

GL-19-22



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August 15, 2022

Sent via personal service

County of Kenosha
c/o Regi Waligora, County Clerk
1010 56th Street
Kenosha, WI 53140

RE: Rebecca Rodriguez Defamation Action and Ancillary Claims

NOTICE OF CLAIM PURSUANT TO WIS. STAT. § 893.80

Dear Ms. Waligora,

This letter correspondence is being served upon the County of Kenosha pursuant to Wis. Stat. § 893.80 as notice of claim against the County and its employees as required under subsection (1d). Please find below details of the claim along with an itemized statement of relief demanded.

Date: May 9, 2022
Time: 4:53 PM
Location: Online / Digitally
Gov't Officers: Assistant District Attorney Alexandra Smathers

Claimant: Rebecca Rodriguez
Address: 3517 29th Street
Kenosha, WI 53144

Description of Claim:

Ms. Rodriguez is a registered nurse in the State of Wisconsin who until recently had been employed by Aurora Health Care as a SANE nurse – a Sexual Assault Nurse Examiner. She had been continuously employed as a registered nurse since 2006 and with Aurora specifically since 2014.

In her role as a Sexual Assault Nurse Examiner, Ms. Rodriguez has frequently been called to give testimony in criminal cases involving sexual assault. She is deeply familiar with the criminal justice system, the courtroom, and her role as a SANE nurse in

the legal process. Ms. Rodriguez routinely interacts with the Kenosha District Attorney's Office and the many prosecutors employed there.

On or about May 9, 2022, Assistant District Attorney Alexandra Smathers ("ADA Smathers" or "Ms. Smathers") authored an email correspondence to Ms. Rodriguez's employer, Aurora Health Care, via her work colleague, Deanna Grundl, who shared the email with Sharain Horn, Ms. Rodriguez's supervisor, in which ADA Smathers made numerous false and defamatory statements about Ms. Rodriguez. See the email correspondence attached hereto as **Exhibit A**. Ms. Rodriguez categorically denies the statements contained in Ms. Smathers defamatory email.

Ms. Smathers's email was made with no firsthand knowledge of my client, my client's credentials, or my client's conduct in the courtroom. Ms. Smathers acknowledges as much in the first paragraph of her email writing that she "has not personally worked with" my client. Nonetheless, Ms. Smathers authored an email to my client's employer in which she makes specific allegations despite any basis to make such allegations. It is deeply disturbing that a public official would write such an email without any knowledge or investigation of the facts.

Among the many untrue statements contained in the email, Ms. Smathers begins by writing "it is my understanding that she was not a registered nurse when she began her career as a SANE Nurse and was not a registered nurse from some time. This obviously caused credibility concerns at trial." Ms. Rodriguez holds Wisconsin registered nurse license number 153397 and has held that RN licensure since 2006 – facts which can be confirmed by a thirty second search on the website for the Wisconsin Department of Safety and Professional Services. It is patently false that Ms. Rodriguez operated, at any time, without any required license in the State of Wisconsin.

Ms. Smathers additionally claims that Ms. Rodriguez had violated patient confidentiality in violation of HIPAA. There is no possible way that Ms. Smathers could have had the knowledge to verify whether such a violation occurred and she recklessly repeated this unfounded allegation to Ms. Rodriguez's employer. No such HIPAA or confidentiality violation occurred.

Given the nature of Ms. Rodriguez's employment and profession, allegations regarding her nursing credentials or concerning patient confidentiality were considered extremely serious by her employer. Ms. Smathers should know the weight and seriousness of such allegations. To author an email to Ms. Rodriguez's employer without exercising basic fact checking or without having any firsthand interaction with Ms. Rodriguez is incredibly unprofessional and reckless. ADA Smathers should know better.

ADA Smathers's email contains other unfounded statements. Ms. Rodriguez did not cause a not guilty verdict regarding her "blood capillaries" testimony and that fact is verifiable through public records and online via Consolidated the Court Automation Programs (CCAP). The defendant in that case was convicted. Ms. Smathers could have

investigated this claim before falsely stating it to Ms. Rodriguez's employer, but she did not do so.

Finally, it must be highlighted the petty commentary contained in the email in which it is implied that Ms. Rodriguez dresses inappropriately. No individual, be it attorneys, court staff, judges, or otherwise, has ever had issue with Ms. Rodriguez's courtroom attire. It should be noted that Ms. Rodriguez has appeared by videoconference for approximately the past two years and only had one in person court appearance before this incident. We have photographs of her attire for that recent testimony and Ms. Rodriguez's attire is wholly appropriate.

As a result of Ms. Smathers's defamatory email, Ms. Rodriguez was placed on work suspension and then terminated by Aurora Health Care effective as of May 20, 2022.

As a licensed attorney and representative of the County of Kenosha, the District Attorney's Office, Ms. Smathers should be fully aware of the need to investigate any and all claims and present a tempered, levelheaded analysis of any situation. More than others, attorneys placed in the public's trust, such as Ms. Smathers, should know of the ramifications of their actions. When Ms. Smathers wrote her email, she wrote an email not just on behalf of herself, but as an agent of the Kenosha District Attorney's Office and government employee. Her words were given great effect by Ms. Rodriguez's employer – understandably so. And her untrue statements have now greatly harmed Ms. Rodriguez who has been involuntarily separated from her employment. She has placed Ms. Rodriguez's career in jeopardy.

As a result of Ms. Smathers's actions, Ms. Rodriguez has legal causes of action for defamation, section 1983 deprivation of rights, tortious interference with contract, intentional infliction of emotional distress, and civil conspiracy.

Ms. Rodriguez intends to present these legal claims, and all others that may be identified related to this incident, to the maximum extent permitted under the law.

Itemized Statement of Relief Sought:

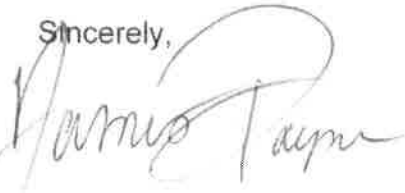
Ms. Rodriguez was employed with Aurora Health Care at a salary of \$106,500. She has been unemployed since May 20th and has accrued \$25,906.86 in lost wages at the time of this writing. Her lost wages continue to accrue. She has also lost compensation in the form of loss of quarterly bonuses, loss of tuition reimbursement and loan forgiveness, and loss of other employment benefits. Furthermore, Ms. Rodriguez will have lost career opportunities due to the termination including future promotions, salary raises, bonuses, and other associated compensation that she will be unable to earn due to the actions of ADA Smathers.

Aurora Health Care is the primary institution in the region providing SANE services. Ms. Rodriguez's only other non-Aurora option in the general vicinity of Kenosha is with Froedtert in Milwaukee, but that program is not full-time. Thus, Ms. Rodriguez cannot

continue her career without uprooting her family and working outside of Southeastern Wisconsin. Ms. Rodriguez's career is irreparably harmed as a result and ADA Smathers's defamatory email has acted as a *de facto* restriction of her ability to work in her profession and use her State of Wisconsin professional licenses without encumbrances.

Her reputation, status, and standing in the community has been lowered and she has suffered damages, in an amount to be determined, due to these effects. Investigation and discovery are ongoing, but Ms. Rodriguez believes her damages in aggregate are in excess of \$250,000. You are further placed on notice of her intent to seek punitive damages.

Sincerely,

A handwritten signature in cursive script that reads "James Payne". The signature is written in dark ink and is positioned above the printed name.

James Payne

CC: Joseph Cardamone III, Esq. (via email)
Michael D. Graveley, Esq. (via email)

Smathers, Alexandra

From: Smathers, Alexandra
Sent: Monday, May 9, 2022 4:53 PM
To: [REDACTED]
Subject: Rebecca Rodriguez

Good afternoon,

Since I transferred to Kenosha County, I have learned of some issues our office has had working with Ms. Rodriguez. I should note that I have not personally worked with her, but this is information I have learned from our head victim witness coordinator Heather Beasy, my victim witness coordinator Rhonda Mrnak, and attorneys who have worked with her in the past, including ADAs James Kraus and Thomas Binger.

First, it is my understanding she was not a registered nurse when she began her career as a SANE Nurse and was not a registered nurse for some time. This obviously caused credibility concerns at trial.

Second, she has a tendency to testify as an expert in areas about which our office does not believe she is qualified. For example, she lost us a sexual assault case when, on cross examination, she testified extensively about a condition in which the blood capillaries are very near the surface of the vagina and therefore causes bleeding easily. Therefore, despite the allegation of very forcible rape with tears and scars in the victim's vagina, and no indication she had this condition, there was a not guilty verdict.

Third, just last week, she was cross examined at trial about a public Facebook post she made while on jury duty, indicating that she did not think she would be chosen for the Kyle Rittenhouse case because she is friends with many people in the DA's Office. During her cross examination, she clarified that she meant Facebook friends, not friends in real life, and said that she is Facebook friends with the ADA (although she was not).

Fourth, in the middle of an adult (but developmentally delayed) sexual assault trial, she instructed her SANE Nurse to inform our office that the victim in our case had been in for a SANE exam previously. Our office had no knowledge of this, which caused a mistrial, Shiffra/Green issue, and then the victim died before the case could be retried. This seems like a huge HIIPA violation on the victim's part.

Finally, there has been ongoing concerns about her appearance in court. She apparently dresses inappropriately for trial, including tight fitting, low cut clothing, and lots of makeup.

I hope this information helps. If you need more details, I can get more information for you from ADAs Binger or Kraus, or you can reach out to them directly. I did let Heather Beasy and Rhonda Mrnak know that I was providing this information. Please let me know if there is anything else I can to help.

Thank you,

Alexandra K. Smathers
Assistant District Attorney
Kenosha County
(262) 653-2400

