

BEFORE THE MUSCATINE, IOWA CITY COUNCIL



IN THE MATTER OF:

Diana L. Broderson, Respondent.

**POST HEARING BRIEF IN SUPPORT
OF REMOVAL OF MAYOR**

COMES NOW, the undersigned, and pursuant to City Code Section 1-14, and hereby submits the following Post Hearing Brief in Support of the Removal of Mayor.

I. INTRODUCTION

This removal action is not a grudge match between the City Council and the Mayor of Muscatine. This removal action is based on dozens of instances of misconduct where the Mayor either asserted baseless and unfounded allegations against City officials and various members of the public, violated City Code and the City Code of Ethics, and/or misused her power for her personal benefit. The Mayor not only engaged in the underlying actions without legal authority to do so, but she engaged in such actions repeatedly, publicly and with full knowledge the consequences could affect the City if she did not stop. Not to be deterred, the Mayor refused to heed the advice of the City Attorney and continued to repeatedly deviate from the City Code, the Code of Ethics, her fiduciary duties, and to assert baseless and unfounded allegations throughout her tenure as Mayor.

Importantly, the Mayor's allegations were not benign. She made allegations that created a risk to the City that could cause substantial civil penalties and/or civil liability, which costs ultimately would have fallen on the taxpayers. Most egregiously, the Mayor made numerous false or baseless allegations that other people had committed crimes and went so far as to affirmatively seek the filing of criminal charges against the City

Councilmembers, the City Administrator, the City Attorney, and members of the local press. These actions cannot—and should not—be taken lightly.

The victims of the Mayor's false complaints have families, careers, and are established members of the community. The Mayor has relentlessly and inexcusably asserted baseless allegations that not only tarnished their good name, but attempted to destroy various facets of their lives. Though the Mayor may disagree with, or question, the propriety of certain items concerning City matters, neither her elected status nor her subjective opinion enable her to denigrate with impunity the individuals with whom she disagrees. Yet, this is precisely what she has done repeatedly.

Under the facts, it is evident the Mayor's repeated allegations were, at worst, made maliciously with the intent to besmirch her political opponents, city employees and private citizens and, at best, made recklessly, without regard to the consequences of her actions. Whatever the case may be, her conduct occurs so frequently as to be the rule and not the exception, thus constituting willful misconduct and willful or habitual neglect of office.

To no one's benefit, the Mayor's repeated false and baseless allegations were but one category of misconduct in which the Mayor has engaged. The Mayor also repeatedly violated the City Code, the City Code of Ethics, and misused her power in an effort to gain a personal advantage. As more fully explained below, the Mayor's combined actions necessitate her removal pursuant to City Code Section 1-7-6.

II. STATEMENT OF FACTS

Diana Broderon was elected Mayor of the City of Muscatine in November 2015, and officially began her term of office on January 1, 2016. The evidence in this case

clearly establishes that, since taking office, the Mayor has exceeded her lawful authority by repeatedly violating the City Code, the City Code of Ethics, by asserting false and baseless allegations, and by misusing her authority for her own personal benefit. The specific facts and evidence that support these allegations are defined in greater detail in the following sections. Such facts and evidence are incorporated herein by reference.

III. CREDIBILITY DETERMINATIONS

The Mayor's testimony in this case was not credible. It was both inconsistent with the testimony of the nearly a dozen other witnesses, as well as inconsistent with her own prior statements concerning the same subject matter. As the Fact Finders in this case:

"You are the sole judges of the weight of the evidence, the credibility of the witnesses, and the conclusions to be drawn from the facts and circumstances proved. If the testimony or any part thereof is conflicting, you will reconcile it if you can, so that it may all have weight and effect, but if you cannot, you will then give credit to that testimony and to those witnesses that to you as fair-minded men and women seem most entitled thereto. In passing on the credibility of the witnesses and weighing their testimony, you may and should consider their appearance and conduct on the witness stand, their age, intelligence, strength of memory, and means of knowledge of matters of which they speak, the remoteness of events about which they testify, their interest or lack of interest in the result of the trial, the motives, if any, actuating them as witnesses, their candor, fairness, bias or prejudice, the reasonableness and probability of their statements or the want thereof, whether their testimony is corroborated or contradicted by other witnesses or facts proven, and from all of these and all other facts and circumstances proven upon the trial, determine where to give credit and where to withhold the same, and give to the testimony of each witness the weight to which you believe it is fairly entitled."

State v. Harrington, 284 N.W.2d 244, 249 (Iowa 1979).

In this case, the hearing took place over a two-day period spanning approximately twenty hours, with over a dozen witnesses testifying. The City's witnesses had no

personal stake in the outcome of this case, and their testimony was overwhelmingly corroborated by other witnesses' testimony or supporting documentation.

The Mayor presented two witnesses. The first was Melissa Snyder. Her testimony should be wholly and completely disregarded for violating the Mayor's own sequester order. Specifically, after her testimony, it was discovered her testimony was delivered in direct violation of the sequester order for witnesses as directed by the City Council at the outset of this hearing. The sequester order was requested by the Mayor's counsel and the order, once entered, made the Mayor and her counsel bound to sequester and gave them an affirmative duty to ensure the Mayor's witnesses were in compliance. However, as is the case with many aspects of the Mayor's behavior, she and/or her counsel failed to comply and simply chose to decide that the rules or orders do not apply to her conduct. In addition, Ms. Snyder's testimony was wholly irrelevant to whether or not the Mayor should be removed from office.

The only other witness presented on behalf of the Respondent was the Mayor. The Mayor presented only her self-serving testimony which did not credibly refute the testimony of the witnesses or the documentary evidence admitted in this case, much of which consisted of the Mayor's very own emails, press releases, and other correspondence. Indeed, in many instances, the Mayor's testimony outright conflicted with the testimony of others. For instance:

1. The Mayor testified that she was not coached about her powers and duties as Mayor. The testimony of City Attorney, Matt Brick, established that, contrary to the Mayor's testimony, she was coached about her powers and duties and the potential adverse consequences of exercising her position as Mayor beyond the scope of her duties under the City Code on at least three occasions.
2. The Mayor testified that the City Attorney gave her the phone number to the Ombudsman's office and indicated that she should give the Ombudsman a call.

The City Attorney testified to the contrary, indicating that he advised the Mayor not to call the Ombudsman and that he did not have the phone number to give to the Mayor.

3. The Mayor testified that when reporting suspected law violations to the County Attorney, she just wanted to know whether a particular fact-set constituted a crime, but was not asking that criminal charges be filed. The testimony of the County Attorney indicated the opposite, that he understood the Mayor's requests as requesting that he file criminal charges against the subjects of her complaints.
4. The Mayor testified that she made it very clear to the Property Manager of the Tower apartments that she was calling regarding her mother, who was a resident at the facility, and that she never suggested the Towers hold a spaghetti dinner for the police department at the property. Contrary to this testimony, the Property Manager testified the Mayor never mentioned that her mother was a resident and never indicated that she was calling in a personal capacity.

Not only did the Mayor's testimony conflict with the testimony of others, the Mayor's testimony also conflicted with her very own prior statements. For instance:

1. The Mayor testified that she never used the word "bullies," yet her very own statements indicate otherwise. See Exhibit Brick 4 (stating "Please arrive early and join your neighbors as we stand up to the bullies and fight for free and open local government.")).
2. On May 21, 2016, Mayor Broderson held a "Coffee with the Mayor" and alleged that the City staff were afraid for their jobs and specifically referred to Chief Talkington. See Exhibit Brick 8. At the hearing, the Mayor testified she doesn't believe she said the Police Chief was afraid of his job, which is contrary to her very own statement. Moreover, the Police Chief testified that he was not afraid of his job and had no issue freely engaging with the Mayor. See Exhibit Statement #15, Talkington Depo. Tr. p. 6:19-7:8.
3. On May 21, 2016, Mayor Broderson held a "Coffee with the Mayor" and alleged that her complaint about anonymous staff making social media posts was not investigated. See Exhibit Brick 8. At the hearing, the Mayor testified that she never stated her complaints regarding City staff violating the social media policy were not investigated. Instead, she testified, that she simply stated that she forwarded on the social media posts and asked how they jive with policy, and that it hasn't gone anywhere. The Mayor's testimony is contrary to her very own statement. Moreover, City Attorney Matt Brick testified that he specifically looked into the complaints and advised the Mayor on at least two occasions that no violations had occurred.

4. The Mayor testified that she did not make a statement that she was being treated poorly because of her gender. In fact, the Mayor made at least two such allegations. See Exhibit Brick 8; see Exhibit Brick 4 (stating “As a woman Mayor, I am faced with Councilmen and a City Administrator who rather than engage in a discussion, compromise and dialog choose to change the rules and strip the Mayor's power away.”); see Mayor Exhibit VV (stating that “I would like to reiterate my concern that the problems I am facing result from me being female ... I fear that me being female in a leadership role has resulted in me being met with a complete lack of acceptance and respect.”).
5. The Mayor claimed during the hearing that the false and baseless complaints she made were part of her duty to report what she was told by citizens in the community. Yet when asked to name even one of these alleged citizens, she refused and/or was simply unable to support her justification by supplying a name of a citizen.
6. The Mayor testified she did not fully understand the limitations of her duties and that she did not know or understand the potential consequences of acting beyond the scope of her authority. This assertion is contrary to the city's records and testimony of City Attorney Matthew Brick.

Based on the foregoing, the Mayor's testimony was clearly inconsistent with the evidence and the testimony in this case, which includes testimony from the Muscatine Police Chief, respected members of the Iowa State Bar, City staff, and respected members of the community at large, all of whom had no personal stake in the outcome of this matter. It is specious to suggest that the Mayor's testimony is somehow more credible than the combined testimony of these disinterested witnesses, particularly in light of the discrepancies between the Mayor's own testimony and her prior statements. Given these facts, the Mayor's self-serving and uncorroborated testimony is simply not credible in this case.

IV. ARGUMENT

A. LEGAL STANDARD FOR MISCONDUCT

Pursuant to City Code 1-7-6, the Mayor may be removed from office for, among other reasons, willful misconduct or maladministration in office. Given the scarcity of case law on the subject, Iowa courts have not had occasion to define the precise contours of the phrase “misconduct” as utilized in the removal statute. The Iowa Attorney General’s office has interpreted the phrase and held that “Misconduct generally means any unlawful behavior by a public officer in relation to the duties of his office, willful in character, and embraces acts which the office holder had no right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act.” 1997 Iowa AG LEXIS 26, *10 (citing Black's Law Dictionary 901 (1979)).

As the Iowa Attorney General observed, misconduct “is necessarily a broad term,” and includes within its scope other common grounds for removal such as misfeasance, malfeasance, and nonfeasance, which together are often referred to as official misconduct. See id.; see also, 4 McQuillin Mun. Corp, § 12:327. Regardless of the nomenclature used, official misconduct is any wrongful conduct that affects, interrupts, or interferes with the performance of an official duty. See 4 McQuillin Mun. Corp, § 12:327.

As for maladministration, it has been held to simply mean wrong administration. See Minkler v. State, 14 Neb. 181, 183 (Neb. 1883)(stating that “The phrase maladministration is not found in any of the law dictionaries, but we cannot be far wrong in giving it the signification of wrong administration....”); see also, *e.g.*, Oxford English Dictionary, available at <https://en.oxforddictionaries.com/definition/maladministration>

(defining mal-administration as “Inefficient or dishonest administration; mismanagement.”) and Ballentine’s Law Dictionary (defining maladministration as “[i]nefficient administration; bad but not necessarily corrupt administration.”).

In order for misconduct or maladministration to provide a basis for removal, “a showing is required the alleged [conduct] was committed willfully and with an evil purpose.” State v. Bartz, 224 N.W.2d 632, 633 (Iowa 1974). “Acts which are simply irregular, even if violative of statutes, are not in themselves grounds for removal from office unless an evil and corrupt motive on the part of the officeholder is shown.” Id. (citations omitted).

As more fully discussed below, the Mayor engaged in misconduct and maladministration of office by repeatedly acting outside the scope of her powers. The Mayor’s actions that extended beyond her authorized powers fall into four general categories: a) City Code violations, b) Code of Ethics violations, c) making baseless allegations, and d) misuse of authority. These items are discussed below, in turn.

1. MAYOR REPEATEDLY VIOLATED CITY CODE

Importantly, the powers that a particular city officer or elected official has are not uniform throughout the State of Iowa. There are approximately a half-dozen different forms of government in Iowa, with each form of government allocating power in a different manner than the others. See Iowa Code § 372.1(1). As a result, a particular elected official’s scope of authority depends, necessarily, on the form of government that exists in any particular city, as further modified by that city’s charter and/or city code.

In Muscatine’s case, the City has the special charter form of government. Muscatine’s iteration of this form of government allocates all powers of the City to the

voting members of the City Council, unless a particular power has been specifically allocated elsewhere by City Code or state law. See Exhibit Mandsager 2; City Code § 1-9-2 (stating that “All powers of the City are vested in the Council except as otherwise provided by law or ordinance.”). The Mayor’s powers, in contrast with City Council’s broad powers, are limited to those powers specifically enumerated in section 1-7-2 of the City Code.¹

Against this backdrop, it is evident that, from the outset, the Mayor decided her powers were greater than they actually were, and that she intended to operate in the manner that she envisioned her role, rather than to follow the limited confines of her position as established by City Code.

For example, as the uncontroverted evidence established, only the City Council has the authority to form ad-hoc committees. See Exhibit Brick 9; City Code § 2-10-1 and 2-10-2. Despite this rule, the Mayor formed two ad-hoc committees/task forces without Council approval – the Millennial Muscatine Committee and the Mayor’s Special Task Force. See Exhibits Brick 1 and 2.

While the Mayor’s self-serving testimony attempted to indicate that no ad-hoc committee had in fact been formed, the clear language of the Mayor’s own press release indicates otherwise:

¹ See Exhibit Mandsager 1 and City Code § 1-7-2, providing as follows:

1-7-2 Powers and Duties of the Mayor. The Mayor shall be the chief executive officer of the City; shall take care that the laws of the State of Iowa and the provisions of this City Code are duly respected, observed, and enforced within the City; shall preside at all council meetings, preserve order and decorum and shall decide all questions of order, subject to an appeal from the Council; shall from time to time give the Council information for its consideration on such measures as may be in the interest of the City; shall be the conservator of the peace and may call for the assistance of the police and, if necessary, any citizen of the City to aid in quelling or preventing any riot or unlawful assembly, or in preventing or restraining any breach of the peace and any such police officer or citizen, when so called upon, who shall refuse to obey the orders of the Mayor shall be deemed guilty of a misdemeanor; shall sign on behalf of the City all contracts between the City and any other party; and shall perform all duties required by the Charter, the provisions of this Code, resolutions of the City Council and all other acts which the good of the City may require.

The Mayor will be sharing information ... regarding several new groups that she *has created* since taking office on January 1. The first is “Millennial Muscatine: which is a group of young people in Muscatine that is chaired by Ryan Broderson, a current MCC student, Eagle Scout, and young entrepreneur.....The second group is the Mayor’s Special Task Force which is in the creation process and will look into the current form of our local government. ...The group which is made up of people from all walks of life, genders, political parties, ages and socio-economic status will solicit input from the public in their final recommendations.

See Exhibit Brick 2 (emphasis added).

The Mayor’s testimony that she has not created a task force or ad-hoc committee is simply not credible when the Mayor’s very own words indicate that she, in fact, created two. In addition, the Mayor’s own testimony further established that her nephew had been appointed as chair of Millennial Muscatine Committee—fully negating any argument that the committee had not in fact been formed or members appointed.

Not only did the evidence clearly establish that the Mayor formed these ad-hoc committees or task forces, the uncontroverted testimony further established that the Mayor did not obtain Council approval before forming these ad-hoc committees or task forces. The evidence presented in this case thus clearly established that the Mayor violated Title 2, Chapter 10 of the Muscatine City Code when the Mayor formed the Millennial Muscatine Committee and the Mayor’s Special Task Force. As the Mayor’s actions in creating the ad-hoc committees/task forces ran afoul of City Code, her actions amounted to misconduct in office. See 1997 Iowa AG LEXIS 26, *10 (stating “Misconduct generally means any unlawful behavior by a public officer in relation to the duties of his office, willful in character, and embraces acts which the office holder had no right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act.”).

In addition to violating Title 2, Chapter 10, the evidence clearly established that the Mayor violated City Code Section 1-10-2(e)(1)(b) on at least three occasions when she contacted City staff directly. Although the Mayor clearly wants to have direct access to City staff, the City Code specifically prohibits her from dealing directly with any City staff other than through the City Administrator. See Exhibit Mandsager 3; City Code § 1-10-2(e)(1)(b) (stating that “Any elected official shall deal with City Department Heads and employees... solely through the City Administrator...”). Despite this being the law of the City, the evidence clearly established that the Mayor contacted City staff directly in the following instances:

1. On April 1, 2016, Respondent emailed City staff about a contractor who was bidding on a City project. Respondent advised staff to reject the contractor’s bid as the contractor lacked qualified staff and did not have enough skilled help to complete the bid. See Exhibit Statement #2, Edgmond 1;
2. On or about May 6, 2016, Respondent contacted Dave Gobin as part of an unapproved plan for her to have regular meetings with staff. See Exhibit Statement #5, Gobin Depo. Tr. pp. 13:13-14:5; and
3. On August 22, 2016, Respondent contacted City staff member Dave Gobin to, among other things, inform him that she planned to be part of his discussions and meetings regarding a proposed river port. See id.

At the removal hearing, the Mayor testified that the above-referenced communications with City staff did not violate City Code because the City Administrator, after the fact, authorized her to contact staff directly so long as he was carbon copied on the email. This explanation simply fails to negate the above-referenced Code violations.

The email in question that the Mayor references was sent on April 11, 2016, and could not have been relied on as the basis for the Mayor’s communication on April 1, 2016. See Mayor Exhibit FF. Moreover, as Mr. Brick’s testimony clearly indicated, this email was a follow up to the conversation that occurred previously concerning nuisance

properties, and the authorization to contact City staff via email, so long as the City Administrator was carbon copied, was limited to that particular topic. Even if that were not the case, however, on the remaining two occasions mentioned above, the Mayor attempted to meet with City staff directly to discuss City business without the City Administrator's presence. As the April 11, 2016, email made clear, this was not permitted. See Mayor Exhibit FF.

Accordingly, the clear evidence presented in this case established that the Mayor violated City Code Section 1-10-2(e)(1)(b) by contacting city staff directly, without the City Administrator personally or electronically present. As the Mayor's actions in communicating with City staff ran afoul of City Code, her actions amounted to misconduct in office. See 1997 Iowa AG LEXIS 26, *10 (stating "Misconduct generally means any unlawful behavior by a public officer in relation to the duties of his office, willful in character, and embraces acts which the office holder had no right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act.").

2. MAYOR REPEATEDLY VIOLATED THE CITY CODE OF ETHICS

The uncontroverted evidence in this case established that the Muscatine City Council adopted Council Rules that include a Code of Ethics, which applies to its elected officials and City employees. See Exhibit Mandsager 4. The purpose of the Code of Ethics is to prohibit behavior that may affect the public's trust in the City and hinder governmental operations. See Mandsager 4, Code of Ethics, Sec. 1.0001 (stating that "[a]ccepting a position as a public official and/or employee carries with it the acceptance of trust that the official/employee will work to further the public interest; maintaining that

public trust is critical to the continued operation of good government.”). In furtherance of this stated purpose, the Code of Ethics provides that:

Members shall refrain from abusive conduct and should also refrain from making personal charges or verbal attacks upon the character or motives of other members of the council, boards and commissions, the staff, city employees or the public. Council members should treat all city employees, fellow council members and the public in a respectful manner and shall not speak ill of the City of Muscatine, Iowa, any city employee, fellow council members or the public at a public meeting.

Despite this clear prohibition against members making personal charges upon the character or motives of other elected officials, the uncontroverted evidence in this case established that the Mayor did precisely that on at least five separate occasions. Specifically, the uncontroverted evidence established that the Mayor made the following charges or attacks on the character or motives of Council:

- February 29, 2016:
 - On February 29, 2016, the Mayor sent an email personally attacking the motives of the City Council, alleging that the Council’s refusal to vote on all appointments was additional evidence she was being discriminated against, bullied and attacked by the Council and the City Administrator. While this email was initially private between the elected officials, the uncontroverted evidence clearly established that the Mayor made these allegations public and sent it to the Muscatine Journal.
- On May 21, 2016:
 - On May 21, 2016, the Mayor held a “Coffee with the Mayor” wherein she made a number of baseless, false and/or unsubstantiated comments, such as her complaint about staff making social media posts were not investigated; that many City employees are afraid for their jobs; the Council has not done anything to support the Mayor since she was elected; that the City Administrator and Council are not following the current form of government and are preventing her from doing her job; that she is being treated poorly by the Council and the City Administrator because of her gender; that the City Administrator and City Attorney refuse to answer her questions about the changes to her appointment powers; and that the City Administrator is the “root cause” of what is going on.

- June 20, 2016:

- On June 20, 2016, the Mayor sent correspondence to members of the public in which she made the following allegations:
 - The good-old-boys are attempting to destroy the Office of the Mayor in Muscatine. Simply put, some Councilmen are offended by diversity and open government. They have scheduled a meeting at 7:00 PM on Thursday, June 23rd at City Hall to discuss a resolution stripping away all of the Mayor's power and giving it to an unelected bureaucrat. We must send a clear message to your Councilman that this is wrong. Muscatine's people deserve better than a DC-style-closed-door-backroom government. Your voice matters, now is the time to make it heard.
 - Within days of taking Office, several members of the City Council and city bureaucrats began plotting their opposition to my efforts to bring new and diverse people into our City's Boards and Commissions.
 - Immediately upon my appointing people and moving them to the next step of Council approval, a DC style anti-appointment process began.
 - These examples illustrate that the issue of appointments is a key power of the Mayor's Office. Several of the Muscatine Councilmen and certainly the City Administrator have made it abundantly clear that they do not like me being Mayor. Their lack of respect and professionalism speaks volumes.
 - As a woman Mayor, I am faced with Councilmen and a City Administrator who rather than engage in a discussion, compromise and dialog choose to change the rules and strip the Mayor's power away.

See Exhibit Brick 4.

- August 1, 2016:

- On August 1, 2016, the Mayor sent a second correspondence to members of the public in which she made the following allegations:
 - Either the City Council failed to consider my recommendations, tabled my appointments, or, after much controversy, good people have removed themselves from consideration. For this I am most sincerely sorry. We should be recognizing people's willingness to serve our city, not use partisan obstructionism to block their appointments.

See Exhibit Brick 5.

- October 13, 2016:

- Respondent interviewed with Mary Mason of the Voice of Muscatine. During the course of this interview, Respondent repeatedly made personal attacks on

the character or motives of Council and City Staff. Specifically, Respondent alleged that since she got elected it has been the goal of the City Administrator to get rid of her. In addition, she alleged that City Council is using closed sessions impermissibly as a way to “keep the public from knowing everything that’s going on.” Furthermore, Respondent alleged that the Council and Administrator are unwilling to accept her as Mayor and accept the people’s vote, and that various members of Council are taking certain action because they are “followers” and “just want to be accepted.”

The aforementioned allegations are obvious personal attacks on the character and motives of the City Council and City Administrator. They violate not only the express prohibition against making such attacks, but the fundamental purpose underlying the City’s Ethics policy, which is to preserve the public’s trust in the City and the efficient operation of the government. Indeed, the Mayor’s actions highlight the importance of and wisdom behind the Ethics policy. The Mayor’s attacks are not merely harmless campaign rhetoric; they are personal attacks against the Councilmembers.

The uncontroverted evidence in this case clearly establishes that the Mayor violated the letter and spirit of the Code of Ethics, and in doing so caused the exact result the Code of Ethics is designed to protect against. As the Mayor’s actions in making these personal attacks ran afoul of the City’s Code of Ethics, her actions amounted to misconduct in office. See 1997 Iowa AG LEXIS 26, *10 (stating “[m]isconduct generally means any unlawful behavior by a public officer in relation to the duties of his office, willful in character, and embraces acts which the office holder had no right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act.”); see also, Price v. San Marcos, 744 S.W.2d 349, 351 (Tex. App. Austin 1988)(upholding official’s removal from office when the official twice violated City’s code of ethics).

3. MAYOR REPEATEDLY ASSERTED FALSE AND BASELESS ALLEGATIONS

Perhaps most notably, the evidence in this case clearly established that the Mayor alleged impropriety after impropriety against City staff, City Council, and various members of the public. Specifically, the evidence indicated that the Mayor made the following allegations:

Allegation 1. On January 21, 2016, Mayor Broderson contacted City Attorney, Matt Brick, and relayed the following accusations:

- i. City staff violated the law by hiring a retired employee, Randy Hill, as a consultant;
- ii. City Administrator Gregg Mandsager accepted a gift, gratuity, or kickback in the form of airline tickets or a ride on a private plane from a contractor in exchange for the contractor being awarded a Muscatine construction project;
- iii. Muscatine Community Development Director, Dave Gobin, accepted a gift, gratuity or kickback in the form of airline tickets or a ride on a private plane from a contractor in exchange for the contractor being awarded a Muscatine construction project;
- iv. City Administrator, Gregg Mandsager, had unlawfully signed a health inspection report.

See Exhibit Brick 8A.

Allegation 2. On February 26, 2016, Mayor Broderson accused two Muscatine employees of violating the social media policy. These employees were later identified as Shelley Meyer and Michelle Metzger.

See Exhibit Brick 8A.

Allegation 3. On or about February 29, 2016, Respondent sent an email personally attacking the motives of the City Council, alleging that the Council's refusal to vote on all appointments was evidence she was being discriminated against, bullied and attacked by the Council and the City Administrator.

See Exhibit Brick 8A.

Allegation 4. On February 29, 2016, Mayor Broderson notified the City Attorney, that against the advice of the City Attorney, she had met with the State Ombudsman and made a complaint alleging a violation of the law regarding the City's health inspection program against City staff and Gregg Mandsager.

See Exhibit Brick 8A.

Allegation 5. On March 1, 2016, Mayor Broderson met with an investigator employed by Homefront Security which was investigating the Mayor's complaint of gender bias and, during this interview, claimed she had been threatened by Gregg Mandsager.

See Exhibits Brick 8A and Savelli 5.

Allegation 6. On March 1, 2016, while meeting with the investigator from Homefront Security, the Mayor alleged a private citizen had a mental illness in an attempt to justify the nomination of Karl Reichert to the Planning and Zoning Commission. This assertion was baseless and false.

See Exhibit Statement #7, Sworn Statement of John Hintermeister.

Allegation 7. On April 22, 2016, the Mayor emailed the City Attorney alleging that the Mayor's Community Improvement Action Team committee and the City's China committee were not properly authorized by the Council under the City Code. The City Attorney found no evidence to support her claims.

Allegation 8. On April 28, 2016, Mayor Broderson contacted the City Attorney to discuss allegations of alleged criminal conduct by a City Councilmember and upon receiving the opinion of the City Attorney that the matter did not involve criminal conduct, she later raised the same allegation with the Muscatine County Attorney in the summer of 2016 against Councilmember Fitzgerald.

See Exhibit Brick 8A; Mayor Exhibit DD.

Allegation 9. On April 28, 2016, the City Attorney was notified by the Iowa Public Information Board that the Mayor had filed an open meetings complaint against the City Council, City Administrator and City Attorney. The complaint alleged that the City's closed session meetings were not detailed enough and said minutes were not formally approved by the Council. The complaint was dismissed as being legally insufficient.

See Exhibit Brick 8A.

Allegation 10. On May 11, 2016, the City received notice that the Auditor of Iowa had received an anonymous complaint to perform a review of the City's 2014/2015 audit. The City subsequently learned that the complaint had been filed by the Mayor and involved the City's Sister-City and economic development opportunities with China. The Mayor did not discuss this request or her underlying concerns with City staff or the Council prior to filing her complaint.

See Exhibit Statement #8, Lueck Exhibit 1.

Allegation 11. On May 11, 2016, City staff was notified that a complaint had been made to the Iowa Public Employees Retirement System (IPERS) and that it was later discovered the complaint was made by Mayor Broderson, that the IPERS rules regarding retirement and eligibility had been violated by City Staff and Randy Hill.

See Exhibit Brick 8A.

Allegation 12. On October 31, 2016, Mayor Broderson filed another complaint with the Iowa Public Information Board alleging she had been inappropriately excluded from a meeting by City Council members, City Administrator and City Attorney.

See Exhibits Brick 7 and 8A.

Allegation 13. On October 17, 2016, the Mayor contacted the County Attorney, Alan Ostergren, and alleged criminal activity on the part of two journalists-Emily Wegner of the Muscatine Journal and Mary Mason of the Voice of Muscatine. Specifically, the Mayor sent an email to the County Attorney requesting the following:

“please consider this a request to investigate the possibility of a recent action against me is a criminal action. Following the Muscatine City Council meeting on 10-13-16, Emily Wegner of the Muscatine Journal and Mary Mason with The Voice of Muscatine followed me to my office as mayor of Muscatine, Iowa....Please investigate and determine if there is any criminal activity in the above behaviors and thank you for your assistance.”

See Exhibit Statement #12, Ostergren Exhibit 7.

Allegation 14. On or about December 12-13, 2016, Mayor Broderson contacted County Attorney, Alan Ostergren, alleging that she had an Attorney General's opinion indicating that City Council, City Administrator, and City Attorney engaged in criminal activity when they made changes to the

Mayor's appointment powers, and requested that the County Attorney file criminal charges against them.

See Exhibits Brick 8A; Statement #12, Ostergren Exhibits 1-6.

In each of the forgoing instances, the evidence presented at the removal hearing clearly established that the Mayor's allegations were false and/or baseless.

With respect to allegations 1, 2, 4, 7, and 8, the uncontroverted testimony of the City Attorney established that these allegations were presented to the City Attorney by the Mayor and, after considering and investigating her allegations, he determined and communicated to the Mayor that there was no basis to conclude that any violation had occurred.

Despite these findings and conclusions of the City Attorney, the evidence established that the Mayor was dissatisfied with the City Attorney's response as it related to alleged criminal activity of Councilmember Fitzgerald, see allegation 8, the City's Health Inspection Program, see allegation 1 (iv), and the IPERS matter, see allegation 1(i).

Dissatisfied with the response she received on these items, the Mayor—against the advice of the City Attorney—continued to pursue her allegations and reported them to the County Attorney, see allegation 8, to the State Ombudsman, see allegation 4, and to the Iowa Public Employees Retirement System, see allegation 11, respectively. Consistent with the City Attorney's original opinion on these matters, no findings have been made by the County Attorney, the State Ombudsman, or IPERS, supporting the Mayor's alleged violations.

In addition to the foregoing, the evidence further established that the Mayor eventually bypassed the City altogether and began making reports directly to outside

officials or state agencies. The Mayor made two reports to the Iowa Public Information Board against the City Administrator, the City Attorney, and the City Council alleging violations of the Iowa Open Meetings Law, see allegations 9 and 12. The uncontroverted evidence in this case established that both of these complaints were baseless and, as such, were dismissed as legally insufficient. See Exhibits Brick 3 and Brick 6.

The Mayor also requested a re-audit of the City's 2014/2015 Audit based on alleged issues with the City's sister-city relationship with China. See Exhibit Statement #8, Lueck Exhibit 1. As testified to by the City Attorney at the removal hearing, the Iowa State Auditor's Office found no major irregularities to support the Mayor's allegations.

Moreover, the Mayor asserted allegations of criminal activity to the County Attorney on at least two occasions. First, the Mayor alleged criminal activity against two journalists. The County Attorney found that there was no basis to conclude that any crime had been committed by the journalists. See Exhibit Statement #12, Ostergren Exhibits 6-7. Second, the Mayor obtained an opinion from the Attorney General's office concerning changes to the appointment power, and the Mayor then forwarded this correspondence to the County Attorney alleging that the Attorney General indicated in its letter that the City Council, the City Administrator, and the City Attorney had engaged in criminal activity. See Exhibit Statement #12, Ostergren Depo. Tr. 18:3-21. The County Attorney reviewed the Mayor's allegation that the Attorney General concluded that the City Council, City Administrator, and City Attorney engaged in criminal activity, and found no basis to support her conclusion. See id.

With respect to allegations 3 and 5, the Mayor alleged that she was being discriminated against because of her gender and had been threatened by the City

Administrator. The uncontroverted evidence in this case established that a third-party investigator, Homefront Security, was retained to investigate the veracity of the Mayor's complaints. After interviewing over thirteen (13) witnesses and listening to audio of the alleged threat, the investigator found that all of the Mayor's allegations were baseless. Specifically, the investigator's report summary provided as follows:

HOMEFRONT SECURITY – INVESTIGATION REPORT: MUSCATINE

Key Findings of this Investigation

Pursuant to the preceding investigation which included the interview of 13 people, review of collected evidence and an analysis of Muscatine City Ordinances, it is my opinion the allegations by Mayor Broderon of hostile work environment and gender harassment cannot be substantiated. The Mayor's allegation of verbal threats is unfounded. There is not sufficient evidence to support the Mayor's claims at this time. In fact, review of recordings, witness interviews and analysis of city ordinances and other documents provide extensive evidence to the contrary. Additionally, there seems to be a lack of understanding by Mayor Broderon of the limitations of her duties as revealed through witness interviews of the members of the City Council and the City Administrator.

See Exhibit Savelli 5.

Based on the findings of Homefront Security, the Mayor's allegations that she had been discriminated against based on her gender, was the subject of verbal threats and subject to a hostile work environment, were baseless.

In each of the foregoing instances, it was determined that there was no basis for the Mayor's allegations. In total, the Mayor asserted at least thirteen (13) alleged law violations against the City staff, elected officials, and/or members of the public, as the case may be. Throughout her testimony the Mayor explained away these multiple allegations as her just reporting rumored law violations to the appropriate officials or agencies in an effort to do her job as Mayor. The alleged law violations ranged from civil

violations—a committee was not properly formed—to criminal violations—alleging that misdemeanor and felony crimes had been committed. Regardless, the allegations were many and the Mayor had no objectively reasonable basis to continue to assert them. At the hearing the Mayor had the opportunity to support her allegations by reporting the name of just one person to support her concerns. She either refused and/or simply could not provide the name of any persons relating to these false and baseless assertions. See Iowa Supreme Court Atty. Disciplinary Bd. v. Doe, 878 N.W.2d 189 (Iowa 2016)(imposing discipline against attorney and finding first amendment protections did not apply because attorney asserted an allegation against a judge which lacked objectively reasonable basis in fact.).

The Mayor’s continued assertion of baseless allegations caused the City to expend in excess of \$100,000 in public funds, see Exhibit Mandsager 5, investigating or responding to the baseless allegations, and, further, exposed the City and the subjects of the Mayor’s complaints to civil and/or criminal liability. The repeated making of baseless allegations exceeded the scope of the Mayor’s lawful authority and constituted misconduct in office. See In re Recall of Lee, 122 Wn.2d 613, 615 (Wash. 1993)(holding that Mayor clearly engaged in wrongful conduct which “affected” the performance of her duties when she falsely indicated that council took certain action it did not take); see Boyer v. City of Potosi, 77 S.W.3d 62, 72 (Mo. Ct. App. 2002) (upholding determination of lower tribunal that making of false report constitutes malfeasance); see also, Makwinski v. State Bd. Of Comm’rs, 76 N.J. 87, 385 A.2d 1227 (1978) (stating a finding of misconduct need not “be predicated upon the violation of any particular rule or regulation, but may be based merely upon the violation of the implicit standard of good

behavior which devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct.”).

Importantly, the Mayor’s assertion that she was simply asserting these allegations to ensure the laws were being followed in an effort to protect the City is not credible. The Mayor asserted many of the allegations after being instructed that there was no basis for them and did so repeatedly.² In addition, while the Mayor was quick to report alleged law violations of others, she had no qualms deviating from City Code or Code of Ethics when it benefited her. She did so frequently,³ knowingly,⁴ and often publically—and not once did she request an opinion from an outside agency to confirm whether her own actions constituted a violation of the law.

Given the frequency and baselessness of the allegations, it is evident that the Mayor was not concerned with upholding the strict letter of the law for the greater good of the City, but with reporting those whom she considered her political opponents in an effort to achieve their demise.

It should not be overlooked or taken lightly that the Mayor’s conduct of making false or baseless allegations to suit her political agenda was not limited to elected officials, City staff or members of the press. Her conduct even went so far as to attack or impugn the health or character of a private citizen when the Mayor was attempting to promote or justify part of her political agenda.

When being interviewed by an investigator for Homefront Security, the Mayor used this opportunity and forum to support her allegation that the City Council’s failure to approve her nomination to City Commissions was evidence of her being bullied or

² See supra Allegations 1, 4, 8 and 11.

³ See supra, section IV(A)(2)

⁴ See supra Allegations 1.

subject to a hostile work environment. Specifically, regarding her nomination to the Planning and Zoning Commission, the Mayor asserted her nominee was the subject of complaints about his duties as an Executor of his father's Estate. In an effort to minimize his behavior, the Mayor viciously and intentionally attacked the health, mental status and character of an interested party to the Estate by asserting this person had a "mental illness."

Not only was this allegation unsupported, it was false and unconscionable. To attack a private citizen to further her political agenda is never acceptable. See Allegation 6 above.

4. THE MAYOR MISUSED HER POWER TO OBTAIN PERSONAL BENEFITS

Finally, the evidence in this case clearly established that the Mayor misused her position in an attempt to obtain a personal benefit not available to members of the general public.

Pursuant to Iowa Code section 68B.2A, "Any person who serves ... a political subdivision of the state shall not engage in any of the following conduct:

Outside employment or an activity that involves the use of the [] political subdivision's time, facilities, equipment, and supplies or the use of the state or political subdivision badge, uniform, business card, or other evidences of office or employment to give the person or member of the person's immediate family an advantage or pecuniary benefit that is not available to other similarly situated members or classes of members of the general public."

At the hearing, the evidence established that in the summer of 2016, the Mayor contacted the Manager of the property locally known as the Tower Apartments, Ms. Deana Fleming. Ms. Fleming testified that the Mayor identified herself as the Mayor of Muscatine and voiced various grievances, concerning seating at the front entrance of the

apartments, the downstairs bathroom being locked, and younger disabled individuals living at the property, which the Mayor believed created some safety concerns. To address her safety concerns, the Mayor proposed having the Towers provide a spaghetti dinner for police officers at the Tower Apartments so law enforcement would be present at the facility and provide special or more intense attention to the Towers. At the time of the call, the Mayor did not indicate that the call was personal in nature and, more importantly, did not indicate that her mother was a resident at this facility.

In light of these facts, the evidence clearly established that the Mayor attempted to utilize her position as Mayor to improve the downstairs seating, to unlock the door of the downstairs bathroom, and to obtain increased security at her mother's apartments, not for the benefit of the City, but for the benefit of her own mother. These benefits were not available to other members of the public and the Mayor violated Iowa Code Section 68B.2A in seeking to obtain them by using her elected status.

The Mayor's self-serving testimony to the contrary is simply not credible. On September 2, 2016, the Mayor emailed the City Council, the City Administrator, and the City Attorney, and outright denied ever speaking with any staff from the Tower Apartments. See Exhibit Talkington 2.⁵ Despite the Mayor's adamant denials that the conversation had occurred, the Mayor testified at length during the hearing about this conversation in an effort to refute the testimony of the Property Manager. The Mayor was

⁵ In pertinent part, the Mayor stated as follows:

I have never even met the on-site manager. I have never been to a meeting there or talked to any of them. I have never had any contact with the people who live or work there. I am not involved in this situation in any way. I've never even spoken to her. My only involvement with Towers is that my mom lives there and I called the corporate office quite a while ago about a question she had. Any reference to the Mayor being involved in a dispute with them is completely false. I will now contact the corporate office about this lady stating these things about me that are complete falsehoods. I may need more specifics from you Gregg about her saying that I met with Towers staff, which is untrue.
Thanks for letting me know.

not forthright about the conversation after it happened, and there is no evidence to suggest that she is being forthright about it now. The Mayor's self-serving testimony is simply not credible in this case in light of what are, at best, apparent inconsistencies, and, at worst, outright falsities.

In addition, abuse of power is something the Mayor can do *only* by virtue of her elected position. Through her status as the Mayor, she has capacities to act in ways that can greatly disadvantage those she views as her opponents or enemies, such as repeatedly meeting/contacting the County Attorney to discuss criminal charges against reporters, elected officials and City staff. Similarly, it is an abuse of power for the Mayor to make baseless claims that require the City to expend taxpayer funds to defend, as well as when the Mayor spends her own campaign donations for non-campaign purposes. Another example is when the Mayor—during Council meetings, at her Coffee with the Mayor meetings, and in letters to the citizens—falsely stated that the Council refused to consider her appointments even though the Council had in fact approved the vast majority of her appointments. When the Mayor does these types of things, seemingly on a whim and without any evidence, it is an abuse of power.

5. THE MAYOR'S ACTIONS WERE WILLFUL

As previously mentioned, “The standard fixed by the statute for the removal of a public officer is not the mere violation of the statute; but the violation, to constitute a ground for removal, must be willful and with an evil purpose. The word “willful,” as used in this connection, was held in State v. Meek, to imply “knowledge on the part of the officer, together with a purpose to do wrong.” State ex rel. Cochran v. Zeigler, 199 Iowa 392, 202 N.W. 94 (1925).

Direct evidence that an official acted with an evil or malicious purpose is generally non-existent. In the absence of direct evidence, the court looks at the frequency of the conduct in question to infer malicious intent. See State ex rel. Collins v. Garretson, 207 Iowa 627, 628 (Iowa 1929) (holding that Appellant's noncompliance happened so frequently as to be the rule, not the exception, and, "beyond doubt," indicated that appellant engaged in such conduct willfully); see also, State v. Callaway, 268 N.W.2d 841, 842 (Iowa 1978) (holding that established pattern of misconduct warranted removal).

In this case, the Mayor violated the City Code on at least five occasions, the City Code of Ethics on at least five occasions, acted outside the scope of her authority by making false and baseless allegations on at least thirteen occasions, and misused her authority to obtain a personal benefit on at least one occasion. The Mayor continued to violate the City Code and the Code of Ethics and to assert allegations after being advised not to, after being advised of the falsity and baselessness of her prior allegations, and after being educated on the scope of and limitations to her authority. Based on the frequent, repeated, and knowing nature of the Mayor's conduct, it is clear that the Mayor engaged in such conduct willfully and with an evil or malicious motive.

As was the case in State ex rel. Collins v. Garretson, the Mayor's misconduct:

"was marked by graveness, and it demonstrated [her] unfitness for the position, as required by the authorities above cited. Mere accident or mistake does not appear in this respect, but rather, throughout [her] administration, appellant persisted in and connived at statutory evasion and maladministration." State ex rel. Collins v. Garretson, 207 Iowa 627, 223 N.W. 390 (1929).

6. CONCLUSION AS TO WILLFUL MISCONDUCT

Based on the foregoing, the testimony in this case established by clear, convincing and satisfactory evidence that throughout her tenure, the Mayor repeatedly exceeded the scope of her lawful authority by violating the City Code requirements, by violating the City Code of Ethics, by asserting false and baseless allegations, and by misusing her authority for personal benefit. The evidence further established that the Mayor engaged in such conduct willfully and, as a result, she should be removed from office pursuant to City Code Section 1-7-6 for engaging in willful misconduct and maladministration in office.

B. LEGAL STANDARD FOR WILLFUL OR HABITUAL NEGLECT OF DUTY

Pursuant to City Code Section 1-7-6, the Mayor may be removed from office for, among other reasons, willful or habitual neglect. As with misconduct and maladministration, given the scarcity of case law on the subject, Iowa courts have not had occasion to define the precise contours of the phrase “willful or habitual neglect.” One court has interpreted willful neglect of duty as follows:

“willful neglect of duty means that the act or failure to act was for a bad or evil purpose, or when the officer conscientiously acts or fails to act contrary to a known duty, he must be guilty of some conscious wrong or inexcusable carelessness or recklessness in the discharge or a failure to discharge an official duty.”

Shields v. State, 1939 OK 203, P20 (Okla. 1939).

In the instant case, as mentioned in greater detail above, the Mayor was advised on multiple occasions of the scope of her duties and of the need to act within them. Despite this, the Mayor knowingly continued to make personal charges against the

character and motives of the City Council and persisted in her campaign to assert allegations against City staff and City officials. The Mayor's repeated violations of the Code of Ethics and repeated assertions of false and baseless allegations were made consciously, with full knowledge of the consequences that could attach to the City if she did not act within the confines of her proscribed duties. Under these facts, even if the Mayor's conduct did not amount to willful misconduct in office, it clearly amounts to willful or habitual neglect, as she recklessly and habitually continued to engage in such conduct without regard to the impact on the City and the limitations to her authority.

V. DUE PROCESS

As a conclusory matter, it is anticipated that the Mayor will argue that she did not receive due process at this hearing. For due process to exist, the Mayor needed to receive:

“(1) notice and (2) the opportunity to defend. Mere notice of the commencement of the action is insufficient. To comply with the notice requirement of due process, the appealing party must present the issues to be addressed to provide the opposing party an opportunity to adequately defend. In determining whether an agency proceeding comported with due process, our benchmark is fundamental fairness.”

Alcoa v. Musal, 622 N.W.2d 476, 479 (Iowa 2001).

In this case, the removal hearing fully comported with principles of due process. Preliminary to the filing of charges, the Council authorized the City Attorney to draft and file the written charges for removal.⁶ Thereafter, the City Attorney drafted the written charges and filed the same on February 17, 2017 with the City Clerk. The written charges

⁶ Iowa Code Chapter 66 authorizes removal hearings to be heard before the city council rather than through district court, and authorizes cities to establish the procedures for such hearing. Pursuant to this authority, the City Council adopted City Code Section 1-7-6, which provides that the Mayor may be removed from office after hearing by city council based on written charges prepared and filed by the city attorney. See Exhibit Mandsager 1. The stated grounds for removal under City Code 1-7-6 are the same as those established by state code. It was pursuant to this statutory authority that the City Council authorized the city attorney to draft and file written charges of removal so that a hearing concerning the same could be held.

of removal consisted of thirty-six detailed paragraphs of factual allegations against the Mayor.

Subsequently, the City Council scheduled the matter for hearing on March 23, 2017. Mayor Broderon was personally served with an original notice and the written charges for removal on March 9, 2017, as required by City Code Section 1-7-6. See City Code 1-7-6 (“Notice of such hearing shall be by personal service on the Mayor whose removal is being sought not less than ten (10) days before the date of such hearing.”).

Thereafter, on March 14, 2017, the Mayor was served with transcripts containing the sworn testimony of nearly all of the undersigned’s witnesses, as well as “Minutes of Testimony” which included statements concerning the anticipated testimony of every witness that the undersigned intended to call. With these items, the Mayor had not only notice of the charges against her, but had the evidence and testimony that the undersigned intended to rely upon to support this case.

At the removal hearing, the Mayor had the opportunity to be, and in fact was, represented by counsel. She had the opportunity to cross-examine all of the evidence presented against her and to present her own evidence. See City Code § 1-14-4. In addition, the City Council, as the fact finder, shall be required to make specific findings of fact and conclusions of law when issuing its decision. See id.

It is hard to envision under these circumstances how Respondent did not receive due process when she: 1) received detailed notice of the allegations against her, 2) received notice of the specific testimony of each witness to be presented against her, and 3) had a full and fair opportunity to defend the case, which included the opportunity to cross-examine every witness against her, all which were sworn to tell the truth, to call her

own witnesses, and to put on her own evidence. These procedures clearly satisfied the due process requirements that the Mayor received notice of the charges against her and be provided a reasonable opportunity to defend.

To the extent that the Mayor takes issue with fact that the City Council authorized the drafting and filing of the removal charges by City Attorney Matthew Brick and later voted to set the matter for hearing, the Iowa Supreme Court has clearly held that these procedural actions required to commence the evidentiary hearing are purely ministerial and do not deprive the Mayor from receiving a fair and impartial hearing. See Botsko v. Davenport Civ. Rights Comm'n, 774 N.W.2d 841, 849 (Iowa 2009) (stating “the mere filing of a complaint by an executive director is considered ministerial in nature and does not give rise to a due process issue in the event the executive director participates in the final agency adjudication.”).

Moreover, to the extent that the Mayor argues that she did not receive due process because the City Council authorized the filing of the charges, hired the special prosecutor, and will ultimately adjudicate the matter, the Iowa Supreme Court has already established that there is no due process violation simply because the same agency fills investigative, prosecutorial, and adjudicative roles. See id. (stating that “the mere fact that investigative, prosecutorial, and adjudicative functions are combined within one agency does not give rise to a due process violation.”).

If the Mayor takes the position that she did not receive a hearing in front of a fair and impartial tribunal, it is well established that there is a presumption of honesty and integrity that attaches to those serving as adjudicators—and to overcome this presumption requires significant evidence to the contrary. See Botsko v. Davenport Civ.

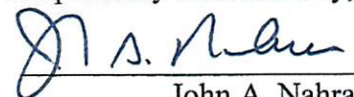
Rights Comm'n, 774 N.W.2d 841, 849 (Iowa 2009) (stating “the challenging party must bear the difficult burden of persuasion to overcome the presumption of honesty and integrity in those serving as adjudicators.”). To overcome this presumption, the Mayor needed to present evidence of actual bias. She presented no such evidence and, as a result, cannot possibly overcome the presumption of fairness.

Based on the foregoing, the removal hearing in this case clearly comported with due process as it ensured the Mayor had a reasonable opportunity to defend the charges against her. Any arguments to the contrary are unfounded, without evidence and/or simply misplaced.

VI. CONCLUSION

WHEREFORE, as provided above, the evidence in this case established by clear and satisfactory evidence that the Mayor engaged in willful misconduct and in willful and habitual neglect of office. Pursuant to City Code Section 1-7-6, the Mayor should be immediately removed from her position and, as such, the undersigned respectfully requests that the City Council Order that the Mayor be immediately removed from office of the Mayor of the City of Muscatine, and further Order that she immediately relinquish all City property to the City Clerk, and for such other and further relief deemed just and equitable in the premises.

Respectfully Submitted by,



John A. Nahra
6204 Emery Court
Bettendorf, IA 52722
SPECIAL PROSECUTOR