

STATE APPEAL BOARD CLAIM FORM AND AFFIDAVIT

CLAIM NUMBER

(for Appeal Board use only)

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Submit to: STATE APPEAL BOARD Department of Management State Capitol, Room 12 Des Moines, Iowa 50319

DATE RECEIVED (for Appeal Board use only)

Directions: A TORT CLAIM MUST submit 3 complete sets of documents, an original claim form with any attachments and two claim form copies with attachments for EACH, CLAIMANT and NOTARY public must sign. A GENERAL CLAIM MUST submit 2 complete sets of documents, an original and one copy with attachments for EACH. Please see specific directions on the back of this form that pertain to the type of claim you are filing.

1. NAME OF CLAIMANT (please print full name) Polly Carver Kimm 2. DATE OF BIRTH 05/09/1963

3. ADDRESS OF CLAIMANT (Street, City, State, Zip Code) 4. TELEPHONE: Home () Business () Email Address

5. CLAIMANT'S SOCIAL SECURITY NUMBER OR FEDERAL TAX IDENTIFICATION NUMBER

6. IDENTIFY STATE AGENCY OR DEPARTMENT INVOLVED Iowa Department of Public Health

7. LOCATION OF ACCIDENT/INCIDENT <For Tort Claims Only> Des Moines, Iowa 8. DATE/TIME OF ACCIDENT/INCIDENT 15-Jul-20

9. SELECT TYPE OF CLAIM: place an X in the box (A SEPARATE claim must be filed by each claimant for each of the three types of claims defined below.) (1) GENERAL AMOUNT OF CLAIM (2) TORT CLAIM AGAINST THE STATE (3) TORT CLAIM AGAINST STATE EMPLOYEE(S) Give name and department of employee(s) See Attachment A FOR TORT CLAIMS, INDICATE ONE OF THE FOLLOWING: PROPERTY DAMAGES \$ PERSONAL INJURY \$ 3,000,000.00 WRONGFUL DEATH \$

10. BASIS OF CLAIM (Please provide all the information required on the reverse side of this form. Attach separate sheets if necessary.) See Attachment A

NOTARIAL SEAL IOWA NATHAN VOS Commission No. 808837 My Comm. Expires Feb. 8, 2021

11. NAME, ADDRESS, TELEPHONE # AND EMAIL ADDRESS OF ATTORNEY, IF ONE HAS BEEN RETAINED IN THIS CASE. Thomas J. Duff, 4090 Westown Pkwy, Suite 102, West Des Moines, IA 50266, 515-224-4999, tom@tdufflaw.com

12. ATTORNEY'S SOCIAL SECURITY NUMBER OR FEDERAL TAX IDENTIFICATION NUMBER

I, the claimant, being duly sworn upon oath depose and state that I have read the supplied information and the same is true and correct to the best of my belief. Subscribed and sworn to before me this 24th day of August, 2020. My commission expires FEB. 8, 2021. NOTARY PUBLIC

PARTIES

1. At all times material hereto, Plaintiff Polly Carver-Kimm (“Polly”) was a citizen and resident of Polk County, Iowa.

2. At all times material hereto, the State of Iowa was a sovereign state as defined in the Iowa Code with its principal place of business in Des Moines, Polk County, Iowa.

BACKGROUND FACTS

3. Polly was hired in 2007 by the Iowa Department of Public Health (“IDPH”) as the Public Information Officer. Her title changed to Communications Director during her tenure, but she held the same position with the same duties through March 2020.

4. Until March 2020, Polly was in charge of all IDPH communications, including public information requests and COVID-19 related communications.

5. In early March 2020, the State activated emergency protocols because of the COVID-19 pandemic. Those protocols included activating the Emergency Command Center (“ECC”) and the use of ECC email addresses for COVID-19 related communications instead of the normal State of Iowa email addresses.

6. The normal process for complying with open records requests (Iowa Code Chapter 22) for emails is to contact the Office of the Chief Information Officer and request that they compile the emails responsive to the request. The requested documents are then gathered internally from staff. After the emails and documents are compiled, Polly would forward them to Heather Adams, the Assistant Attorney General assigned to the IDPH, for review and redaction. After Ms. Adams completed her review, Polly would produce the approved documents to the requesting party. During the thirteen years that Polly worked for IDPH, the Governor’s office was never involved in this process.

7. On at least one occasion, Pat Garrett told Polly to “hold” the production of records already approved by Ms. Adams. The record in question was a list of questions to be used as part of the Test Iowa website evaluation of whether someone needed to be tested.

8. In early March 2020, Polly was informed by Sarah Reisetter, the Deputy Director of IDPH, that all press releases should go through the Governor’s office.

9. On March 12, 2020, all media inquiries related to COVID-19 were rerouted through Deputy Director Reisetter.

10. On March 13, 2020, Deputy Director Reisetter complained to Polly about the volume of media inquiries related to COVID-19. Polly offered to resume her normal duties. Polly told Reisetter that she had experience with such media inquiries and it was easier for her to reassume this responsibility.

11. Reisetter responded that it may be easy for Polly to handle the inquiries, but it was not easy “for other people.” After this, Amy McCoy, Legislative Liaison for IDPH, began handling COVID-19 related media inquiries. Polly was told this change was made because McCoy was working out of the State Emergency Operations Center (“SEOC”).

12. On March 17, 2020, Polly was moved to the SEOC but was not asked to resume COVID-19 related media responses.

13. In early April 2020, Polly received a request for emails from specific IDPH email addresses relating to COVID-19. The email addresses specified were the state’s normal email addresses, not the ECC email addresses.

14. Polly asked Assistant Attorney General Adams whether the ECC emails should be produced. Ms. Adams eventually confirmed that the ECC emails should be included in response to this specific request. However, the ECC emails were never again searched and responsive

documents in the ECC emails were never again produced. Polly repeatedly inquired of Ms. Adams via email regarding whether the ECC emails should be produced but never received a response.

15. In April 2020, Pat Garrett complained that Polly was posting the daily new case numbers to the IDPH website prior to the Governor's press conference. On April 19, 2020, Polly emailed Reisetter stating that she had only done this once several weeks before. Polly complained to Reisetter that she was being accused of something she didn't do.

16. On April 20, 2020, Gerd Clabaugh (Director of IDPH) told Polly that she was no longer allowed to update the IDPH website.

17. During the week of April 21, 2020, Polly informed her supervisors that a news reporter had brought to her attention the unsanitary working conditions and lack of social distancing at the SEOC. Multiple persons, including Director Clabaugh, demanded the name of the journalist who made this observation. When Polly refused to give the name of the journalist, more assigned job duties were taken from her including being in charge of social media and working with the counties and local government entities.

18. In May 2020, Polly fulfilled an open records request submitted by Iowa Public Radio. Later that month, the New Yorker and USA Today made a very similar request. Polly informed the New Yorker and USA Today that if they slightly modified their requests, she could immediately produce the emails that had already been approved for release to Iowa Public Radio.

19. The New Yorker and USA Today modified their request and later asked Polly to send them all responses to open records requests submitted by other news agencies. Polly did so because this was a common practice in state government. For example, the Department of

Natural Resources posts all public information requests on their website (<https://iowaopenrecords.nextrequest.com/requests>).

20. In late May 2020, the New Yorker began asking questions critical of the State Hygienic Lab referencing the documents produced by Polly. Reisetter sent Polly an email questioning how the New Yorker received those documents. When Polly responded, Reisetter asked whether producing the documents “was even legal.”

21. On June 4, 2020, Polly was no longer allowed to respond to any open records requests, including those dealing with COVID-19.

22. On June 15, 2020, the New Yorker published an article critical of the company running “Test Iowa” utilizing the previously released emails. On June 17, 2020, Polly was no longer allowed to respond to any media inquiries involving COVID-19 or any other infectious disease.

23. Throughout March, April, May and June of 2020, Polly had regular conversations with Karla Dorman (Human Resources). Polly complained to Ms. Dorman that the ongoing removal of her duties and responsibilities amounted to mismanagement and abuse of authority.

24. On July 2 or 3, 2020, Tony Leys with the Des Moines Register asked Polly for the pregnancy termination statistics for the State of Iowa. This is publicly available information routinely produced in the past. Polly gave Mr. Leys the requested information.

25. On July 12, 2020, the Des Moines Register ran a story that showed the number of pregnancy terminations in Iowa had climbed by 25% in 2019 after continuously decreasing for decades. The article attributed the increase to the decision to cease participation in a federally funded family planning program.

26. The Leys article was likely embarrassing to Governor Reynolds who promoted and supported the 2017 plan to expel Planned Parenthood and other abortion providers from family planning programs and replace it with a state financed program.

27. On July 15, 2020, Polly was told, in the midst of an ongoing state and nation-wide pandemic, that she could either resign or be terminated due to “restructuring.” Polly initially chose termination, but agreed to an involuntary resignation after being told that she would forfeit her accumulated vacation time if terminated.

COUNT I
WRONGFUL DISCHARGE IN VIOLATION OF PUBLIC POLICY

COMES NOW the Claimant, Polly Carver-Kimm, and for her cause of action against the State of Iowa states as follows:

28. Polly realleges and incorporates by reference the allegations contained in paragraphs 1 through 27 as if fully set forth herein.

29. Polly was stripped of her duties and later terminated after she made repeated efforts to comply with Iowa’s Open Records law (Chapter 22) by producing documents to local and national media regarding the State of Iowa’s response to the ongoing pandemic.

30. The act of compiling and producing records requested by media outlets and members of the public, pursuant to Iowa Code Chapter 22, was in furtherance of the clear public policy of the State of Iowa to free and open examination of public records even if such examination may cause inconvenience or embarrassment to public officials. Iowa Code §22.8(3)(2020).

31. Polly's termination violates well established public policy of the State of Iowa as defined by statute, regulation and judicial decision, and this public policy is undermined and jeopardized under the circumstances of this case.

32. The State of Iowa stripped Polly of her duties and responsibilities and terminated her employment as a result of her participation in protected activity.

33. The reasons proffered for her discharge are pretextual and the State of Iowa lacked any legitimate reason to terminate her employment.

34. As a direct and proximate result of the actions of the State of Iowa, its agents, servants and employees, Polly has suffered and will continue to suffer loss of wages, benefits, job security and other emoluments of employment and has suffered and will continue to suffer mental anguish, emotional distress and damage to her reputation.

WHEREFORE, Claimant Polly Carver-Kimm requests judgment against the State of Iowa in such an amount as will fully and fairly compensate her for her injuries and damages, for interest as allowed by law, the costs of this action and for such other and further relief as the State Appeal Board deems just and equitable.

COUNT II
VIOLATION OF RIGHT TO FREEDOM OF SPEECH
IOWA STATE CONSTITUTION ARTICLE I, § 7

35. Polly realleges and incorporates by reference paragraphs 1 through 27 as previously set forth herein.

36. The conduct of the State of Iowa as described herein violated Polly's rights under the Iowa Constitution Article I, Section 7 by terminating her for her protected speech.

37. As a direct and proximate result of the actions of the State of Iowa, Polly has suffered and will continue to suffer loss of wages, benefits, job security and other emoluments of employment and has suffered and will continue to suffer mental anguish, emotional distress and damage to her reputation.

WHEREFORE, Claimant Polly Carver-Kimm requests judgment against the State of Iowa in such an amount as will fully and fairly compensate her for his injuries and damages, for interest as allowed by law, the costs of this action and for such other and further relief as the State Appeal Board deems just and equitable.