



CASHION GILMORE & LINDEMUTH

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Via Email and U.S. Mail

Dave Bronson, Mayor of the Municipality of Anchorage

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Office of the Mayor

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Subject: Wrongful Termination of Anchorage Municipal Manager Amy Demboski
Our Matter No. 10965-1

Mayor Bronson—

My firm and I represent former Municipal Manager Amy Demboski regarding your termination of her employment. For the reasons summarized herein, your decision to terminate her was retaliatory and unlawful. Furthermore, your ongoing behavior following Ms. Demboski’s termination, including slander—and attempts to coerce current municipal employees to slander her reputation using public resources—are compounding her ongoing reputational and financial damages.

This letter is an attempt to educate you regarding the unfortunate, and potentially grave, repercussions of your actions and to provide an opportunity to resolve this matter short of extensive discovery and costly litigation.

Factual Background Related to Ms. Demboski’s Unlawful Termination:

On December 19, 2022 you terminated Ms. Demboski. Immediately following her termination, you instructed executive staff to leak information to the press in a belated attempt to somehow tie Ms. Demboski’s termination to an incident in which she used vulgar language regarding another Municipal employee. However, this story is simply a fig leaf, a pretext that you reverse-engineered to justify Ms. Demboski’s unlawful termination. In fact, we have concrete evidence that Ms. Demboski’s occasional use of strong language was not an issue to you prior to the incident, and that you *specifically confirmed* your desire to have her employment continue even following this statement.

The real story behind Ms. Demboski's termination is that you retaliated against her for doing nothing more than attempting to convince you to cease unlawful and unethical activities using municipal resources. These issues were raised to you verbally on many occasions by Ms. Demboski. Finally, she formalized several of them in an email to you on December 14, 2022. That email triggered your immediate retaliation against her and was the direct cause of her firing. In fact, following the firing you have personally told others *point blank* that this email—in which Ms. Demboski catalogued some of the many legal and ethical issues in your Administration—is “why I fired Amy.”

What follows is a brief and non-exhaustive list of legal and ethical lapses in your actions as Mayor and actions taken with your direction and/or approval:

- **Illegal and improper delegation of Municipal Manager's Contracting Authority to the Purchasing Director**

Municipal Charter grants the Municipal Manager the authority to administer government. While the code does say the mayor can delegate certain authorities, it has always been the practice and interpretation that contract authority is inherent in the administration of government and under the direct authority of the Municipal Manager. You granted the Purchasing Director (Rachelle Alger) unlimited contract signing authority. You did so without Ms. Demboski's consent, and without the approval of the Department of Law. After this delegation was reviewed by the Department of Law on October 18, 2022, you were told this authority was not within your authority to give and you rescinded this delegation.

- **Unlawful contracting**

Sole source (or “no bid”) contracts of \$30,000 or more, and all Lobbyist contracts, require specific approval by the Municipal Assembly. You have personally directed and/or delegated the signing of numerous sole source contracts exceeding \$30,000 without the approval of the Assembly. Because you decided to circumvent Ms. Demboski in executing these contracts, we do not know their exact number. Ms. Demboski asked the Purchasing Director and Chief Financial Officer to allow her to review all such contracts and amendments, but that request was not fulfilled. Based on what knowledge she has been able to obtain, we believe that there could be approximately ten or more such unlawful contracts.

Additionally, there is the specific matter of your “Senior Policy Advisor” Larry Baker's contracts. The Mayor's Office has intentionally executed at least three sole source contracts with Mr. Baker for \$29,500 each in almost immediate succession to one another, with only a three-day break between each. This disingenuous scheme is a clear violation of the law limiting the size of such contracts. We do not understand why you did not simply hire Mr. Baker as a Municipal employee. One possible motivation for this scheme could be to defraud the PERS system—that is, Mr. Baker could act essentially as a Municipal employee, while pretending to be a private contractor,

allowing him to “double dip”—collecting retirement payments and contract payments simultaneously. We learned that you have attempted to “clean up” this issue by having Mr. Baker take the month of January 2023 “off” and then go back on contract. However, this, too, appears to be fraudulent in that Mr. Baker is still meeting with you daily and still has a work computer and an office at City Hall. This so-called “break” appears to be nothing more than another attempt to evade the limit on sole source contracts and to continue to skirt the PERS contribution that would normally be required of a full-time employee.

- **Improper retaliatory termination**

A significant RFP was put out in August of 2021, with two responsive bidders. The RFP scoring panel was chaired by a Municipal employee in the relevant division. A close associate of yours (who is a very close friend of one of the bidders) cornered this employee and told her she needed to “swing” this contract to his friend. This employee was very uncomfortable with this action and she reported it to several people, including her immediate supervisor and the Department of Law. The contract was eventually awarded, and the friend of your close associate did not receive it. At this point your close associate complained to you about the employee who chaired the RFP panel, and you had that employee terminated. Typically, such employment decisions come through Ms. Demboski, but this one did not. She discovered the termination two or three days after the fact.

You subsequently acknowledged to Ms. Demboski that your close associate asked for the termination, so you called the Human Resources director and asked him to arrange it. Ms. Demboski explained to you that your close associate had improperly asked this employee to “swing” the contract to his friend, and that the firing therefore appeared to be clear and improper retaliation for that decision. Ms. Demboski also expressed to you her displeasure with this termination decision being made without her input or that of the terminated employee’s supervisor.

Following this occurrence, you acknowledged to Ms. Demboski on several occasions that you made a mistake and should never have directed this termination.

- **Unlawful termination of fluoridation of Anchorage’s water supply**

Municipal Code requires fluoride be added to Anchorage’s water supply in an amount of not more than 1.3 parts per million.¹ While on a tour of the water treatment facility in Eklutna, you unilaterally directed the fluoride supply to be shut off. Upon your return to City Hall, a staff member who had accompanied you, as well as other employees, came into Ms. Demboski’s office and advised her what had occurred. Ms. Demboski went to your office and asked you about this issue. You confirmed that you directed the shut off. Ms. Demboski advised you of municipal code and explained that it was unlawful and beyond your power to turn off the fluoride supply.

¹ AMC 26.40.050.

Ms. Demboski then immediately contacted the General Manager of AWWU on the phone and directed him to turn the fluoride supply back on. Fortunately, because the fluoride was only off for a few hours, it remained within code requirements, but this was one of many examples of you being unaware of the law, being unwilling to follow the law, or both.

- **Unlawfully directing work on Navigation Center without Assembly authorization**

You and Mr. Baker communicated directly with the Maintenance and Operations Director about the Navigation Center and the progress on its construction. On multiple occasions the M&O Director met directly with you and Mr. Baker about this project. The Bronson Administration has a chain of command, but it was completely ignored regarding the Navigation Center project. These communications circumvented Ms. Demboski, now-Chief of Staff, Adam Trombley,² and Public Works Director, Lance Wilber. It is Ms. Demboski's belief that you and Mr. Baker were pressuring the M&O Director to "get it done" as quickly as possible.

On several occasions Ms. Demboski heard you say "we need to get the concrete poured by October," "we can't wait," "we can't stop once the pour is started," and multiple other references that she later heard mimicked by the M&O Director nearly verbatim. The M&O Director ultimately was the one who signed work orders, but it appears that this action was taken at your specific direction and under pressure from you and Mr. Baker.

Further, Ms. Demboski is aware that you communicated with others expressing knowledge that you were operating outside of Code in starting construction of the navigation center without Assembly approval, but that you also expressed that the M&O Director would ultimately be the one to "take the fall" for the decision.

Additionally, there is video of Mr. Baker on site and supervising the pouring of concrete for the navigation center, further validating your involvement and that of your Senior Policy Advisor.

In September 2022, as soon as Ms. Demboski found out about the status of the project, she immediately (within 24 hours) put the Roger Hickel Contractors contract amendment in front of the Assembly for proper consideration. After the Assembly voted it down, Mr. Baker was still talking to the M&O Director directly, and Ms. Demboski was forced to personally step in and direct the stop work order. Ms. Demboski was forced to go so far as to physically supervise the construction site, along with the Building Official and the Public Works Director to ensure the work was immediately stopped.

At this point the Municipality's liability on this issue is likely between \$3.9-\$4.5 million for work performed at your direction and in knowing violation of Anchorage Municipal Code.

² At the time, Mr. Trombley was Director of Community and Economic Development.

- **Human Resources issues and hostile work environment**

Additionally, your own behavior, and behavior that you encourage and/or condone has created a hostile work environment at City Hall.

You are well known to often discuss confidential personnel matters with, and in front of, Municipal employees having no relationship to the issue or need to know. This behavior also includes discussing such matters with individuals outside the Municipality as well.

You have a very close relationship with two senior staff members. These two staff members have categorized professional administrative staff in the Mayor's Office as "mean girls," behaved unprofessionally towards them, and have attempted to get them fired. In Ms. Demboski's experience these administrative staff were very competent and professional. This conflict seems to have arisen because one of the two senior staff members is known to have an inappropriate relationship with a subordinate. Some of these staff had complained to Ms. Demboski and others about the relationship, which is obvious and makes the staff uncomfortable. Although you told Ms. Demboski she could address the relationship issue with this employee (which she did) it is still occurring—apparently with your tacit approval. Furthermore, you yourself now participate in this behavior, parroting the language and referring to these administrative staff as "mean girls" in the same inappropriate and unprofessional manner.

Such preferential treatment of these two senior staff members is further evidenced by your failure to take any action regarding extremely inappropriate sexualized jokes and comments made by one of these two in the workplace. This behavior even included passing out genitalia-shaped cookies to the staff. Ms. Demboski reported this behavior to you and the Director of Human Resources, yet no action was taken.

Finally, staff has often reported to Ms. Demboski and others that you treat women in the office differently than men. Despite her very senior position, Ms. Demboski acutely experienced such gender discrimination from you herself. For example, on one occasion Ms. Demboski sent an email in which she referred to a male subordinate's email to multiple directors as "suboptimal" in tone and encouraged better communication with a clearer definition of what this subordinate needs. You chastised Ms. Demboski severely for this email. You raised your voice while showing her your hands held at different heights to indicate that—because this subordinate is a man and Ms. Demboski is a woman—the male employee is "up here" and Ms. Demboski is "down there." Two days later you had another meeting with Ms. Demboski in which you criticized her again, telling her that this subordinate employee "is a man" and making clear to Ms. Demboski that she wasn't to speak to a man "that way." You made several subsequent references to this email and Ms. Demboski's use of the word "suboptimal," instructing her that she can't "speak to a man that way" in "this building," an apparent reference to City Hall.

- **Intentional code violations related to use of Sullivan Arena**

As has been covered in the media, with the onset of winter, and given the lack of available options, the Sullivan Arena has again been put to use as a shelter. However, what is not public is that you intentionally pushed to exceed allowable capacity and allowance of a kennel on site, even though these actions would violate code. You circumvented Ms. Demboski in driving towards this outcome because you were well aware that she would object to code violations and/or would advise you that you needed to proactively work with the Assembly to address the issue.

Although this emergency was belatedly and temporarily resolved by the Assembly waiving code requirements, this was an emergency entirely of your own deliberate creation.

- **Unlawful misuse of law enforcement database for personal matter**

You informed Ms. Demboski and several other Municipal employees that on Thanksgiving weekend of 2022 the Anchorage Police Department was called to Mr. Baker's house due to some sort of domestic disturbance. Despite APD being on the scene, you told Ms. Demboski that you went to Mr. Baker's house, armed with a firearm. These actions apparently arose due to the close personal relationship you have with Mr. Baker.

Another disturbing aspect of your bizarre involvement in this incident is that you then went on to personally instruct a Municipal employee to use the Alaska Homeless Management Information System ("HMIS"), a law enforcement database, to investigate the individual involved in this disturbance. This action appears to violate multiple provisions of state and federal law regarding personal use of such information.

- **Unethical attempts to influence the Municipal Attorney to drop or mitigate criminal charges for personal and/or financial reasons**

Mr. Baker, with your support and blessing, attempted to influence a criminal prosecution to assist his friend and business partner,³ Brandon Spoerhase, who had been charged with a series of crimes related to domestic violence, stalking, and violation of the terms of a protective order.⁴ The former Municipal Attorney, Patrick Bergt, reported to Ms. Demboski that he was approached by Mr. Baker—both during the transition and after the Administration took office—to get these charges dismissed. Mr. Bergt came to Ms. Demboski expressing shock and discomfort about Mr. Baker's request.⁵ Furthermore, Mr. Bergt also conveyed that he received a communication from

³ See www.bsialaska.com/team

⁴ See Municipal Cases No. 3AN-19-06540CR; 3AN-19-01663CI; and 3AN-19-07415CR. See also State of Alaska Case No. 3AN-19-08799CR.

⁵ Ms. Demboski does not know how the case was ultimately handled; however, it is her belief that Mr. Bergt would have refused to influence the case at Mr. Baker's request.

Mr. Spoerhase's attorney in which he said, "Larry [Baker] told me to reach out to you" which made Mr. Bergt even more uncomfortable.

It was evident to Ms. Demboski that Mr. Bergt strongly believed that Mr. Baker was attempting to use his influence with you to convince Mr. Bergt to have the charges against Mr. Spoerhase dismissed.

In addition to the behavior above, Mr. Baker attempted to influence Ms. Demboski against offering a job to Mr. Spoerhase's alleged victim. As you know, Ms. Demboski resisted Mr. Baker's request on this matter. Nevertheless, you continued to follow Mr. Baker's guidance and allow him great influence over you and your Administration.

- **Unethical attempts to direct Municipal real estate transactions**

In addition to attempting to influence Mr. Spoerhase's criminal prosecution, Mr. Baker also attempted to use his influence with you to direct real estate transactions towards properties Mr. Spoerhase represents. Mr. Spoerhase is a partner in the same firm as Mr. Baker, which Mr. Baker founded.⁶ Despite the appearance and actual impropriety of Mr. Baker advising you to give such financial benefits to his own business partner, you still considered such transactions.

- **Ongoing misuse of Municipal position to impugn Ms. Demboski's reputation**

Additionally, it does not appear that such ethical and legal lapses have ceased following Ms. Demboski's termination. In fact, Ms. Demboski now finds herself the target of your misuse, and attempted misuse, of Municipal resources to denigrate her reputation. Specifically, you personally have been calling senior staff and directors to get them to slander Ms. Demboski. Also, at your direction Mr. Baker and senior staff have tried to pressure other staff to "dig up dirt" for a "hit piece" on Ms. Demboski, using Municipal time and resources. Further, we have received reports that you have personally been routinely making slanderous statements about Ms. Demboski and her work history to staff.

Potential Claims Arising from your Unlawful Termination of Ms. Demboski and subsequent activities:

Ms. Demboski has many strong claims against you arising from the facts discussed above and additional facts to be discovered or disclosed. Below are examples regarding some of the claims Ms. Demboski may assert should the issues surrounding her wrongful termination not be resolved to her satisfaction:

⁶ See www.bsialaska.com

- **Violation of the Anchorage Whistleblower Act**

Anchorage Municipal Code protects public employees who report matters of public concern through the Anchorage Whistleblower Act.⁷ A “matter of public concern is defined as”:

1. A violation of federal, state or municipal law, regulations or ordinance;
2. A danger to public health or safety;
3. Gross mismanagement, a substantial waste of funds, or clear abuse of authority;
or
4. A matter accepted for investigation by the office of the ombudsman under section 2.60.110.⁸

The conduct Ms. Demboski complained about qualifies under most, if not all, of these definitions.

Once an employee has made such a report—which Ms. Demboski did, to both the Ombudsman⁹ and you, as her supervisor—their superior may not retaliate against them by firing, threatening them, or otherwise discriminating against them.¹⁰ Simply put, Ms. Demboski raised these issues with you many times, and once she put many of her concerns in writing to you, you almost immediately terminated her.

As a whistleblower, Ms. Demboski can bring a civil action that would entitle her to not only her compensatory damages, but also to punitive damages up to three times the amount of any compensatory damages award. You may also be separately liable for a civil fine of up to \$10,000.¹¹ If Ms. Demboski’s potential whistleblower claims are asserted, she can still recover additional damages under the many other claims she could make,¹² some examples of which are also listed below.

- **Retaliatory Discharge**

In *Veco, Inc. v. Rosebrock*,¹³ the Alaska Supreme laid out the framework for retaliatory discharge claims. To establish a prima facie case of retaliation, a plaintiff must show:

1. that the employee was engaged in a protected activity;
2. that an adverse employment decision was made; and
3. that there was a causal connection between the two.

⁷ AMC 3.75.010 - Purpose of chapter.

⁸ AMC 3.75.020 - Definitions.

⁹ Ms. Demboski’s first in a series of reports to the Ombudsman began in November 2022.

¹⁰ AMC 3.75.030 – Prohibited Actions by Municipality

¹¹ AMC 3.75.050 - Relief and penalties.

¹² AMC 3.75.060 - Relationship of chapter to other laws.

¹³ 970 P.2d 906 (Alaska 1999).

We will not need to prove that you specifically said that you were terminating Ms. Demboski in retaliation for raising her concerns—even though, as described above, we can provide witnesses who will say that you did. Rather, the Alaska Supreme Court has stated that "causation sufficient to establish a prima facie case of unlawful retaliation may be inferred from the proximity in time between the protected action and the allegedly retaliatory discharge."¹⁴

You will not be able to defend yourself by simply referencing the single incident in which Ms. Demboski used vulgar language; a "mere pretext" for a discriminatory firing does not absolve you of liability.¹⁵ We have very strong evidence—some of that evidence in your own words—that this reason, if proffered, is pretextual.

- **Violation of the Implied Covenant of Good Faith and Fair Dealing**

You might be under the impression that your firing of Ms. Demboski was lawful because she is an "at-will" employee—however such an impression would be woefully misplaced. It is true that at-will employees may generally be terminated with little, or no reason given. However, even at-will employees cannot be fired for an *improper or unlawful* reason, which is precisely what occurred in Ms. Demboski's case.

In every employment relationship there exists what's called the "implied covenant of good faith and fair dealing." If that covenant was breached in firing the employee, then that employee has a claim against their former employer.¹⁶ Breach of the covenant can be either subjective or objective. An employer violates the implied covenant by acting with a subjectively improper motive. The subjective element is not based on the employee's personal feelings, but rather on the employer's motives. An objective breach of the implied covenant may occur where the employer does not "act in a manner which a reasonable person would regard as fair." Disparate employee treatment, terminations on unconstitutional grounds, and firings that violate public policy are examples of actions that may violate the objective aspect of the implied covenant.¹⁷

You terminated Ms. Demboski either because you wanted to prevent her from further obstructing your illegal and unethical actions, because she reported your illegal and unethical actions, and/or because she did not conduct herself towards men in the subservient manner you demanded. Each of these motivations for terminating Ms. Demboski qualify as a breach of the covenant of good faith and fair dealing. The evidence will show that your decision to terminate her was made "in bad faith"¹⁸ entitling Ms. Demboski to damages for this claim.

¹⁴ *Kinzel v. Discovery Drilling, Inc.*, 93 P.3d 427, 433 (Alaska 2004).

¹⁵ *Rosebrock*, 970 P.2d at 920-21.

¹⁶ *Pitka v. Interior Reg'l Hous. Auth.*, 54 P.3d 785, 789 (Alaska 2002).

¹⁷ *Id.*

¹⁸ *Crowley v. State, Dep't of Health & Soc. Servs.*, 253 P.3d 1226, 1230 (Alaska 2011).

- **Unlawful Gender Discrimination**

Employment discrimination based on gender is generally unlawful, and a plaintiff is entitled to recovery if they were fired for reasons related to their gender. A plaintiff does not have to prove that gender-related issues were the *only* reason for their termination. Under a mixed-motive analysis, if a plaintiff can produce direct evidence of discriminatory intent, then they need only show that it was a “motivating factor” in the firing.¹⁹

Given your numerous, repeated comments to Ms. Demboski that she was not to admonish a male subordinate using such tame language as “suboptimal” because he is “a man” and she, a woman, cannot talk “to a man that way” and given your statement that men are “up here” and women are “down there” in your Administration, demonstrating gender as a motivating factor will not be difficult. Terminating Ms. Demboski, even in part, because she was not docile or subservient enough to you and male members of your Administration is unlawful. Discovery and depositions will also demonstrate what is well known among Municipal employees—that you routinely make such comments to other staff, male and female alike.

- **Tortious Interference**

Following her unlawful termination Ms. Demboski must now find other employment. As discussed above—and as will be further proven in discovery—you are even now waging a campaign to demean Ms. Demboski, her abilities, and her desirability as an employee. This will impact her ability to find other employment, leading to additional damages and claims.

As discussed above, you have repeatedly cajoled and directed Municipal employees to compile and disseminate information impugning Ms. Demboski. Many of these employees have refused to do so and objected to such an improper use of Municipal resources.

Any activity or attempt to “undermine [Ms. Demboski’s] desirability as an employee” gives rise to a claim for damages, actual and punitive.²⁰ The fact that you are misusing public resources in conducting these attacks, also raises additional legal and ethical problems for you and your administration.

- **Defamation**

As discussed in the preceding pages, you are not only making false statements regarding Ms. Demboski, but you apparently are also encouraging Municipal employees and others in your circle of influence to do so. Those false statements not only include falsehoods regarding Ms. Demboski’s abilities and conduct, but also regarding the actual reasons you terminated her employment.

¹⁹ *Kinzel*, 93 P.3d at 434.

²⁰ *Id.*

Given the sheer volume of reports we have already received from those you have spoken to, it is evident that discovery and depositions will only strengthen our evidence of such claims. Your liability for damages related to these defamatory statements not only include harm to Ms. Demboski's employment prospects, but also likely includes potential mental and emotional harm, as well as punitive damages.

Conclusion:

No doubt you will attempt to explain away Ms. Demboski's serious concerns as complaints fabricated up by an angry former employee following her termination. What you may not realize is that—in addition to verbalizing and emailing her concerns to you—Ms. Demboski was previously forced to seek the assistance of the Municipal Ombudsman. In the weeks prior to her wrongful termination she raised concerns regarding potentially unlawful decisions by you. She raised these concerns with him both verbally and documented them in writing.

As you consider the facts and analysis in this letter, please realize that the last, best hope for you to avoid litigation of these issues is to reach a prompt settlement with Ms. Demboski, issue a written correction and apology, and provide your signature on a binding non-disparagement agreement. Since you are personally aware of the facts above, you must realize how confident we are in our ability to prove these allegations. Simply put, the factual and documentary evidence in our possession already is strong and will only strengthen following depositions of you and other members of your Administration, as well as discovery of additional evidence and records.

Here, the facts are clear: Ms. Demboski was not terminated for failing to do her job properly; she was terminated for *doing her job too well*. Obviously, she was loyal and never wavered from supporting your administration's agenda—she simply tried to compel you to do your own job within the bounds of the law. Like you, when Ms. Demboski took the job of Municipal Manager, she swore an oath to uphold the Municipal Charter and Code. Eventually, you terminated her for attempting to fulfill that oath; and when fidelity to the laws of the municipality is considered a liability by a leader, that leader has truly lost his way.

Time is of the essence if you wish to resolve this matter via a settlement, and we request that your counsel contact us to discuss this matter by January 18, 2023 if you wish to avoid involvement of the court system. Ms. Demboski and I await your prompt reply.

Sincerely,



Scott Kendall

cc: Anchorage Assembly wwmas@anchorageak.gov; Anchorage Municipal Ombudsman, Darrell Hess darrel.hess@anchorageak.gov