

May 11, 2022

Dawn Sherman
Human Resources Administrator
720 Central Avenue
Dubuque, IA 52001

Re: Response to Offer of "Last-Chance" Agreement, Complaint of Retaliation, and
Grievance of Termination Decision

Dear Ms. Sherman:

I am writing this letter with three purposes:

1. To reject your offer to sign a "last-chance" agreement and accompanying letters;
2. To reiterate my claim that C.J. May has engaged in unlawful and unethical political retaliation against me; and,
3. To invoke the grievance procedures of the agreement between Dubuque County and the Assistant County Attorneys' Association.

1. The Agreement and Accompanying Documents

I will not sign the "last-chance" agreement or the accompanying letters because they falsely characterize my actions and fail to address the real problems in the County Attorney's Office. I also reject your invitation to characterize that refusal as a resignation. I do not resign from my position with the County and I am prepared to return to work with appropriate safeguards in place to protect me from further harassment by Mr. May.

The "last-chance" agreement falsely characterizes my actions and the situation of the County Attorney's Office in the following ways:

- a. In our meeting on March 15, 2022, I told Mr. May that I thought it was juvenile and contrary to productive work that he and [REDACTED] were exchanging puke emoji texts in reference to me. You sat by as Mr. May denied that happened. I knew it had, and it is imperative that a prosecutor be able to work with the [REDACTED]; so I had a professional conversation with [REDACTED]. In that conversation, [REDACTED] apologized for sending the text.

That conversation was neither contrary to a clear directive nor otherwise inappropriate, and in fact was necessary in order to advance the work of the County Attorney's Office. I only addressed the text messages; it was [REDACTED]

██████████ who brought up concerns about her work product generally. At the end of that conversation, an objective observer would conclude that the working relationship between us had improved. ██████████ and I worked fine together for the next day and a half, until Mr. May encouraged ██████████ to file the unsubstantiated harassment complaint against me.

- b. The agreement makes a general claim of “unsatisfactory performance.” That is false. I would put my performance up against any prosecutor in Dubuque County. I have gotten positive feedback on my job performance from virtually everyone else involved with the criminal justice system.
- c. There was never a scheduled meeting for March 21 with a set time. I had a felony jury trial starting on March 22 and had multiple hearings and trial preparation on March 21, and I told you truthfully that I thought the proposed meeting would be a waste of time. However, a meeting should actually be scheduled before it is considered “missed.” And I did in fact meet with you, Ms. Sherman, on March 21, at approximately 4pm!

All the foregoing acts occurred before Mr. May’s prior reprimand letter to me of March 25, 2022.

2. Political Retaliation

When you and I met on March 21, I told you that I suspected ██████████ complaint had been made at Mr. May’s behest and encouragement. That is a claim I repeated during the investigation in this case, and the investigator specifically told me at the beginning of my interview that she was investigating “my counter-claim.” However, in our meeting on May 10, 2022, you informed me that the only claim investigated was the claim of harassment against me.

I am reiterating my claim now. Mr. May has used his office to harass me and exert pressure on others in the County Attorney’s Office to undermine me. He has directed employees to “find dirt” on me and he encouraged ██████████ to file a complaint of harassment against me. I believe the investigator found evidence of that, but you have said that was not in the scope of the findings you would present to me and you have asserted that I will not be allowed to review the investigator’s report.

Despite a clear conflict of interest, Mr. May improperly attempted to exert influence over the investigation. For example, the investigation was reopened to include witnesses put forward by Mr. May. But the reopening of the investigation did not include interviews of witnesses that I had suggested who had been subject to the same sort of retaliation, as well as other witnesses who were familiar with comments made by ██████████. A formal finding should be made about whether Mr. May has been retaliating against me for political purposes.

3. Grievance

I am invoking the grievance procedure of the agreement between the County and the Assistant County Attorneys' Association. Normally this would start with a complaint to Mr. May, but given his conflicts of interest in this matter, be a futile act (he is CC'd on this letter). Accordingly, I am asking that the Board of Supervisors intervene to halt the unfair labor practices being used against me in these matters.

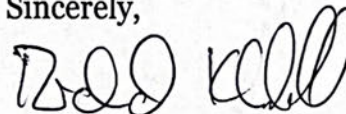
Having my employment with the County terminated without valid cause is a violation of the bargaining agreement. I am prepared to support my claims in whatever presentation for the Board is appropriate, or at arbitration as contemplated under the bargaining agreement.

Conclusion

The County's position to this point has been to defend Mr. May's improper actions rather than shining a light on the true problems in the County Attorney's Office. When I previously went through the grievance procedure because of harassment by Mr. May against me, your ultimate response was to go along with his claim that it wasn't a real grievance because a work place environment free of harassment is "not an explicit term of the bargaining agreement." Now, you have allowed Mr. May to have access to, and to be involved in, an investigation in which he has a clear conflict of interest. You have gone along with a "last-chance" agreement and related apology letters that falsely characterize the situation and defame me.

The oft-heard excuse is that Mr. May "is an elected official, what can we do?" You can start by ensuring that Dubuque County does not condone Mr. May's illegal and improper actions. Sunlight is the best disinfectant, especially for government officials who abuse their positions. I hope that my rejection of the misguided "last-chance" agreement and the use of the grievance procedure will expose Mr. May's improper actions in these matters and begin the process of restoring a proper working environment in the County Attorney's Office.

Sincerely,



Richard W. Kirkendall

Cc: Harley Pothoff, County Supervisor Chair
Ann McDonough, County Supervisor
Jay Wickham, County Supervisor
C.J. May III, County Attorney
Ryan Gallagher, Assistant County Attorneys' Association