

STATE OF NEW YORK
SUPREME COURT COUNTY OF JEFFERSON

TODD K. GORMAN, DAVID M. CORTRIGHT AND
JAMIE SANCHEZ,

Petitioners,

vs.

NON-JURY TRIAL DECISION
AND ORDER/FINDINGS OF
FACT AND CONCLUSIONS OF
LAW

TOWN BOARD OF THE TOWN OF ALEXANDRIA,

INDEX #: EF2018-2325

Respondent.

PROCEDURAL HISTORY

The Court adopts the procedural history and general statement of facts set forth by the Hon. Peter A. Schwerzmann, AJSC in his Decision and Order dated March 9, 2020. The Decision is attached hereto and made a part hereof as Exhibit A. Upon Justice Schwerzmann's retirement, this Court accepted assignment and scheduled an in-person, non-jury trial in Watertown, New York. Petitioners have been represented by Michael Young, Esq. Respondent has been represented by Robert Slye, Esq.

Trial commenced on October 12, 2022, continued on October 13, 2022, and concluded on November 15, 2022. On October 12, 2022, the Court heard sworn testimony from Justice Todd K. Gorman, Town Justice David M. Cortright, and former Town Justice Sherry Pennington.

On October 13, 2022, the Court denied Respondent's motion for a trial order of dismissal. The Court heard sworn testimony from Jefferson County Director of Human Resources Valerie Nugent, and Town of Alexandria Councilman Ronald Thompson.

On November 15, 2022, the Court heard sworn testimony from Petitioner Jamie Sanchez's husband, Regent St. Onge, and further brief testimony from Justice Todd K. Gorman. Petitioner did not present any sworn testimony from Jamie Sanchez herself.

The Court reserved Decision. Counsel requested the opportunity to submit written summations by January 9, 2023. The Court agreed and both sides submitted their respective briefs in a timely fashion. Attorney Slye has since retired from the practice of law and no substitution of counsel has been reported.

The Court received the following exhibits into evidence by stipulation as set forth in Exhibit B attached hereto and made a part hereof.

FINDINGS OF FACT

1. The credible sworn testimony of Justices Gorman, Cortright, and Pennington establishes that Jamie Sanchez was a trusted exemplary Town Clerk in many respects. As conceded by Attorney Slye in his written summation (p. 8) :

“There can be no question that the testimony of the three judges was that Ms. Sanchez was a hard worker; she was good at what she did; she had been extremely efficient; her supervisors trusted her implicitly; she could keep the confidences of the Court; and the Town Justices and the former Village Justice could rely on her”.

2. The testimony of Jamie Sanchez's husband, Regent St. Onge, was likewise most credible. Mr. St. Onge detailed his wife's struggling health during the 2014-2017 period. She suffered from back/neck pain resulting from a fall, vertigo, migraines and had gastric bypass surgery and recovery therefrom. There were days she could barely walk, suffered from many headaches and dizziness, and would need to lay down in the dark at times. On one occasion, she was on the floor vomiting due to vertigo at work and he had to pick her up and take her to the

emergency room. She had frequent doctor appointments.

3. The New York State Comptroller's final report dated October 2018 pertaining to Petitioner Sanchez and Respondent was received into evidence by the Court by stipulation, as Exhibit J at trial. The Court determines this report to be most credible regarding the following "key findings" set forth in the "Report Highlights" Section on the first page:

- 63 of the 67 time sheets (approximately 94 percent) completed by the Clerk showed no evidence of supervisory review and approval
- The Clerk reported 405 hours on her Town time sheets totaling \$5,868.00 that coincided with hours worked at other municipalities
- Court monies were properly recorded, deposited and reported

4. The "Audit Period" in this report was April 3, 2014 - March 16, 2017.

5. The aforementioned first and third "Key Findings" were corroborated by the credible testimony of the three Town Justices.

6. The second "Key Finding" as to the overlapping hours was corroborated by the most credible sworn testimony of Town of Alexandria Board Member, Ronald Thompson. Mr. Thompson carefully examined Mr. Sanchez's time sheets for each municipality. Mr. Thompson prepared summary charts which were received into evidence by the Court by stipulation. Per Exhibit M, Ms. Sanchez's time "overlaps" began in the neighborhood of one hour and by the end of the year they were at two and three hours. In 2015, Ms. Sanchez routinely reported at least two hours and stretched it to three and four hours on occasion. In 2016, her time overlap resulted in three and one half to four hours. Finally, in 2017, she worked the trial in Clayton which started the whole investigation and claimed eleven hours of overlap one day and fourteen hours the next. Exhibit M, like the Comptroller's final report, found exactly 405 hours of time overlap

between all municipalities.

7. Mr. Thompson credibly testified to the preparation of his summary chart Exhibit N as well, which shows the overlap in hours billed solely between the Towns of Alexandria and Clayton. Here also the Court finds a progression from twenty one total hours of overlap in 2014, to sixty one hours of overlap in 2015, and eighty nine hours of overlap in 2016 through the 2017 Clayton trial.

8. Petitioner Jamie Sanchez failed to testify and offered no testimony at all from any witness as to the 405 overlapping hours established by the October 2018 Comptroller's Report, the testimony of Ms. Thompson, and Exhibit M. Accordingly, the Court, as trier of fact, "may draw the strongest inference that the opposing evidence permits against a witness who fails to testify in a civil proceeding..." Mtr. Of Nassau County Department of Social Services v. Denise J., 87 N.Y.2d 137(1983). The Court does in fact draw the strongest inference against Ms. Sanchez and she does indeed "have to bear all of the legitimate inferences stemming from the damaging evidence adduced" as to the established 405 overlapping hours billed among each of these municipalities. See, Matter of Cohen, 7 N.Y.2d 488, 501 (1960).

9. Per the credible testimony of Valerie Nugent, Jefferson County Director of Human Resources, Ms. Sanchez's official title with the Town of Alexandria was "Confidential Clerk to the Town Justice". This is an "exempt" classification and does not entitle Ms. Sanchez to a Civil Service Law Section 75 hearing. The Respondent has not, however, established that Ms. Sanchez was also exempt from the provisions of Town Law Section 20(1)(b), calling for the "advice and consent" of the Town Justices prior to her termination.

10. The October 2018 NYS Comptroller's final report and supporting proof

establishes, without any rebuttal, that Ms. Sanchez reported 405 hours on her Town time sheets totaling \$5,868.00 that coincided with hours worked at other municipalities.

11. The Respondent Town, through counsel, acknowledged that Respondent is not making any claim for "travel time".

12. The Respondent failed to adequately prove specific "sick time" and "call in hours" abuses and there were too many concessions in the testimony to corroborate these points.

CONCLUSIONS OF LAW

1. Both sides argue that Justice Schwerzmann's prior Decision and Order within this case has some preclusive effect. Petitioners assert "collateral estoppel", and Respondent asserts the "law of the case doctrine".

2. As Justice Schwerzmann issued that Decision within this litigation prior to his retirement, the doctrine of "law of the case" applies. This doctrine "is a rule of practice, an articulation of sound policy that, when an issue is once judicially determined, that should be the end of the matter as far as Judges and Courts of co-ordinate jurisdiction are concerned. Martin v. Cohoes, 37 N.Y.2d 162, 164 (1975). Under this principle, this Court adopts the following determination from Justice Schwerzmann's Decision discussing whether the Town Justices had the right to withhold their consent to the Town's discharge of Petitioner Sanchez under Town Law Section 20(1)(b) when faced with the serious allegations of "double-billing" set forth in the State Comptroller's report:

"It makes perfect sense that a town justice should have input in the selection and discharge process of his or her court clerk, yet it stretches logic to imagine that the sponsors of the bill [requiring "advice and consent"] and those groups that submitted memorandums in support of it would have imagined a situation such as this where town justices

refuse to give consent to the discharge of a court clerk following a Comptroller's audit which found numerous, apparently fraudulent, time-sheet differences.

If the statute were interpreted literally, a court clerk could theoretically engage in any conduct, no matter how nefarious, and still maintain his or her position as long as the town justice supported continued employment.

The Court must resolve the conflict between two reasonable arguments. It must choose either affording Ms. Sanchez the protection intended by the enactment of Town Law section 20(1)(b) or protecting the citizens of the Town of Alexandria from fraudulent misappropriation of funds.

In that light the Court is compelled to choose the greater good. To withhold consent to terminate an employee who seems quite clearly to have been engaging in criminal behavior is unreasonable. This is even more so when done by people elected to administer justice.

The Court rejects the argument that the lack of consent of the justices to the termination of an apparently dishonest employee compels the Town to retain said employee. That cannot be what the Legislature intended.

It also seems incredible that two presumably competent and honorable town justices would argue so strenuously to retain a clerk in light of these findings. There must be more to this story. Perhaps the audit was flawed. Perhaps honest mistakes were made. One of the best ways to reveal the truth is to give both sides a full and fair hearing.

The same logic applies to the Respondent's request for declaratory judgment that the town justices were arbitrary and capricious in refusing to consent to the termination of Ms. Sanchez. That issue has not been fully developed and must be fleshed out at trial.

3. As aforementioned, Petitioners failed to sustain their burden of proof. Town Law Section 20(1)(b), per the Schwerzmann Decision, does not allow the Town Justices to withhold their consent arbitrarily and capriciously. Despite Ms. Sanchez's otherwise glowing work record,

the final Comptroller's Report in evidence establishes 405 overlapping billing hours between the municipalities in question, as supported by the credible testimony of Mr. Thompson and Exhibit M. The Court has drawn the strongest inference against Ms. Sanchez for her failure to offer any testimony to rebut these credible findings. Petitioners failed to establish that the "audit was flawed" or that "perhaps honest mistakes were made".

The Court finds the Town Justices' decision to withhold their consent to indeed be arbitrary, and capricious under these circumstances. The "greater good" cited by Justice Schwerzmann was served by the Town's termination of Ms. Sanchez, the town justices wrongfully withheld consent, and the Court hereby dismisses Petitioners' request for relief sought pursuant to CPLR Articles 78 and 30.

4. The State Comptroller's Report (Exhibit J) and the testimony of Ronald Thompson demonstrates the difficulty in establishing exactly which municipality was over billed due to the 405 overlapping hours.

5. The Court adopts the Respondent's argument that such circumstances warrant application of the "faithless servant" doctrine. Firmly rooted in this state's jurisprudence is the principle that "an employee is to be loyal to his [or her] employer and is prohibited from acting in any manner inconsistent with his [or her] agency or trust and is at all times bound to exercise the utmost good faith and loyalty in the performance of his [or her] duties. Western Elec. Co. v. Brenner, 41 N.Y.2d 291, 295 (1977), quoting Lamdin v. Broadway Surface Adr. Corp., 272 N.Y.133, 138 (1936). "One who owes a duty of fidelity to a principal and who is faithless in the performance of his [or her] services is generally disentitled to recover his [or her] compensation, whether commissions or salary." Feiger v. Iral Jewelry, 41 NY2d 928 (1977; see Murray v.

Beard, 102 NY 505, 508-509 (1886). Thus, where an employee “engages in repeated acts of disloyalty, complete and permanent forfeiture of compensation, deferred or otherwise, is warranted.” William Floyd Union Free School Dist. v. Wright, 61 AD3d 856, 859 (2d Dept. 2009).

6. The Respondent Town does not argue for full and complete forfeiture of all compensation, but for half. The Court does indeed find Ms. Sanchez to be a “faithless servant” to the extent of the un rebutted “double billing” of the established 405 hours. However, it would be inequitable to direct a complete forfeiture of all compensation earned. In fact, “transaction-by-transaction apportionment of forfeiture is appropriate where (1) an employee did not engage in a “wide-ranging scheme” to defraud the employer, and (2) the incidents of disloyalty “did not extend to or taint all the dealings between the parties.” Phansalkar v. Anderson Weinroth & Co., L.P., 344 F.3d 184 (2d Cir.2003); Seava Corp. V. GBJ Corp., 156 F.3d 136 (2d Cir. 1998); Musico v. Champion Credit Corp., 764 F 2d 102 (2d Cir. 1985).

7. The proof establishes by a fair preponderance of the evidence the two Phansalkar factors and the Court hereby limits Ms. Sanchez’s forfeiture of compensation back to the Town of Alexandria to Five Thousand Eight Hundred Sixty Eight and 00/100 Dollars (\$5,868.00). This represents the value of the 405 hours claimed on the time sheets which coincided with hours worked at other municipalities and proven by Ex. J and the credible testimony of Mr. Thompson.

8. Accordingly, it is ORDERED, ADJUDGED, and DECREED that Petitioner Sanchez’s Petition for Relief is dismissed in its entirety; and it is further

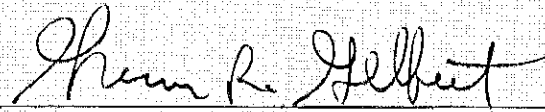
9. ORDERED, ADJUDGED, and DECREED, that Respondent Town of Alexandria’s request for declaratory judgment is granted to the extent that the town justices acted

arbitrarily and capriciously in refusing their consent to the termination of Petitioner Sanchez, that the Town's actions were reasonable under the circumstances; and that the Respondent Town is awarded judgment against Petitioner Sanchez in the amount of Five Thousand Eight Hundred Sixty Eight and 00/100 Dollars (\$5,868.00) after partial application of the "faithless servant" doctrine.

The foregoing shall constitute the Decision and Order of this Court.

Dated: February 6, 2023

ENTER



HON. GREGORY R. GILBERT, J.S.C.

EXHIBIT A

At a term of the Supreme Court held in and for the County of Jefferson at the Jefferson County Court Complex in the City of Watertown.

PRESENT: Hon. Peter A. Schwerzmann,
Acting Justice of the Supreme Court

STATE OF NEW YORK
SUPREME COURT COUNTY OF JEFFERSON

Todd K. Gorman, David M. Cortright and
Jamie Sanchez,

Petitioners,

**DECISION AND
ORDER**

-vs-

Town Board of the Town of Alexandria

RJI No: 22-18-0953
Index No: EF2018-
2325

Respondent.

Before the Court is a Petition filed by Todd K. Gorman, David M. Cortright and Jamie Sanchez seeking relief pursuant to Article 78 of the Civil Practice Law and Rules and for declaratory judgment pursuant to Article 30 of said Civil Practice Law and Rules. Specifically, they ask the Court to a) vacate the June 20, 2018 resolution and decision of the Town Board to discharge Jamie Sanchez from her employment and vacate the Town's action discharging her from her employment on June 21, 2018; b) Reinstate Jamie Sanchez as Confidential Clerk to the Town Court; c) Issue back pay for the time that she was removed from her position and d) be awarded costs and disbursements.

The requested relief is opposed by Respondent and they raise several objections, including that the three petitioners are not "united in interest", the claims are rendered moot by the Justice's subsequent 'advice and consent' under Town Law Section 20(1)(b) to the filling of the vacancy by an individual of the Justice's choice, that any right to consent to the termination of Ms. Sanchez under said section of the Town Law was waived by the Justices' consent to the

appointment of an individual to replace her, the Justices' claims are barred by the doctrine of laches in that they were obligated to press their claims before seeking the appointment of a new confidential clerk, that Ms. Sanchez has no standing under Town Law Section 20(1)(b) to challenge her termination because that claim belongs only to the Town Justices, and that the Town Justices were arbitrary and capricious in their refusal to give consent to the discharge of Ms. Sanchez.

Through its Answer, the Respondent asserts several counterclaims. First, it disputes that a justiciable controversy exists over Petitioners Gorman and Cortright's ability to claim entitlement to rights under Town Law Section 20(1)(b) to deny consent to Ms. Sanchez's discharge after they consented to the filling of the vacancy by an individual of their choice. A second counterclaim is that the Respondent is entitled to declaratory relief to the effect that said Petitioners arbitrarily and capriciously refused to give consent to the discharge of Ms. Sanchez under the circumstances of her misconduct. The final counterclaim asserted is that Ms. Sanchez was a faithless servant of the Town of Alexandria and as result the Town is entitled to recoup all amounts paid her from the time of her first faithless act through the termination of her employment in an amount to be determined by the Court.

The Petitioners filed a Verified Reply opposing the relief requested in the counterclaims. In that filing twelve affirmative defenses were asserted which were addressed in turn through an Affirmation subsequently filed by Attorney Slye. The Supervisor of the Town of Alexandria, Brent Sweet, also filed an Affidavit in Opposition to the Petitioner's claims.

Oral argument was had on the claims and counterclaims. Based on the points of counsel raised thereon and on the moving papers of the parties the Court makes the following findings of fact and conclusions of law.

However, before doing so, it should be noted that the parties and the Court agree that, although touched upon, most of the issues raised need to be developed at trial or settled by

agreement in order to be fairly resolved. Therefore, this decision will only focus upon and resolve the requests for declaratory judgment.

Facts

The relevant facts are as follows. Prior to her termination, Jamie Sanchez had been employed by the Town of Alexandria since August of 2014 in the position of Confidential Clerk to the Town Justice. The appointment to this full-time position was made by the Town of Alexandria Board with the advice and consent of the individuals serving as Town Justices at the time. In addition to her employment with the Town of Alexandria, Ms. Sanchez had also been working part time for the Town of Clayton Court. She was paid by both courts on an hourly basis computed using time sheets which she maintained and submitted to the justices in each court.

In June or July of 2017, Mr. Sweet and others learned that Ms. Sanchez had charged both the Town of Alexandria and the Town of Clayton for hours worked on a trial held in the Town of Clayton Justice Court. Upon learning of this overlap, the supervisors of both towns met to review her timesheets, and in doing so they discovered multiple instances where Ms. Sanchez's timesheets overlapped.

Subsequently the Town of Alexandria supervisor notified the New York State Comptroller's Office and said office conducted audits of both the Town of Clayton and the Town of Alexandria Justice Court. When the audit was finished, representatives of the Comptroller's Office conducted interviews with the Alexandria Town Supervisor, Deputy Supervisor and with the two Town Justices.

On May 31, 2018 the Comptroller's Office presented a draft report of their findings and asked the Town of Alexandria to submit a response before the final report was issued. The Town presented their reply on July 13, 2018, and during their next regular Board meeting met in Executive Session with Justice Gorman and Justice Cortright to discuss the report and the employment history of Ms. Sanchez. Representatives of the Board indicated they were seeking to

terminate Ms. Sanchez based on the findings contained in the report. In response, both Justices stated that they would not consent to her termination.

Nevertheless, the Town Board terminated Ms. Sanchez from her position effective June 21, 2018 which resulted in the two Town Justices seeking a meeting with Hon. James P. McClusky in his capacity as the Supervising Judge of the Justice Courts of Jefferson County. According to the Affidavit of Petitioner Gorman, at this meeting Justice McClusky informed the justices that they had to keep the Town Court open.

As a result, said Petitioners met with the Town Supervisor and Deputy Supervisor and asked that the existing part-time Confidential Clerk be appointed to fill the position held by Ms. Sanchez. Petitioners maintain they had no choice in the matter and that the only way the Town Court could be kept open was to have that individual, who was familiar with the responsibilities of the position, appointed.

Effective July 2, 2018 the then part-time Confidential Clerk, Jocelyn Shaffer, was appointed to fill the full time Confidential Clerk position. Petitioners Gorman and Cortright maintain this appointment was made without their advice and consent as required by Section 20(1)(b) of the Town Law. They maintain their consent was to a temporary appointment until Ms. Sanchez was reinstated.

Discussion

Regarding town officers, as a town of the second class the Town of Alexandria is governed by Town Law Section 20(1)(b) which provides in relevant part "All other town officers and employees in such a town shall be appointed by the town board, except as otherwise provided by law". Further, that "The clerk of the court of a town shall be employed and discharged from employment only upon the advice and consent of the town justice or justices".

To the Court's knowledge, the only published case dealing with the discharge of a court clerk is the matter of *Roberta Reno v. East Greenbush Town Board*, 230 AD2d (3rd Dept. 1997). Therein, a court clerk sued the town alleging improper suspension based on the fact that the consent to her termination was given by a town justice other than the one she worked for. In interpreting the statute, the Third Department examined the legislative history behind it and concluded that the discharge at issue was improper given that, as the clerk was responsible solely to another justice, his or her consent was required before the town board would be authorized to discharge the clerk.

The facts of the *Reno* case are not exactly analogous, and from reviewing the decision it appears that the effort to discharge the court clerk was initiated by a non-supervising town justice and not by the town board. In addition, it appears the State audit referenced in the decision deals with the operation of the town court itself, which again is different from the facts of the case at bar.

The chain of events which ultimately lead to the dismissal of Ms. Sanchez started when the Town of Alexandria asked the NYS Comptroller's Office to investigate the apparent billing overlaps wherein Ms. Sanchez billed both the Town of Clayton and the Town of Alexandria for the same dates and times. Thus, the inquiry was not brought about based on any alleged conduct in connection with her responsibilities as a Court Clerk, but rather her billing practices which affected the pay she received from the towns.

Employees are regularly terminated upon proof or even mere suspicion of theft from their employer. In this case, the Town had what it considered clear proof that Ms. Sanchez was billing it for time which she spent elsewhere.

One issue for the Court to decide is whether the Town Board's discharge of Ms. Sanchez without the consent of the two town justices was in violation of Town Law Section 20(1)(b). On its face, the language of the statute is clear when it provides that the clerk of a town court shall

be employed and discharged from employment only upon the advice and consent of the town justices.

The *Reno* case reinforced the plain meaning of the statute, which protects the justices and clerks from political mischief. But what about the Town? It also has rights and responsibilities the Court must consider.

The position of the Petitioners Gorman and Cortright is that they believe Ms. Sanchez did not purposely or intentionally misreport any time or expenses on her time she nor otherwise commit any culpable act in the performance of her duties. They maintain she only billed for hours worked on town matters and note that the Town gave them no direction as to personnel policy or oral rules regarding billing and time sheets.

Based on the Courts' review, the report from the New York State Comptroller's Office provides multiple instances of significant issues with the accuracy of Ms. Sanchez's time-sheets. The report indicates that Ms. Sanchez billed 405 hours to the Town of Alexandria which overlapped billing for the Town of Clayton. While the Petitioners maintain that Ms. Sanchez could work on Town of Alexandria matters from the Town of Clayton, the report indicates that this was not what was being done, but rather she was billing both towns for the same hours. The report specifically references 282 days during their audit period where her hours for work at one municipality coincided with hours for another resulting in an estimated cost of \$5,984. While the report acknowledged that Ms. Sanchez performs some duties outside of the Court's computer system, they noted the fact that there were 87 days that had billing but no corresponding computer activity.

The report also uncovers issues where Ms. Sanchez did not account for travel time when submitting her time sheets. Her recorded end time at one location and her start time at the second location were the same. Specifically identified were 942 days when Ms. Sanchez reported working for both Towns but did not allow for any travel time on her time sheets. Assuming a

minimum travel time of fifteen minutes, the report estimated Ms. Sanchez was paid \$1,800 for 123 hours that were not worked and should have been considered unpaid travel time.

Another issue raised in the report deals with alleged improper use of sick time and notes that on fourteen instances Ms. Sanchez claimed eight hours of sick time yet reported working on her Town of Clayton time sheets. This resulted in 112 hours of sick leave at a cost to the Town of Alexandria of \$1,795. As her duties in both Towns was exactly the same, the fact that she used sick time in one municipality while working in another seems improper.

Regarding her 'call-in' hours, the Comptroller's report notes that during the period of time subject to the audit that she listed 73 call-in hours on her time sheet, and of these 43 had no description while 30 had vague descriptions, such as "arraignment" or "DWT". Regarding the propriety of call-in hours themselves there is a discrepancy over whether these hours were even allowed at all. According to the report, both justices stated they had not told Ms. Sanchez she was eligible for call-in hours and Ms. Sanchez herself stated that she believed she was eligible for them based on representations from the other municipalities she worked in that she was eligible for them. The report adds that after the fieldwork was complete that one of the Justices added that he did recall telling her she was eligible for a minimum of two hours because he thought it was an Office of Court Administration rule.

Regarding oversight, the report states that of the sixty-seven time sheets reviewed, the justices only reviewed four of them for accuracy. This suggests to the Court that the justices were not aware of the specifics of the time sheets and the nature of the billing Ms. Sanchez was submitting.

To be fair, some of the discrepancies, such as the overlapping billing of two municipalities or the sick time abuse would not have been apparent on their face. That being said, when presented with the findings of in the Comptroller's report the justices should reasonably have been concerned over the findings and the accuracy of the time sheets Ms. Sanchez submitted.

At the time the findings in the report were released, Ms. Sanchez had been working with the Petitioners for several years and was a valued employee. Her ability as a court clerk has not been cast in doubt, nor have there been any allegations that monies entrusted to her were improperly handled. The sole issue is that she had been submitting improper time sheets which resulted in her receiving more pay than that to which she was entitled.

At the time these arguments were presented Ms. Sanchez had not formally been charged with any wrongdoing, but the issues raised in the petition were investigated by the Comptroller's Office prior to the report being issued. In connection with this investigation said office interviewed the parties involved, including the town justices and Ms. Sanchez, and also reviewed the billing records as issue. The findings in the report are based on that investigation and are not speculation or one-sided allegations. The refusal of the town justices to consent to the termination of Ms. Sanchez based on these findings appears unreasonable when faced with the findings of the report.

The Court has reviewed the bill jacket and legislative history for Assembly Bill 5740 and Senate Bill 3566 which amends the Town Law section at issue. In the Memorandum in Support, the stated purpose of the legislation is as follows "Provides that the justice of a town or village shall have the right to consent to the hiring or discharge of the clerk of their courts" and the justification is as follows "Town and village justices rely heavily on the expertise of a court clerk as unlike many higher courts that handle large sums of cash collected from fines, fees and forfeitures. Under present state law, the justices are individually accountable and liable for these funds. Not only may they be removed if the funds are not accurately accounted for but they are also subject to removal (and some have been) if the required reports are not timely filed and the fact that it may be the clerk's fault does not relieve the justice of responsibility".

Michael Colodner, the then Counsel for the NYS Unified Court System's Office of Court Administration, submitted a memorandum in support of the proposed legislation. Therein he

noted that the proposed legislation would insure more effective operation of the local court system.

A memorandum in support was also submitted by James N. Baldwin, the then Executive Deputy Secretary of State who noted "the purpose of the bill is to remedy the situation which occasionally occurs where the governing body and the justice may differ over the qualifications or the actual performance of a particular candidate or appointee. By making the appointment subject to the approval of the justice, the law will henceforth ensure that the clerk's actual supervisor will have a say in the hiring-firing decisions".

Thus, before the bill was passed a town board had the sole authority to appoint and discharge a court clerk. For the reasons stated in the *purpose* and *justification* section of the bill this was obviously not an ideal situation in that town justices are personally responsible for the funds their courts collect, yet they had no formal input regarding the employment of that individual. It was only natural that the legislature would want to change this system.

It makes perfect sense that a town justice should have input in the selection and discharge process of his or her court clerk, yet it stretches logic to imagine that the sponsors of the bill and those groups that submitted memorandums in support of it would have imagined a situation such as this where town justices refuse to give consent to the discharge of a court clerk following a Comptroller's audit which found numerous, apparently fraudulent, time-sheet differences.

If the statute were interpreted literally, a court clerk could theoretically engage in any conduct, no matter how nefarious, and still maintain his or her position as long as the town justice supported continued employment.

The Court must resolve the conflict between two reasonable arguments. It must choose either affording Ms. Sanchez the protection intended by the enactment of Town Law section 20(1)(b) or protecting the citizens of the Town of Alexandria from fraudulent misappropriation of funds.

In that light the Court is compelled to choose the greater good. To withhold consent to terminate an employee who seems quite clearly to have been engaging in criminal behavior is unreasonable. This is even more so when done by people elected to administer justice.

The Court rejects the argument that the lack of consent of the justices to the termination of an apparently dishonest employee compels the Town to retain said employee. That cannot be what the Legislature intended.

It also seems incredible that two presumably competent and honorable town justices would argue so strenuously to retain a clerk in light of these findings. There must be more to this story. Perhaps the audit was flawed. Perhaps honest mistakes were made. One of the best ways to reveal the truth is to give both sides a full and fair hearing.

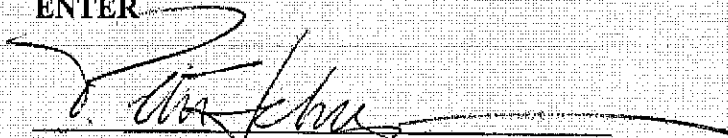
The same logic applies to the Respondent's request for declaratory judgment that the town justices were arbitrary and capricious in refusing to consent to the termination of Ms. Sanchez. That issue has not been fully development and must be fleshed out at trial.

In accordance with this Decision, both requests for declaratory judgment are denied. The remaining issues may proceed to trial and a conference to either settle these matters or set a trial date will be scheduled shortly.


The foregoing shall constitute a Decision of this Court, and it is So Ordered.

Dated: March 9, 2020
Watertown, New York

ENTER


Hon. Peter A. Schwerzmann, AJSC

DECISION AFTER TRIAL



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Receipt # 2023003109
22 Pages

Gizelle J Meeks, Jefferson County Clerk
Clerk: LV

EXHIBIT B

Exhibit 201

On Behalf	Numt	Offer/Mark	Received	Status	Description
Plaintiff	1	10/12/2021	10/12/2021	Admitted	Letter, dated June 19, 2015 from Town of Alexandria Supervisor Dale D. Hunneyman
Plaintiff	2	10/12/2021	10/12/2021	Admitted	Check from Town of Alexandria, dated July 3, 2018 to Jamie S. Sanchez (2 pages)
Plaintiff	3	10/12/2021	10/12/2021	Admitted	State Comptroller Town and Village Court Revenue Report 2010-2020 (11 pages)
Plaintiff	4	10/12/2021	10/12/2021	Admitted	Clayton Dental Office letter, dated October 26, 2021 with attachments (3 pages)
Plaintiff	5	10/12/2021	10/12/2021	Admitted	River Hospital dated October 25, 2021 with attachments (2 pages)
Plaintiff	6	10/12/2021	10/12/2021	Admitted	Samaritan Medical Center Patient's Data dated January 31, 2022 with attachments (3 pages)
Plaintiff	7	10/12/2021	10/12/2021	Admitted	Town of Alexandria Personnel Manual as amended January 7, 2015.
Plaintiff	8	10/12/2021	10/12/2021	Admitted	Judge Pennington letter dated November 4, 2014
Plaintiff	9	10/12/2021	10/12/2021	Admitted	Judge Pennington letter dated April 17, 2015
Plaintiff	10	10/12/2021	10/12/2021	Admitted	Judge Pennington statement to Town Board
Plaintiff	11	10/12/2021	10/12/2021	Admitted	Judge Gorman letter dated May 5, 2016
Plaintiff	12	10/12/2021	10/12/2021	Admitted	Judge Gorman statement to Town Board
Plaintiff	13	10/12/2021	10/12/2021	Admitted	Judge Gorman letter dated July 2017
Plaintiff	14	10/12/2021	10/12/2021	Admitted	Town of Alexandria letter dated August 4, 2017
Plaintiff	15	10/12/2021	10/12/2021	Admitted	Judge Gorman letter dated June 20, 2018
Plaintiff	16	10/12/2021	10/12/2021	Admitted	Jamie Sanchez weekly total hourly statement (2 pages)
Plaintiff	17	10/12/2021	10/12/2021	Admitted	Town of Clayton Employee Handbook 2015
Plaintiff	18	10/12/2021	10/12/2021	Admitted	Town of Alexandria Report of Examination October 2018
Defendant A		10/12/2021	10/12/2021	Admitted	Letter from Judge Pennington dated October 27, 2018
Defendant B		10/12/2021	10/12/2021	Admitted	Jamie Sanchez time cards for the Town of Alexandria
Defendant C		10/12/3021	10/13/2021	Admitted	Town of Clayton Timesheets for Jamie Sanchez
Defendant D		10/13/2021	10/13/2021	Admitted	Valerie Nugent Affidavit of January 25, 2019
Defendant E		10/13/2021	10/13/2021	Admitted	Subpoena Duces Tecum of Valerie Nugent
Defendant F		10/13/2021	10/13/2021	Admitted	Jamie Sanchez Roster Card
Defendant G		10/13/2021	10/13/2021	Admitted	Civil Service Law Sections 20/22
Defendant H		10/13/2021	10/13/2021	Admitted	New Position Duties Statement
Defendant I		10/13/2021	10/13/2021	Admitted	Civil Service Law Sections 40/41
Defendant J		10/13/2021	10/13/2021	Admitted	Comptroller Report - Alexandria 2017M-284
Defendant K		10/13/2021	10/13/2021	Admitted	Comptroller Report - Clayton 2017M-286
Defendant L		10/13/2021	10/13/2021	Admitted	Alexandria Court Clerk Use of Sick Pay
Defendant M		10/13/2021	10/13/2021	Admitted	Overlap Exhibit
Defendant N		10/13/2021	10/13/2021	Admitted	Hours Comparison
Defendant O		10/13/2021	10/13/2021	Admitted	Payroll Summary
Defendant P		10/13/2021	10/13/2021	Admitted	Timeline of Court Positions
Defendant Q		10/13/2021	10/13/2021	Admitted	Amended & Restored Personal Policies and Procedures Manual of Town of Alexandria dated June 8, 2019