

STATE OF NEW MEXICO  
COUNTY OF VALENCIA  
THIRTEENTH JUDICIAL DISTRICT COURT

LEONA VIGIL,

Plaintiff,

v.

Case No. D-1314-CV-2020-00621

CITY OF BELEN,

Defendant.

**COMPLAINT FOR VIOLATION OF NEW MEXICO WHISTLEBLOWER  
PROTECTION ACT**

Leona Vigil, by and through her counsel Valdez and White Law Firm, LLC  
(Timothy L. White) files this complaint and would show as follows:

PARTIES, JURISDICTION AND VENUE

1. Leona Vigil is a resident of Valencia County, New Mexico.
  2. At all times pertinent to this complaint, Ms. Vigil was a “public” employee as defined by NMSA 1978, section 10-16C-2(B).
  3. The City of Belen (hereafter the City) is located in Valencia County, New Mexico.
  4. The City is a “public employer” as defined by NMSA 1978, section 10-16C-2 County.
  5. Each of the acts described here occurred in Valencia County, New Mexico.
- Jurisdiction is conferred upon this Court pursuant to Article 6 section 13 of the New Mexico Constitution and NMSA 1078, section 10-16C-4.

## FACTS COMMON TO ALL COUNTS

6. During the times relevant to this complaint, Leona Vigil was employed as the City Manager, then Community Services Director, then Deputy Clerk for the City.

7. At all times of her employment with the City, Ms. Vigil performed her job well and had no disciplinary actions against her.

8. During the spring of 2019, the City of Belen was undergoing an audit process for the fiscal year 2018. The auditors asked Ms. Vigil, as required by law, if she had anything to report that would constitute a violation of the laws controlling government conduct. The auditors specifically asked about a proposed project to renovate or repair sidewalks on 5th Street in the City, and about a birthday celebration for an artist friend of the Mayor's, Judy Chicago.

9. Ms. Vigil and other city employees had previously advised the Mayor that the sidewalk project could not be done without violating the Americans with Disabilities Act and the proposed expenditures for Judy Chicago could violate the anti-donation clause of the New Mexico Constitution.

10. Mayor Jerah Cordova resisted this advice and report and insisted that the projects needed to be done or someone was going to be held to account if they were not completed.

11. The Mayor persisted in pursuing this expenditure for Judy Chicago and asked the then Community Services Director Brian McBain to arrange for police and fire personnel to support this project as well as provide City garbage collection services. Mr. McBain complied with the Mayor's directives.

12. During the audit process, Mr. McBain was questioned about the Judy Chicago Event by the City's contracted auditors. Mr. McBain conveyed to the auditors that he was sick of the mayor's unethical demands. After the audit

process, Mr. McBain later quit his position stating that he could no longer violate any more laws.

13. Ms. Vigil reported all of the above to the auditors, and also that the Mayor had asked her to take a leave of absence so that he could take over as “interim” City Manager. Ms. Vigil further reported to the auditors that the Mayor interferes with other City staff, beyond the boundaries of his authority, and abused that power.

14. Ms. Vigil submitted documentation of the above improper conduct and the auditors later found the City in violation of the anti-donation clause and wasting public funds regarding the 5th Street sidewalk and Judy Chicago matters.

15. After this report by Ms. Vigil to the auditors and nearing the local election, the Mayor made plain he would not seek reappointment of Ms. Vigil as City Manager.

16. In October 2019, the Mayor met with Ms. Vigil and confirmed that he intended to find another city manager.

17. The Mayor further told Ms. Vigil that he only had two years left in office, that he had a lot to do, and that Ms. Vigil had been in his way. He also told her that he was “tired of the complaints”.

18. The Mayor offered to let Ms. Vigil resume her old job, as the City had not yet replaced Mr. McBain as Community Services Director. Because of the Mayor’s insistence that this happen, Ms. Vigil accepted the position on the condition that the severance promised in her then current contract would be paid to her per the terms of that agreement.

19. Ms. Vigil then verified several times with the City Attorney and the Mayor that she would be allowed to transfer to that position. Both the Mayor and City attorney agreed and verified that the transfer would take place.

20. On November 5, 2019, the local election is held. Robert Noblin and Danny Bernal are elected into office as city councilors.

21. By November 6, 2019 candidate for City Manager Andrew DiCamillo, who was formerly fired from the City, sued the City and agreed to never seek employment with the City, came to meet with Ms. Vigil and the Mayor. The Mayor and Mr. DiCamillo reveal they had already been working on a contract for DiCamillo.

22. On December 5, 2019, Mayor Cordova and Andrew DiCamillo came to City Hall. The Mayor asked Ms. Vigil to print an employment contract for Mr. DiCamillo the Mayor had just sent her. He asked Ms. Vigil if she saw any issues with it, to which she replied first that you can't have two City Managers. Ms. Vigil asked to be able to have time to look over the contract and get a legal opinion. Mr. DiCamillo and the Mayor then discuss the provisions in the contract and they both sign in front of Ms. Vigil, leaving the contract on her desk.

23. Ms. Vigil immediately texted Councilor-elect Robert Noblin to report that the Mayor and Mr. DiCamillo just signed an employment contract in violation of the Open Meetings Act and NMSA 3-11-5A which requires that the Mayor shall submit for confirmation by the governing body, the names of persons who shall fill the appointive offices of the municipality and the names of persons who shall be employed by the municipality.

24. Noblin reports this to the then Mayor Pro Tem Frank Ortega.

25. Ms. Vigil notified Mayor Cordova that the City Council is upset at his signing this contract in violation of law and behind their back.
26. That contract is later rescinded, but DiCamillo is later put forth to the Council as the new City Manager nominee and is appointed by the Mayor breaking a tie vote to appoint DiCamillo.
27. The two councilors voting for DiCamillo are Danny Bernal, who works for the Mayor in the private sector, and Ronnie Torres, who DiCamillo is going to live with and does live with while employed as City Manager.
28. On January 7, 2020, Ms. Vigil returns to the Community Service Director position.
29. On January 23, 2020, DiCamillo requests that all contracts be sent to his office at City Hall. Reviewing those contracts was one of Ms. Vigil's duties as Community Service Director.
30. Ms. Vigil was advised that DiCamillo told the IT director that he no longer reports to her and will now report directly to DiCamillo.
31. Ms. Vigil calls the Mayor and asked him if they were eliminating her job. The mayor denied that was happening but said the City Manager was "reorganizing".
32. On January 29, 2020, Ms. Vigil then receive a notice via email with a letter attached stating that there is no documentation that she held the position of Community Services Director and the only "comparable position" would be Deputy Clerk.
33. Ms. Vigil was then demoted to Deputy Clerk, stripped from all supervisory duties, her pay was cut from \$21.40 to \$16.10 an hour, and she was told she was not to represent the City of Belen without the City Manager's approval, and answered directly to the City Clerk, Dorothy Flores.

34. Ms. Vigil told DiCamillo that if the Community Services Director had not been available and her transfer approved by the Mayor and City Attorney, that she would have not left the City Manager position.

35. On January 30, 2020, Andrew DiCamillo emails all employees that there were issues in payroll and the City may need to undergo a forensic audit and he was freezing payment of any severances, despite the previous promise by the Mayor that if she transferred from City Manager to Community Services Director she would be paid the severance promised in her then existing contract.

36. On February 5, 2020, Ms. Vigil went to Human Resources to file a formal complaint about the demotion. Then interim Human Resources person Angela Blake says she will talk to DiCamillo about this.

37. On February 6, 2020, Angela Blake tells Ms. Vigil that she was not “demoted” despite Ms. Vigil’s pay being cut, duties eliminated and being moved a level down the City’s administrative hierarchy. Blake continues to deny that she was demoted.

38. On February 10, 2020, Dorothy Flores, Ms. Vigil’s new direct supervisor and Ms. Vigil meet with Andrew DiCamillo to ask questions about her new position. During the meeting Ms. Vigil asks DiCamillo what happened to her Community Services position. He said that there is no proof she held the position. She replied that she can show him disciplinary actions she took during that time as Community Services Director. He then said he did not see a need for that position.

39. Ms. Vigil then asked him about her promised severance pay, and DiCamillo said that he gave me his word that she would get it and she would get it.

40. Ms. Vigil then told DiCamillo that she went to Human Resources to report retaliation, that Ms. Blake did not know what to do and that she did not even document the complaint.

41. DiCamillo asked who is retaliating, and Ms. Vigil had to tell him that it was him. He got upset and asked why he would retaliate against her and she replied because I had to report that you and the Mayor signed your employment contract behind the council's back.

42. When Ms. Vigil again complained that she had been demoted and wanted to file a grievance he told her she was on probation and was not able to grieve that. That is contrary to the City's Personnel Policies and Procedures, that an "Established Reclassified Employee" is on probation for six months but is entitled to the grievance process.

43. On February 20, 2020, Angela Blake asked Ms. Vigil to come to Blake's office to go over her severance pay. Ms. Vigil reviewed it and got up to leave, when Blake said "your employment with the City is terminated. Please get your stuff and leave." When Ms. Vigil asked three times why, Blake told her she did not need to let her know and a police officer escorted her out.

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44. Plaintiff incorporates by reference the factual allegations set forth above.

45. Ms. Vigil, in good faith, engaged in the protected conduct described above, protected under NMSA 1978 section 10-16C-3 (A)-(C) by reporting the illegal and retaliatory conduct described above.

46. Defendant retaliated against Ms. Vigil by demoting her, and then terminating her for her protected activity, calling it her “complaints” that were “getting in the Mayor’s way” and reporting the illegal acts set forth above to the City Council in violation of NMSA 1978, section 10-16C-3.

47. As a result of the retaliation described above, Ms. Vigil has suffered and seeks here all damages recoverable by law, including but not limited to the statutory damages set forth in the New Mexico Whistleblower Protection Act, emotional distress, lost employment and retirement benefits, costs, attorneys’ fees and other actual damages.

For the reasons stated, Leona Vigil requests that the court enter judgment on all relief sought above and for such other relief to which the court finds her entitled.

Respectfully submitted,

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