

STATE OF MICHIGAN
IN THE COURT OF APPEALS

John C. Floyd III
Plaintiff-Appellant

Case Number 371329
Trial Court Case Number 24-000210-CZ

v

City of Ann Arbor
Defendant-Appellee

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APPEAL BRIEF OF PLAINTIFF-APPELLANT

ORAL ARGUMENT REQUESTED

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Statement of the Basis of Jurisdiction of the Court of Appeals

The complaint was filed pursuant to MCL 15.271 to compel compliance with the Michigan Open Meetings Act. In section 11, the Act provides:

15.271 Civil action to compel compliance or enjoin noncompliance; commencement; venue; security not required; commencement of action for mandamus; court costs and attorney fees.

Sec. 11. (1) If a public body is not complying with this act, the attorney general, prosecuting attorney of the county in which the public body serves, or a person may commence a civil action to compel compliance or to enjoin further noncompliance with this act.

(2) An action for injunctive relief against a local public body shall be commenced in the circuit court, and venue is proper in any county in which the public body serves. An action for an injunction against a state public body will be commenced in the circuit court and venue is proper in any county in which the public body has its principal office, or in Ingham County. If a person commences an action for injunctive relief, that person will not be required to post security as a condition for obtaining a preliminary injunction or a temporary restraining order.

(3) An action for mandamus against a public body under this act will be commenced in the court of appeals.

(4) If a public body is not complying with this act, and a person commences a civil action against the public body for injunctive relief to compel compliance or to enjoin a further noncompliance with the act and succeeds in obtaining relief in the action, the person will recover court costs and actual attorney fees for the action.

The trial court entered an order granting Defendant's motion for summary disposition and closing case on June 7, 2024.¹ In accordance with MCR 7.204, the claim of appeal was filed with the Michigan Court of Appeals on June 17, 2024.

¹ Appendix App p135

STATEMENT OF QUESTIONS INVOLVED

1. Did the Complaint State a State a Claim on Which Relief Could Be Granted?

The trial court said “no.”

2. Was a Claim for Relief Established by the Documents Filed with the Trial Court?

The trial court did not answer this question.

3. Were Plaintiff-Appellant’s Due Process Rights Violated Because of the Lack of an Impartial Forum?

The trial court said “no.”

STATEMENT OF FACTS

02/21/2024 Complaint²

The complaint alleges that Defendant's City Council violated the Michigan Open Meetings Act (OMA) by holding a closed meeting on October 16, 2023 without announcing the purpose as required by MCL 15.267. It also alleged that at a subsequent meeting the Defendant violated the OMA by adopting false minutes in violation MCL 15.269. The complaint contained a transcript³ prepared from a portion of the October 16, 2023 dealing with the closed meeting. Attached to the complaint were the approved minutes for the same portion of the meeting.⁴ The official public record of the meeting is a video recorded and maintained on the City's website at <https://ctnvideo.a2gov.org/CablecastPublicSite/show/8928?site=1>

The approved minutes attached to the complaint purported to show the following actions taken by the City Council:

[1] A motion was made by Councilmember Disch, seconded by councilmember Briggs, that Council enter into Closed Session under the Open Meetings Act as set forth in MCLA 15.268 a, c, d, e and h for the City Attorney's personnel evaluation. On a roll call, the vote was as follows with the Mayor declaring the motion carried and the meeting adjourned in Closed Session at 8:50.

Yeas: 11

Mayor Taylor, Councilmember Briggs, Councilmember Disch, Councilmember Song, Councilmember Eyer, Councilmember Radina, Councilmember Harrison, Councilmember Ghazi Edwin, Councilmember Watson, Councilmember Akmon and Councilmember Cornell

Nays: 0

[2] A motion was made by Councilmember Briggs, seconded by Councilmember Cornell, that the meeting reconvene. On a voice vote, the Mayor declared the motion carried and the meeting reconvened in Open Session at 9:11 p.m.

[3] Councilmember Akmon moved, seconded by Councilmember Eyer, that the Agenda be opened and amended to add the following Resolution: Resolution to Finalize Evaluation Report and Amend the employment agreement for City Attorney Atleen Kaur. In a voice

² App p1

³ App p5

⁴ App p6

vote, the Mayor declared the motion carried.

[4] A motion was made by Councilmember Radina, seconded by Councilmember Watson, that the Resolutions be approved. On a voice vote, the Mayor declared the motion carried.

[5] A motion was made by Councilmember Disch, seconded by Councilmember Ghazi Edwin, that Council enter into Closed Session under the Open Meetings Act as set forth in MCLA 15.268 a, c, d, e, and h for the City Administrator's personnel evaluation. On a roll call, the vote was as follows with the Mayor declaring the motion carried and the meeting adjourned in Closed Session at 9:15 p.m.

Yeas: 11

Mayor Taylor, Councilmember Briggs, Councilmember Disch, Councilmember Song, Councilmember Eyer, Councilmember Radina, Councilmember Harrison, Councilmember Ghazi Edwin, Councilmember Watson, Councilmember Akmon and Councilmember Cornell

Nays: 0

[6] A motion was made by Councilmember Ghazi Edwin, seconded by Councilmember Radina, that the meeting reconvene. On a voice vote, the Mayor declared the motion carried and the meeting reconvened in Open Session at 9:37 p.m.

[7] Councilmember Watson moved, seconded by Councilmember Song, that the Agenda be opened and amended to add the following Resolution: Resolution to Finalize Evaluation Report for City Administrator Milton Dohoney Jr. On a voice vote, the Mayor declared the motion carried.

[8] A motion was made by Councilmember Radina, seconded by Councilmember Watson, that the Resolution be approved. On a voice vote, the Mayor declared the motion carried. Resolution to Finalize Evaluation Report for City Administrator Milton Dohoney Jr.

None of the eight items is substantiated by the meeting record. Item one is a false report of the actual meeting call by the City Attorney which was "I would like to call a closed session under the Michigan Open Meetings Act specifically MCL 15.268 c, d, e and h."

Items two through six have no basis in the meeting record. There was a four minute gap in the record for which there was no audio during which some business may have been conducted, but there was no record of any motions or actions taken. The meeting record shows that items seven and eight did not happen.

Attached to the complaint as Exhibit C was a document that purported to amend the City Attorney's employment agreement to grant her a 3% raise and a lump sum payment of \$4,200.

There was nothing in the official meeting record showing approval of the document. There was no public report of the pay raise.⁵

The complaint also stated “The violations of the Open Meetings Act described here are a part of Defendant’s practices of conducting government business in secrecy.”⁶

03/07/2024 Disqualification Motion and Affidavit⁷

In an affidavit submitted with a motion for disqualification of Judge Carol Kuhnke, Plaintiff said he had watched a video recording of a hearing in a case where his current counsel sought copies of municipal bond documents. “I watched the video recording of the January 24, 2024 hearing in the case of R. Bruce Laidlaw v City of Ann Arbor (23-001432-CZ).”

<https://vimeo.com/910507265?share=copy>

The affidavit said the Plaintiff observed Judge Kuhnke saying that she didn’t understand the request for “bond texts” and asking whether “bond text” was a term of art. The judge’s conduct that he observed led him to try to determine whether the judge had a special relationship with the City. He then found public records showing that Judge Kuhnke had made political campaign donations to City Council members who had attended the closed meeting and voted to approve the false minutes described in the complaint. Secretary of State records showed the donations and the attendance of Judge Kuhnke at a fundraiser for one of the council members.⁸ The affidavit concluded “I feel that Judge Kuhnke cannot fairly preside over my lawsuit.”

03/18/2024 Summary Disposition Motion⁹

The City filed a motion for summary disposition pursuant to MCR 2.116(C)(8) and (C)(10). It stated, “Plaintiff relies on a single meeting with alleged OMA violations and has not alleged

⁵ App p10

⁶ App p2

⁷ App p12

⁸ App p20-21

⁹ App p22

any facts of violations at any other meetings to support an argument that there are any “ongoing violations” of the OMA by the City to justify the extraordinary remedy of injunctive relief.”

The motion was accompanied by the affidavit of the City Attorney¹⁰ which acknowledged her call for a closed meeting did not comply with the OMA. The affidavit said:

6. I verbally requested the closed session and indicated that MCL 15.278 c, d, e, and h were the bases for going into closed session.
7. In doing so, I inadvertently and unintentionally omitted MCL 15.278a from the list of bases for going into closed session.
8. I also inadvertently and unintentionally omitted a description of the specific purposes for going into closed session, which was a one-time departure from my usual practice.

The motion addressed the issue of the false minutes with the following incomprehensible logic:¹¹

Plaintiff also alleges that “[t]he minutes falsely portray the proceedings of the October 16, 2023 meeting” in violation of the OMA (Plaintiff’s Complaint, ¶ 10). It appears that by his reference to “[t]he actual proceedings [as] shown on the City’s video of the meeting,” Plaintiff bases this allegation on the fact that prior to the City Council going into closed session, the City Attorney verbally identified only MCL 15.268 c, d, e, and h and inadvertently omitted mention of subsection a. (Ex 2, p. 2). Plaintiff incorrectly infers from this that meeting minutes did not accurately include the purposes for the closed session.

But this allegation is also contradicted by the meeting minutes Plaintiff attaches to his complaint as Exhibit B. The meeting minutes clearly state that the City Attorney’s personnel evaluation was in fact the purpose for the closed session:

A motion was made by Councilmember Disch, seconded by Councilmember Briggs, that Council enter into Closed Session under the Open Meetings Act as set forth in MCLA 15.268 a, c, d, e and h for the City Attorney’s personnel evaluation.

(Ex 3, p. 14). This is an accurate description of the purpose for going into closed session on October 16, 2023. (Ex 2, p. 2). Accordingly, the meeting minutes accurately reflect the “purpose or purposes for which a closed session is held” in accordance with the requirements of the OMA. MCL 15.269. **Thus, the meeting minutes do not violate the OMA.** [emphasis added]

¹⁰ App p40

¹¹ App p33

Attached to the summary disposition motion was a copy of the approved minutes¹² of the October 16, 2024 meeting. The portions of those minutes beginning with the call for the closed meeting are identical to the minutes attached to the complaint.

04/08/2024 City Reply to Disqualification Motion¹³

The City's reply to the disqualification motion cited State Bar of Michigan Ethics Opinion JI-145 which states “. . . a private donation by a judge to a nonjudicial candidate's campaign, **without more**, [emphasis added]is not an ethically prohibited 'public endorsement.'" The City's reply also stated "Neither Councilmember is named as a party or defendant in this matter."

04/10/2024 Hearing on Disqualification Motion¹⁴

In denying the motion for disqualification Judge Kuhnke stated

I'm sorry, but I was going to say that the individual council members are not parties to this case. The Defendant is the city of Ann Arbor, and the vote that you challenge was, as I understand, unanimous, and I fail to see how that creates even an appearance of impropriety,¹⁵

04/11/2024 Initial Disclosure¹⁶

In accordance with MCR 2:302(A)(7) Plaintiff's initial disclosure was served on the City's attorneys.

04/13/2024 Depositions of Defendant's Officers¹⁷

Plaintiff noticed the April 29, 2024 depositions of the City Clerk, Mayor and City Attorney.

¹² App p42

¹³ App p61

¹⁴ App p136

¹⁵ App p143

¹⁶ App p128

¹⁷ App p105

04/19/2024 Motion for Protective Order¹⁸

The City filed a motion for protective order to cancel the depositions. The motion asserts that Plaintiff was not entitled to engage in discovery because the Initial Disclosure was premature. The City claimed initial disclosure can only be filed after a defendant files an answer. Defendant never answered the complaint.

04/25/2024 De Novo Review of Disqualification Motion¹⁹

On de novo review, Chief Judge Patrick Conlin denied the motion for disqualification. He said “I don’t think her actions in any way indicate bias or improper behavior for a judge given the ethics opinion.”²⁰

05/01/2024 Hearing on Motion for Protective Order²¹

At the hearing on the motion for protective order, the City’s attorney is not asked to present her motion. She only uttered 33 words. Instead the judge interrogates Plaintiff’s counsel about why he should be permitted to take the depositions. The Judge only asks the City’s attorney: “Is your motion such that I could consider it under C8 without discovery.” The response is: “Yes, you could consider it entirely on C8 if you decide to do that.” Judge Kuhnke then rules that all discovery is barred until after June 5, 2024. She states: “When I have a motion filed in lieu of an answer, I think it is appropriate to do that before engaging in discovery.”

05/09/2024 City’s Additional Brief in Support of Summary Disposition Motion²²

The City filed a brief changing to request for summary disposition under MCR 2.116(C)(8) and MCR 2.116(C)(10) to requesting relief solely under MCR 2.116(C)(8). The brief states:

¹⁸ App p104

¹⁹ App /148

²⁰ App p157

²¹ App p160

²² App p131

Plaintiff's response, like his complaint, fails to identify any other meetings with alleged OMA violations by the City Council apart from the October 16, 2023 meeting that is the subject of his complaint. Plaintiff does not squarely address the City's argument that his complaint should be dismissed under MCR 2.116(C)(8) because he failed to state a cognizable claim for injunctive relief pursuant to MCL 15.271 by not alleging "ongoing violations" of the OMA. On this basis alone, summary disposition should be granted.

Instead, Plaintiff makes the lone conclusory assertion that "[o]ther minutes were approved describing a City Council action that simply did not happen" but does not provide any specifics of when that allegedly happened. (Plaintiff's Response, p. 3). Further, Plaintiff does not assert any other violations at any other City Council meetings.

06/05/2024 Hearing on Summary Disposition Motion²³

At the hearing on the motion for summary disposition, the City's attorney states "Plaintiff relies only on an alleged violation at a single meeting closed session." Counsel for Plaintiff pointed out that assertion is incredible in light of detailed allegations of the Complaint showing multiple violations of the Open Meetings Act in approving false minutes. He indicates that the violations continue because the City failed to correct the false minutes.

In granting the motion for summary disposition, Judge Kuhnke states "The only violation identified in the complaint is the closed session on October 16, 2023." She also asserted: "The only relief requested by the Plaintiff is the appointment of someone to monitor the work of the Ann Arbor City Council to ensure that it complies with the Open Meetings Act."

06/07/2024 Final Order²⁴

On June 7, 2024 an order was entered stating "It is hereby ordered that, for the reasons stated on the record, Defendant's Motion for Summary Disposition pursuant to MCR 2.116(C)(8) is granted; This is a final order that closes the case." There was no written opinion.

²³ App p162

²⁴ App p135

Arguments

1. The Complaint Stated a Claim on Which Relief Could Be Granted.

Standard of Review

Plaintiff-Appellant is appealing a final order granting motion for summary disposition pursuant to MCR 2.116(C)(8), failure to state a claim upon which relief can be granted. The standard of review for an appeal from a summary judgment in Michigan is de novo, meaning the appellate court reviews the case without deference to the trial court. The appellate court reviews the facts in the same way as the trial court, giving the non-moving party the benefit of all reasonable inferences and viewing the evidence in their favor. A motion for summary disposition pursuant to MCR 2.116(C)(8), failure to state a claim upon which relief can be granted, is tested by the pleadings alone. Only the legal basis of the complaint is examined. See *Mills v White Castle System, Inc*, 167 Mich App 202, 205; 421 NW2d 631 (1988).

The Open Meetings Act requires that for a closed public meeting “The roll call vote and the purpose or purposes for calling the closed session shall be entered into the minutes of the meeting at which the vote is taken.”²⁵ That requires the public body to "state on the record the purpose of the closed session before initiating the closed session..." *Herald Co., Inc. v. Tax Tribunal*, 258 Mich App 78, 669 NW 2d 862 (2003). The complaint clearly states that the City did not comply with that requirement.²⁶

To get relief under OMA the Michigan Supreme Court has held that a plaintiff must allege additional violations of FOIA showing that an injunction is necessary, *Speicher v Columbia Twp. Bd. of Trs.*, 497 Mich 125, 860 NW2d 51(2014). Public bodies get one free violation of OMA.

The additional violation is stated in paragraph 10 of the complaint which states that the

²⁵ MCL 15.267

²⁶ Paragraph 8, App p2

relevant minutes later approved by the City Council were false. That allegation is supported by the minutes requirement sections of Sections 7 and 9 of the OMA.²⁷ One cannot seriously claim that false minutes meet the requirement. Posting false minutes is forgery which is a felony punishable by imprisonment for up to 14 years, MCL 750.248.

The existence of the allegations cannot be nullified by claims that the minutes are not false or do not exist. See above Statement of Facts. They are spelled out in black and white in the complaint.

2. The Claim for Relief Established by the Documents Filed with the Trial Court.

Standard of Review

The standard of review is the same de novo consideration as described in part 1 above.

The City never answered the Complaint, but, in the course of the litigation, it managed to admit the key elements. It admitted that it did not comply with OMA in declaring the purpose of the closed meeting. By attaching the minutes which were approved at a later council meeting, it admitted the authenticity of the identical minutes which were attached to the complaint.

The complaint stated that the meeting was called as follows:

“I would like to call a closed session under the Michigan Open Meetings Act at MCL 15.268 C, D, E and H.”²⁸

That was admitted by the affidavit attached to the City’s motion for summary disposition.

“I also inadvertently and unintentionally omitted a description of the specific purposes for going into closed session. . .”²⁹

The false contents of minutes were admitted by attaching to the motion minutes which stated:

“A motion was made by Councilmember Disch, seconded by Councilmember Briggs, that Council enter into Closed Session under the Open Meetings Act as set forth in MCLA

²⁷ MCL 15.267 and MCL 15. 269

²⁸ App p1

²⁹ App p40

15.268 a, c, d, e and h for the City Attorney's personnel evaluation.”

The Complaint contained a transcription of the official record of the which included the following regarding the closed session:

01:51:54: Video notice: “City Council Meeting is in Closed Session”

2:10:29: Video shows persons seated at council table, no audio

2:14:04: Video notice: “City Council Meeting is in Closed Session”

2:36:47 Open meeting resumes³⁰

That meant that there was no official record of proceedings from 01:51:54 until 2:35:47. There was nothing to justify the meeting motions and seconds described in the Statement of Facts as items [2] through [6]. The City managed to admit the lack of a record in its brief filed on May 9, 2024 which stated:

“The lack of audio is related to a technical issue by CTN in re-starting the audio recording following the first closed session. It is clear, however, from the video that during this period on video without audio, the City Council is present in Council Chambers at the Council Table and Councilmembers are shown raising their hands to cast votes. Further, this Resolution was passed in open session, as noted in the official written minutes of the meeting, and the record of the passed resolution clearly indicates that the City Council voted to pass the resolution.”

That was an admission there was no official record basis for the minutes other than a no audio video showing people raising their hands.

While avoiding the filing of an answer, the City’s court filings constituted admissions that a closed meeting was held without notice of the purpose. The filings showed that the minutes approved on November 6, 2023 regarding the calling of the closed session were false. The filings also showed that there was no basis for five items of the approved minutes. The remaining two minutes were not discussed in the City’s brief, but there was more than enough to show an OMA violation regarding meeting minutes. The false minutes showed violations that were clearly intentional. It was no accident that the approved minutes changed the statute citation to make it look like the closed session was properly called. There is every reason to believe that injunctive relief is needed to prevent future OMA violations

³⁰ App p6

3. Plaintiff's Due Process Rights Were Violated Because of the Lack of an Impartial Forum.

Standard of Review

The violation of due process rights is discussed here for determining the appropriate relief. It is not addressed to reversing any trial court order. In that context its review could either be de novo or regarding abuse of discretion. Either standard leads to the same result. See *Armstrong v Ypsilanti Charter Twp.*, 248 Mich App. 573, 596, 640 NW2d 321 (2001). "This Court reviews a trial court's factual findings on a motion for disqualification for an abuse of discretion, but the application of the law to the facts is reviewed de novo." See also *People v Schumacher*, 276 Mich App 165, 176; 740 NW2d 534 (2007) "This Court reviews de novo a defendant's due process claim related to an alleged failure to provide evidence."

The U.S. Supreme Court has held that due process requires an impartial forum:

"A fair trial in a fair tribunal is a basic requirement of due process. Fairness of course requires an absence of actual bias in the trial of cases. But our system of law has always endeavored to prevent even the probability of unfairness. To this end no man can be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome. That interest cannot be defined with precision. Circumstances and relationships must be considered. This Court has said, however, that 'Every procedure which would offer a possible temptation to the average man as a judge * * * not to hold the balance nice, clear, and true between the State and the accused denies the latter due process of law.' *Tumey v State of Ohio*, 273 U.S. 510, 532, 47 S.Ct. 437, 444, 71 L.Ed. 749. Such a stringent rule may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties. But to perform its high function in the best way 'justice must satisfy the appearance of justice.' *Offutt v. United States*, 348 U.S. 11, 14, 75 S.Ct. 11, 13." *Murchison*, 349 U.S. 133,(1955).

In this case impartiality failed first in the denial of the disqualification motion. Neither Judge Kuhnke nor Judge Conlin was able to understand why John Floyd felt he could not get a fair hearing after discovering that Judge Kuhnke had made campaign donation to officers of the defendant and had attended a fundraiser of one of them. In denying the motion Judge Kuhnke pointed out that the officers were not named as defendants. However they could have been

because they voted to approve the very OMA violations described in the Complaint.

Judge Kuhnke also found it relevant that the officers were only two of the eleven members of the City Council. That brings to mind the hypothetical situation of a judge having a financial relationship with a member of the board of directors of a defendant corporation. Would a court really find no appearance of impropriety if the officer was only one member of a board of a ten person board of directors?

In denying the disqualification motion at the *de novo* review hearing, Judge Patrick Conlin stated “According to State Bar Michigan Ethics Opinion JI-145, a judge may make a private monetary donation to non-judicial candidates' campaigns. This is not unethical.”³¹ But that opinion said ““Given the amendments of Canons 2 and 4 of the Code of Judicial Conduct allowing judges to be more involved in fund raising activities, a campaign contribution to a nonjudicial candidate, **without more**, is not ethically prohibited.” [emphasis added] Surely contributions to officers of a defendant corporation is much more.

The lack of impartiality next appeared at the hearing on the motion for a protective order.³² The City claimed that discovery was not permitted on the basis of the preposterous proposition that the initial disclosure was premature. But it didn't have to try to explain that because Judge Kuhnke questioned Plaintiff counsel on why he should be permitted to engage in discovery. The City claimed undue burden on City officers attending depositions in walking distance of their offices. Although the City has a staff of twelve attorneys, Judge Kuhnke did not discuss how the depositions would create a hardship. The big burden the City would have faced would have been to deal with at least one of its officers needing to plead the fifth amendment to avoid charges under the Michigan forgery statute. The Complaint contained allegations of official misconduct for which made the depositions relevant. A delay might have properly been considered by Judge Kuhnke. But she effectively barred all discovery until she dismissed the case.

Judge Kuhnke signaled that she would consider a revised theory for granting a motion for summary disposition. The City's counsel promptly filed a brief that ignored the Complaint and said, “Plaintiff relies only on an alleged violation at a single meeting closed session.” At the

³¹ App p 157

³² App p162

hearing on the summary disposition motion the court accepted that false claim saying. “Plaintiff relies only on an alleged violation at a single meeting closed session.” She then went a step further, ignoring the seven relief requests of the Complaint and said “The only relief requested by the Plaintiff is the appointment of someone to monitor the work of the Ann Arbor City Council to ensure that it complies with the Open Meetings Act.”³³

The final insult was the final order issued by Judge Kuhnke. The Plaintiff’s counsel had provided the court with an example of an opinion of an impartial judge in deciding a similar mixed issue of fact and law. ³⁴ But, instead of providing an opinion, Judge Kuhnke simply issued an order granting the summary judgment motion “. . . for the reasons stated on the record.” Those reasons stated on the record had no basis in reality.

³³ App p174

³⁴ App p78

Remedy

The denial of due process by the trial court cannot be corrected by remanding the matter to the circuit court bench of Washtenaw County. The past and present chief judges were unable to understand why Mr. Floyd feared he could not get a fair hearing. Also, until recently, one of the circuit judges was an assistant city attorney. Plaintiff-Appellant would have ample reason to be concerned about impartiality of the circuit court bench.

There is no need to remand the matter to any circuit judge because a final order of the Court of Appeals can close the case. The Complaint and the court filings by Defendant-Appellant established the proof necessary for the Court of Appeals to issue injunction orders. If a mandamus is necessary the Open Meetings Act authorizes the Court of Appeals to issue it, MCL 15.275: “An action for mandamus against a public body under this act shall be commenced in the court of appeals.”

The Complaint prayer for relief requested “Appointment of a master to monitor the City’s compliance with the orders of the Court, and to make recommendations to the Court regarding City policies to achieve transparency in government.” Plaintiff-Appellant has no desire to continue the policing of OMA compliance by the City. Law enforcement and ethics agencies can handle the tasks regarding the criminal and ethical misconduct.. Therefore he is willing to abandon the request for appointment of a master.

City Council records included a document purporting to give the City Attorney a 3% raise and a lump sum payment.³⁵ There was no record of approval of the raise and bonus except the false minutes. Since the deposition of the City Attorney was barred by Judge Kuhnke, no information is available on whether the City Attorney received the additional payments. If they were the result of deliberations at the closed meeting, the approval would violate OMA. Accordingly the relief should include an injunction against approval of actions deliberated at closed meetings.

Plaintiff-Appellant had only paid out of pocket expenses for the litigation. However, time records have been kept for attorney hours spent on the matter. Plaintiff-Appellant will only be indebted for attorney fees to the extent reimbursement is authorized by the Court of Appeals

³⁵ App p11

under OMA Section 11, MCL 15. 275. Based on an hourly rate of \$300, the expenses and attorney fees now total \$35,527.48. In *Woodman v. Dep't of Corrections*, 511 Mich 427, 999 NW2d 463 (2023), the Supreme Court ruled that such *pro bono* representation may not be considered for the reduction of attorney fees. Accordingly an award of fees and expenses is requested without the necessity of remand to a circuit court.

Prayer for Relief

Plaintiff-Appellant requests that Court of Appeals order the following:

1. An injunction against holding closed meetings without notice of the purpose.
2. An injunction against adopting meeting minutes that are not based on official records.
3. An injunction against approval of matters for which there has been deliberation in closed meetings.
4. A mandate that the City correct the public record regarding the minutes of the closed meeting on October 16, 2023.
5. An award of attorney fees and expenses in the amount of \$35,527.48 or such other amount as the Court deems reasonable.
6. Request review by the Judicial Tenure Commission regarding conduct of Judge Carol Kuhnke along with the pending investigation number 2024-2934
7. Request review by the Attorney Grievance Commission regarding the Conduct of Jennifer A. Richards, Matthew Thomas and Atlene Kaur.
8. Request review by the Michigan Attorney General and the Washtenaw County Prosecutor regarding the conduct of City Attorney Atlene Kaur, Mayor Christopher Taylor, and City Clerk Jacqueline Beaudry.

Remedy II

The above remedy discussion provides a manner of ending the lawsuit at the appeal level. If the Court of Appeal wishes things dealt with at the trial court level, when permitted to do discovery, Plaintiff-Appellant could sort out a tangled web of lies.

The problem began with the holding of an illegal closed meeting that may (or may not) have been the result of a simple mistake by the City Attorney. But instead of attempting to correct the public record, City officials attempted a coverup. That led to the web of lies by City

officials, the City's attorneys and Judge Carol Kuhnke.

Lies on November 6, 2023

The lies were by the City Clerk, the Mayor and ten City Council members in approving false minutes the most blatant of which was:

“A motion was made by Councilmember Disch, seconded by Councilmember Briggs, that Council enter into Closed Session under the Open Meetings Act as set forth in MCLA 15.268 a, c, d, e and h for the City Attorney's personnel evaluation.”³⁶

Lies on March 18, 2024

In a motion for summary disposition, Assistant City Attorney Jennifer A. Richards began her lies with:

“Instead, Plaintiff relies on a single conclusory allegation that the violations described in his complaint on October 16, 2023, “are a part of Defendant's practices of conducting government business in secrecy.”³⁷

Lies on May 9, 2024

In her brief, Assistant City Attorney Jennifer A. Richards stated:

“Second, Plaintiff failed to allege any other Open Meeting Act (“OMA”) violations at other meetings. . .”³⁸

“Indeed, Plaintiff's complaint and his response are devoid of any specific assertion of OMA violations at any other meeting to suggest that there are any “ongoing violations” needed to prevail on his injunctive relief claim.”

Lies on June 5, 2024

At the hearing on the motion for summary disposition, Assistant City Attorney Jennifer A. Richards claimed:

“Plaintiff relies only on alleged violations at a single meetings closed session, and makes a conclusory allegation that the City has practices in government business and secrecy

³⁶ App p43

³⁷ App p28

³⁸ App p132

without any factual allegations. . .”³⁹

Lies by Judge Kuhnke on June 5

In granting the motion for summary disposition, Judge Carol Kuhnke claimed:

“The only violation identified in the complaint is the closed session on October 16, 2023.”⁴⁰

“. . .the only relief requested by the Plaintiff is the appointment of someone to monitor the work of the Ann Arbor City Council. . .”⁴¹

If this matter is remanded to the trial court, the judge who provided falsehood as the basis for her decision should not have any jurisdiction over the matter. The State Court Administrator should appoint a visiting judge.

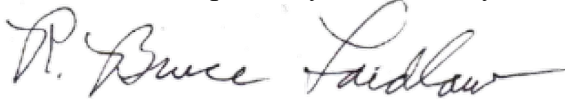
Prayer for Relief II

Plaintiff-Appellant requests that Court of Appeals order the following:

1. That the order granting the motion for summary disposition be reversed.
2. That the matter be remanded to the Washtenaw Trial Court.
3. That the trial court request the appointment of a visiting judge to handle the matter.

Signature

This brief is respectfully submitted by the undersigned.



R. Bruce Laidlaw
Attorney for Plaintiff-Appellant John C. Floyd III
Dated: October 2, 2024

³⁹ App p170, line 22

⁴⁰ App p174, line 3

⁴¹ App p174, line 19