

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OTTAWA

ADELINE HAMBLEY,

Case No: 23-7180-CZ

Plaintiff,

Hon. Jenny McNeill
Sitting by SCAO Assignment

v.

OTTAWA COUNTY,
a Michigan County;
OTTAWA COUNTY BOARD OF COMMISSIONERS; and
JOE MOSS, SYLVIA RHODEA,
LUCY EBEL, GRETCHEN COSBY,
REBEKAH CURRAN, ROGER BELKNAP,
and **ALLISON MIEDEMA,**
Ottawa County Commissioners in their
individual and official capacities,

Defendants.

**PLAINTIFF'S MOTION FOR LEAVE TO FILE SECOND AMENDED
COMPLAINT**

Plaintiff Adeline Hambley, through counsel, hereby makes a motion for leave to file her Second Amended Complaint, pursuant to MCR 2.118(A)(2), and for the reasons stated below:

1. MCR 2.118(A)(2) states, in part, that leave of Court to amend a complaint “shall be freely given when justice so requires.”
2. In this matter, Defendants took an interlocutory appeal after the Court ruled against them on a critical issue in this case: whether Plaintiff was the duly-

appointed Health Officer of Ottawa County. The Court of Appeals ruled in Plaintiff's favor on that issue, and remanded the case to this Court in October.

3. Since the Court of Appeals' remand, the parties have not yet begun discovery in this matter. That is because shortly prior to the Court of Appeals' oral argument, Defendants filed charges for termination against Plaintiff and then ran a sham termination hearing in October. That termination hearing has had no conclusion or findings. As of today, Defendants have continued the hearing over six different sessions. Yesterday, on November 28, 2023, Defendants voted to adjourn the hearing indefinitely without date.

4. As the Court is aware, Plaintiff takes the position that Defendants agreed to settle this litigation and resolve the hearing on November 6, 2023, when Defendants met in closed session and negotiated for an entire eight-hour day with Plaintiff and her counsel. Plaintiff's motion to enforce the settlement agreement in this matter is currently pending before the Court.

5. Plaintiff's Second Amended Complaint restates the original claims in this case, and adds two new claims. Those include Count V, which is a claim under the Open Meetings Act challenging the Defendant Board of Commissioners' vote to authorize charges for termination against Plaintiff, in an attempt to make the charges compliant with MCL 46.10, and their vote to reschedule the special hearing on those charges, on October 10, 2023. If the Court denies Plaintiff's motion to enforce the settlement agreement, Plaintiff is required to preserve this claim soon because of the limitations period.

6. The other new claim, Count VI, is another Open Meetings Act claim, pursuant to Section 11 of that Act. Count VI challenges the Board's failure on November 6, 2023, to adequately describe the decision it was making in the public, open session at the very end of its meeting when it returned out of closed session and from its eight-hour negotiations with Plaintiff and her counsel. The Board voted 7-3 to pass Defendant Joe Moss's motion, which proposed only to "to accept Counsel's recommendation regarding litigation and settlement activities in the case of *Hambley v. Ottawa County* as addressed during closed session." Defendants engaged in no further public deliberation or explanation of the decision being voted on in open session. On its face, this violates Section 3 of the Open Meetings Act by failing to adequately describe the decision being made to the public. See *Andrich v Delta College Bd of Trustees*, No. 337711, at *12-*15, 2018 Mich. App. LEXIS 2574 (June 5, 2018).

7. Count VI, of course, is also directly relevant to Plaintiff's motion to enforce the settlement agreement, since Plaintiff takes the position that Defendants were voting to accept the terms of the settlement agreement reached in negotiations, and that the agreement became final and binding upon that vote. Defendants now take the position that they were not voting to accept the settlement agreement, but only to "continue negotiations." Defendants have also filed a motion to quash Plaintiff's subpoenas for testimony and production of the closed session minutes to certain commissioners and Clerk Justin Roebuck. Clerk Roebuck took the closed session minutes, which would explain what Defendants intended to

approve when they voted. In particular, Defendants are trying to keep the Court from reviewing the closed session minutes by claiming the Open Meetings Act prohibits disclosure of these minutes to the public unless there is an Open Meetings Act claim under Section 10, 11 or 13 implicating those minutes. While Plaintiff disagrees with Defendants' legal position and argues that the Court may still review the minutes *in camera* now that Defendants have placed them controversy because that is not "disclosure to the public," Plaintiff's Count VI removes all doubt that the Court can and must review the closed session minutes *in camera*. Indeed, because there is a OMA violation on its face – because of the lack of description of the Board action on November 6, 2023 – the Court can and must review the closed session minutes *in camera*, and then disclose them to the parties and the public once confirming the OMA violation. That will help resolve Plaintiff's motion to enforce the settlement agreement one way or the other.

8. Moreover, at this juncture, prior to the taking of any discovery, Plaintiff is clearly entitled under Michigan law to amend the pleadings.

Accordingly, Plaintiff respectfully requests that the Court grant leave for Plaintiff to file her Second Amended Complaint.

PINSKY SMITH, PC
Attorneys for Plaintiff Adeline Hambley

Dated: November 29, 2023

By: /s/ Sarah R. Howard
Sarah Riley Howard (P58531)
Elizabeth L. Geary (P76090)
146 Monroe Center St NW, Suite 418
Grand Rapids, MI 49503
(616) 451-8496
showard@pinskysmith.com