

IN THE IOWA DISTRICT COURT IN AND FOR SCOTT COUNTY

CITY OF DAVENPORT, IOWA, )  
 and MIKE MATSON, MAYOR, )  
 )  
 Plaintiffs, )  
 )  
 v. )  
 )  
 )  
 )  
 SUSAN GREENWALT, NICOLE )  
 BRIBRIESCO-LEDGER, CLYDE )  
 MAYFIELD, and HELEN ROBERSON, )  
 )  
 Defendants. )

Case No. CVCV300137

**RULING ON PLAINTIFFS’  
MOTION FOR SUMMARY  
JUDGMENT**

On June 16, 2020, Plaintiffs’ Motion for Summary Judgment came before the Court for consideration without oral argument. Defendant Susan Greenwalt has filed a resistance to said motion. No other Defendant has filed an answer or resistance in this matter<sup>1</sup>. The Court has reviewed the file and considered the applicable law. In light of the aforementioned factors, the Court rules as follows.

**BACKGROUND FACTS**

The Court adopts in large part the background facts set out by the Hon. Henry Latham in his opinion of March 31, 2020 granting Plaintiff’s Motion for Temporary Injunction. The background facts are set forth below.

<sup>1</sup> The Court notes that in filings by Susan Greenwalt, she purports to be filing on behalf of all Defendants. However, her pleadings acknowledge that she is filing in her pro se status. The Court does not believe Ms. Greenwalt is a licensed attorney based on a review of the OPR attorney listings. Accordingly, she is not authorized to file on behalf of other individuals. Nonetheless, the ruling herein would be the same even if she did have authority to file on behalf of all Defendants.

Defendant, City of Davenport (the “City”), has organized a civil rights commission (the “DCRC”) pursuant to Iowa Code Section 216.19(2). Iowa Code Section 216.19(2) *requires* a city the size of Davenport to maintain a *functioning* civil rights commission:

A city with a population of twenty-nine thousand, or greater, **shall maintain an independent local civil rights agency or commission** consistent with commission rules adopted pursuant to chapter 17A. An agency or commission for which a staff is provided shall have control over such staff. A city **required to maintain a local civil rights agency or commission shall structure and adequately fund the agency or commission** in order to effect cooperative undertakings with the Iowa civil rights commission and to aide in effectuating the purposes of this chapter. (emphasis added).

The DCRC has seven commissioners appointed by the City’s Mayor. *See* Davenport Mun. Code § 2.58.040. Each commissioner is appointed for a *two-year* term that begins on December 1 of the appointed year and ending on November 30 two years after the appointed year. *Id.* Defendants, Susan Greenwalt (“Greenwalt”), Clyde Mayfield (“Mayfield”), and Helen Roberson (“Roberson”), were appointed to the DCRC effective December 1, 2016. As such, their terms expired two years later on November 30, 2018. Defendant Nicole Bribriesco-Ledger (“Bribriesco-Ledger”) was appointed to the DCRC effective December 1, 2017. It follows that her term expired on November 30, 2019.

In December of 2018, then Davenport Mayor Frank Klipsch appointed three new members of the DCRC—Lee Gatson, Patricia Hardaway, and Randy Moore—to replace Greenwalt, Mayfield, and Roberson. These new appointments were confirmed by the City Council on December 12, 2018, and their terms expire on November 30, 2020. Bribriesco-Ledger was not reappointed upon the expiration of her term in November 2019<sup>2</sup>. In November 2019, then Mayor Klipsch appointed four new members to the DCRC—Ruby Mateos, Janelle

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<sup>2</sup> Nicole Bribriesco-Ledger was removed prior to the expiration of her term. However, that does not impact the findings and decision in this matter as her term has naturally expired and she was not reappointed.

Swanberg, Henry Karp, and Richard Pokora. These appointments were then confirmed by the City Council on November 26, 2019, and their terms expire November 30, 2021.

Plaintiffs argue that notwithstanding the natural expiration of their terms as commissioners, Defendants have refused to step down as commissioners on the DCRC because Defendants claim the Mayor had no right to appoint new commissioners to fill their places. Plaintiffs allege that Defendants mainly argue their terms of office automatically continue past the natural expiration date of their two-year term, and the Defendants additionally assert that they have some other unfettered, unspecified right to continue as commissioners of the DCRC, even though their terms have expired.

On February 21, 2020, Plaintiffs filed a Petition for Declaratory Judgment (the “Petition”) requesting that the Court determine who the legally appointed and duly confirmed and authorized DCRC commissioners are, and that the Defendants have no authority to act, or to continue to hold themselves out, as commissioners of the DCRC.

Plaintiffs maintain that since the filing of the Petition, the Defendants have continued to hold themselves out as commissioners of the DCRC and purport to direct the actions of its director and staff. Plaintiffs assert the Defendants have disrupted the meetings of the legitimate DCRC commissioners, and have prevented the DCRC from conducting meetings and business, all without any legal authority to do so since their terms have expired. Plaintiffs allege that the Defendants’ actions have interfered with the lawfully appointed commissioners’ exclusive right to exercise their powers to conduct DCRC business and to supervise the DCRC director and its staff.

On March 31, 2020, the Hon. Henry Latham granted Plaintiff's request for a temporary injunction to preserve the *status quo* during the course of this litigation and to allow the DCRC to function and conduct legitimate business without interference from the Defendants.

Defendant Greenwalt filed an Answer and an attachment entitled "Legal Opinion on the Interpretation of the Commission's Ordinance." However, this attachment was not created by Defendant Greenwalt or an attorney of record, but by Latrice Lacey. Ms. Lacey's attempt to intervene in this case was denied by the Hon. Henry Latham on April 13, 2020. The legal opinion contains mostly irrelevant facts and arguments going to alleged motivations behind the Mayor's DCRC appointments; arguments about how this Court is not a proper venue for this case and how the City is not a proper plaintiff<sup>3</sup>; and how conflicts of interest exist between Plaintiffs' counsel's firm and the DCRC because citizens currently being investigated by the DCRC are also represented by Plaintiff's Counsel's Law firm, to wit: Lane & Waterman.<sup>4</sup> Parts of the legal opinion are incorporated in part in Ms. Greenwalt's brief in support of her resistance to the Motion for Summary Judgment.

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<sup>3</sup> The Court finds the City is a proper Plaintiff. The City is required to have a functioning civil rights commission under Iowa Code Section 216.19(2). Defendants' refusal to step down as commissioners, has made the DCRC dysfunctional. Due to Defendants' actions, the City cannot meet the requirements mandated by this Code Section. Thus, the City has suffered, and will continue to suffer, injury caused by Defendants' refusal to step down. The City is entitled to a remedy.

<sup>4</sup> The Court finds no conflict of interest just because the firm of Lane & Waterman currently represents individuals with pending cases in front of the DCRC. First, Plaintiffs' counsel here represents the City and the Mayor, not the DCRC. Second, there has been no evidence provided that Plaintiffs' counsel is personally involved in any of the cases in front of the DCRC.

## ANALYSIS

### I. Summary Judgment Standard

A motion for summary judgment is appropriate “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Iowa R. Civ. P. 1.981(3). The moving party carries the burden of proving the absence of an issue of material fact. *McIlravy v. N. River Ins. Co.*, 653 N.W.2d 323, 328 (Iowa 2002). “If reasonable minds may differ on the resolution of an issue, a genuine issue of material fact exists.” *Id.* However, speculation and mere allegations are not material facts. *Hlubek v. Pelecky*, 701 N.W.2d 93, 95–96 (Iowa 2005). In ruling on a motion for summary judgment, the facts must be viewed in the light most favorable to the non-moving party. *Id.* at 95. Thus, the Court “consider[s] on behalf of the nonmoving party every legitimate inference that can be reasonably deduced from the record.” *Phillips v. Covenant Clinic*, 625 N.W.2d 714, 717–18 (Iowa 2001). “An inference is legitimate if it is ‘rational, reasonable, and otherwise permissible under the governing substantive law.’” *Id.* (quoting *Butler v. Hoover Nature Trail, Inc.*, 530 N.W.2d 85, 88 (Iowa Ct. App. 1994)). An inference cannot be based on mere speculation or conjecture. *Id.*

### II. Are the terms for Commissioners of the Davenport Civil Rights Commission fixed as two year terms?

Here, Plaintiffs’ Petition seeks a declaratory judgement that the Defendants are no longer commissioners of the DCRC because their two-year statutorily appointed terms have expired, and the Mayor appointed new commissioners who have been confirmed by City Council. This is

because under the Davenport Municipal Code Section 2.58.040, a commissioner's term is two years:

There is established in the City a Commission to be known as the Davenport civil rights commission. Such commission shall consist of seven individuals broadly representative of the community and the various racial, religious, cultural and social groups within it. The Mayor shall appoint members of the commission, who must reside in Davenport. All appointments shall be confirmed by the city council. **The term of appointment shall begin on December 1st and end two years later on November 30th.** The Mayor shall fill any vacancy on the commission, occurring for a reason other than the expiration of a term of appointment, by appointing an eligible individual to fill the remainder of the vacated term. (emphasis added).

The clear language points to the terms being fixed at two years. Defendant's attempt to badly misconstrue the Ordinance by claiming that the Mayor can only fill a vacancy created other than by expiration of term. An Ordinance must be read in its entirety. The language that the Defendants rely upon clearly just grants the Mayor the right to fill a partial term when a Commissioner resigns or becomes incapacitated and can no longer serve. When a term expires, the Mayor can appoint an individual for a full two year term. Defendants point to no authority under Iowa law or City Code to support the Defendants' argument that they are somehow entitled to remain in office following the natural expiration of their two-year term following the appointment of new commissioners.

Defendants claim the newly appointed and approved commissioners have not taken an oath of office, so they cannot act as commissioners. Defendants further argue that the Supreme Court of Iowa case, *Westphal v. City of Council Bluffs* and Iowa Code Section 63.7 and 63.8 are applicable here. *Westphal v. City of Council Bluffs*, 275 N.W.2d 439, 440 (Iowa 1979). All of Defendants' arguments fail. First, Defendants provide no authority that mandates a DCRC commissioner must take some sort of oath of office to become "official". Second, *Westphal* is inapplicable to the case at hand, and even if it did apply, Defendants' holdover argument would

still fail since the Mayor has appointed new DCRC commissioners who have been confirmed by City Council to replace the Defendants. Third, like *Westphal*, the statutes cited by Defendants involve the Defendants' failing holdover argument. Regardless of the Defendants' holdover argument, their citations to Chapter 63 of the Iowa Code are also inapplicable because Chapter 63 handles issues with *elected* officials—DCRC commissioners are not elected, but appointed by the Mayor. *See* Iowa Code § 63.7 and § 63.8

In *Westphal*, a former city clerk brought an action against the city alleging wrongful removal from office by the city council. *Id.* at 441. The plaintiff was originally appointed for a term commencing on August 2, 1963, and was subsequently reappointed several times. *Id.* This dispute involved an argument over which statutes and ordinances were in effect at the time (a provision of the Iowa Code required appointment of a city clerk at a January meeting while a city ordinance required appointment on the first Monday of April), but essentially boiled down to a dispute about holdover appointments. *Id.* Specially, the plaintiff was reappointed as city clerk in January of 1964, 1966, 1968, and 1970, but for some reason no action or reappointment took place in 1972, 1974, or 1976. *Id.* Notwithstanding the lack of reappointments or action, the city continued to pay the plaintiff as city clerk, the plaintiff continued to perform his duties as city clerk, and the city even gave him a salary raise. *Id.* So, the plaintiff acted as the city clerk from his original appointment in 1963 until October 18, 1976, the election in question. *Id.* Prior to the October 18, 1976 election, a city councilman discovered a city ordinance requiring an election for the city clerk. *Id.* An election was held, and the plaintiff lost and brought suit. *Id.*

The plaintiff argued that since the January appointment (required by statute) and the April appointment (required by ordinance) times had already passed, he was essentially reappointed because the city council took no action to confirm or deny his appointment (as had

occurred in previous years). *Id.* at 442. As such, he argued that “he was, in effect, appointed for the period in question by the actions of the council, and that his term was not merely until the election and qualification of a successor, but extended for the same period as for a clerk formally appointed under the ordinance.” *Id.* Conversely, the city argued he was merely a holdover, “not reappointed by the council expressly or by implication, and his tenure was extinguished upon the qualification of the successful candidate at the October 18 election.” *Id.*

The Iowa Supreme Court ruled in favor of the city. *Id.* at 445. In doing so, the Court cited another Iowa case—*Downing v. Cree*, 190 N.W. 36, 36 (Iowa 1922):

The *Downing* case establishes these principles applicable here: (1) [a]n incumbent officer immediately becomes a holdover officer upon expiration of his term. It does not require any affirmative act of the appointing body, acquiescence by it, or appointment by implication; it is automatic, by operation of law. (2) The tenure of a holdover officer is not necessarily equal to a term of a regularly appointed officer. In other words, Brown did not, by holding over after the April election date, become vested with a three-year term expiring in April of 1924, but only until the next general election, and subsequent qualification of his successor. This is in accord with the general rule, which is that ‘when the rights of the successor vest those of the incumbent (holdover) terminate.’

*Westphal*, 275 N.W.2d at 443 (quoting 63 Am.Jur.2d, Public Officers and Employees s 159, p. 726).

Here, even if the Defendants were holdover candidates, they would still have no right to continue to hold their office. The commissioners’ two-year terms expired. The Mayor appointed and the City Council confirmed new commissioners to replace the Defendants. These affirmative actions taken by Plaintiffs to replace the Defendants distinguish this from the holdover cases cited above. Thus, Defendants’ argument about some continued right to serve as a holdover fails. The plain language of the ordinance sets the terms of the Davenport Civil Rights Commissioners at two years. The terms of all of the defendant, therefore, naturally expired. When the terms expired, the Mayor, by the ordinance, is authorized to appoint a new commissioner. If the Mayor



could only appoint new commissioners when the incumbent commissioner chose to voluntarily vacate their positions, it would negate the plain language of Ordinance 2.58.040 stating that commissioner's term is fixed at two years. To accept the Defendant's position that they are essentially appointed for life<sup>5</sup> would lead to an absurd result that is contrary to the clear language and intent of the ordinance.

### **III. Quo Warranto**

Quo Warranto is not the exclusive remedy. Declaratory Relief is also an appropriate remedy.

### **IV. Time to Conduct Discovery**

Defendants claim that time is needed to conduct discovery. Iowa Rule of Civil Procedure 1.981 provides the Court discretion to allow additional depositions and discovery when affidavits are unavailable. In this case, no claim is made that affidavits are unavailable. Just a non-descript claim for a need for discovery. In this case, the Court finds that the issue presented is purely a legal issue and that discovery would serve no purpose. Each side has provided lengthy argument on the legal merits of the issues raised. Accordingly, any request by Defendants for further delay to conduct discovery is denied.

### **V. Initial Disclosures**

Defendant's claim that the matter cannot proceed because Initial Disclosures as provided for in Iowa Rule of Civil Procedure 1.500 have not been complied with. As this is a purely legal issue, the lack of initial disclosures is not fatal to Plaintiff's Motion for Summary Judgment. To the extent necessary, the Court finds that initial disclosures are not necessary in this case. Such

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<sup>5</sup> A lifetime appointment would essentially be created if the Defendants could serve until they decide to voluntarily leave.

is sufficient under Iowa Rule of Civil Procedure 1.500(1)(a) to exempt this case from initial disclosures.

## **VI. Conclusion and Ruling**

The clear language of Ordinance 2.58.040 sets the terms of commissioners on the Davenport Civil Rights Commission at two years. To interpret the Ordinance as creating anything akin to a lifetime appointment is absurd and contrary to any legal authority. Such an interpretation fails to read the ordinance as a whole. The Defendant's terms all naturally expired some time ago and the Mayor has now appointed successors and the successors were approved by the Davenport City Council. These successors are the rightful Commissioners of the Davenport Civil Rights Commission.

Accordingly, Plaintiff's Motion for Summary Judgment is granted. The Court grants the Declaratory Judgment and rules as follows:

1. Defendant's terms as Commissioners of the Davenport Civil Rights Commission have naturally expired and, thus, they are no longer Commissioners of the Davenport Civil Rights Commission and have no right to hold themselves out as such.
2. Janelle Swanberg, Henry Karp, Richard Pokora, Ruby Mateos, and Lee Gaston constitute the legally appointed and lawful Commissioners of the Davenport Civil Rights Commission with the full authority to act on behalf of the Davenport Civil Rights Commission consistent with the laws of the State of Iowa and the Davenport City Municipal Code.
3. If not already done, the Mayor is entitled by the Ordinance to fill any existing vacancies.
4. Costs are taxed jointly and severally to Defendants.



State of Iowa Courts

**Type:** OTHER ORDER

**Case Number** CVCV300137      **Case Title** CITY OF DAVENPORT VS FORMER MEMBERS OF DCRC

So Ordered

A handwritten signature in black ink that reads "Tom Reidel".

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**Tom Reidel, District Court Judge,  
Seventh Judicial District of Iowa**