF IOWA CODE CHAPTER 730

109. Plaintiff incorporates paragraphs 1 through 108 of this Petition as if fully set forth herein.

110. Under Iowa Code Chapter 730, it is unlawful for an employer to "blacklist" a former employee.

111. Defendants terminated Plaintiff's employment and thus she became a former employee of Defendants.

112. Thereafter by word, writing, or other means Defendants prevented or attempted to prevent Plaintiff from obtaining other employment.

113. Plaintiff has been unable to gain employment with another fire department since July 28, 2017.

114. Defendants knew or should have known their actions would prevent Plaintiff from obtaining future employment, future comparable employment, or future employment in her practiced field.

115. As a proximate result of Defendants' actions, as outlined above, Plaintiff has in the past and will in the future suffer mental and emotional harm, anguish, humiliation, embarrassment, lost wages and benefits, and lost earning capacity.

116. Plaintiff requests relief as more fully set forth below.

COUNT VI

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

117. Plaintiff incorporates paragraphs 1 through 116 of this Petition as if fully set forth herein.

118. The documents released by Defendants to the Quad City Times and subsequently published on April 11, 2018, constitute confidential records under Iowa Code chapter 22.

119. Defendants were aware that release of confidential records and information was not authorized by Plaintiff and would be embarrassing to Plaintiff.

120. Defendants' conduct was outrageous and done with the intent to or reckless disregard of the probability of causing Plaintiff emotional distress.

121. As a proximate result of Defendants' actions, as outlined above, Plaintiff has in the past and will in the future suffer mental and emotional harm, anguish, humiliation, embarrassment, lost wages and benefits, and lost earning capacity.

122. Defendant Spiegel's actions in causing Plaintiff emotional distress were undertaken with actual malice, or willful, wanton, and reckless misconduct.

123. Plaintiff requests relief as more fully set forth below.

VII. RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter a judgment and seeks the following relief:

- A. An adjudication that Plaintiff's discharge from employment was an unfair and/or discriminatory practice within the meaning of Iowa Code § 216;
- B. An award of back pay and benefits pursuant to Iowa Code chapter 216;

- C. An adjudication that reinstatement is not appropriate and in lieu thereof an award of reasonable front pay and benefits pursuant to Iowa Code chapter 216;
- D. An award of compensatory damages, including emotional pain, suffering, inconvenience and mental anguish, pursuant to Iowa Code chapter 216, and as allowed by law for Plaintiff's common law claims;
- E. An award of treble damages, as permitted pursuant to Iowa Code § 730.2;
- F. An award of pre-judgment interest as provided by law;
- G. An award of offset, as an additional appropriate remedy pursuant to the Iowa Civil Rights Act for any and all income taxes due from her on account of the other damages and/or recovery awards herein;
- H. An adjudication that Plaintiff is entitled to equitable relief in the form of orders and injunctive relief requiring Defendant to do the following:
 - (i) Provide training to supervisory employees regarding how to effectively avoid discrimination in employment on the basis of sex and age and to report to the court once every six months for a period of three years on the training provided and on its effectiveness;
 - (ii) Require that all disciplinary decisions regarding employees employed by Defendant in Iowa be reviewed by an independent EEO agency for compliance with EEO laws and regulations prior to implementation;
 - (iii) Monitor the environment in workplaces operated by Defendant in Iowa to assure that employees are not being treated unfairly based on sex and age, and report annually to the court for a period of three years on its monitoring; and
 - (iv) Test and evaluate supervisory employees working for Defendant in Iowa to assure that they do not exhibit or act upon bias against the sex and age or bigoted attitudes and opinions, do not tolerate disparate treatment based on sex and age, by their subordinates, and report annually for a period of three years on its testing and evaluating.
- I. An adjudication that Plaintiff is entitled to reasonable attorney fees, as well as interest allowed by law and the costs of this action;
- J. An award of punitive damages against Corrin Spiegel, individually; and
- K. Award such other and additional relief as the Court may deem just and proper.

VIII. JURY DEMAND

Plaintiff hereby demands a jury trial for all claims alleged herein.

Respectfully submitted,

/s/ Michael J. Carroll/Megan C. Flynn
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