IN THE SUPREME COURT FOR THE STATE OF IOWA
NO. 17-0183

STATE OF IOWA,
Plaintiff-Appellee

vs.

ABRAHAM K. WATKINS,
Defendant-Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
FOR VAN BUREN COUNTY,
HONORABLE JAMES A. DREW

DEFENDANT/APPELLANT'S FINAL BRIEF AND REQUEST FOR ORAL ARGUMENT

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I hereby certify that I e-filed the Defendant-Appellant's Final Brief with the Electronic Document Management System with the Appellate Court on the 16th day of June 2017.

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ROUTING STATEMENT

Pursuant to Iowa Code § 66.21, Abraham Watkins appeals his removal from the office of Van Buren County Attorney. This case should be retained by the Supreme Court because:

1. Iowa Code § 66.21 indicates cases of this nature should be heard by the Supreme Court;

2. it involves lawyer discipline, *see* Iowa R. App. P. 6.1101(2)(e);

3. no court has yet considered the standards to be applied in evaluating whether sexual harassment equates to "willful misconduct or maladministration" under Iowa Code § 66.1A(1), *see* Iowa R. App. P. 6.1101(2)(c), (f);

4. whether an elected official is removed from office is a fundamental and urgent issue of broad public importance, *see* Iowa R. App. P. 6.1101(2)(d).

CASE STATEMENT

Voters in Van Buren County elected Watkins to the position of County Attorney for a term beginning January 2015. (Watkins DT 5:12). On September 29, 2016, a petition was filed seeking the removal of Watkins from office. The district court ordered Watkins removed from office on January 3,

2017, finding Watkins had committed misconduct or maladministration by engaging in sexual harassment. (App. 166-167).

FACTS

I. Background

Watkins lives in Keosauqua, Iowa with his wife, Renee Watkins, and their two little girls, currently ages 4 and 2. (Watkins DT 6:24).[1] Watkins was sworn into the Iowa bar in May 2013. (Watkins DT 5:18). He had never worked as an attorney before. Watkins has followed a nontraditional path; he has played poker for a living and lived overseas. (Watkins DT 11:1-4; TT 545:24-25). Watkins is a "personable young gent," (TT 60:5), and is not, by his nature, politically correct.

Watkins opened a solo practice in Keosauqua, operating out of the first floor of the home he shared with his family. (TT 314:1, Watkins DT 14-19:15). The family's kitchen, laundry, and one of their two bathrooms were on the main floor with the offices. (App. 233, 234, 239-252; TT 193:10-194:11).

[1] "Deposition transcript" is abbreviated as "DT." The transcript from the first three days of trial is abbreviated as "TT." The transcript from Monday, November 21, 2016 is abbreviated as "TT2." And the transcript from Tuesday, November 22, 2016 is abbreviated as "TT3."

Watkins and Renee became close friends with a former Bettendorf police officer, Chris Kauffman, (TT 56:18-19, 336:2), who encouraged Watkins to run for County Attorney. (TT 58:25-59:13). Watkins did so, running as a "no party" candidate. (Watkins DT 11:18; TT3 643–8, 73:11–18). He won the election and began his term as a part-time County Attorney for Van Buren County on January 1, 2015, less than two years after beginning his practice. (Watkins DT 5:12).

Renee—who has some college but also had no legal experience prior to the opening of the civil practice—works closely with Watkins. (TT 329:9-10; Watkins DT 7:8-14). She serves as an office manager for his private practice and as the victim witness coordinator for the County Attorney's office. (TT 313).

Watkins and Renee hired Jasmin Wallingford as an assistant in September 2014. (TT 149:24-150:2). Wallingford had recently graduated from college and had never before worked in a law office. (TT 148-49). She was interested in attending law school and admired Watkins' intellect. (TT 196:5-12; App. 267). Watkins and Renee trained Wallingford as a legal assistant. (Watkins DT 36:13). When Watkins became County Attorney, he hired Wallingford to work part-time for the County Attorney's office in addition to working for his private office. (TT 150:2-8).

Wallingford became very close friends with the Watkins family. Their relationships developed quickly because they were the only ones in the office and had to figure out together how to manage a rapidly-growing law practice and the County Attorney's office. (TT 332:19–333:16). Wallingford agreed that part of the appeal of the office was that it was personal and that she, Watkins, and Renee were a close-knit team. (TT 194:2). Wallingford would help the Watkins' two little girls get ready in the morning. (TT 332:13). The children were often in the office. (TT 190:24-25).

The office environment was close-knit, cheerful, and relaxed. (TT 197–98). Renee described the atmosphere in the office in 2015 as comfortable and stated "we all felt like we could be ourselves around one another, just kind of like you'd be . . . around your family." (TT 457:7; App. 237, 238). Wallingford labeled herself an "honorary family member." (TT 220:23; App. 217). She and Renee would tell each other they loved one another. (TT 187:6). Wallingford and Watkins may have told each other they loved one another; Wallingford could not recall. (Wallingford DT 65:10-16). Wallingford was familiar with Watkins' personality and knew that he could often be quite blunt. (TT 196).

Wallingford socialized with both Watkins and Renee outside of work and took trips out-of-town with the Watkins family, including at least two

trips to an out-of-town waterpark where they stayed in a hotel. (TT 210:18, 211:14-19; App. 235-236). She had no qualms with being in her bathing suit around Watkins; nor was she uncomfortable changing into her workout attire daily at Watkins' office. (TT 210, 212:2). Wallingford shared personal details of her life with the Watkins, including various details of her romantic life. (TT 454:1–54:14). She introduced her boyfriends to the Watkins, and it was important for them to get to know the people in her life. (*See* TT 452:1 (the Watkins knew Wallingford's mother, father, brother, grandparents, and boyfriend)).

In April of 2015, Watkins hired Virginia Barchman as assistant county attorney. Kauffman had recommended to Watkins that he hire Barchman (who was one of his best friends). (TT 59:20-60:9, 89:9-24). Barchman is in her seventies and had retired from a 24-year career with the Iowa Attorney General's Area Prosecution Division. (TT2 105:23-106:10). Prior to being hired by Watkins, Barchman was retired for 5 years. *Id.* Barchman is "a very serious person" and "a woman of strong opinions" who is not afraid to voice those opinions. (TT3 160:4, 161:2, 161:22). Both Watkins and Barchman have been described as "Type A" personalities. (TT 202:6). It soon became evident that Barchman and Watkins had a significant personality conflict. (TT

202:13). Their arguments were sometimes quite heated and Barchman would curse at Watkins. (TT 207:18–207:25).

Nevertheless, the County Attorney's office functioned apparently without any serious issues until the spring of 2016. In April 2016, Barchman became frustrated during preparations for the Gaylord trial, a domestic abuse case with, as she put it, "just really horrible facts, horrible facts." (Barch. DT 63:9). Barchman blamed Watkins for her frustrations. (Barch. DT 64-68). Wallingford began to look for other employment around this time because she was distressed by the increasing arguing in the office. (TT 182–83).

The office grew busier during the summer of 2016. (Watkins DT 67–68). Watkins testified, "It was chaos." (Watkins DT 80:24). It was the most stressful period the young office had ever encountered. (Watkins DT 81:11). The Gaylord case was a significant piece of the chaos; trial in that case began July 19, 2016 and concluded July 21, 2016 with a jury verdict of guilty on all six counts.[2] (Van Buren Case No. FECR001537).

After the trial, on July 26, 2016, Barchman became upset with Watkins and "gave it to him." (TT2 192). She criticized his performance during the Gaylord trial and accused him for the first time of "smelling like booze"

[2] The jury found the defendant guilty of a lesser-included felony offense on Count I.

during the trial. (TT2 192). Due to Barchman's continued disrespect, Watkins realized he would be unable to continue working with her. (Watkins DT 92:14). Later in August 2016, Watkins contacted the University of Iowa Law School regarding a possible job opportunity with his office. (Watkins DT 92:14, 94:6). An applicant responded to that position on August 31, 2016. (App. 216). Barchman saw this correspondence and interpreted it to mean Watkins wished to terminate her. (Df. Ex. 16; TT2 206:2–206:8, 207:23–208:1).

Watkins and Renee' relationship also suffered during the summer of 2016. (Watkins DT 78:3). Renee became increasingly frustrated with Watkins' drinking. (Watkins DT 85:13). They would argue about his drinking in the evenings and the acrimony would creep into the workday. (TT 550).

On Friday, August 5, 2016, Renee left with the children to visit her mother in North Carolina because she could no longer handle his drinking. (Watkins DT 87:12, TT 68:9-69:18, 553:21-554:1). Watkins testified it "hit [him] like a ton of bricks" that he needed to quit drinking. (Watkins DT 88:4). Watkins telephoned Kauffman shortly thereafter to help hold himself accountable. (Watkins DT 90, 166:22; TT 470:23). He also met with his doctor. (Watkins DT 90). Kauffman assisted Watkins later that weekend to obtain medical care. (TT 71:4-72:19).

Watkins contacted Hugh Grady from the Iowa Lawyers Assistance Program afterwards and met with him on August 10, 2016. (Watkins DT 88:21; TT2 197:21; Grady DT 11:25-12:18). Barchman was present for the latter half of that meeting. (Grady DT 13:11-14:1). Grady recommended to Watkins that he see a counselor, attend Alcoholics Anonymous meetings, and maintain regular contact with Grady. (Grady DT 16).

Watkins acted on Grady's recommendations. (Grady DT 20:11). He has not consumed alcohol since August 5, 2016. (Watkins DT 89:17; TT 470:20, 475:23-25). He is regularly attending Alcoholics Anonymous meetings. (Watkins DT 91:13, Grady DT 20:1-11). He and his wife are engaged in regular counseling to address their marital issues and their own personal issues. (Watkins DT 91:20–91:25; TT 475:17-22). Watkins has maintained regular contact with Grady. (Grady DT 19:18).

Meanwhile, the office was left in the lurch by Renee's departure. Watkins turned to Wallingford, his friend, for support during this time. (TT 473:15-19). Renee was also communicating with Wallingford, as a friend. (TT 219:23-220:4, 473:12-19; App. 217).

Four days after Renee left for North Carolina, on August 9, 2016, Wallingford resigned citing a "hostile work environment." (App. 224). Kauffman and Barchman consulted with Wallingford prior to her resignation.

(TT 216:7-216-25). Kauffman encouraged Wallingford to write down all of her complaints regarding Watkins. (TT 225:16-23). Wallingford later retracted her resignation but was not rehired; she instead found employment with the Van Buren County Sheriff's Office. (App. 224; TT 222:1-223:8, 583:24-584:3).

Renee returned from North Carolina on August 19 or 20 and resumed working in the office. (TT 475:2-3, 573:3).

Facts specific to the sexual harassment allegations will be discussed below, within the argument.

II. Removal proceedings

The Van Buren County Board of Supervisors learned of Wallingford's resignation through Jon Swanson, who represents the county. (TT2 36:22-37:4; App. 272). The Board of Supervisors held two closed sessions to discuss Watkins. (App. 272, 300). Prior to the second closed session, Swanson retained Thomas H. Miller—a former Iowa Assistant Attorney General and Barchman's former supervisor—to investigate and advise the Board of Supervisors regarding a potential removal action. (App. 296, ln. 9-16). Miller came to Van Buren County and began his investigation with a social lunch with Barchman and Kauffman—both old friends. (TT2 211:10-25; App. 324,

ln. 13-14). Miller did not speak to Watkins or Renee as part of his investigation. (TT 474:19-20; App. 311, ln. 3-4, 329-330, ln. 24-2).

In the second closed session, the Board of Supervisors was incorrectly informed Watkins had refused the state bar's request that he seek treatment. (App. 312). The Board of Supervisors then authorized F. Montgomery Brown—who shared an office with Miller—to initiate a removal action. (App. 342-343, ln. 14-1).

Brown filed a Petition for Removal from Office on September 29, 2016, claiming authorization to do so under Iowa Code § 331.754(4). Watkins was presented with the allegations for the first time on the same day the petition was filed. (Watkins DT 106:5-107:13). By that time, Watkins had been sober for nearly two months and was working to recover from the disruption caused by Wallingford's resignation, his personal differences with Barchman, and Renee's period of absence. Watkins and Renee were working to mend their relationship.

The State amended its Petition three times before trial. (App. 12, 18, 25). The Third Amended Petition alleged five grounds for removal: 1) sexual harassment; 2) aiding and abetting a violation of Iowa Code § 123.47(5); 3) retaliation; 4) conflicts in three cases; and 5) intoxication. The State withdrew

its retaliation ground after the close of evidence, recognizing that it had failed to prove that allegation. (App. 85).

Trial was held from October 31 through November 2, 2016, then continued on November 21 and 22, 2016.

On January 3, 2017, the district court ordered Watkins removed from office on the basis of sexual harassment. (App. 166-167). The district court inferred that Watkins acted willfully, with an evil purpose. (App. 167). The district court found the State failed to prove the three alleged conflicts warranted removal from office. (App. 167). Likewise, the district court found the State failed to prove Watkins was intoxicated. (App. 168). The district court did not address whether aiding and abetting a violation of Iowa Code § 123.47(5) warranted removal.

ARGUMENT

I. THE ACTION AGAINST WATKINS MUST BE DISMISSED BECAUSE IT WAS UNLAWFULLY INITIATED

A. Preservation & Standard of Review

Watkins filed a motion to dismiss. (App. 33, 40). The Court denied this motion. (App. 45).

Questions of statutory interpretation are reviewed de novo. *C & J Vantage Leasing Co. v. Wolfe*, 795 N.W.2d 65, 73 (Iowa 2011).

B. Argument

The Van Buren County Board of Supervisors empowered Brown to prosecute this action via Iowa Code § 331.754(4).

Iowa Code § 66.3 delineates "who may file" a petition to remove an official from office:

> 1. By the attorney general in all cases.
> 2. As to state officers, by not fewer than twenty-five electors of the state.
> 3. As to any other officer, by five registered voters of the district, county, or municipality where the duties of the office are to be performed.
> 4. As to district officers, by the county attorney of any county in the district.
> 5. As to all county and municipal officers, by the county attorney of the county where the duties of the office are to be performed.

None of the means of filing a petition under Iowa Code § 66.3 contemplate a Board of Supervisors instigating a removal action. Nor does chapter 66 empower a Board of Supervisors, acting through either an elected or an appointed county attorney, to initiate a removal proceeding. Only the elected county attorney or the attorney general—both elected officials beholden to their constituents—are empowered to initiate an action as the sole complainant.

The omission of a Board of Supervisors from the sweep of the statute is significant. The Legislature did not intend to empower a Board of Supervisors to initiate removal actions. Otherwise, it would have said so.

Kucera v. Baldazo, 745 N.W.2d 481, 487 (Iowa 2008) (discussing the interpretive rule *expressio unius est exclusio alterious*: "the express mention of one thing implies the exclusion of others not so mentioned").

Iowa Code § 331.754(4) does not legitimize the Board's activities. Allowing the Board of Supervisors to appoint an attorney via Iowa Code § 331.754(4) to initiate a removal proceeding would allow the Board of Supervisors control over the County Attorney that does not exist by law. To illustrate: if the Board of Supervisors believed that the County Auditor had engaged in the removable offense of extortion, Iowa Code § 66.1A(4), the Board of Supervisors could not force the County Attorney to file a removal action against the County Auditor. It would be up to the County Attorney to exercise his or her independent judgment and decide if a removal action was justified.

Yet here, the Board of Supervisors hired outside counsel to do its whim, thus circumventing the authority statutorily vested in the County Attorney. Chapter 66 contemplates prosecutors or voters exercising their independent judgment as to the propriety of official acts. It does not contemplate, nor does it allow, the Board of Supervisors to retain a hired gun (exercising no independent judgment) to do its bidding. In essence, allowing the Board of Supervisors to appoint an attorney via Iowa Code § 331.754(4) to initiate a

removal proceeding allows the Board of Supervisors to exercise the powers of a County Attorney. This is impermissible.

Allowing the Board of Supervisors to appoint an attorney via Iowa Code § 331.754(4) to initiate a removal proceeding would also create an end run around the five-voter requirement. Iowa Code § 66.3 requires five voters to instigate a removal proceeding. There are only three members of the Van Buren County Board of Supervisors. Initiating a removal proceeding via Iowa Code § 331.754(4) masks who is behind the action. Instead of signing on the dotted line as three of five registered voters, the Supervisors engaged an out-of-town middleman who is not accountable to the voters of Van Buren County to prosecute the removal action.

Further, Iowa Code § 331.754(4) empowers the Board to appoint an acting county attorney in a civil proceeding if the county attorney is conflicted, but a chapter 66 proceeding is more akin to a criminal matter than it is a civil matter. The Iowa Supreme Court has recognized removal proceedings are "penal or quasi-criminal in character." *City of Des Moines v. Dist. Court of Polk Cty.*, 241 Iowa 256, 262 (1950). Iowa Code § 331.754(4) therefore does not authorize the appointment of a county attorney to prosecute a chapter 66 action.

Iowa Code chapter 66 contains a specific provision for the appointment of a special prosecutor in removal cases involving a county attorney, empowering a judge to make the appointment. Iowa Code § 66.12. That provision must be read as controlling in this case. Iowa Code § 66.12 applies to these specific facts, whereas chapter 331 contains general rules about replacing conflicted county attorneys. "[T]he more specific provision controls over the general provision." *Christiansen v. Iowa Bd. of Educ. Examiners*, 831 N.W.2d 179, 189 (Iowa 2013). If Iowa Code § 331.754(4) provisions are deemed applicable in chapter 66 proceedings, the special prosecutor provision in Iowa Code § 66.12 will be rendered superfluous. *Miller v. Westfield Ins. Co.*, 606 N.W.2d 301, 305 (Iowa 2000) (nothing statutes will not be construed to make any part superfluous).

The Petition should be dismissed for its noncompliance with the strictures of Iowa Code §§ 66.3 and 66.12. The Petition was defective *ab initio*.

II. THE STATE FAILED TO PROVE WATKINS COMMITTED SEXUAL HARASSMENT WITH AN EVIL OR CORRUPT INTENT

A. Preservation & Standard of Review

Review is de novo. *State v. Bartz*, 224 N.W.2d 632, 634 (Iowa 1974). The Supreme Court "give[s] weight to findings of the trial court, but

nonetheless assume[s] the responsibility of reviewing the entire record in determining the case anew on appeal." *Id.*

Beginning with the first Iowa Code, enacted in 1851, Iowa law has provided for the removal of county officers. Iowa Code, Ch. 31, § 397 (1851). Caselaw on removal actions is limited and antiquated; the most recent opinion involving the removal of a county official was issued 39 years ago. *State v. Callaway*, 268 N.W.2d 841, 842 (Iowa 1978). The grounds for removal adopted in 1851 remain largely unchanged in the modern-day statute, Iowa Code § 66.1A. Iowa Code § 66.1A (2016) provides that an elected officer may be removed from office for "willful misconduct or maladministration in office."

A removal proceeding "is a drastic one and is penal or quasi-criminal in character." *City of Des Moines*, 241 Iowa at 262; *accord State v. Roth*, 162 Iowa 638 (1913). The State has the burden of proof to establish official wrongdoing "by clear and satisfactory evidence." *State v. Hospers*, 147 Iowa 712 (1910).

"[T]he primary purpose of the statute is the protection of public interests[.]" *State ex rel. Crowder v. Smith*, 232 Iowa 254, 262 (1942) (internal quotation marks omitted). The public interest is "not imperiled by acts of a trifling or unimportant character occasioning no injury against which the

personal responsibility and official bond of the incumbent [do not] afford undoubted security." *Id.* (internal quotation marks omitted). The public interest is imperiled only when a public official's administration "is marked by such grave misconduct or such flagrant incompetency as demonstrates his unfitness for the position." *Id.* (internal quotation marks omitted). In considering allegations for removal, "[t]he character of the man . . . must be kept apart from that of the officer." *State v. Welsh*, 109 Iowa 19 (1899).

To warrant removal, the State must prove Watkins acted with an evil and corrupt motive. *See State v. Zeigler*, 199 Iowa 392 (1925); *State v. Meek*, 148 Iowa 671 (1910). The evidence must "show a breach of duty committed knowingly and with a purpose to do wrong." *Callaway*, 268 N.W.2d at 842. "Conduct may be voluntary, thoughtless, or even reckless, yet not necessarily willful." *Meek*, 148 Iowa at 671. Unlawfulness does not necessarily imply willfulness. *Id.*

B. Ethical Standard Does Not Govern; Employment Law Standards Most Applicable

In finding Watkins had committed sexual harassment, the district court applied the standard of the Iowa Rules of Professional Conduct. (App. 165). In the ethical context, the Iowa Supreme Court has broadly defined sexual harassment to include "any physical or verbal act of a sexual nature that has

no legitimate place in a legal setting." *Iowa Supreme Court Attorney Disciplinary Bd. v. Moothart*, 860 N.W.2d 598, 603 (Iowa 2015).

This Court should not conflate the standard under Iowa Code § 66.1A with the ethical standards of the Iowa Rules of Professional Conduct; the standard in this removal action is necessarily more narrow than the ethical standard. For one, the ethical standard does not include any analysis of intent, while intent is key to removal analysis. Second, "any physical or verbal act of a sexual nature that has no legitimate place in a legal setting" does not equate to "grave misconduct." Based on common sense and experience, the number of elected officials who have made any off-color joke in their careers is not insignificant. If the Court were to adopt *Moothart*'s expansive definition of sexual harassment in the removal context, it would open the floodgates to removal actions, sweeping in untold numbers of elected officials guilty of nothing more than a crude sense of humor. Moreover, the standard for whether sexual harassment amounts to willful misconduct should not depend upon a given professional's governing ethical code; the standard should be universal and applicable to any elected official regardless of training and education.

The decision of whether Watkins violated the Iowa Rules of Professional Conduct is best left for the Iowa Supreme Court Attorney Disciplinary Board and the Iowa Supreme Court Grievance Commission.

Those bodies can review evidence in the proper forum and, if necessary, mete out punishment appropriate to the violation, ranging from a private admonition to a license revocation. Because of the wide discretion available in disciplining attorneys, an expansive definition of sexual harassment is appropriate there. But because the remedy in a removal action is drastic, penal, and one-size-fits-all, the standard for sexual harassment must be higher.

The standards used in employment law provide a better framework for analyzing whether an elected official's behavior amounts to "grave misconduct" warranting removal. Title VII of the Civil Rights Act and the Iowa Civil Rights Act both prohibit discrimination based on sex. Sexual harassment is recognized as a form of sexual discrimination. *McElroy v. State*, 637 N.W.2d 488, 499 (Iowa 2001). In employment law, courts recognize two types of sexual harassment: *quid pro quo* and hostile work environment. *Id.* There is no allegation Watkins ever engaged in *quid pro quo* sexual harassment.

Liability for a hostile work environment claims exists if an individual was subjected to unwelcome harassment and the harassment affected a term, condition, or privilege of employment. *Boyle v. Alum-Line, Inc.*, 710 N.W.2d 741, 746 (Iowa 2006). "Hostile work environment claims are actionable '[w]hen the workplace is permeated with discriminatory intimidation,

ridicule, and insult that is sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment.'" *Farmland Foods, Inc. v. Dubuque Human Rights Comm'n*, 672 N.W.2d 733, 743 (Iowa 2003).

There must be a showing that the individual "subjectively perceived the conduct as abusive and that a reasonable person would also have found the conduct to be abusive or hostile." *Boyle*, 710 N.W.2d at 747. The objective prong of this test "considers all the circumstances, including: (1) the frequency of the conduct, (2) the severity of the conduct, (3) whether the conduct was physically threatening or humiliating or whether it was merely offensive, and (4) whether the conduct unreasonably interfered with the employee's job performance." *Farmland*, 672 N.W.2d at 744–45. "These factors and circumstances must disclose that the conduct was severe enough to amount to an alteration of the terms or conditions of employment." The harassing behavior must have occurred during the hours when the individuals were working. *See Rheineck v. Hutchinson Tech.*, Inc., 261 F.3d 751, 757 (8th Cir. 2001) (noting comments made outside of work "add little support to . . . claims that [the] work environment itself was hostile").

Ultimately, though, this Court's analysis must focus on whether Watkins acted "with a purpose to do wrong," *Callaway*, 268 N.W.2d at 842,

or "an evil or corrupt motive or intent," *Meek*, 148 Iowa at 671. In a small community with few legal resources, Watkins had to learn on his on how to manage a law office. This was a challenge he welcomed. The fundamental problem in Watkins' office was never his job performance; he worked hard to become a competent private practitioner and county attorney. The fundamental problem was his friction with Barchman and the stress between him and his wife caused by his drinking. Yet before the removal petition was a glimmer in anyone's eye, Watkins was addressing these issues. In hindsight, Watkins should have conducted himself more conservatively and professionally, but on the whole the evidence shows that Watkins never acted with malice.

C. Watkins Did Not Act with an Evil or Corrupt Intent

As Chief Justice Cady once recognized, the complexity of sexual harassment cases "is not necessarily tied to the complexity of the law as much as the complexity of human relationships and interactions with others. . . . . Close personal relationships between men and woman can often produce personal emotions and conduct that are unfamiliar to the workplace relationship targeted by the general prohibition against gender discrimination in the workplace." *Nelson v. James H. Knight DDS, P.C.*, 834 N.W.2d 64, 75–76 (Iowa 2013) (Cady, C.J., specially concurring). Thus, a "practical change

in an employment relationship [occurs] when a relationship extends beyond the workplace." *Id.* at 76. Such a "practical change" has significance under the law: "the law against workplace discrimination only seeks to protect a woman from discrimination based on her status as a woman in the workplace, not on her . . . personal affiliations with her employer." *Id.*

Watkins does not contend that Wallingford invited or "consented to" any sexual comments, but the relationship between the two must inform the Court's understanding of Watkins' intent and how Wallingford would have perceived his conduct. Watkins, Renee, and Wallingford were intimate friends who often socialized both outside of work and in the workplace. Given their close-knit relationships, a comfort level existed wherein any sexually-related comments were not intended to be offensive and indeed were not perceived as more than tasteless at the time they occurred. And given those relationships, the State cannot carry its burden to establish that Watkins intended any sexually-related comments to be abusive or acted with an evil or corrupt motive.

Quite to the contrary, any sexual comments made by Watkins were made in jest in the context of their friendship. Renee was present in the exact same workplace as Wallingford. Renee and Wallingford jointly teased, made sarcastic remarks, and picked on Watkins. (TT 197). For instance, in both

2015 and 2016, Wallingford and Renee conspired to play April Fool's Day pranks on Watkins. (TT 197:7-198:10).

Indeed, Wallingford's testimony reveals that the behavior she found "hostile" was the increasing arguing in the office. Wallingford described the atmosphere in the office as "tense" and "uncomfortable" because of "Mr. and Mrs. Watkins yelling at each other and then Mr. Watkins and Miss Barchman didn't get along very well." (TT 184:5, 208:6). Wallingford testified that she was placed in the middle of the arguments between Barchman and Watkins because she shared an office with Barchman. (TT 207:22). Barchman would sometimes curse at Watkins in Wallingford's presence. (TT 207:25).

Wallingford detailed that she considered quitting in April or May of 2016. (TT 182:24). When asked on direct examination what she was upset about, Wallingford explained, "Just the way that he – Mr. Watkins and Mrs. Watkins would fight in the office and yell." (TT 183:15). When then asked if there were other reasons she was tired of Watkins, Wallingford elaborated:

> He was rude at times and when I — at points when I would want to ask him a question on something, it would be a negative response and that was part of it, why I was done.

(TT 183:23). Wallingford confirmed on cross-examination that she first had the thought that she was experiencing a "hostile work environment" when

> the yelling . . . between Mr. and Mrs. Watkins became more frequent and it was very uncomfortable because I wasn't sure if

> I should even be there when they were having their arguments 'cuz it was personal matters, obviously.

(TT 219:5–9). She agreed that the "biggest factor" that made the office "hostile" was the arguing between Watkins and Renee. (TT 240:13). This testimony demonstrates that Wallingford used the term "hostile work environment" in its colloquial sense; she did not realize the legal, i.e. sexual, baggage associated with that term.

Wallingford's testimony and her written statement further reveal that a large source of her dissatisfaction with her employment was the nature of her responsibilities. (App. 195). She testified she was beginning to look for another position because she was tired of performing assistant-type tasks. (TT 208:10).[3]

Examining the timeline of events demonstrates that any sexually-related incidents did not disrupt Wallingford's work environment or relationship with Watkins. Wallingford agreed that all of Watkins' sexual comments occurred months before she decided to resign. (TT 241).

[3] There is no basis for concluding that Wallingford's work responsibilities were based on her sex or intended to be abusive. Nothing prohibits Watkins from employing Wallingford for personal-assistant-type work as a part of her responsibilities for the private office. *Cf. Farmland*, 672 N.W.2d at 745–46 (rejecting hostile work environment claim when unpleasant job assignments reflected staffing needs). Wallingford was hired with the understanding that her responsibilities would be wide-ranging and depend on the Watkins' needs. (TT 191:4).

Wallingford confirmed that none of the sexually-related incidents negatively impacted their working relationship; they both moved on without missing a beat. (TT 201:12, 209:24). Wallingford continued to socialize with Watkins, change into her workout clothes at the office, and joke around with Watkins after most of the allegedly harassing comments occurred. (*See* TT 210 (Wallingford worked out with Renee from February 2016 through the end of April 2016, and sporadically through the summer), 212 (Wallingford attended Watkins' daughter's birthday party in June 2016 and Watkins attended Wallingford's boyfriend's birthday party in summer 2016)). Wallingford testified she felt very close to the Watkins family at least up until the spring of 2016. (Wallingford DT 74:5-21). Wallingford never raised any concerns regarding sexually inappropriate behavior with Watkins. This demonstrates that the sexually-related incidents were not intended to be offensive or perceived as abusive.

Nor was Watkins' alleged misconduct pervasive. As discussed in detail *infra* section II.D, Wallingford testified to approximately ten sexually-related incidents/comments. Wallingford worked for Watkins for nearly two years. At least three of the incidents/comments occurred outside the workplace. The sexual comments were "sporadic and often separated by long gaps in time." *Farmland*, 672 N.W.2d at 745. And "the sporadic use of abusive language,

gender-related jokes, and occasional teasing," do not present a hostile work environment. *Faragher v. City of Boca Raton*, 524 U.S. 775, 788 (1998). As Barchman testified, the workplace was not clouded by an air of sexual inappropriateness. (TT2 153:8–54:3).

The timing of Wallingford's resignation confirms sexual harassment was not the cause. Wallingford was placed in the middle of Watkins' and Renee's argument on August 5, 2016—the day Renee left with the children for North Carolina. (TT 214:23). Wallingford offered to help with the children that day because Renee was crying. (TT 214:24–215:4). Wallingford worked the rest of the day, (TT 215:6), and when she left she told Watkins to call her if he needed anything, (Watkins DT 97:18). Watkins perceived that Wallingford was sincerely worried about him; he felt as if she was a little sister. (Watkins DT 97:22). Wallingford communicated with Renee over the next few days, while Renee was driving to North Carolina and after Renee reached North Carolina. (App. 217-222).

Watkins and Wallingford also communicated several times between the Friday when Renee left and the Tuesday when Wallingford quit. Watkins spoke with Wallingford on Sunday, "telling [her] what he was doing over the weekend and sa[ying] he hadn't slept and ask[ing] what [Wallingford] had cooked because [she] told him [she was] grilling out." (TT 178:14–178:21).

Watkins also called Wallingford from the emergency room to seek her help regarding paperwork he needed at the hospital. (*See* Watkins DT 169:14 (recording of voicemail left on Wallingford's telephone)). These calls demonstrate the personal relationship that existed between Watkins and Wallingford.

In her handwritten list, Wallingford complained that Watkins "[t]ried to get [her] to talk to Renee for him after [she] said leave me out of it." (App. 195). The voicemail Watkins left Wallingford on August 9, 2016, after receiving her resignation, demonstrates he believed she had resigned due to her entanglement with the personal issues between him and Renee: Watkins commented, "maybe you know something I don't about Renee that's making you not want to come in." (App. 356). Yet Wallingford testified she did not make the decision to quit until Watkins made a rude comment about her father. (TT 215:19).

Wallingford was encouraged by Kauffman to write down her every criticism of Watkins. (TT 225:19). In hindsight, then, Wallingford identified sexual comments made by Watkins as inappropriate. The handwritten list reflects Wallingford's opinion of Watkins on the day that she drafted it.

That handwritten list is the best evidence of Wallingford's reason for quitting: Of the approximately 55 listed complaints, the vast majority present

personal slights and complaints about the menial work she was asked to do. Telling are the complaints, "the importance of him & not us" and "no one was important in our office except him." (App. 195). This list reveals that Wallingford no longer felt respected by Watkins. She grew to resent Watkins and found the environment in the office very stressful. This is not to imply that Wallingford's feelings were unjustified, but to demonstrate that the cause of the disintegration of her relationship with Watkins was not sexual harassment.

The facts of this case do not align with the typical understanding of sexual harassment. Wallingford did not testify Watkins targeted her or intended to make her uncomfortable. No witness testified Watkins intended his behavior to be harassing. Nor did any witness testify Watkins was attempting to develop a sexual relationship with Wallingford. Wallingford did not testify that she perceived Watkins' comments as "come-ons," and Barchman concurred that Watkins never hit on Wallingford. (TT2 153:8–54:3). Watkins never touched Wallingford inappropriately, propositioned Wallingford, or used sexual language to criticize Wallingford. (TT2 153:8–54:3); *cf. Moothart*, 860 N.W.2d 598 (a more typical sexual harassment case); *Lynch v. City of Des Moines*, 454 N.W.2d 827, 830 (Iowa 1990) (affirming verdict on hostile work environment claim where defendant engaged in

"sexually-charged verbal abuse" and "repeated incidents of sexually derogatory remarks, vulgar insults, [or] requests for sexual favors"). The conduct alleged occurred on the periphery and was not a feature of the office. *Cf. Duncan v. Gen. Motors Corp.*, 300 F.3d 928, 934 (8th Cir. 2002) ("[The plaintiff] was upset and embarrassed by the posting of the derogatory poster and was disturbed by [the defendant's] advances and his boorish behavior; but, . . . these occurrences in the aggregate were [not] so severe and extreme that a reasonable person would find that the terms or conditions of [the plaintiff's] employment had been altered.").[4] If Watkins ever possessed a malicious intent, surely one of the State's many witnesses would have testified to as much. The glaring absence of testimony on this issue prevents the State from satisfying its burden by clear and satisfactory evidence.

On the whole, the evidence shows that at the time Watkins made the various comments to Wallingford, their relationship was such that Watkins did not intend to harass Wallingford. Watkins believed himself to be good friends with Wallingford and intended any sexual comments as jokes or meaningless comments made in passing. (*See* Watkins DT 121:1; TT 159:1,

[4] The *Duncan* Court collected "[n]umerous cases [that] have rejected hostile work environment claims premised upon facts equally or more egregious than the conduct at issue [in *Duncan*]." 300 F.3d at 934. The facts of those cases are much worse than Watkins' case, as well.

161:9 (Wallingford recounting Watkins made comments while laughing)). Watkins testified he did not realize his relationship with Wallingford had deteriorated. (Watkins DT 79:17). He explained, "I was not paying attention to Jasmin in [the summer of 2016]. I had too much going on and too many other things to worry about, including my marriage, apart from the legal work I had to do." (Watkins DT 79:19–79:23). Watkins' unawareness of the simmering tension evidences that he did not intend his actions to be malicious; he did not act purposefully to offend.

Granted, Watkins' comments may have been inappropriate and ill-advised, but Watkins never intended to offend Wallingford or saw any signs that he had done so. Even in her resignation letter, Wallingford recognized she had "enjoyed the job, the people [she] had worked with, and the support [she] had received." (App. 224). She stated it was "the last few months that ha[d] been difficult" but reiterated she had "enjoyed [her] job." (App. 224). She characterized her employment as a "mostly positive experience." (App. 224). Watkins' behavior was not intended to be abusive nor was it perceived as abusive when it occurred; it therefore does not warrant removal. Wallingford occupied a prominent role in Watkins' and Renee's lives and saw Watkins at both his best and his worst. Watkins' conduct was thoughtless or

perhaps even reckless, but the facts do not demonstrate the "corrupt purpose" necessary to justify removal. *Zeigler*, 199 Iowa at 392.

D. Discussion of Specific Allegations

This Court should not defer to the district court's factual and credibility findings. Actions occurring before Watkins became county attorney cannot be weighed against him, yet the district court failed to analyze when the allegations occurred. The district court stated its factual findings in a bulleted list and did not acknowledge or address the substantial contradictory evidence in the record. (App. 161-164). Nor did the district court specify which facts supported its conclusion that Watkins had committed sexual harassment warranting removal. This is a case that requires a scalpel, not an axe. Unfortunately, the district court used an axe.

Watkins asks this Court to more closely examine the record: the relevant events took place over two years, the relationships involved are complex, and context is ever-important. *See Bartz*, 224 N.W.2d at 634 (recognizing court must "review[] the entire record in determining the case anew on appeal"). A closer examination of the record will reveal the State cannot carry its burden to prove the allegations against Watkins by clear and satisfactory evidence. In particular, the district court's inferential finding that

Watkins acted with an evil purpose is not supported by clear and satisfactory evidence.

1. Barchman Credibility

As a general matter, this Court should consider Barchman's testimony with a grain of salt. As discussed, Barchman and Watkins had a significant personality conflict. Barchman spent quite a bit of time ruminating on Watkins' flaws and discussing those flaws extensively with others (her husband, Wallingford, Waibel, Brown, Kauffman, Miller, Paulek, Mrs. Paulek, her neighbor, etc.). (TT2 176). It is unsurprising that Barchman's story picked up some detail and inaccuracies in its multiple retellings.

Barchman had an axe to grind against Watkins and was all too eager to prosecute his removal, contrary to the district court's comment that she was not "eager to testify against Watkins." (App. 164). Barchman turned Wallingford's resignation letter over to John Finney, the Van Buren County Auditor, and contacted Scott Brown in the Iowa Attorney General's office regarding Watkins. (App. 224). Barchman deleted her communication with Brown after Watkins discovered it. (TT2 135). Barchman additionally went behind Watkins' back to try and secure what she dubbed an "Abe-free zone" office space in the Van Buren Courthouse for herself, Wallingford, and Renee. (App. 224; TT 598:25-599:17). Curiously, Barchman was present when Tayt

Waibel made her statement to the Van Buren County Sheriff. (TT3 46). Barchman later approached Watkins' current staff person, without advising Watkins, and stated the staff person "could always go to [Barchman] or the sheriff's office, because we need[] to keep each other safe." (TT3 116:13).

Barchman falsely reported to Miller and the State's attorney that Grady had recommended in-patient treatment to Watkins and that Watkins had refused Grady's recommendations.[5] (TT3 145; App. 189). Someone, presumably Barchman, told Swanson that "there had been an attempt to assist Watkins on the substance abuse problem, which he declined." (TT2 82:1). This false information was passed on to the Board of Supervisors. (App. 287 ln. 25; 308 lns. 17–19; 313 lns. 23–25). Barchman provided three affidavits in support of the State's removal petition. (App. 180, 206, 211).

In finding the State's witnesses credible, the district court additionally commented, "The State's witnesses have no significant personal interest in the outcome of the case." (App. 165). This is incorrect. Virginia Barchman was promoted to County Attorney for Van Buren County after Watkins was removed. *See* Van Buren Co. appoints new chief prosecutor, KTVO.com (Jan.

[5] Barchman does not believe that alcoholism is a disease. (TT2 203:21–203:25).

16, 2017), *available at* http://ktvo.com/news/local/van-buren-co-appoints-new-chief-prosecutor.

Barchman's animosity towards Watkins infected her testimony and rendered it inaccurate in many respects. The grounds for removal based upon intoxication and retaliation were based wholly on Barchman's testimony, and both were found to be without merit. Barchman's incredible testimony on those matters bears discussion because it is indicative of her credibility generally.

a. Intoxication

Not until July 26, 2016—nearly a week after the Gaylord trial had ended—did Barchman accuse Watkins of being intoxicated on the first day of trial. (TT2 191:24). The accusation came in the course of a rant against Watkins. (TT2 192:7–192:18; Watkins DT 83–84). Barchman later testified, "The smell of an alcoholic beverage was present the entire trial, morning and afternoon of every day of the Gaylord trial. It was very apparent to me." (TT2 116:22). Barchman admitted she never observed Watkins drinking during the trial. (Barch. DT 74). In her deposition, Barchman could only testify that she "maybe" saw Watkins act intoxicated during the trial. (Barch. DT 74). But at trial, Barchman testified that she believed Watkins was impaired by alcohol

during his cross-examination of the defendant and during closing argument, (TT2 117–118).

No one else associated with the Gaylord trial ever complained that Watkins was intoxicated. (Barch. DT 76). Wallingford never observed Watkins consuming alcohol during the Gaylord trial, (TT 169:20), nor did she observe any signs that he was intoxicated, (TT 228:11).

Directly contrary to the testimony of Barchman is the testimony of three individuals who were intimately involved in the trial. First, the judge that presided over the Gaylord trial, the Honorable Joel Yates, a very experienced trial lawyer and judge testified, "There was nothing that led me to believe at any time during the trial that Watkins was drinking." (TT 484:21). Second, the defense attorney representing Gaylord, Curtis Dial, stated he spent a significant amount of time with Watkins during the Gaylord trial, was frequently in Watkins' close presence, and never believed Watkins was impaired in any manner. (App. 253). Lastly, Mae Herman, a DHS caseworker and the mother of the victim in the Gaylord case, testified that she spent significant time with Watkins during the trial and never smelled alcohol on him or observed any behavior that led her to believe he was intoxicated. (TT3 107, 109:23). Watkins participated fully in the trial and obtained a conviction on all six counts.

b. Retaliation

The State conceded it failed to prove Barchman's allegations that Watkins retaliated against her by interfering with her email access. (3rd Amend. Pet. ¶ 5(c); App. 28). This is one area where Barchman's tale was highly exaggerated and misleading. Both Renee and Wallingford testified email misdelivery issues were a long-running problem in the office that Renee had been unable to solve. (TT 204:5–205:9, 230:5–230:20, 341–348). Barchman herself had experienced these email misdelivery issues before and Renee had explained to her how to preempt misdelivery. (TT 204:16, 343:17–344:2, 348:17). Flatly contradicting Barchman's allegations that her County email address had been "disabled," she continued to send emails from that account. (TT 344:25–346:18). Barchman's allegation of retaliation is nothing more than an unfounded conspiracy theory. The State's concession that it cannot prove Barchman's allegations is telling.

2. Sexual-harassment Related Allegations

The following presents a detailed discussion of the facts relating to the State's sexual harassment allegations. Again, in evaluating each of these allegations, the standard to be applied is whether Watkins acted with an evil or corrupt intent; an intent to sexually harass. Each of these allegations should be evaluated individually to determine if 1) it occurred in the workplace; 2) it

occurred while Watkins was County Attorney; and—most importantly—3) clear and convincing evidence exists that Watkins possessed the requisite intent.

a. Wearing Boxer-Briefs in Office

Watkins' office was his home—contrary to the impression the petition for removal gave the public. His laundry and kitchen were both downstairs. It is not sexual harassment or maladministration for him to have briefly and rarely appeared in the bottom floor of his home wearing boxer-briefs. There is no evidence Watkins possessed any sexual intent, made any inappropriate remarks while in his boxer-briefs, intended to make anyone uncomfortable, or lingered around the office in his boxer-briefs. This conduct therefore was not abusive or harassing. Clear and satisfactory evidence does not exist that Watkins acted with an evil or malicious intent.

Wallingford's testimony

When Wallingford began working solely for Watkins' private practice, she worked from 9:00 a.m. to 5:00 p.m. (TT 198:13). When Watkins became County Attorney, he extended the office hours to 8:00 a.m. to 5:30 p.m. (TT 198:18). Watkins kept less of a regular schedule. (TT 452). Wallingford possessed the office key and would arrive promptly to open the office and answer the phones. (TT 198–99). Usually when Wallingford arrived the

Watkins family would still be sleeping. (Walling. DT 82:12). She would not announce herself when she arrived because she did not want to disturb them. (Walling. DT 82:12).

Wallingford identified only two occasions when she had ever seen Watkins wearing boxer-briefs, both sometime in 2016. (TT 199, 201; Wallingford DT 85:25–86:1 (stating she could not recall a third time)). Both occasions occurred in the morning when Watkins walked downstairs to his kitchen to get coffee. (TT 199:15; Wallingford DT 82, 85). Watkins testified he does not remember these specific instances, but he does not deny that they occurred. (Watkins DT 58:8).

Wallingford's desk was located by the door to the laundry room and kitchen. (TT 193:8). According to Wallingford, on one occasion Watkins did not stop and talk to her; he went straight to the kitchen and then returned upstairs. (TT 199:19; Walling. DT 82:21, 83–84). On the other occasion, he briefly stood by her desk to look at something on her computer. (TT 199:22). Wallingford recalled that she laughed or did something that drew Watkins' attention to her computer. (TT 200:2). Watkins did not stay long when he looked at her computer. (TT 200:6). Wallingford could not remember when this occurred, but she estimated it happened within eight months prior to her trial testimony. (TT 201:8). On both of these occasions, Watkins then returned

upstairs to finish dressing and came down fully dressed for the workday. (TT 201). Watkins and Wallingford did not discuss the matter and proceeded with work as usual. (TT 201:12).

Watkins does not recall these two alleged occurrences, but testified "I don't disbelieve Jasmin. I think those things happened based on the way she said it." (Watkins DT 115:14). Wallingford never told Watkins these occurrences made her uncomfortable or were inappropriate. (Watkins DT 116:3).

Wallingford's allegations do not merit removal because it has not been established Watkins intended his conduct to be sexual in nature or to make Wallingford uncomfortable. Wallingford was an "honorary family member." She had vacationed with the Watkins family and been swimming with Watkins before; there was a level of physical comfort between them. Watkins coming downstairs twice over the course of two years to get coffee in the morning is hardly distressing. In context, this conduct was entirely innocuous.

Barchman's testimony

Barchman testified that she once observed Watkins wearing briefs. (App. 180; TT2 165:18). She detailed that Watkins "kept his hand in front of his crotch that time." (App. 183). According to Barchman, Watkins walked through the office she shared with Wallingford, into the bathroom/laundry

room. (TT2 107:14). At trial, Barchman testified that when Watkins came down that time, he commented, "Normally I would not come down like this." (TT2 107:13). Barchman claims she retorted, "Jasmin and I are not married to you. We don't want to see you wearing your pajamas in the office." (TT2 107:19). At trial, Barchman claims Wallingford was present on this occasion. (TT2 107:11). Watkins denies ever appearing in his boxer-briefs in Barchman's presence. (Watkins DT 114:25, 195:16, 195:24–196:4).

This allegation should not be considered as a basis for removing Watkins from office because Barchman's testimony on this issue is not credible. One, Wallingford did not corroborate Barchman's testimony. Two, Barchman took issue with Watkins' attire as a general matter. (*See* App. 183). She did not perceive any difference between athletic shorts and pajamas. (*See* App. 183). As she stated at trial, "some of the shorts he wore that I considered to be maybe pajama bottoms, maybe those were underwear, maybe they weren't. I don't know. But I considered shorts/pajama bottoms to be too revealing, too, so it is all one to me." (TT 165:20). Three, Barchman's written statement, (App. 182), is exceedingly detailed, yet it does not include the verbal exchange Barchman described in her testimony or the allegation that Wallingford was present. It is also odd that Barchman told Watkins she did

not want to see him "wearing [his] pajamas" if he was wearing briefs. This calls into question the accuracy of Barchman's testimony.

In any event, Barchman's testimony does not suggest that Watkins intended his conduct to be sexual in nature. To the contrary, even according to Barchman, Watkins acknowledged his wardrobe was unusual and attempted to cover himself. If, as Barchman recalls, Watkins went into the laundry room, the natural inference is that he needed to get clean clothes. This would have been an innocuous event that does not merit removal.

b. Picture of Wife Shown to Jasmin

Wallingford recounted an occasion in 2015 when she was over for supper at Watkins' and Renee's home. (TT 158:11, 188:22). Wallingford testified that Watkins showed her two nude photographs of Renee that were saved on Watkins' phone. (TT 157:19). She explained that Watkins "laughed and said, here, look at this." (TT 159:1). Watkins only showed Wallingford the photographs for a moment; so short a period that Wallingford did not have time to object. (Walling. DT 108:2). Renee recalled that Watkins had accidently showed the photograph to Wallingford. (TT 556:21). Watkins does not recall this incident but does not deny it occurred. (Watkins DT 209:20).

This allegation does not warrant Watkins' removal because it occurred outside of the workplace, while Watkins and Renee were socializing with

Wallingford. This allegation is also stale; it occurred in the summer of 2015. Wallingford and Watkins continued to work well together after this occurred. This single fleeting occasion that occurred during a social event more than a year ago does not establish that Watkins is unqualified to serve as County Attorney.

c. "Broken Vagina" Comment

Wallingford spoke to Renee about having visited a gynecologist because Renee asked Wallingford if she was okay. (TT 182:4, 209:17). Wallingford was comfortable sharing this information with Renee. (TT 208:24). Wallingford believed Watkins may have walked in when Wallingford was discussing the issue with Renee. (TT 209:14). Wallingford testified Watkins asked her why she was going to the doctor. (TT 182:13). Wallingford testified that, "afterward, if [she] went somewhere, [Watkins would] ask if [her] vagina was still broke." (TT 182:13). She testified that Watkins made that comment "at least once" but she could not recall additional times. (TT 182:18). This occurred around October 2015. (TT 208:13). Wallingford agreed the comment did not change her work environment. (TT 209:24).

Renee also testified about this incident. (TT 462:16–463:14). As Renee recalled it, Watkins walked in when Wallingford and Renee were discussing

the issue, and they both fell silent. (TT 462:23). Watkins inquired about what was going on, and the women eventually revealed the issue. (TT 463:1). Renee believes she first made the "broken vagina" comment, which she intended as a joke. (TT 463:2-12). Renee did not perceive that Wallingford was offended by the comment. (TT 463:14).

Watkins testified he did not make this comment to Wallingford. (Watkins DT 207:16–207:18).

Barchman testified that she heard Watkins comment, "Is your vagina still broke?" (TT2 110:3). According to Barchman, Wallingford responded, "What did you just say to me?" (TT2 110:18). Barchman testified that Renee then entered the room, started "remonstrating with Watkins," and told him, "You can't talk to Jasmin like that." (TT2 110:17).

Barchman's testimony on this issue is not credible. Neither Wallingford nor Renee corroborate Barchman's account. Barchman also did not include that version of events in her affidavit or detailed written statement. (App. 180, 183). This calls into question the accuracy of Barchman's testimony. Again, Barchman's testimony is suspect because she has essentially lived in an echo chamber reverberating allegations against Watkins. This seems to have caused her to embellish over time.

Wallingford's allegation on this issue should not serve as grounds for removal because it was isolated. Again, Watkins' personal relationship with Wallngford must also be considered. At most, this comment among friends was a joke made in poor taste to bring levity to a sensitive subject. Further, this allegation is stale; it occurred over a year before the removal petition was filed. Watkins and Wallingford continued to work well together after this occurred. The State has not established that Watkins intended to sexually harass or embarrass Wallingford.

d. "Boobs Are Distracting" Comment

Wallingford testified that, one day during work, Watkins commented that her "boobs were distracting him and . . . if [she] ever went clubbing, [she] should wear that shirt out." (TT 173:9). This is the only comment Wallingford ever recalled Watkins making about her body; he never commented on her breasts again. (TT 173:9). Wallingford testified this occurred while Watkins was County Attorney, but she did not provide a more specific timeframe. (TT 188:25). Watkins did not recall making this comment. (Watkins DT 121:25). Miller commented, "I don't think [Watkins] was doing anything—He thought he was being funny." (App. 328 lns. 6-7).

Wallingford's work attire was sometimes inappropriate and Watkins' comment to her was a poorly-worded suggestion that she should wear a more

conservative shirt. (App. 327-328 lns. 2–7). Wallingford still felt comfortable changing into work-out attire at the office and being around Watkins in her bathing suit, demonstrating she did not feel Watkins had any inappropriate physical interest in her. There is no evidence that Watkins possessed any evil motive in making this statement; it should not serve as grounds for removal.

e. Breast Milk Video

Wallingford testified that once, sometime around June 2015, she was out for a meal with Watkins and Renee in Burlington, Iowa. (TT 159:9, 159:25). On the way home, Renee squirted breast milk in Wallingford's car. (TT 161:2). Renee testified she was intoxicated at the time. (TT 564:11). Watkins caught this event on tape. (TT 161:3). Wallingford testified that Watkins later showed her the video of that occasion. (TT 161:6). Wallingford testified Watkins and Renee "jokingly" referred to the breast-milk incident as retaliation for Wallingford vomiting in their car on a prior occasion. (TT 161:22). Wallingford stated Watkins was laughing about the video, thought it was funny, and asked her if she remembered the occasion. (TT 161:9). Watkins does not recall if he showed the video to Wallingford. (Watkins DT 214:22).

This allegation should not serve as grounds for removal because it occurred in a social setting and was not abusive. Indeed, this incident is an

example of how close Wallingford was with Watkins and Renee. All three were extremely comfortable around one another. The State cannot prove Watkins acted with any evil intent and this incident cannot serve as grounds for removal.

f. Sex with Wife Comment

Wallingford testified: "At one point we were talking about winning the lottery and he said he just wished he had a wife that had sex with him all the time." (TT 181:6). Watkins did not recall making a comment about not having enough sex with his wife but acknowledged he "may have joked about it with [his] wife in front of Jasmin." (Watkins DT 120:20).

Wallingford did not specify when this alleged comment occurred, which alone should disqualify this remark from consideration in the removal action. In any event, this comment is simply an inappropriate joke, not intended to target Wallingford or harass her. It should not be weighed against Watkins in the removal analysis.

g. Nude Photos of Ex-Girlfriends Comment

Wallingford testified that Watkins told her on August 7, 2016, the Sunday after his wife left, that "he was glad he kept old naked pictures of girlfriends so he could look at them all." (TT 178). Watkins does not recall making this statement. (Watkins DT 215:22–216:3). Wallingford further

testified that Watkins had called her that day to tell her what he was doing over the weekend and to chat about what Wallingford had for supper. (TT 178:19).

In context, this was a social telephone call—occurring outside of the workplace—between two friends. Watkins was going through a very difficult time because his wife had left and he turned to Wallingford, his friend, for support. The comment was not intended to be sexually abusive. This comment does not justify removal.

h. Comment on Breasts

Kauffman testified Watkins posed a question to him regarding a woman's breasts: "You think those are real or is that a push-up bra?" (TT 77:2). Watkins made this comment to Kauffman at a social event in June 2016. (TT 75:8). Wallingford testified Watkins later repeated this comment to her and Renee. (TT 174–75). Wallingford could not remember any other sexual comments made by Watkins. (TT 179:14).

The State cannot establish Watkins intended this comment to be abusive or harassing. This type of minor comment should not justify removal.

i. Bona Joke

Wallingford testified that Watkins made a sexually-related joke regarding a hardwood floor cleaner branded "Bona." (TT 180:9). Watkins

allegedly made this joke to his housekeepers while in Wallingford's presence. (TT 180:9). Watkins does not recall making this comment but he does not deny it occurred. (Watkins DT 123:12).

The State cannot establish Watkins intended this comment to be abusive or harassing. This type of minor comment, nothing more than juvenile humor, does not justify removal.

j. "T.Quiff" Comment

Barchman testified Watkins stated that a nickname for someone whose initials were T.Q. should be "T. Quiff." (TT2 112:2-3). She testified Watkins would not tell her what "quiff" meant, but called Renee in to have her explain. (TT2 112:4-6). Renee apparently told Barchman that "quiff" is "a word for vaginal fart." (App. 180).[6] Barchman testified Wallingford heard this comment, (TT2 112:14), although Wallingford has never stated as much. Barchman testified that she said, "We will never say that again in this office." (TT2 164:4). She never heard anyone use that word again. (TT2 164:7).

This allegation should not serve as grounds for removal because it is an isolated comment and the State cannot establish that Watkins intended the

[6] A "quiff" is actually "a hairstyle that combines the 1950s pompadour hairstyle, the 1950s flattop, and sometimes a mohawk." https://en.wikipedia.org/wiki/Quiff. The correct spelling of the "word for vaginal fart" is "queef."

comment to be harassing to anyone in the office. It appears to be nothing more than a short-lived bathroom-humor joke.

k. Comments to Kauffman

Kauffman testified Watkins likes to talk about sex and has offered to show him nude photographs of Renee. (TT 74:16-21). Kauffman did not testify that Watkins talked about sex in the workplace or offered to show him nude photographs in the workplace. Kauffman was very close friends with Watkins. (TT 58:15-17, 335:18-336:4). Topics Watkins and Kauffman discussed in the context of their friendship cannot constitute sexual harassment; they do not warrant removal.

l. Picture of Wife Shown to Barchman

Barchman testified that she was in Watkins' office once, behind his desk, and Watkins showed her a waist-up nude photograph of Renee. (TT3 44, 52:6). Renee was pregnant in the photograph and covered in blue paint. (TT3 42:24–43:2).[7] Renee is an artist, and the photograph captures a time when Renee was working on project where she made an impression of her pregnant belly on a large canvas. (Watkins DT 118:23–119:10). Barchman

[7] Barchman testified that Defense Exhibit No. 33 is not the photograph she viewed. (TT 53:5). The photograph Barchman viewed, however, would have been one from the same series.

recalls that Watkins made the single comment, "Isn't my wife beautiful?" (TT3 44:24–45:1; App. 180).

Watkins does not dispute that this occurred; he merely clarifies that, as he remembers it, the photograph was up on his computer screen one day when Barchman came into his office. (Watkins DT 117). He testified that Barchman saw the photograph inadvertently and that his comment, "Isn't my wife beautiful?" was intended to dispel the discomfort of Barchman viewing the photograph. (Watkins DT 117:19). Watkins disputes that he intended to show the photograph to Barchman.

This incident does not add anything to the removal analysis. The State does not allege Watkins sexually harassed Barchman. The State cannot establish Watkins intended to offend or harass Barchman by showing her the photograph. The photograph is an artistic piece and is not intended to be sexualized.

m. Tayt Waibel Accusations

In late August, Watkins hired Tayt Waibel to work as an assistant in the office. (TT 22:14). Waibel was inexperienced and her skill level as an assistant was subpar. (TT 47:17). Accordingly, Waibel transitioned from that role into being a nanny for the Watkins' children. She provided nannying services from mid-September until October 3, 2016. (TT 34:13).

Waibel testified to two sexually-related comments. First, Waibel testified, "I don't even know what we were talking about and he just said, oh, Holly likes big cocks, or something like that." (TT 26:14). Waibel provided no additional detail regarding that alleged comment. Holly Richardson, who currently works in Watkins' law office, testified that Watkins did not make any such comment to her. (TT3 118:2–118:11, 121:14–121:20). Richardson recalled that the only individuals in the room were herself, Waibel, and Renee. (TT3 117:24). Richardson explained that there was some sexual-innuendo-type joking amongst the women in the office relating to "Big Boy" tomatoes, but that sexually explicit language was never used. (TT3 117:20–118:1, 120:10–120:23). Waibel alleged at trial that "stuff was just taken pervertedly (sic)," (TT 26:3), but again she could not remember any details. (TT 25:18).

Second, Waibel testified that she missed a call from Watkins on October 1, 2016. Watkins had called her regarding babysitting. (TT 49:19). When Waibel returned Watkins' phone call, she informed him that he had missed the call because she was in the shower. (TT 29:2). Waibel alleges Watkins then stated she "should have FaceTimed him while [she] was in the shower." (TT 29:4). According to Waibel, Watkins continued, "this is probably why I'm in trouble for sexual harassment and . . . I shouldn't say things like this." (TT 30:15).

Watkins denies Waibel's account of that conversation. Watkins testified he had phoned Waibel and she called him back almost immediately. (Watkins DT 126:14–127:14). By that time, Watkins had already phoned another assistant, so he had to hang up with that individual to take Waibel's return call. Watkins recalls commenting something to the effect of, "It wasn't like I was trying to FaceTime you, or something. You could have answered the phone." (Watkins DT 127:5). Watkins remembers thinking that he did not understand how Waibel could have called him back so quickly if she were in the shower, and he wished she would have answered the first time he called because her return call interrupted his subsequent call. (Watkins DT 127:8–127:15).

Waibel's testimony is not credible. Her story evolved over time, lacks specificity, and contradicts Richardson's and Watkins' testimony. Oddly, after Waibel wrote out her allegations on October 1, 2016, (TT 50:1-17), she went by Watkins' home and agreed to babysit for him later. (TT 51:25-53:16). Waibel then took the initiative to contact the Van Buren County Sheriff's office on October 3, 2016 regarding the alleged Facetime comment. (TT 41:3; App. 223). It is a bit strange that Waibel thought such a comment, made while she was a nanny for Watkins, warranted a report to the Sheriff. Perhaps Barchman encouraged Waibel to do so, as Barchman later encouraged

Richardson. (TT3 116:13). In her written statement, Waibel did not mention any inappropriate comment about "big cocks." Watkins learned of that accusation on the eve of trial. (TT 19:9).

Waibel also apparently told Barchman a much bigger story than she presented at trial or in her statement to the Sheriff. Barchman's written statement indicates Waibel stated she quit working in Watkins' law office "because she objected to being ridiculed and demeaned for not immediately understanding office procedures." (App. 190). At trial, though, Waibel admitted she "agreed that [her] skill level in doing work at [Watkins'] office was not good" and that she "just didn't have the experience." (TT 47:17). Waibel also relayed to Barchman that Watkins "insisted that [she] drink alcohol" and bought her three alcoholic beverages one night when Waibel was serving as Watkins and Renee' designated driver. (App. 191). Waibel relayed her belief that Watkins and his wife "were using other substances" that same night and "made physical advances towards" Waibel and her boyfriend. (App. 191). Strangely, these accusations were not presented at trial, nor were they included in Waibel's written statement. Watkins was questioned about the under-aged drinking accusation, however, and he denied it. (Watkins DT 267:21, 270:11). Likewise, Renee testified, "Tayt said she drank Red Bull

vodka and I don't remember who ordered it, but one came to the table and she didn't drink either of them." (TT 564:1).

On the whole, the evidence suggests that Waibel may have been eager to jump on the bandwagon, and in doing so may have misinterpreted or misheard certain statements. Richardson's testimony on the "big cocks" comment is the clearest evidence of this. Richardson's testimony on that issue was more detailed and more credible than Wallingford's. Likewise, Watkins' testimony on the Facetime comment is more detailed and more credible. The State cannot prove any of Waibel's accusations by clear and satisfactory evidence. The Court therefore should not consider Waibel's accusations probative on this issue of whether Watkins has committed willful misconduct or maladministration.

Even if the Court were to find Waibel's recollection of the October 1, 2016 conversation accurate and credible, such a comment does not rise to the level of willful misconduct or maladministration *in office*. For one, Waibel was a private employee at the time the October 1, 2016 phone conversation occurred. For another, such a comment, made off-hand to a private employee, does not evidence an evil or corrupt intent. Finally, even accepting Waibel's version of the facts, Watkins allegedly communicated that the statement was made in jest and seemed to apologize for the comment.

III. THE ACTION AGAINST WATKINS MUST BE DISMISSED BECAUSE IT WAS NOT INSTIGATED BY AN INDEPENDENT, IMPARTIAL INVESTIGATOR

A. Preservation & Standard of Review

Watkins raised this issue in his post-trial brief. (App. 152-154). The district court necessarily rejected this argument when it ruled Watkins should be removed from office.

B. Argument

The Van Buren County Employee Handbook is a contract that binds Van Buren County in its dealings with Watkins. (App. 176); *see Anderson v. Douglas & Lomason Co.*, 540 N.W.2d 277, 283 (Iowa 1995) (discussing when employee handbook constitutes a contract). Watkins signed the handbook, manifesting his acceptance of the terms. (App. 354) The Employee Handbook provides that the Board of Supervisors "will promptly name an impartial investigator" in response to allegations of sexual harassment. (App. 178). Van Buren County breached its contract with Watkins by failing to retain an impartial investigator to investigate the allegations of sexual harassment against Watkins. (App. 176).

Miller was not an impartial investigator. He was a colleague of Barchman for her entire 24-year tenure as an assistant attorney general. (TT3 128:25-129:5). Miller and Barchman remain friends, have routinely socialized, and have been to each other's homes. (TT3 129:6-8). Miller had a

social lunch with Barchman while he was in Keosauqua conducting his investigation (TT3 135:9-14). Barchman was Watkins' most vocal accuser, *see infra* section II.D.1. Barchman did not inform any county official of her long-standing friendship with Miller. (Barch. DT 34:202-23).

Impartiality is defined as "freedom from favoritism, bias, or prejudice." Iowa R. Civ. P. 11.3. Undoubtedly, Miller would have a tendency to favor the narratives of Barchman and her comrades in conducting his investigation. The preordained nature of Miller's conclusions is evidenced by how Miller conducted his investigation. Miller called Barchman the same night after Salmons called him to initiate the investigation. (Miller DT 14:2-5). Miller interviewed Wallingford, Barchman, and a handful of law enforcement officers. (TT3 135:19-138:3). Yet two obvious witnesses were not interviewed: Watkins and Renee. (TT3 138:4-139:9). It is mindboggling that an investigator would not interview the accused individual or the other individual who would have observed nearly all of the alleged misconduct.

Watkins was denied the fair process to which he was entitled under the terms of the Employee Handbook. Because of Miller's social interests, the entire investigation and the resulting petition was tainted *ab initio*.

IV. THE ACTION AGAINST WATKINS MUST BE DISMISSED BECAUSE IT WAS INFECTED BY A CONFLICT OF INTEREST

A. Preservation & Standard of Review

Watkins raised this issue in his post-trial brief. (App. 154-156). The district court necessarily rejected this argument when it ruled Watkins should be removed from office.

B. Argument

Swanson and Carlton Salmons used privileged information to come to the conclusion that removal proceedings were necessary against Watkins. Swanson and Salmons provided legal representation to an organization: Van Buren County. Van Buren County acts through its Board of Supervisors and employees of the County. *See* Iowa R. Prof. Conduct 32:1.13 ("An organizational client is a legal entity, but it cannot act except through its officers, directors, employees, shareholders, and other constituents.").

Watkins communicated with Swanson and Salmons in his capacity as an employee of Van Buren County. (TT 4:25-5:15). He communicated with them in the aftermath of Wallingford's resignation. (App. 224). He sought advice about how to proceed in light of Wallingford's allegations. (Watkins DT 177:12-21; TT 4:12-15). Swanson and Salmons provided advice to Watkins. (TT 6:9-8:22; TT2 48:19-50:5; App. 200).

These exchanges were all protected communication. "When one of the constituents of an organizational client communicates with the organization's lawyer in that person's organizational capacity, the communication is protected by rule 32:1.6." *Id.* Meaning, Swanson and Salmons could not reveal the contents of those exchanges. "A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent. . . ." Iowa R. Prof. Conduct 32:1.6.

Yet Swanson relayed privileged information to the Board of Supervisors and others who were investigating a removal action against Watkins. (App. 2 lns. 2-11; 280 lns.15-17; 281 lns. 23-25; 282 lns. 3-7; 283 lns. 19-25). This is a clear conflict. By providing advice to both the County Attorney and the Board of Supervisors (*see* App. 342 lns. 14-19, Swanson provides his "recommendation" to the Board), Swanson and Salmons created a situation in which "the representation of one client [was] directly adverse to another client." Iowa R. Prof. Conduct 32:1.7. Swanson and Salmons, by virtue of their representation of the Van Buren County Attorney, had information that could be used against Watkins in removal proceedings. Swanson and Salmons should have withdrawn from representing the Board of Supervisors. At minimum, they should have recused themselves from advising the Board on removal proceedings. Because they did not remove

themselves from the deliberations of instituting removal proceedings, Watkins has been denied fair process. This requires reversal and dismissal of the petition.

V. THE ACTION AGAINST WATKINS MUST BE DISMISSED BECAUSE THE VAN BUREN BOARD OF SUPERVISORS FAILED TO EXPLORE LESS DRASTIC OPTIONS

A. Preservation & Standard of Review

Watkins raised this issue in his post-trial brief. (App. 156-158). The district court necessarily rejected this argument when it ruled Watkins should be removed from office.

B. Argument

This action is tried in equity. Iowa Code § 66.18. "A court of equity seeks to do justice between the parties by penetrating to the very substance of the matter." *Petty v. Mut. Benefit Life Ins. Co.*, 235 Iowa 455, 466, 15 N.W.2d 613, 618 (1944). Watkins was subject to inequitable treatment by the Board of Supervisors when they failed to consider remedial options short of removal.

Given the quality of Watkins' work and the dearth of prior complaints against him, the Board of Supervisors should not have immediately turned to removal. Mark Meek, who serves on the Van Buren Board of Supervisors, testified that Watkins "was very faithful about attending [Board of Supervisor] meetings." (TT3 78:13). None of the Supervisors expressed any complaint with Watkins' work. Watkins was given no indication the County

was concerned about his behavior until he was presented with the removal Petition.

Far from being the only option to deal with problematic behavior with a County Attorney, removal proceedings are one arrow in the County's quiver, to be used only as a last resort. A simple conversation would have been a good place to start. The Board of Supervisors never tried to address any of its issues with Watkins. Besides Swanson's brief initial (privileged) conversation with Watkins, no one ever spoke to Mr. Watkins about the issues in the removal petition(s). No county official ever asked for Watkins' side of the story. No county official ever asked Mr. Watkins to change his behavior.

Beyond such basic remedial steps, the Board of Supervisors could have implemented the progressive discipline set forth in its own handbook or reached out to the Attorney Disciplinary Board. Pursuant to the Employee Handbook, Watkins is entitled to progressive discipline. The options include counseling, written warning, suspension, and termination. To rush straight to removal proceedings on these facts was overkill and violative of the agreement in the Employee Handbook to use progressive discipline. In situations where substance abuse is a concern, Iowa Code § 331.754 furnishes the County and courts with options for appointing an acting county attorney

to carry out the function of the office while the official officeholder is incapacitated.

Had the County informed the Attorney Disciplinary Board, it could have meted out an appropriate sanction. Potential sanctions include: "'suspension or revocation of the attorney's license, as well as additional or alternative sanctions such as reprimands, restitution, payment of costs, practice limitations, [and] appointment of a trustee or receiver.'" *Iowa Supreme Court Attorney Disciplinary Bd. v. Khowassah*, 837 N.W.2d 649, 656 (Iowa 2013); *see also Moothart,* 860 N.W.2d at 615 (noting the Court has "considered instances of an Iowa attorney's inappropriate sexual misconduct on a number of occasions and imposed sanctions ranging from a public reprimand to a three-year suspension").

A petition for removal is a drastic, last resort. It was the wrong mechanism for achieving the County's goals here; the issues in this case could have been resolved a respectful dialogue. Under these circumstances, equity requires dismissal of the petition.

VI. WATKINS IS ENTITLED TO ATTORNEY FEES ON THE DISMISSED COUNTS

A. Preservation & Standard of Review

Watkins filed a motion requesting partial attorney fees. (App. 170). The district court denied the motion. (App. 174).

B. Argument

The State's Third Amended Petition alleged five grounds for removal: 1) sexual harassment; 2) aiding and abetting a violation of Iowa Code § 123.47(5); 3) retaliation; 4) conflicts in three cases; and 5) intoxication. The Court only found sexual harassment warranted removal. (App. 166-167). Accordingly, four out of the five grounds for removal alleged by the State were dismissed.

Iowa Code § 66.23 provides: "If the petition for removal is dismissed, the defendant shall be reimbursed for the reasonable and necessary expenses incurred by the defendant in making a defense, including reasonable attorney's fees, as determined by the court." *See also City of Des Moines*, 41 N.W.2d at 41 ("The right of an officer, who defeats an action for his removal from office, to recover the expense of his defense is quite generally recognized."). The purpose of Iowa Code § 66.23 is to reimburse an elected official for the costs of defending a meritless claim. *See id.*

Iowa Code § 66.23 must be interpreted consistent with its equitable purpose. Iowa Code § 66.18; *see Oyens Feed & Supply, Inc. v. Primebank*, 808 N.W.2d 186, 193 (Iowa 2011) ("We look to both the language and the purpose behind the statute."). Reimbursement under Iowa Code § 66.23 serves the equitable purpose of Chapter 66:

> The claims of public officers to reimbursement for expenditures reasonably incurred by them in defending themselves against groundless charges or litigation arising out of faithful discharge of duty are founded in equity and justice, and, in all fairness, should be paid by the public.

Curry v. City of Portage, 217 N.W. 705, 707 (Wis. 1928).[8] Equity requires a result that is "consistent with principles of justice and right." Equitable, Black's Law Dictionary (10th ed. 2014). "[E]quity will refrain from a lock-step application of legal rules that would result in an injustice and has the power, where necessary, to pierce rigid statutory rules to prevent injustice as well." 27A Am. Jur. 2d Equity § 84 (footnote omitted).

In deciding what is reasonable in awarding attorney's fees, the Court must consider the results obtained. *See Hensley v. Eckerhart*, 103 S. Ct. 1933, 1940 (1983) (analyzing issue in context of reasonable attorney's fees awarded in federal § 1983 action). When a party partially succeeds, a partial award of fees is appropriate. *Id.*

It is inequitable to impose on Watkins the cost of defending himself against the dismissed grounds. The vast majority of Watkins' costs were incurred defending allegations the Court found insufficient to warrant

[8] The Iowa Supreme Court cited *Curry* as authority in its decision holding Iowa Code § 66.23 is constitutional. *City of Des Moines*, 41 N.W.2d at 41.

removal. One successful claim should not preclude Watkins from recovering for his defense of the State's meritless claims. The State should not be allowed to bootstrap all of its meritless claims in on one valid claim.

Disallowing partial recovery of fees under these circumstances would incentivize parties filing a removal action to throw everything and the kitchen sink into their petitions. This results in a waste of resources not only for the challenged elected official, but for everyone—including taxpayers. The Court should not reward the strategy of throwing everything up to see what sticks.

Partially reimbursing Watkins for his cost of defense honors the purpose of Iowa Code § 66.23. Simply because the State was successful on one of its claims does not change the fact that Watkins, a duly elected public official, invested significant resources defending himself against multiple meritless claims.

Watkins requests that the Court grant him an award of fees in the amount of 80% of his total legal bill to compensate him for his success against 80% of the State's petition for removal.

CONCLUSION

This is a case about interpersonal conflicts. The deterioration of Watkins' friendship with Wallingford; the ongoing friction between Watkins and Barchman; Watkins' and Renee's marital issues. In the summer of 2016,

the office shared by these four individuals essentially became a pressure cooker for their conflicts. Things had to change, and they did: Wallingford found new employment, Watkins ceased drinking, and Watkins and Renee engaged in counseling. The individuals involved took appropriate action nearly two months before this flawed prosecution began. These personal issues should not have been addressed post hoc by removal.

This action came to fruition based largely on incomplete and inaccurate information, passed to the Board of Supervisors through biased parties. As a result, this removal action was a rushed, ill-conceived response to already-resolved interpersonal issues. If the Court finds removal appropriate on these facts, it will encourage political infighting between elected officials and incentivize immediate escalation of issues that could be addressed in a much more civil (and inexpensive) manner

It cannot be over-emphasized that removal is a "drastic and highly penal" remedy, *Roth*, 162 Iowa at 638, "the effect of which is not only to deprive an individual of an office to which he has been regularly chosen, but also to deprive the people of the services of the man whom they have selected for the position." *Hospers*, 147 Iowa at 712. Reviewing the evidence, the Court may conclude that Watkins was at times uncouth, immature, or unprofessional—but the State has never proven that Watkins possessed an evil

or corrupt motive or acted with a purpose to do wrong. *Callaway*, 268 N.W.2d at 842; *Zeigler*, 199 Iowa at 392; *Meek*, 148 Iowa at 671.

The Court therefore should reverse the order removing Watkins from office, reinstate him as County Attorney, and award him full attorney fees. If the Court upholds the removal ruling, Watkins asks that he be awarded fees in the amount of four-fifths of his total legal bill.

ORAL ARGUMENT NOTICE

Counsel requests oral argument.

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CERTIFICATE OF COMPLIANCE AND SERVICE

This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) (no more than 14,000 words); excluding the parts of the brief exempted by Rule 6.903(1)(g)(1), which are the table of contents, table of authorities, statement of the issues, and certificates. This brief contains 13,802 words.

This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P.6.903(1)(f) because this brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 2010 in font size 14, Times New Roman.

I hereby certify that on June 16, 2017, I did serve Defendant-Appellant's Final Brief on Appellant by mailing one copy to:

Abe Watkins
Defendant-Appellant

___/S/ *John Maschman*_____

Dated: June 16, 2017
John Maschman