

STATE OF NEW MEXICO  
FIRST JUDICIAL DISTRICT  
COUNTY OF SANTA FE

DEBRA GILMORE and  
CLIFFORD GILMORE,

Plaintiffs,

Case assigned to Mathew, Francis J.

v.

Case No. D-101-CV-2021-01406

NEW MEXICO CHILDREN,  
YOUTH & FAMILIES DEPARTMENT,  
BRIAN BLALOCK, and TERRY LOCKE,

Defendants.

**COMPLAINT FOR VIOLATIONS OF THE  
NEW MEXICO WHISTLEBLOWER PROTECTION ACT**

Plaintiffs Debra and Clifford Gilmore, by through counsel, Davis & Gilchrist, P.C. (Bryan J. Davis & Shayne C. Huffman) hereby state the following for their complaint against Defendants:

**PARTIES, JURISDICTION, AND VENUE**

1. Plaintiff Debra Gilmore (“Debra”) is an individual who resides in Santa Fe County, New Mexico.

2. Plaintiff Clifford Gilmore (“Cliff”) is an individual who resides in Santa Fe County, New Mexico.

3. Debra and Cliff (collectively “Plaintiffs” or “Gilmores”) were at all times material “public employee[s]” as defined by the New Mexico Whistleblower Protection Act, NMSA 1978, Section 10-16C-2(B) (2010).

4. Defendants New Mexico Children, Youth & Families Department (“Defendants” or “CYFD”) is an administrative agency of the State of New Mexico. CYFD is a “public

employer” as defined by the New Mexico Whistleblower Protection Act, NMSA 1978, Section 10-16C-2(B).

5. Defendant Brian Blalock is the Cabinet Secretary of CYFD and, upon information and belief, resides in Santa Fe County. Defendant Blalock is a “public employer” as defined by the New Mexico Whistleblower Protection Act, NMSA 1978, Section 10-16C-2(C).

6. Defendant Terry Locke is the Deputy Cabinet Secretary of CYFD and, upon information and belief, resides in Bernalillo County. Defendant Locke is a “public employer” as defined by the New Mexico Whistleblower Protection Act, NMSA 1978, Section 10-16C-2(C).

7. The Court has jurisdiction over the parties and over the subject matter of this action pursuant to NMSA 1978, Section 10-16C-4, and venue in this district is proper under NMSA 1978, Section 38-3-1(A).

## **FACTS**

8. CYFD recruited the Gilmores to join CYFD based on their experience and qualifications. The Gilmores relocated from Vancouver, Washington in late 2020 based on CYFD’s employment offer to Cliff and recruitment of Debra. CYFD required the Gilmores to become New Mexico residents.

9. Cliff accepted a position with CYFD to serve as the Public Information Officer (“PIO”) in Santa Fe, New Mexico. He began his employment on or about November 3, 2020 remotely from the Gilmores’ previous home in Washington.

10. Debra accepted a position as Director of the Office of Children’s Rights (“OCR”). Debra began her employment with CYFD on or about December 31, 2020.

11. Based on their significant combined experience in government positions, the Gilmores were concerned, at the outset of their employment, that CYFD’s leadership directed

them to communicate through Signal Messenger (“Signal”) and set communication channels to auto-delete. Signal is an encrypted messaging platform for smart phones and desktop computers that secures all communications. Signal also has a function that allows its users to automatically delete messages at durations set by the users.

12. Defendants Blalock and Locke directed CYFD staff, including the Gilmores, to set up certain Signal channels to autodelete after 24 hours.

13. Alarmed by the high potential for public mistrust and concerned that the directed practice could violate public record retention laws, the Gilmores each raised independent concerns about public officials conducting official business through an encrypted messaging app and automatically deleting messages.

14. Additionally, the Gilmores each raised or filed formal complaints concerning other ethical concerns they had with CYFD, including flagging problems with non-competitive procurement of information systems software, improper hiring interference, and having contractors evaluate and direct the duties of public employees.

15. The Gilmores would not go unpunished for whistleblowing. On May 6, 2021, within weeks of the Gilmores’ ethics complaints, Defendants terminated both Debra and Cliff Gilmore on the same date and at the same time, ostensibly because of poor—but unrelated—job performances.

***Debra Gilmore Raises Ethical Concerns about CCWIS and Contract Employee Practices***

16. CYFD recruited Debra to lead the OCR, a newly created office. Debra has nearly thirty years of experience in child welfare. She holds juris doctor and master of public administration degrees, and she is a certified Project Management Professional. She practiced child welfare law prior to working as a national consultant in child welfare. The U.S. Department

of Health and Human Services honored her for past accomplishments with a national Adoption Excellence Award.

17. As Director of the OCR, Debra was responsible for, among other things, “build[ing] informed reform campaigns [to] address systemic shortcomings [and] provid[ing] long-term solutions...that ultimately transform the services delivered to children and families.”

18. Debra supervised an Immigration Rights Attorney and was responsible for hiring and leading a team of twelve, including two more attorneys.

19. One of Debra’s top priorities was building the infrastructure for the newly formed Office. Staffing was imperative to put in place a team that could carry-out the OCR’s purpose and goals within the context of CYFD’s mission.

20. Defendants represented to Debra that the Director of the OCR was a high-level professional position that granted her wide latitude to carry out the OCR’s purpose.

21. Debra immediately had concerns with personnel matters relating to supervision of the Immigration Attorney. A contractor who worked closely with the attorney relayed to Debra that Defendant Blalock instructed the contractor – a non-attorney – to “supervise” the attorney’s work content and to have Debra only “supervise” him for legal work.

22. Debra initially thought she had worked through this conundrum by setting up weekly meetings with the contractor and garnering her input on the Immigration Attorney’s initial goals and ongoing performance. Debra became alarmed when the contractor told Debra that she completes employee evaluations for at least one full-time CYFD employee that are then signed off by CYFD’s acting protective services director without review. The contractor then indicated she felt she should also write the evaluations for the Immigration Attorney. Debra told the contractor that seemed unethical since she was the supervisor-of-record, and suggested that

she and the contractor discuss the matter with Lisa Fitting, Director of Operations, who oversees CYFD's human resources.

23. On or about March 22, 2021, Debra told Defendant Locke about her ethical concerns with the contractor's request. Defendant Locke questioned why it was an issue, and told Debra that he had authorized another outside contractor to supervise and complete evaluations for employees for whom he was supervisor-of-record at the time.

24. Debra was the immediate supervisor of the subject employee and therefore was required by law to evaluate her own employee. New Mexico Administrative Code, Title 1, Chapter 7, Part 9 states that appraisals of employee performance and development shall be performed by an immediate supervisor.

25. Debra also raised significant concern with a large-scale, multimillion-dollar IT project to develop a Comprehensive Child Welfare Information System ("CCWIS").

26. In March 2021, Debra was invited to a series of Executive Steering Workgroup meetings related to CYFD's CCWIS project. Nationally, CCWIS projects are intended to modernize child welfare systems. The federal CCWIS guidelines allow for more customized options tailored to each state's needs, emphasize efficiencies in federal data reporting, and require collaboration (e.g., via data exchanges) with certain other state systems,

27. At one of the March meetings, Debra, a certified project management professional, raised several questions and concerns regarding the project's scope, schedule, and vendor selection.

28. The CYFD CCWIS project had been initiated in 2017 and, according to its project managers, was revamped by Defendant Blalock in 2019. Project managers were unable to clearly articulate a clear scope or goals for the project. They also could not explain how certain federal

requirements would be met and on what timeline. Furthermore, Debra raised concerns about the identified software vendor, Binti, a California-based start-up that did not appear to have a full CCWIS solution nor significant experience in the child welfare space.

29. Following Debra's concerns voiced at the Executive Steering Workgroup meetings, Defendant Locke set a meeting on or about March 26, 2021 with Debra, Cliff (who had raised his own concerns, *see infra*) and two CYFD CCWIS project managers.

30. Defendant Locke had seemingly called the meeting to placate the Gilmores' independent concerns each had raised about CCWIS. In the meeting, the project managers conceded that the project lacked scope and stated that was complicated by Defendant Blalock's changing directions. They also explained to the Gilmores that Binti had been selected due to "emergency circumstances."

31. Defendant Locke questioned why it was even important that a multimillion-dollar project had a scope. Debra explained that a project scope sets the framework for what the project is and what it is not, helps with stakeholder identification, and drives the project schedule and budget.

32. On April 9, 2021, Debra had a scheduled check-in with Defendant Blalock in which he alleged that Debra was having "tension" with others. When Debra asked Defendant Blalock to provide examples, he referenced "tension" with employees working on the CCWIS project and with the contractor who was improperly completing and seeking to complete CYFD employee performance appraisals.

33. Immediately following the check-in, Debra received a Zoom invite link from Defendant Locke for a meeting with him and Lisa Fitting. When Debra asked what the nature of

the meeting would be, Defendant Locke responded, “[t]he meeting will be a discussion of your job performance.”

34. At the meeting, Defendant Locke shared his screen via Zoom and presented Debra with a Letter of Concern (“LOC”). Not having had notice of the disciplinary nature of the meeting, Debra objected and asked for a support person to be present at the meeting. Defendant Locke replied, “you are not entitled to representation at this meeting.”

35. Upon information and belief, Defendant Locke issued the LOC to Debra out of retaliation for raising ethical concerns with the CCWIS project and the contractor-appraising-employees issue. The LOC alleged pretextual personnel issues that were either demonstrably false or a mischaracterization of events.

36. For example, the LOC alleged that Debra had “exhibited a resistance to accepting general supervision” and referenced an incident in which Debra allegedly failed to heed Defendant Locke’s direction to meet with the Director of Behavior Health to identify developmentally disabled children who may not be receiving adequate services. Debra had in fact contacted the Director of Behavioral Health immediately after being directed on or about March 18, 2021. Debra spoke at length with the Director of Behavioral Health and had arranged for at least one follow-up meeting.

37. The LOC further alleged that Debra had not “worked with or talked to any children in CYFD’s care.” This was also both false and a mischaracterization of Debra’s key Director responsibilities.

38. The LOC alleged that Debra had “exhibited a failure to form productive and professional work relationships.” The “work relationships” at issue were with those project

managers assigned to the CCWIS project and the contractor, further confirming the retaliatory nature of the LOC.

39. Following receipt of the LOC, Debra filed a formal complaint with the governor's office against Defendants Blalock and Locke stating that the LOC was issued in retaliation for Debra's ethics complaints. Debra received no response to her formal complaint prior to her termination.

40. Debra began investigating further into CYFD's procurement of Binti for its CCWIS. She was aware that there are multiple CCWIS vendors and options. From descriptions of entering the relationship with Binti in 2019 or 2020, it seemed that Binti had not been selected through a competitive bidding process. Despite the project manager's statement that Binti had been selected on an "emergency" basis, Debra also did not believe that it met the definition of emergency under the Procurement Code.

41. Defendant Blalock had repeatedly indicated the need to overhaul CYFD's decades-old information system, with Binti as the best solution. Yet, according to a 2020 news release announcing New Mexico's selection of Binti, Binti had only developed two modules. In that same news release, Defendant Blalock claimed CYFD had selected Binti "not only because it fit their criteria, but because word-of-mouth backed them up."

42. In a check-in meeting with Defendant Blalock on May 4, 2021, Debra asked him to explain how CYFD was about to enter into a \$4.5 million contract with Binti without a Request for Proposal or a competitive bidding process. Rather than respond to the question, Defendant Blalock directed Debra to follow-up with CYFD's chief procurement officer or general counsel.

43. That same day, Debra contacted CYFD's chief procurement officer (CPO) and the New Mexico General Services Department to better understand New Mexico's procurement practices to assuage her concerns about Binti. Debra was not given concrete information. The CPO provided Debra with a General Services Department "Price Agreement" between CYFD and Binti. The CPO confirmed that there had been no competitive bidding process and claimed that the price agreement was all that was needed because Binti had a federal pricing agreement. Debra continued to ask for clarification on the legal procurement method and asked to see a copy of the contract referenced in the purchase order.

44. She was never provided the contract. Instead, CYFD terminated Debra two days later.

***Cliff Gilmore Raises Ethical Concerns about CCWIS and Hiring Interference***

45. CYFD hired Cliff on or about November 2, 2020 as its PIO.

46. Cliff is an honorably retired United States Marine Corps lieutenant colonel who specialized in public affairs. His military assignments included curriculum development and instruction of the course used to certify public affairs officers for the U.S. military and other government agencies; two years as Special Assistant for Public Communication to the Vice Chairman of the Joint Chiefs of Staff; and three combat deployments including one for which his multi-national team received first-place Marine Corps-wide awards for excellence in the areas of Reputation & Brand Management, Information Campaign, Creative Tactics, and Research & Evaluation.

47. Cliff holds a doctorate in organization and management with a specialization in leadership.

48. As CYFD PIO, Cliff was CYFD's official spokesperson and was responsible for handling all public communication, including with the media, lawmakers, and the general public.

49. Cliff's job description specifically provided that he would "navigate sensitive subjects and work with the Office of General Counsel to balance state law with being as transparent as possible to the public."

50. On March 10, 2021, an externally contracted assessment firm had provided CYFD with a report that indicated the CCWIS project was at high risk across numerous essential categories of performance, including communication.

51. Cliff was appointed to lead the communication planning effort for CCWIS. As PIO, it was imperative that Cliff fully understood the goals and scope of the CCWIS project in order to effectively be the voice of the organization and the CCWIS project.

52. In the CCWIS meeting on or about March 26, 2021 that Defendant Locke arranged for Cliff and Debra with the CCWIS project managers, the project managers openly described the more than two-year-old CCWIS project as "putting the cart before the horse," "building the engine while flying the plane," and having a scope that was undefined and constantly shifting.

53. Cliff raised concerns with Defendant Locke and the project managers, stating that as spokesperson for the project he would have difficulty fielding queries from the media, public, and legislature about the CCWIS project given his own perceived red flags and the March 10, 2021 report. Cliff described the CCWIS to Defendant Locke as a "train wreck waiting to happen." Defendant Locke replied that he strongly disagreed with Cliff's concerns, but he did not address the merits of those concerns.

54. During a phone call following the meeting, Defendant Locke told Cliff it had been “a terrible meeting, really terrible.” Cliff asked for clarification of Defendant Locke’s meaning and Defendant Locke said, “you made it sound like we don’t know what we are doing.”

55. After the meeting in which Cliff raised concerns about CCWIS, Defendant Locke directed him to halt all communication planning work in support of CCWIS and removed him from having any association with the project.

56. Around December 2020, CYFD was recruiting candidates for the position of Community Events Organizer. Cliff was tasked with interviewing and hiring for the position as the position fell under his supervision.

57. Defendant Blalock reached out to Cliff and asked whether a particular individual had applied for the position. When Cliff confirmed that the individual had applied, Defendant Blalock stated something to the effect of, “make sure that [candidate] makes it to the final interview round, one way or another.”

58. Defendants Blalock and Locke both continued a campaign to pressure Cliff to advance their desired candidate through the interview process despite that he was neither the best qualified nor highest scoring among the panel of interviewers.

59. Cliff raised this issue with Defendant Locke, who claimed via email that there was no ethical issue related to Defendant Locke’s or Blalock’s questions about the specific candidate; that Cliff had either misquoted or misunderstood Defendant Blalock’s intent; that Defendant Blalock’s instruction was only that if the candidate did not advance to the final interview, Cliff would need to explain why; and that Locke was following up because Cliff had previously failed to complete similar directives.

60. Cliff believed in good faith that Defendant Blalock's and Defendant Locke's interference in the hiring process and his push to advance a particular candidate were improper and unethical and that actions against him in response were retaliatory. Accordingly, he filed a formal complaint about the incident on April 2, 2021.

***The Gilmores Both Raise Concerns about CYFD's Use of Signal***

61. Cliff first raised concerns about CYFD's use of Signal in January, just less than two months into his tenure.

62. Initially, Cliff took issue with Signal's intrusion into employees' work-life balance. CYFD employees were expected to download Signal to their government issued cell phones and communication via Signal regularly occurred at all hours. Defendant Blalock informed his leadership team during the 2021 legislative session that they were expected to monitor Signal and respond 24/7.

63. Defendant Blalock told Cliff in response to his initial concerns that Cliff did not understand how Signal was being used and that his support of Defendant Blalock in its continued use was expected.

64. As Cliff continued his employment and became more familiar with New Mexico's public record laws and regulations, he became troubled by the ethical and potential legal implications in CYFD's use of Signal, but was repeatedly assured by Defendant Blalock that use of Signal had been thoroughly vetted by legal counsel and IPRA "experts."

65. During a Zoom meeting with members of the non-profit organization NMCAN, Cliff told the NMCAN employees that CYFD was using Signal to conduct official business communication. One NMCAN employee expressed his alarm at the disclosure and indicated that he was going to contact the media. Cliff clarified that he did not state this with the intention of

alerting the press to CYFD's use of Signal. Cliff acknowledged that he could not tell the NMCAN partner what he could or could not do.

66. Upon information and belief, the NMCAN employee contacted Searchlight New Mexico ("Searchlight"), an independent investigative journalism organization.

67. A journalist from Searchlight contacted Cliff on or about April 21, 2021 in Cliff's official capacity as PIO. The journalist was inquiring about CYFD's use of Signal.

68. Cliff advised the reporter that he could not respond to the questions immediately and asked that the questions be submitted to him via email. Cliff then advised both Defendants Blalock and Locke via email that the query was pending. In addition, Cliff copied Tripp Stelnicki, Governor Michelle Lujan Grisham's Public Information Officer.

69. Stelnicki replied to Cliff's email regarding the Searchlight probe and asked, "[w]hy is he [the journalist] asking about this? Who gave him this story idea?" Cliff responded that the journalist would not divulge his source. Stelnicki again replied and implied that he believed Cliff had alerted the media to CYFD's use of Signal,

Really? That's interesting. It's the kind of thing no one would have any way of knowing anything about unless someone, like an employee who has gone well out of his way to make clear he is wildly disgruntled, told him about it. I wonder if that's the case.

70. Despite Blalock's claims that use of Signal had been "carefully vetted" by attorneys, Stelnicki's email to Cliff clearly demonstrated that Defendants intended on keeping the use of Signal from the public.

71. Following the Searchlight inquiry, Cliff sent a memorandum to Defendants Blalock, Locke, and CYFD's General Counsel on April 22, 2021. In the memo, Cliff formally recommended that CYFD immediately discontinue using Signal. Cliff stated that use of Signal was "detrimental to the credibility of and the public's trust in government institutions and their

leaders.” Cliff further added that CYFD’s use of Signal potentially violated the Inspection of Public Records Act and could be perceived as being used by Defendants CYFD, Blalock, and Locke to avoid records retention laws and public accountability.

72. In response to Cliff’s memo, Defendant Blalock told Cliff that “CYFD’s use of Signal was carefully vetted by [CYFD’s] attorneys and leadership before we began using it.”

73. On April 26, 2021, Searchlight ran a story about CYFD’s use of Signal. The story quickly went viral and was picked up by both local and national media outlets. CYFD’s use of Signal also drew considerable condemnation by the New Mexico Attorney General, lawmakers, and proponents of open and transparent government.

74. Following the Searchlight story, Defendant Blalock held a leadership meeting via Zoom with approximately 25-30 staff present, including the Gilmores. Defendant Blalock addressed the Searchlight article and criticized the journalist for not understanding encryption. He also highlighted and praised the CCWIS project.

75. On April 27, 2021, Defendant Blalock again sent a message via Signal to the leadership team members attempting to justify CYFD’s use of Signal in light of the negative press.

76. Debra responded to Defendant Blalock’s Signal message in the group thread and raised concerns that CYFD’s use of Signal violated record retention regulations. Debra specifically cited New Mexico Administrative Code 1.21.2.104, which states that executive level communications must be permanently retained.

77. Defendant Blalock responded and again alleged that Signal had been carefully vetted and insisted that Debra speak with CYFD’s “IPRA and legal experts.”

78. On May 6, 2021, CYFD terminated the Gilmores.

**COUNT I – VIOLATION OF THE NEW MEXICO  
WHISTLEBLOWER PROTECTION ACT**

79. Plaintiffs incorporate all the foregoing paragraphs as though fully set forth herein.

80. At all times material, Plaintiffs were public employees under the New Mexico Whistleblower Protection Act (“WPA”), NMSA 1978, Section 10-16C-2(B) (2010).

81. Defendant CYFD is a public employer under Section 10-16C-2(C)(1) of the WPA.

82. Defendants Blalock and Locke are officers of CYFD and therefore public employers pursuant to Section 10-16C-2(C)(4) of the WPA.

83. Plaintiffs reasonably believed that Defendant Blalock’s direction for executive level employees to communicate on Signal and set messages to autodelete within 24 hours constituted an “unlawful or improper act” under Section 10-16C-2(E) of the WPA.

84. Plaintiffs reasonably believed that CYFD’s failure to properly manage the CCWIS project, including ensuring that it met certain criteria necessary for federal funding and CYFD’s non-competitive procurement of Binti to deliver a CCWIS package, constituted “unlawful or improper acts” under Section 10-16C-2(E) of the WPA.

85. Plaintiff Debra Gilmore reasonably believed that a contracted employee completing an employee appraisal for a full-time public employee constituted an “unlawful or improper act” under Section 10-16C-2(E) of the WPA.

86. Plaintiff Cliff Gilmore reasonably believed Defendant Blalock’s and Locke’s interference campaign to pressure him into hiring their preferred candidate for the position of Communications Affairs Manager, despite not being the most qualified candidate, constituted an “unlawful or improper act” under Section 10-16C-2(E) of the WPA.

87. Plaintiffs made multiple written and verbal complaints to Defendants, through Defendants Blalock and Locke and others regarding the aforementioned unlawful or improper acts.

88. Upon information and belief, Defendant Locke served Plaintiff Debra Gilmore with a Letter of Concern in retaliation for her aforementioned complaints, which constituted a “retaliatory action” under Section 10-16C-2(D) of the WPA.

89. Upon information and belief, Defendants Blalock and Locke terminated Plaintiffs in retaliation for their aforementioned complaints, which constituted a “retaliatory action” under Section 10-16C-2(D) of the WPA.

90. As a direct result of Defendants’ violation of the WPA, Plaintiffs have suffered actual damages in the form of lost past and future wages, and special damages.

91. Plaintiffs are entitled to actual damages, reinstatement with the same seniority status that they would have had but for the violation, two times the amount of back pay with interest, special damages, litigation costs and reasonable attorney’s fees.

WHEREFORE, Plaintiffs Debra and Cliff Gilmore respectfully request that the Court award them two times backpay, compensatory damages, emotional distress damages, reasonable attorney fees, litigation costs, pre- and post-judgment interest as provided by law, and any further relief the Court deems just and proper.

Respectfully Submitted,

**DAVIS & GILCHRIST, P.C.**

By: **“Electronically Filed” /s/ Bryan J. Davis**

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