

In the Matter of

The City of Monroe, a North Carolina
Municipal Corporation,

Complainant,

v.

Angelia Nikole James,

Respondent.

ORDER

THIS MATTER was heard before the Hearing Officer on February 8, 2022, regarding the joint proposal by the City of Monroe and Ms. James submitted on February 1, 2022. The parties proposed that the Hearing Officer recommend to Monroe City Council that Ms. James, Mayor Holloway, Councilmember Gordon, and Councilmember Keziah be excused from participating in the second part¹ of this proceeding and voting on Ms. James' removal on account of having (or potentially having) predisposition and bias concerning whether to remove Ms. James from the City Council (the "Joint Proposal").² Ms. James raised concerns of councilmembers and the Mayor's bias resulting from their votes in favor of a resolution to censure Ms. James on September 28, 2021 (the "Censure"). The Hearing Officer, having considered the parties' positions, legal and factual bases, and North Carolina law, for the reasons stated herein, DENIES their Joint Proposal.

Ms. James has not presented sufficient evidence for the Hearing Officer to recommend the excusal of three councilmembers and the Mayor from participating and voting on Ms. James' removal in the second part of this proceeding. The burden is on Ms. James to demonstrate bias. *State v. Kennedy*, 110 N.C. App. 302, 305, 429 S.E.2d 449, 451 (1993); *Berger v. New Hanover County Bd. of Comm'rs*, 2013 NCBC Lexis 42, *69 (N.C. Super. Ct. Sept. 5, 2013). Ms. James

¹ See City of Monroe Amotion Rule I.B (describing the two parts of the amotion proceeding).

² The email containing the Joint Proposal is attached hereto as Exhibit A.

has conceded that the sole evidence in the record warranting excusal on these grounds is that certain councilmembers and the Mayor have voted to censure Ms. James.

Every factfinder, including judges and City Council members, bring biases to their decision-making. That is human nature and unavoidable. However, a vote for Censure alone does not establish *impermissible* bias requiring excusal from voting on Ms. James' removal. As the North Carolina Supreme Court has explained, a councilmember's "*fixed opinion that is not susceptible to change* may well constitute impermissible bias" requiring non-participation. *Cnty. of Lancaster v. Mecklenburg Cnty.*, 334 N.C. 496, 511, 434 S.E.2d 604, 614 (1993) (emphasis added) (citations omitted); *see also* City of Monroe Amotion Rule I.F.1 (using nearly identical language). "Bias is hard to prove." *Crump v. Bd. of Educ. of Hickory Admin. Sch. Unit*, 326 N.C. 603, 625, 392 S.E.2d 579, 591 (1990). Proof of bias "requires much more than innuendo or inference," and there is a "heavy burden" required to "overcome a presumption of honesty and integrity in those serving as adjudicators." *Berger*, 2013 NCBC Lexis 42, at *41 (citation omitted) (internal quotation marks omitted).

The parties have stated that the Censure vote is an "indicia" or evidence of a fixed opinion. In other words, a vote in favor of the Censure creates an "inference" of impermissible bias against Ms. James. However, this is legally insufficient to warrant that I recommend excusing democratically elected councilmembers and the Mayor as decisionmakers from this proceeding. *Cf. Farber v. N.C. Psych. Bd.*, 153 N.C. App. 1, 10, 569 S.E.2d 287, 295 (2002) (holding "[b]ecause petitioner failed to present sufficient grounds for bias, the Board was not obligated to grant petitioner's request for *voir dire* or to exclude Board members from consideration of the petitioner's case.").

There are substantial differences between this amotion proceeding and the Censure. First, the consequences of Ms. James' removal from elected office are more significant to Ms. James and the voters of the City of Monroe. The Censure, while a public rebuke of Ms. James' actions, is far less consequential than removing a duly elected official from office in the middle of her term. Censures are essentially "public statements" or proclamations, which City Council members routinely make in their official capacity. By contrast, in the removal context, councilmembers stand in the shoes of the voters, representing their constituents to determine whether a councilmember should be excused from their duties. Censures are common; removal from City Council through amotion is rare. *See Berger*, 2013 NCBC LEXIS 42, *25 (analyzing the limited amotion case law in North Carolina state court and suggesting that the last such case was decided in 1935) (citing *Stephens v. Dowell*, 208 N.C. 555, 181 S.E. 629 (1935)).

Notably, the procedure and evidence presented in this specific amotion proceeding varies greatly from that of the Censure. The amotion evidence encompasses numerous exhibits and the testimony of 11 witnesses, including testimony on Ms. James' mental state from a medical doctor—evidence not available or considered during the Censure. Further, this proceeding is overseen by a neutral third-party, the Hearing Officer, who reviews the evidence and issues a report and recommendation to City Council in advance of their vote. In short, the fact that certain councilmembers and the Mayor voted to adopt the Censure resolution "condemn[ing] [Ms. James'] actions in the strongest possible terms" does not establish that they would vote to *remove* Ms. James from City Council without regard to the heightened consequences here and the evidence presented in this proceeding.

Finally, no evidence whatsoever has been presented in this amotion proceeding to establish that the councilmembers and the Mayor who voted for the Censure could not be swayed by the

evidence presented at the motion hearing and the Hearing Officer's report and recommendation addressing that evidence. North Carolina law has a "presumption of honesty and integrity in those serving as adjudicators," including the councilmembers and Mayor at issue here. *Berger*, 2013 NCBC Lexis 42, at *41. The Censure, without more, is legally insufficient to establish that democratically elected councilmembers and the Mayor have a "fixed opinion" "not susceptible to change." *See Cnty. of Lancaster*, 334 N.C. at 511, 434 S.E.2d at 614; *see also Berger*, 2013 NCBC Lexis 42, at *40 (holding a commissioner's comment that he was "concern[ed] that the result of the hearing in favor of removal was inevitable," to be insufficient to establish bias because it at most created an "inference" of bias).

To preserve Ms. James' due process rights, instead of recommending excusal of the councilmembers and the Mayor who voted for Censure, at this time the Hearing Officer will afford Ms. James the opportunity to seek an examination of Mayor Holloway, Councilmember Gordon, and Councilmember Keziah for the limited purpose of ascertaining whether they have fixed opinions not susceptible to change concerning whether to remove Ms. James from City Council. *See Crump*, 326 N.C. at 625, 392 S.E.2d at 591 ("[D]ue process required . . . whatever it would have taken for one or more Board members to candidly answer Crump's questions about their prehearing knowledge."); *Berger*, 2013 NCBC Lexis 42, at *40 ("*Crump* also does not mandate that Plaintiff was necessarily entitled to call any Commissioner as a fact witness beyond a limited inquiry necessary to assess bias").

If Ms. James wishes to pursue a limited inquiry to assess whether those same councilmembers and the Mayor have fixed opinions not susceptible to change, counsel for Ms. James must inform the Hearing Officer within two calendar days of this order. The Hearing Officer will then assist in requesting the attendance of such councilmembers and the Mayor for a

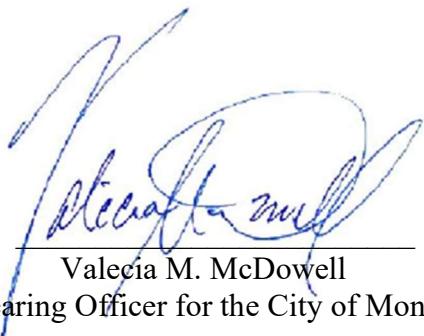
limited inquiry to occur at a date mutually agreed upon by the parties and the participating councilmembers or Mayor, but no later than Thursday, March 3, 2022.

Alternatively, if any councilmember or the Mayor determines for themselves that they have a fixed opinion not susceptible to change concerning whether Ms. James should be removed, then the Hearing Officer requests that the City notify the Hearing Officer in writing within five days. The Hearing Officer would then RECOMMEND that the councilmember or Mayor be excused from the second part of these proceedings, including voting, and they would not need to testify in the limited inquiry on this issue.

Finally, the Hearing Officer does not reach any conclusion as to whether quorum would be maintained should councilmembers James, Gordon, Keziah, and Mayor Holloway be excused from voting under the Joint Proposal. The Hearing Officer, however, cautions City Council to consider that the Joint Proposal presents an unsettled question of law concerning quorum.³ If the City Council's vote concerning removal were appealed to state court, one possible outcome is that the state court invalidates the vote for lack of quorum. *See supra* note 3. Although it may be longstanding City Council practice to count excused councilmembers for the purposes of quorum, a court viewing such action on appeal *de novo* may give such practice little deference. *See In re Ivey*, 257 N.C. App. 622, 627, 810 S.E.2d 740, 744 (2018) (describing the steps courts apply in matters of statutory construction, starting with analysis of the text of the statute).

³ One could read the municipal quorum statute as suggesting parties excused from voting would not be counted towards quorum. N.C. Gen. Stat § 160A-74(a) (noting that a member “who has withdrawn from a meeting without being excused . . . shall be counted as present for the purposes of determining whether or not a quorum is present,” suggesting that a member excused would not be counted towards quorum) (emphasis added). Although not involving the municipal quorum statute at issue, the limited case law on quorum in North Carolina is mixed. *Compare In re Moore*, 308 N.C. 771, 778, 303 S.E.2d 810, 815 (1983) (holding that action taken by four board members eligible to vote although eight board members were present “would not be an action of the Board since four is neither a quorum nor a majority of the membership”); *with Hershner v. N.C. Dep’t of Admin.*, 232 N.C. App. 552, 558, 754 S.E.2d 847, 851 (2014) (holding “a quorum of the SPC is to be determined at the beginning of a meeting; once the meeting is opened, the SPC may conduct business regardless of subsequent recusals that may reduce the number of members voting on a particular issue below the number required for a quorum”).

This the 15th day of February, 2022



Valecia M. McDowell
Hearing Officer for the City of Monroe

EXHIBIT A

From: Hagemann, Robert E. <RHagemann@poynerspruill.com>
Sent: Tuesday, February 1, 2022 10:45 AM
To: Bo Caudill; Valecia McDowell; Fielding Huseth; Raquel Macgregor Pearkes; Bright, Tara M.; mshahkhan@monroenc.org; Sophia Pappalardo
Subject: RE: James - Bias Issue

EXTERNAL EMAIL - USE CAUTION

This is to confirm that the City agrees with Mr. Caudill's email.

Bob

Robert E. Hagemann | Partner



ATTORNEYS AT LAW

301 Fayetteville Street, Suite 1900, Raleigh, NC 27601
PO Box 1801, Raleigh NC 27602-1801
D: 919 783 2987 | **F:** 919 783 1075

rhagemann@poynerspruill.com | www.poynerspruill.com

From: Bo Caudill <bocaudill@villmercaudill.com>
Sent: Tuesday, February 1, 2022 10:32 AM
To: Valecia McDowell <valeciamcdowell@mvalaw.com>; Fielding Huseth <fieldinghuseth@mvalaw.com>; Raquel Macgregor Pearkes <raquelpearkes@mvalaw.com>; Hagemann, Robert E. <RHagemann@poynerspruill.com>; Bright, Tara M. <TBright@poynerspruill.com>; mshahkhan@monroenc.org; Sophia Pappalardo <sophiapappalardo@villmercaudill.com>
Subject: James - Bias Issue

Ms. McDowell,

The parties have conferred on the issue of bias. We agree that it would be sufficient for you to include in your report a recommendation, to safeguard against bias and predetermination of any material issue in these proceedings, that any councilmember that voted to approve the resolution that James be censured for her conduct on or after September 9 be excused by the vote of the Council from participating in Phase II of these proceedings, so that those members do not participate in the following:

- The parties' statements and arguments to Council concerning the findings, conclusions, and recommendations in your report;
- Any deliberation concerning your report or the ultimate issue; and
- Any voting concerning your report or the ultimate issue.

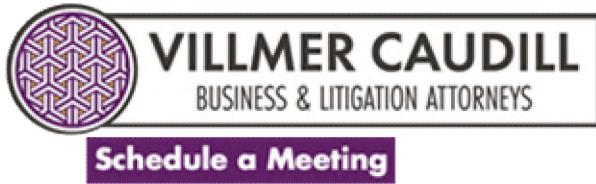
If you agree to include that recommendation, then the parties agree that further proceedings in Phase I are not necessary.

If you have questions or would like to discuss this matter, I am happy to get on a conference call with you and the City's counsel at your convenience.

Sincerely,



BO CAUDILL
Attorney
P: (704) 216-8255
E: bocaudill@villmercaudill.com
M: P.O. Box 18186, Charlotte, NC 28218



DISCLAIMER: The information transmitted by this email is intended only for the person to which it is addressed. This email may contain proprietary, business-confidential and/or privileged material. If you are not the intended recipient of this message, be aware that any use, review, retransmission, distribution, reproduction, or any action taken in reliance upon this message is strictly prohibited. If you received this email in error, please contact the sender and delete the email and the materials sent.

This message constitutes a confidential attorney-client communication. If you have received this communication in error, do not read it. It is not intended for transmission to, or receipt by, any unauthorized persons. Please delete it from your system without copying it, and notify the sender by reply email or by calling 919-783-6400, so that our address record can be corrected. Thank you.