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NO. 62869-1-I

IN THE COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

DAN CLAWSON,

Appellant,

vs.

RANDY CORMAN; DENIS LAW; MARCI PALMER, and DON PERSSON,

Respondents.

BRIEF OF RESPONDENTS

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I. INTRODUCTION

Former Renton City Councilmember, and now appellant, Dan Clawson has failed to satisfy his burden to demonstrate the existence of a disputed material fact: specifically, the existence at any time of a "quorum" of the Renton City Council taking "action" outside of a duly noticed public "meeting" to defeat Toni Nelson in her candidacy for City Council President. Ms. Nelson was unanimously elected as City Council President.

Clawson alleges that two separate pairs of Renton City Councilmembers first met to oppose Ms. Nelson's candidacy for Council President. Clawson next alleges that one person from each pair then met together, linking the two pairs, thereby demonstrating what Clawson considers to be a collective predetermination by a majority of the City Council to deny Ms. Nelson's bid. Ms. Nelson was unanimously elected as City Council President.

Even if Clawson's conclusory allegations were true, Clawson failed to advance admissible evidence of any sort to prove that the Respondent Councilmembers actions constituted a "knowing" violation of the Open Public Meetings Act ("OPMA" or "Act"), chapter 42.30 RCW.

The trial court's order granting summary judgment in Respondents' favor should be affirmed.

II. RE-STATEMENT OF THE ISSUE

A. In responding to the motion for summary judgment below and as required by CR 56(e), did Clawson put forth "facts as would be admissible in evidence"?

B. Does Clawson's "proof" of an OPMA violation constitute inadmissible speculation, rather than admissible inference?

III. RE-STATEMENT OF THE CASE

Appellant Dan Clawson alleges that Respondents Randy Corman, Denis Law, Marci Palmer, and Don Persson (hereinafter, collectively "Councilmembers") knowingly violated the OPMA by determining outside of an open public meeting not to elect Toni Nelson as City Council President for the 2007 term.[1] In fact, Toni Nelson was elected as City Council President at the Renton City Council's regular meeting on November 13, 2006. CP 52, 56, 60, 63. The totality of the communication among the Councilmembers regarding Ms. Nelson's election as Council President follows below.

On the afternoon of November 13, 2006, Toni Nelson called Councilmember Marcie Palmer inquiring about the Council President

[1] "This appeal is directed toward the Council President incident only." Brief of Appellant at 2. Appellant does not challenge the trial court's dismissal of the "Design Standards Allegation," and Respondent accordingly does not brief that issue.

position. Councilmember Palmer responded that she "had concerns." CP 52. Ms. Nelson was "very angry" and "hung up the phone." *Id.* Councilmember Palmer then called Councilmember Denis Law to advise him that Toni Nelson "had called" and that she "was very angry." CP 52, 59-60.

On or shortly before November 13, 2006, Councilmember Don Persson called then-Council President Randy Corman, to share his "concerns" over Ms. Nelson serving as 2007 City Council President. CP 55, 63.

Councilmember Persson had no contact with Councilmember Palmer regarding the Council President position, and cannot recall whether he spoke to Councilmember Law. CP 56.

Councilmember Law had no such contact with Councilmembers Persson and Corman. CP 52.

Councilmember Palmer had no such contact with Councilmembers Persson or Corman. CP 60.

Councilmember Corman had no such contact with Councilmember Law, and cannot recall whether he spoke to Councilmember Palmer. CP 63.

During the day of November 13, 2006, non-elected Council staff member Julia Medzegian asked then-Council President Corman to call

Toni Nelson because two Councilmembers had expressed to Ms. Medzegian – not to Councilmember Corman – that they did not support Toni Nelson for Council President. Ms. Medzegian did not indicate that that any other members of the City Council had in fact decided not to vote for Ms. Nelson. CP 63.

The Renton City Council consists of seven members, with a quorum of four. CP 49; Brief of Appellant at 2. Ms. Medzegian did not specify whether or not the members who had expressed concerns to her were Respondent Councilmembers, or other members of the City Council.

Councilmember Corman called Toni Nelson at about 3:30 in the afternoon, to inform her of the information he had received "from Julia Medzegian." CP 63.

During the November 13, 2006 evening meeting of the Renton City Council, Toni Nelson was elected City Council President for the 2007 term by a unanimous 7 – 0 vote. CP 52, 56, 60, 63.

Nearly thirteen months later, on December 5, 2007, Councilmember Corman wrote a blog entry reciting that only "one-on-one discussions" had occurred about the Council President position. CP 146. The blog entry does not identify whether or not the other participants were Respondent Councilmembers, or other members of the City Council.

On January 4, 2008, Councilmember Corman wrote a second blog

entry reciting that "two separate Councilmembers" had called him "at different times" with "concerns" about Toni Nelson serving as Council President. CP 147. The blog entry does not identify whether or not those two councilmembers were Respondent Councilmembers, or other members of the City Council.

Both of Councilmember Corman's blog entries were written more than one year after Ms. Nelson's election as Council President. Memories fade over time, and Councilmember Corman's informal blog entries are understandably unsworn. In contrast, however, Councilmember Corman's formal declaration is sworn. CP 64. Clawson had available the full range of pre-trial discovery on this issue. His wholly deficient proof on this issue is before the Court now.

After the passage of more than one year's time, Councilmember Corman's blog entries are unclear only with respect to the *immaterial* fact of whether he heard "concerns" from two separate Respondent Councilmembers, or from two other members of the City Council. Perhaps Councilmember Corman actually only heard from Councilmember Persson and from staff member Medzegian (CP 62-63). Neither the blog entries, nor anything else proffered by Clawson, offer admissible proof that Councilmember Corman had contact at any time with Councilmember Law, or otherwise with a quorum of the City Council, regarding Toni Nelson's

election as Council President. CP 63, 52.

IV. ARGUMENT

A. Summary Judgment is Reviewed *De Novo*.

Review of a trial court's decision to grant summary judgment is *de novo.* The appellate court engages in the same inquiry as a trial court, which is to determine whether "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." *Greater Harbor 2000 v. City of Seattle*, 132 Wn.2d 267, 278, 937 P.2d 1082 (1997) (quoting CR 56(c)).

As the moving party below, the Councilmembers bore the initial burden of establishing the absence of disputed material facts. *Young v. Key Pharm., Inc.*, 112 Wn.2d 216, 225, 770 P.2d 182 (1989). Once done, the burden shifted to Clawson to establish the existence of a genuine issue of material fact. *Id.* at 225-226.

A "material fact" is distinct from a "fact." A material fact is one on which the outcome of the case depends. *Atherton Condo. Ass'n. v. Blume Dev. Co.*, 115 Wn.2d 506, 516, 799 P.2d 250 (1990). A fact, by contrast, is "an event, an occurrence, or something that exists in reality. . . . It is what took place, an act, an incident, a reality as distinguished from

supposition or opinion." *Grimwood v. Puget Sound,* 110 Wn.2d 355, 359, 753 P.2d 517 (1988).

The non-moving party may not rely on speculation or having its own affidavits accepted at face value. *Seven Gables Corp. v. MGM/UA Entm't Co.*, 106 Wn.2d 1, 13, 721 P.2d 1 (1986). Instead, it must put forth evidence showing the existence of a disputed, material fact. *Id.* Clawson has failed to satisfy his burden to demonstrate the existence of a disputed material fact – specifically, the existence at any time of a "quorum" of the City Council taking "action" outside of a duly noticed public "meeting" regarding the election of Toni Nelson as Council President.

In an effort to create a genuine issue of material fact, Clawson cannot rely on simple allegations or conclusory assertions. *Michak v. Transnation Title Co.,* 148 Wn.2d 788, 795, 64 P.3d 122 (2003). Clawson likewise cannot rely on speculation or argumentative assertions that unresolved factual issues remain. *Marshall v. Bally's Pacwest, Inc.*, 94 Wn. App. 372, 377, 972 P.2d 475 (1999). Affidavits of a non-moving party that fail to support all elements of the non-moving party's claim are inadequate. *See Olympic Fish Products, Inc. v. Lloyd*, 93 Wn.2d 596, 602, 611 P.2d 737 (1980).

And such is the case here. At most, Clawson offered below only speculation – based exclusively on an unsworn blog entry written more

than a year after Toni Nelson's election as Council President – that (a) a conversation occurred between Councilmembers Corman and Palmer, (b) that this hypothetical conversation specifically related to Toni Nelson's candidacy for Council President, and (c) this hypothetical conversation in fact reflects a collective determination by a majority of the Council to deny Toni Nelson the Council Presidency. Clawson fails mightily here – Councilmember Palmer never spoke to Councilmember Corman about this issue. CP 60. Toni Nelson was elected unanimously as Council President. *Id.*

B. A Quorum of the Renton City Council Never Met Outside of a Duly Noted Open Public Meeting.

Absent a quorum, no OPMA violation can exist. Before this Court even begins an analysis of the statutory elements that Clawson must establish in order to prove the OPMA violations alleged herein, the Court must first find that a quorum of the seven-member Renton City Council met outside of an open public meeting.

"The OPMA is not violated if less than a majority of the governing body meets." *Wood v. Battle Ground Sch. Dist.*, 107 Wn. App. 550, 564, 27 P.3d 1208 (2001). "No meeting takes place, and the OPMA does not apply, if the public agency lacks a quorum." *Eugster v. City of Spokane*, 128 Wn. App. 1, 8, 114 P.3d 1200 (2005).

A "meeting occurs if a majority of the members of the governing body were to discuss or consider" City business outside of an open public meeting. *Wood*, 107 Wn. App. at 564, *citing Attorney General's Open Records & Open Meetings Deskbook*, 1.3B (emphasis added). Even if a quorum is present, "the participants must collectively intend to meet to transact the governing body's official business." *Id.* at 565.

The quorum requirement makes perfect sense, both legally and practically. Unlike, for example, service on the Seattle City Council or the Metropolitan King County Council, service on the Renton City Council is a part-time position. City Council meetings are conducted in the evenings, to avoid interference with a normal workday. CP 49, 53, 57, 61. As the *Wood* court aptly noted, "[W]e also recognize the need for balance between the right of the public to have its business conducted in the open and the need for members of governing bodies to obtain information and communicate in order to function effectively." *Wood*, 107 Wn. App. at 564.

Members of the Council may permissibly meet in numbers of three or fewer. "The OPMA is not violated if less than a majority of the governing body meets." *Id.*

C. Clawson Must Offer More Than Speculation – He Must Prove the Existence of a Prohibited Quorum - in Order to Overcome Summary Judgment.

In order to defeat summary judgment, Clawson must offer specific material facts, admissible in evidence, to rebut the Councilmembers' proof. He has not done so here.

Clawson "may not rely on speculation or argumentative assertions that unresolved factual issues remain." *Marshall v. Bally's Pacwest, Inc.*, 94 Wn. App. 372, 377, 972 P.2d 475 (1999); *Seven Gables Corp.*, 106 Wn.2d at 13 ("A nonmoving party in a summary judgment *may not rely on speculation*, argumentative assertions that unresolved factual issues remain, or in having its affidavits considered at face value; for after the moving party submits adequate affidavits, the *nonmoving party must set forth specific facts* that sufficiently rebut the moving party's contentions and disclose that a genuine issue as to a material fact exists." (Emphases added); CR 56(e).

"In matters of proof the existence of facts may not be inferred from mere possibilities."[2] Clawson offers no direct evidence that the Councilmembers met as a quorum, serially or otherwise, outside of an open public meeting. While Clawson may rely on admissible inference,

[2] *Nejin v. City of Seattle*, 40 Wn. App. 414, 421, 698 P.2d 615 (1985).

he may not rely on inadmissible speculation or guesswork. Clawson cites only an unsworn blog entry written by Councilmember Corman, more than a year after the election of Toni Nelson, as proof that "it is logical to infer"[3] that Councilmembers Palmer and Corman engaged in an illegal meeting. Rather than relying on inference, the Court may instead rely here on direct testimony - the two never spoke about Toni Nelson's election as Council President. CP 60.

Even if the Court were to consider Clawson's claimed "inference," his argument falls well short of the necessary mark. To be properly considered, the "inference" upon which Clawson asks this Court to rely must logically flow from established facts:

> An inference is a *logical* deduction or conclusion from an *established fact*. The mental process is - since this is so, it must follow that it is also true, etc.

Peterson v. Betts, 24 Wn.2d 376, 393, 165 P.2d 95 (1946) (emphases added); *Fannin v. Roe*, 62 Wn.2d 239, 242, 382 P.2d 264 (1963).

Clawson claims that it is "logical to infer" that a phone call that Clawson believes may have occurred between Councilmembers Corman and Palmer violates the Act. He fails, however, to demonstrate how this

[3] Brief of Appellant at 5. Even if true, no violation of the Act occurs when only two members of a seven-member governing body confer.

possible phone call constitutes a "logical" deduction from "established facts."[4]

Rather, the only established facts are that Councilmember Corman cannot recall whether he spoke with Councilmember Palmer about "concerns" regarding Toni Nelson. CP 63. Councilmember Palmer swears there was no contact. CP 60.

Even if those two Councilmembers – only two – did speak, absolutely no proof exists of any decision to conspire with Councilmembers Law and Persson to deny Toni Nelson the Council Presidency (and, of course, Ms. Nelson was elected unanimously as Council President). The Act is not violated when two, or even three, members of a seven-member governing body discuss "concerns" about an issue on their Council agenda.

Clawson's proof is far short of that necessary to overcome summary judgment. To paraphrase the *Peterson* case, since it is not "so" that the Councilmembers met serially or otherwise as a quorum outside of an open public meeting, it does not "follow that it is also true" that a violation of the Act occurred.

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[4] A "fact is an event, an occurrence, or something that exists in reality. . . . It is what took place, an act, an incident, a reality as distinguished from supposition or opinion." *Grimwood,* 110 Wn.2d at 359.

D. Failure to Prove a Meeting of a Prohibited Quorum, Serially or Otherwise, Precludes Proof of any OPMA Violation.

Failure to comply with the OPMA may subject a city councilmember to a $100 civil penalty:

> (1) Each *member* of the governing body who attends a *meeting* of such governing body where *action* is taken in violation of any provision of this chapter applicable to him, with *knowledge* of the fact that the meeting is in violation thereof, shall be subject to personal liability in the form of a civil penalty in the amount of one hundred dollars. . . .

RCW 42.30.120(1) (emphasis added). To enforce this provision, then – but not until first proving with admissible evidence that a quorum of Renton City Councilmembers participated – Clawson must show (1) that a "member" of the Renton City Council (2) attended a "meeting" of that body (3) where "action" was taken in violation of the OPMA, and (4) that the member had "knowledge" that the meeting violated the OPMA. *Wood*, 107 Wn. App. at 558.

The parties agree that the Renton City Council ("Council") constitutes a seven member "governing body," as defined in RCW 42.30.020, with a four-member quorum. CP 4, 43. The OPMA defines "meeting" to be whenever "action" takes place. RCW 42.30.020(4). "Action" is defined as:

> The *transaction of the official business of a public agency by a governing body* including but not limited to receipt of public testimony, deliberations, discussions, considerations, reviews, evaluations, and final actions.

RCW 42.30.020(3) (emphasis added). By its plain terms, then, a "meeting" and "action" under the OPMA require the transaction of official business by "a governing body," not by individual members constituting less than a quorum of that governing body.

Put more plainly, no "governing body" exists absent a quorum. *Eugster*, 128 Wn. App. at 8 ("[N]o meeting takes place, and the OPMA does not apply, if the public agency lacks a quorum."); RCW 35A.12.120 ("At all meetings of the council a majority of the councilmen shall constitute a quorum for the transaction of business . . ."). Even if a quorum is present, "the participants must collectively intend to meet to transact the governing body's official business." *Wood*, 107 Wn. App. at 565.

Clawson's proof of a violation consists only of an "awareness" that certain Councilmembers opposed Toni Nelson's election as Council President, and that some were "concerned" about Toni Nelson's ability.[5] Even if true, "awareness" and "concern" are positive traits in any elected

[5] Brief of Appellant at 9.

official, and certainly do not alone rise to the level under the Act of a prohibited meeting of a quorum of the governing body. Clawson then cites to a conversation between Councilmember Palmer and Toni Nelson where Ms. Palmer is alleged to have said "we don't think you'd be strong" against the former mayor.[6] From that, Clawson leaps to the unreasonable inference that, "[t]hese statements strongly infer that . . . *in fact a consensus that Toni Nelson would not be elected was reached.*"[7]

Based on that alone, Clawson asks this Court to find the existence of a disputed fact on the material issue of whether the Councilmembers collectively predetermined to deny Ms. Nelson the Council presidency (even though Ms. Nelson was unanimously elected as Council President). Hardly. In response, the Councilmembers offer direct factual evidence that they never met as a quorum outside of a duly noticed open public meeting. CP 49-52 (Declaration of Denis Law), CP 53-56 (Declaration of Don Persson), CP 57-60 (Declaration of Marcie Palmer), CP 61-64 (Declaration of Randy Corman), CP 80. While perfectly appropriate conversations did take place between Councilmembers Persson and

[6] Brief of Appellant at 10. Ms. Palmer's reference to "we" is not proof of a prohibited quorum meeting outside an open public meeting. Rather, Ms. Palmer and Mr. Law – only those two - did speak about the Toni Nelson election. CP 52, 59-60.
[7] Brief of Appellant, at p. 10 (emphasis added).

Corman,[8] and between Councilmembers Law and Palmer,[9] there is absolutely no admissible proof that "in fact a consensus that Toni Nelson would not be elected was reached" by a quorum in a prohibited meeting. Councilmembers are allowed, under the Act, to meet in groups of two or even three, and Clawson has not – and cannot – show that a majority of the Councilmembers collectively predetermined to defeat Ms. Nelson's bid for the Council presidency outside of an open public meeting.

In other words, since Clawson fails to prove that "it is so" that the four Councilmembers met, serially or otherwise, and reached a collective commitment about Toni Nelson's election, it does not "follow that it is also true" that a violation of the Act occurred. ("The mental process is - since this is so, it must follow that it is also true, etc." *Peterson*, 24 Wn.2d at 393.)

Nonetheless, Clawson invites this Court to conclude that "concerns" about Toni Nelson holding the President position rise to the level of proof needed to establish a knowing OPMA violation.[10] There is simply no proof of such a predetermined majority consensus – only inference piled on inference, wholly insufficient to overcome the direct

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[8] CP 55, 63.
[9] CP 52, 59-60.
[10] Brief of Appellant, at p. 10 ("These statements strongly infer that discussions took place among the [Councilmembers] and in fact a consensus that Toni Nelson would not be elected was reached.").

factual evidence offered in the Councilmembers' declarations. The "facts" necessary to defeat a CR 56 motion must be based on more than mere possibility or speculation. *Doe v. Dep't of Transp.*, 85 Wn. App. 143, 147, 931 P.2d 196 (1997). Without proof of a quorum, Clawson fails to establish the "meeting" element that is essential to his claim.

E. Clawson Fails to Establish the Essential Element of an OPMA Claim that the Councilmembers *Knowingly* Violated the Act.

Under the OPMA, an individual member of a governing body is subject to a $100 civil penalty only if he or she attends a meeting *knowing* that the meeting violated the OPMA. RCW 42.30.120(1); *Wood*, 107 Wn. App. at 566. Here, the Councilmembers periodically received training and materials from the City Attorney, the City Clerk, and the Municipal Research Service Center regarding compliance with the OPMA. CP 49-50, 53-54, 57-58, 61-62. A key theme recurring throughout that material is the mandate to refrain from meeting as a quorum, outside of a duly noticed open public meeting. *Id.*

Clawson incorrectly implies that the Councilmembers' knowledge of the OPMA establishes the fourth element of an OPMA claim.[11] To the contrary, the Councilmembers' training made them even more aware of their obligation to refrain from prohibited meetings – precisely as the

[11] Brief of Appellant at 6.

evidence here indicates they did.

The Councilmembers here all believed (correctly so) that they had not violated the OPMA regarding the Council President election. CP 50, 54, 58, 62. In *Miller v. City of Tacoma*, 138 Wn.2d 318, 331, 979 P.2d 429 (1999), the trial court found that the affected councilmembers "believed that they were acting appropriately under the law," and declined to impose civil penalties. The Court of Appeals affirmed. *See also, Cathcart v. Andersen*, 10 Wn. App. 429, 436-37, 517 P.2d 980 (1974) (civil penalties not appropriate where uncontroverted affidavits established that attorney general advised law school faculty that meetings did not violate the OPMA), *aff'd*, 85 Wn.2d 102, 530 P.2d 313 (1975). *But see, Wood*, 107 Wn. App. at 566-67, the content of e-mails showed an awareness of possible OPMA violations sufficient to reverse summary judgment in favor of School Board members and remand for trial on that element.

To prove the "knowing" element of an OPMA violation, Clawson must offer "facts as would be admissible in evidence, . . ." CR 56(e). Clawson's bare assertions are insufficient to overcome summary judgment. *See Olympic Fish Products, Inc.*, 93 Wn.2d at 602 (affidavits of a non-moving party that fail to support all elements of the non-moving party's claim are inadequate). There is a complete absence of admissible

facts to show a "knowing" (or other) OPMA violation by any of the Councilmembers.

F. Clawson's Reliance on *In re Estate of Black* is Misplaced in the OPMA context.

Relying on *In re Estate of Black*, 116 Wn. App. 476, 66 P.3d 670 (2003), Clawson claims that the Councilmembers' motion for summary judgment should have been denied because it was supported "almost entirely" by declarations from the Councilmembers regarding conversations in which only they participated.[12] Clawson is effectively arguing that summary judgment would never be appropriate in an OPMA case.

This argument ignores the reality that claimed impermissible communication in *any* OPMA case would virtually always be particularly within the knowledge of the participants. This argument also ignores the reality that the Civil Rules provided Clawson with the full range of pre-trial discovery tools. He took advantage of those tools, and has only the speculation and unfounded assertion in this record to show for it.

It bears repeating that the Act of course does not prohibit communication among less than a quorum of the Council. Neither the

[12] Brief of Appellant at 10.

Act, nor "serial meeting" analysis, even prohibits one Councilmember from having individual conversations with all six of his or her colleagues. As the *Wood* court put it, "[W]e also recognize the need for balance between the right of the public to have its business conducted in the open and the need for members of governing bodies to obtain information and communicate in order to function effectively." *Wood*, 107 Wn. App. at 564. Unlike the Seattle City Council or Metropolitan King County Council, the position of Renton City Councilmember is part-time. Meetings are conducted at night, so as not to interfere with a normal workday. CP 49, 53, 57, 61.

More fundamentally, and unlike the OPMA issues here, the *Black* case involved a will contest over two wills allegedly executed by the same decedent but naming different beneficiaries. On review, Division Three held that the trial court's order of summary judgment admitting the second will into probate, the original of which had been lost, was inappropriate because it "would have the unintended consequence of rendering the unresolved factual disputes over the will's technical validity and contents res judicata in subsequent contest proceedings, *contrary to the probate statutory scheme.*" *In re Estate of Black*, 116 Wn. App. at 485-86 (emphasis added). Under those facts, the *Black* court determined, "[W]here material facts averred in an affidavit are particularly within the

knowledge of the moving party, summary judgment should be denied." *Id.* at 487.

Clawson claims – without citation to authority – that this general rule is "particularly applicable" in OPMA cases. For good reason, no Washington court has held as such. Initially, of course, granting summary judgment in cases brought under the Act is not "contrary to the statutory scheme." In the OPMA context, as opposed to a will contest, Washington courts have not hesitated to rule on summary judgment. *See, e.g.*, *Eugster*, 128 Wn. App. at 10-11; *Cascade Brigade v. Economic Dev. Bd.*, 61 Wn. App. 615, 618, 811 P.2d 697 (1991) (although interpreting CR 11 on appeal, underlying matter involved alleged OPMA violation dismissed on summary judgment, affirmed upon a motion on the merits).

The very purpose of summary judgment is to avoid a useless trial. *Almay v. Kvamme*, 63 Wn.2d 326, 329, 387 P.2d 372 (1963). Given the paucity of evidence proffered by Clawson to support his claim, a trial here would be truly useless.

V. CONCLUSION

Washington law squarely requires the existence of a quorum in order to constitute a "meeting" under the OPMA. The Councilmembers offer direct, admissible proof that they never met as a quorum outside of a duly noticed City Council meeting regarding the Council President

Allegation at issue here. Clawson offers no admissible proof to create a genuine issue of material fact to defeat summary judgment.

Clawson further fails to offer any proof demonstrating that any of the Councilmembers knowingly violated the OPMA. Respondents respectfully request that this Court affirm the Superior Court's ruling in this matter.

RESPECTFULLY SUBMITTED this 20 day of October, 2009.

KENYON DISEND, PLLC

By _____
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DECLARATION OF SERVICE

I, Margaret Starkey, declare and state:

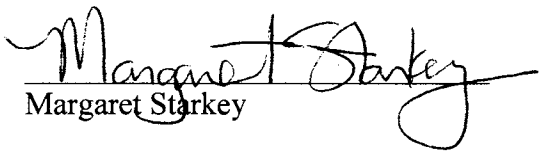
1. I am a citizen of the State of Washington, over the age of eighteen years, not a party to this action, and competent to be a witness herein.

2. On the 20th day of October, 2009, I directed ABC Legal Services to serve no later than 5:00 p.m. on October 21, 2009, a true copy of the foregoing Brief of Respondent as follows:

Dan Clawson
108A Logan Avenue South
Renton, WA 98057-2019

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 20th day of October, 2009, at Issaquah, Washington.



Margaret Starkey