

7-7-2008

# Boudreau v. Wendell Clerk's Record v. 1 Dckt. 35077

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# 35077 LAW CLERK Vol. 1 of 2

IN THE  
SUPREME COURT  
OF THE  
STATE OF IDAHO

Carol A. Boudreau

Plaintiff and  
Appellant

COPY

VS.

City of Wendell

Defendant and  
Respondent

Appealed from the District Court of the 5th  
Judicial District for the State of Idaho, in and

for Gooding County

Hon. Barry Wood District Judge

Daniel Brown  
Fulker Law Offices

Attorney for Appellant

James Davis

SEE AUGMENTATION RECORD

Attorney for Respondent

Filed this	FILED - COPY		
	day of		, 19
	JUL - 7 2015		Clerk
By			Deputy
Supreme Court		Court of Appeals	
Entered on 7:35 by			

35077

**IN THE SUPREME COURT OF THE STATE OF IDAHO**

\*\*\*\*\*

BOUDREAU, CAROL A.	)	
Plaintiff/Appellant,	)	
	)	Supreme Court No. 35077
vs.	)	
	)	CLERKS RECORD ON APPEAL
	)	
CITY OF WENDELL,	)	
Defendant/Respondent.	)	

---

Appeal from the District Court of the 5<sup>th</sup> Judicial District of the State of Idaho, in and for the County of Gooding

\*\*\*\*\*

HONORABLE BARRY WOOD, DISTRICT JUDGE

\*\*\*\*\*

Daniel Brown  
FULLER LAW OFFICES  
P.O. Box L  
Twin Falls, ID 83303

James J. Davis  
Attorney at Law  
P.O. Box 1517  
Boise, ID 83701

**COPY**

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(a)

Carol A. Boudreau vs. City Of Wendell, Rex Strickland, Ilene Rounsefell, Rick Cowen, Don Bunn, Jason Houser

Date	Code	User	Judge
9/19/2007	NCOC	CYNTHIA	New Case Filed - Other Claims
	APER	CYNTHIA	Plaintiff: Boudreau, Carol A. Appearance Greg J. Fuller
		CYNTHIA	Filing: A1 - Civil Complaint, More Than \$1000 No Prior Appearance Paid by: Fuller, Greg J. (attorney for Boudreau, Carol A.) Receipt number: 0004126 Dated: 9/19/2007 Amount: \$88.00 (Check) For: Boudreau, Carol A. (plaintiff)
10/4/2007		CYNTHIA	Filing: I1A - Civil Answer Or Appear. More Than \$1000 No Prior Appearance Paid by: City Of Wendell (defendant) Receipt number: 0004335 Dated: 10/4/2007 Amount: \$58.00 (Check) For: City Of Wendell (defendant)
	APER	CYNTHIA	Defendant: City Of Wendell Appearance James J Davis
10/5/2007	AFFD	CYNTHIA	Affidavit of Service/Summons Returned (Ilene Rounsefell)
	AFFD	CYNTHIA	Affidavit of Service/Summons Returned (Rex Strickland)
	AFFD	CYNTHIA	Affidavit of Service/Summons Returned (City of Wendell)
	AFFD	CYNTHIA	Affidavit of Service/Summons Returned (Jason Houser)
	AFFD	CYNTHIA	Affidavit of Service/Summons Returned (Don Bunn)
	AFFD	CYNTHIA	Affidavit of Service/Summons Returned (Rick Cowen)
10/10/2007	NTSV	CYNTHIA	Notice Of Service
10/24/2007	MOTN	CYNTHIA	Defendant's Motion to Dismiss or in the alternative Motion for Summary Judgment
	AFFD	CYNTHIA	Affidavit of Mickey Walker in Support of Motions...
	MEMO	CYNTHIA	Memorandum in Support of Defendant's Motion to Dismiss...
	NTHR	CYNTHIA	Notice Of Hearing By Parties
	HRSC	CYNTHIA	Hearing Scheduled (Motion for Summary Judgment 12/18/2007 11:00 AM)
11/29/2007	NTSV	CYNTHIA	Notice Of Service
12/3/2007	MEMO	CYNTHIA	Memorandum in Opposition to Defendant's Motion to Dismiss...
	AFFD	CYNTHIA	Affidavit of Carol Bourdrau in Opposition
12/11/2007	MEMO	CYNTHIA	Reply Memorandum in Support of Def's Motion to Dismiss/or Motion for Summary Judgment
	MOTN	CYNTHIA	Defendant's Motion to Strike Portions of Affidavit of Carol Boudreau
	MEMO	CYNTHIA	Memorandum in Support of Defendant's Motion

Carol A. Boudreau vs. City Of Wendell, Rex Strickland, Ilene Rounsefell, Rick Cowen, Don Bunn, Jason Houser

Date	Code	User		Judge
12/11/2007	NTHR	CYNTHIA	Notice Of Hearing By Parties	Barry Wood
	MOTN	CYNTHIA	Defendant's Motion to Shorten Time	Barry Wood
	AFFD	CYNTHIA	Affidavit of James Davis in Support	Barry Wood
	NTHR	CYNTHIA	Notice Of Hearing By Parties	Barry Wood
12/18/2007	CMIN	CYNTHIA	Court Minutes Hearing type: Motion for Summary Judgment Hearing date: 12/18/2007 Time: 11:00 am Court reporter: Linda Ledbetter Audio tape number: DC 07-13	Barry Wood
	HELD	CYNTHIA	Hearing result for Motion for Summary Judgment held on 12/18/2007 11:00 AM: Motion Held	Barry Wood
	ADVS	CYNTHIA	Case Taken Under Advisement	Barry Wood
1/25/2008	DEOP	CYNTHIA	Order on Motion to Strike/Motion to Dismiss and/or Motion for Summary Judgment	Barry Wood
	GRNT	CYNTHIA	Motion for Summary Judgment Granted	Barry Wood
	DPWO	CYNTHIA	Disposition Without Trial	Barry Wood
	STAT	CYNTHIA	STATUS CHANGED: Closed	Barry Wood
	CDIS	CYNTHIA	Civil Disposition entered for: Bunn, Don, Defendant; City Of Wendell, Defendant; Cowen, Rick, Defendant; Houser, Jason, Defendant; Rounsefell, Ilene, Defendant; Strickland, Rex, Defendant; Boudreau, Carol A., Plaintiff. order date: 1/25/2008	Barry Wood
1/31/2008	MISC	CYNTHIA	Case File Scanned	Barry Wood
2/4/2008		AMYA	Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: Capital Law Office Receipt number: 0000488 Dated: 2/4/2008 Amount: \$19.00 (Check)	Barry Wood
3/6/2008		CYNTHIA	Filing: T - Civil Appeals To The Supreme Court (\$86.00 Directly to Supreme Court Plus this amount to the District Court) Paid by: Fuller, Greg J. (attorney for Boudreau, Carol A.) Receipt number: 0001021 Dated: 3/6/2008 Amount: \$15.00 (Check) For: Boudreau, Carol A. (plaintiff)	Barry Wood
	APSC	CYNTHIA	Appealed To The Supreme Court	Barry Wood
	STAT	CYNTHIA	STATUS CHANGED: Inactive	Barry Wood
3/31/2008	NOTC	CYNTHIA	Amended Notice of Appeal	Barry Wood
4/10/2008	ORDR	CYNTHIA	Order Conditionally Dismissing Appeal	Barry Wood
4/28/2008		CYNTHIA	Miscellaneous Payment: For Making Copies Of Transcripts For Appeal Per Page Paid by: Fuller Law Offices Receipt number: 0001841 Dated: 4/28/2008 Amount: \$100.00 (Check)	Barry Wood

ORIGINAL

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ISB #1442

ISB #7538

Attorneys for Plaintiff

DISTRICT COURT  
GOODING CO. IDAHO  
FILED

2007 SEP 19 PM 3:30

GOODING COUNTY CLERK

BY *[Signature]* DEPUTY

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF GOODING

\*\*\*\*\*

CAROL A. BOUDREAU, )  
 )  
 ) Plaintiff, )

Case No. CV-2007-607

vs. )

VERIFIED COMPLAINT

CITY OF WENDELL, a Political )  
 )  
 ) Subdivision of the State of Idaho, and )  
 )  
 ) an incorporated municipality; and )  
 )  
 ) REX L. STRICKLAND, Mayor; ILENE )  
 )  
 ) ROUNSEFELL, Council President; )  
 )  
 ) RICK COWEN, Councilman; DON BUNN, )  
 )  
 ) Councilman; and JASON HOUSER, )  
 )  
 ) Councilman, Individually and in their )  
 )  
 ) official capacity, and DOES I-X, )  
 )  
 )  
 )  
 ) Defendants. )

\*\*\*\*\*

SCANNED

COMES NOW the Plaintiff, CAROL A. BOUDREAU, by and through her attorneys of record, Fuller Law Offices, and hereby complains and alleges as follows:

**COUNT I**  
**WRONGFUL TERMINATION**

1. The Plaintiff, Carol A. Boudreau, is, and at all times herein mentioned was, a resident of the City of Dietrich, County of Lincoln, State of Idaho.

2. The Defendant, City of Wendell is, and at all times herein mentioned was, an incorporated municipality duly organized and existing under the laws of the State of Idaho, doing business and registered in the State of Idaho. That Defendants, Rex L. Strickland, Ilene Rounsefell, Rick Cowen, Donn Bunn, and Jason Houser, are, and at all times herein mentioned were, employees, officers and/or agents, and residents of the City of Wendell, County of Gooding, State of Idaho.

3. That on July 14<sup>th</sup>, 2003, Plaintiff and Defendant, City of Wendell, entered into an employment agreement whereby the City of Wendell employed the Plaintiff as the City Clerk.

4. At the time of entering into said agreement, the Plaintiff was provided a Personnel Manual for the City of Wendell, a copy of which is attached hereto, and fully incorporated by its reference. Said Personnel Manual does not characterize or describe the above-described employment as an "at-will" situation, but instead indicates that Plaintiff's employment may only be terminated for "cause", and in accordance with certain established disciplinary procedures.



5. Said Personnel Manual contains the terms of employment and disciplinary procedures for each employee employed by the City of Wendell. That at the time that Plaintiff began her employment with the City of Wendell, she read, reviewed and followed the directives of the Personnel Manual throughout the scope of her employment with the City of Wendell.

6. The Plaintiff was employed as the City Clerk for the City of Wendell. Said employment consisted of various clerical and administrative duties.

7. That thereafter, Plaintiff entered into the performance of the contract for employment and duly performed all of the conditions on her part to be performed until she was prevented from doing so by the acts of the above-described Defendants.

8. That prior to December, 2006, the Plaintiff had not been subject to any disciplinary action by the above-described Defendants.

9. That during her course of employment with the City of Wendell, and up until December, 2006, the Plaintiff received numerous promotions and pay raises and various and sundry other accolades.

10. That on or about the 1<sup>st</sup> day of February, 2007, the Plaintiff was presented with a written Reprimand, a copy of which is attached hereto as if fully incorporated by its reference, from the Defendant, Mayor, Rex L. Strickland, for allegedly violating certain terms and conditions of the Personnel Manual.

11. On the 9<sup>th</sup> day of August, 2007, the Plaintiff received from the Defendant, Mayor, Rex L. Strickland, a Notice of Proposed Personnel Action-Termination and

Notice of Suspension with Pay Pending Decision, a copy of which is attached hereto and is fully incorporated by its reference.

12. That finally, on the 29<sup>th</sup> day of August, 2007, the Plaintiff received from the Defendant, Mayor, Rex L. Strickland, a written Notice of Decision Regarding Pending Personnel Action – Termination/Unappointment, a copy of which is attached hereto as if fully incorporated by its reference. The written Notice of Decision Regarding Pending Personnel Action – Termination/Unappointment effectively terminated the Plaintiff's employment with the City of Wendell

13. The above-described actions on the part of the Defendant, Mayor, Rex L. Strickland, and on behalf of the City of Wendell and City Council, were without just cause, and in violation of the Plaintiff's Disciplinary Procedures set out in the Personnel Manual of the City of Wendell for the following reasons:

a) None of the allegations elicited in the above-described documents, i.e., the written Reprimand, the Notice of Proposed Personnel Action-Termination and Notice of Suspension with Pay Pending Decision, and the Notice of Decision Regarding Pending Personnel Action – Termination/Unappointment, have any basis in fact.

b) The Plaintiff was never provided an opportunity to present evidence and to rebut the information upon which her charges of misconduct and inadequate performance was based, in violation of those requirements set out in the Personnel Manual, more specifically, paragraph 4, page 27-28, entitled "Appeal hearing".

14. That the above-described actions on the part of the Defendants in this case, amount to a direct violation of the policies and procedures of the City of Wendell, a direct

violation of the Plaintiff's right to due process as set out in the City of Wendell's Personnel Manual, by not allowing the Plaintiff to properly defend herself against those allegations and charges used to terminate her services.

15. That Plaintiff's termination was therefore without just cause, and in violation of the Plaintiff's rights to due process under the City of Wendell's Personnel Manual, and therefore without merit and illegal, and further amounted to a breach of the employment contract between the Plaintiff and Defendants.

16. That by reason of such wrongful discharge the Plaintiff has been damaged in an amount to be proven at trial.

**COUNT II**  
**INTERFERENCE WITH A CONTRACT**

17. For her Second Cause of Action, the Plaintiff incorporates herein Paragraphs 1 through 16 of her First Cause of Action.

18. That now, and at all times hereinafter mentioned, Defendant, Mayor, Rex L. Strickland, was employed by the City of Wendell.

19. That at all times hereinafter mentioned, Defendant, Mayor, Rex L. Strickland, had due notice and knowledge of the aforementioned contract of employment between the Plaintiff and the City of Wendell.

20. That the Defendant, Mayor, Rex L. Strickland, resented and objected to Plaintiff's employment by the City of Wendell. In fact, Defendant, Mayor, Rex L. Strickland, developed a personal vendetta against the Plaintiff, manufactured false

statements and complaints against the Plaintiff, in order to encourage the City of Wendell terminate the Plaintiff's employment.

21. That Defendant, Mayor, Rex L. Strickland, in fact developed a scheme and plan to have the Plaintiff's employment with the City of Wendell terminated, by manufacturing and spreading false rumors and statements about Plaintiff's character and conduct, and tried to force and coerce other employees, namely the City Council, to substantiate said false claims against the Plaintiff, so as to have the City of Wendell terminate the Plaintiff's employment.

22. That notwithstanding the fact that the Defendant, Mayor, Rex L. Strickland, had due notice and knowledge of the aforesaid contract between the Plaintiff and City of Wendell, he wrongfully, knowingly, intentionally, maliciously, and without reasonable justification or excuse induced, persuaded, and caused the City of Wendell and City Council to violate, repudiate, and wrongfully terminate the employment agreement with the Plaintiff and the City of Wendell.

23. That by reason of the fact that the City of Wendell, and other City Council members, were induced to violate, repudiate, and break its agreement with the Plaintiff as aforesaid, and, as a consequence, the Plaintiff has been deprived of the wages and benefits she would have been paid under the contract and has been otherwise damaged in an amount to be proven at trial.

**COUNT III**  
**BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING**

24. For her Third Cause of Action, the Plaintiff incorporates herein Paragraphs 1 through 23 of her First and Second Causes of Action.

25. The Defendants' wrongful, knowing, intentional and malicious actions as described in the preceding Paragraphs, which resulted in the termination of Plaintiff's employment with the City of Wendell, violated the implied covenant of good faith and fair dealing that is applied to all employment relationships.

26. That in addition to the above-described actions, the Defendants wrongfully, knowingly, intentionally, and maliciously proceeded with the termination of the Plaintiff's employment pursuant to a common plan or scheme by one or more of the above-named Defendants, which violates the implied covenant of good faith and fair dealing that is applied to all employment relationships.

27. That by reason of the fact that the above-described Defendants,, violated the implied covenant of good faith and fair dealing, the Plaintiff has been deprived of the wages and benefits she would have been paid under the contract and has been otherwise damaged in an amount to be proven at trial.

28. All of the above-described actions on the part of the Defendants created a hostile work environment, which affected the Plaintiff's ability to carry out her duties for the City of Wendell.

**COUNT IV**  
**QUASI ESTOPPEL**

29. For her Fourth Cause of Action, the Plaintiff incorporates herein Paragraphs 1 through 28 of her First, Second and Third Causes of Action.

30. The above-described Defendants required each employee to read, review, and follow the requirements of the Personnel Manual.

31. The Defendants obtained the benefit of and required each employee to conform his or her conduct to the policies and requirements of said Personnel Manual. Employees who violate the policies and requirements of said Personnel Manual are subject to the discipline and grievance procedures contained in said Personnel Manual.

32. That in fact, the Plaintiff reviewed, read and followed said Personnel Manual, as well as all revisions and updates.

33. The Plaintiff relied on the terms and conditions as set forth in said Personnel Manual and at all times relevant conformed her conduct within the policies and standards dictated by said Personnel Manual.

34. However, the Defendants did not afford the Plaintiff the process of Employee Discipline Procedures and Principles as set forth on pages 26-28 of the City of Wendell Personnel Manual when said Defendants terminated the Plaintiff's employment. Specifically, the Plaintiff was not provided the opportunity to present evidence and to rebut the information upon which her charges of misconduct or inadequate performance was based, thereby violating her rights to due process, as set out in the Personnel Manual described above.

35. That by reason of the Plaintiff's reliance on said Personnel Manual and the Defendants' refusal to apply said Employee Discipline Procedures and Principles to the Plaintiff, the Plaintiff's employment with the City of Wendell was wrongfully terminated, and the Plaintiff has been deprived of the wages and benefits she would have been paid under the contract and has been otherwise damaged in an amount to be proven at trial.

36. That for the reasons set out above, the Defendants should therefore be estopped from claiming, in any way, that Plaintiff is not entitled to the due process that is provided in the Personnel Manual.

#### **DAMAGES**

37. The Plaintiff has been damaged from the acts and/or omissions of the Defendants, which resulted in the above claims against them, by way of general and special damages, lost wages and benefits, costs of litigation.

#### **ATTORNEY'S FEES**

38. As a result of the Defendants' actions and/or omissions, the Plaintiff has had to retain an attorney and is entitled to attorney's fees and costs.

#### **PRAYER FOR RELIEF**

WHEREFORE, the Plaintiff prays for judgment against the Defendants, and each of them, as follows:

1. For general and special damages in an amount to be proven at trial, but in any case, not less than \$500,000.00;
2. For lost wages and benefits, in an amount to be proven at trial;

3. For litigation costs incurred by the Plaintiff as a consequence of the Defendants' actions;

4. For Plaintiff's attorney's fees and costs of suit under Idaho Code Section 12-120, 12-121, and 12-123.

5. Plaintiff reserves the right to amend this Complaint to comply with Idaho Code Section 6-1604; and

6. For such other relief as this Court deems just in the premises.

DATED This 18<sup>TH</sup> day of September, 2007.

FULLER LAW OFFICES

By \_\_\_\_\_

GREG J. FULLER  
Attorneys for Plaintiff



# City of Wendell

375 1<sup>st</sup> Ave East P.O. Box 208  
Wendell, ID 83355  
(208) 536-5161  
Fax: 536-5527

Honorable Mayor  
Rex L. Strickland  
539-7773  
[mayor@safelink.net](mailto:mayor@safelink.net)

Council President:  
Ilene Rounsefell  
Councilman Don Bunn  
Councilman Rick Cowen  
Councilman Jason Houser

## REPRIMAND

In accordance with the City of Wendell's Personnel Policy, Carol us hereby notified this 1<sup>st</sup> day of February 2007, of the following issues which have resulted in this "Written Reprimand and Paid Administrative Leave.

### CAUSES FOR REPRIMAND AND ADMINISTRATIVE LEAVE;

1. Engage in malicious gossip and or spreading rumors; engaging in behavior designed to create discord and lack of harmony; willfully interfering with another employee's work output or encouraging others to do the same.
2. Does not use time productively.
3. Failure to report serious issues to supervisor.

During the week of January 8-12 2007, it was report to you that the bond attorney was missing an affidavit stating the city had not met advertising requirements on the sewer bond. This was a serious concern which could have resulted in having to run a new bond election.

Failure to report this information is gross negligence of your duties. The first I heard of this situation was when I was approached by a concerned employee asking how we were going to resolve this issue. I was dumbfounded to the situation because I was not properly informed by you.

You have been using city time and resources to dispute your concerns in regards to your employment status. You have also been discussing this with other office staff. This is interfering with your and other employees work performance. Personnel issues are to be discussed with other staff members. If you have a concern regarding your status it needs to be addresses in accordance with the city personnel policy.

On January 30, 2007 you were in the prosecuting attorneys office and were discussing a case that was confidential. This was done in public view and you had been told that this issue was not for discussion previously by myself and the prosecutor.

You have also called city council members regarding personnel issues and other issues. These issues are not your concern and it is not your place to discuss these issues with them or anyone else. Here again if you have grievance or concern you need to follow proper procedure.


Also on January 31, 2007, it was found that you had in your possession personnel files that should been in personnel records of other individuals. This is in violation of City policy and State Statues.

You are unable or unwilling to utilize your work time wisely. I have witnessed on several occasions, you sitting at your desk not doing any work. Some times this has gone on for several hours. If you are unable to find any work to do you need to contact me so *can assign you a task.*

*Your behavior is disrupting to harmony and work environment. These issues needed to be resolved. Therefore, at this time I am putting on Paid Administrative leave until such time as a decision can be made to you employment with the city.*

  
Carol Boudreau

Signing this statement does <sup>not</sup> mean the Employee agrees or disagrees with any statements. Signature only represents that the Employee has received a copy of this reprimand and administrative leave.

  
Rex L. Strickland  
Mayor

**PERSONAL AND CONFIDENTIAL**

September 8, 2006

TO: CAROL BOUDREAU, CITY CLERK  
FROM: REX STRICKLAND, CITY OF WENDELL MAYOR  
RE: **NOTICE OF PROPOSED PERSONNEL ACTION-TERMINATION AND  
NOTICE OF SUSPENSION WITH PAY PENDING DECISION**

**You are hereby notified that I believe you may have been involved in acts or omissions for which any employee of the City of Wendell may be subject to discipline, up to dismissal from employment, pursuant to the Wendell Personnel Manual.**

**This Notice is provided to give you notice of the basis for the proposed action in accordance with the Personnel Manual and to allow you to respond to me and provide any information you desire me to consider, before I make my final decision regarding what action, if any, should be taken with regard to the matters that are under consideration at this time. Once I make my final decision you will have (5) working days to submit any written grievance you may have regarding my decision.**

**Please keep in mind, that if you do not submit your written grievance within the time allowed, we will have to reach a final decision based upon the information known to us at that time and your failure to respond will constitute a waiver of this opportunity to provide a response to this proposed personnel action and the information upon which it is based.**

**To assist you in preparing any response you may desire to submit, the following is information upon which I have relied to this point in this proceeding:**

1. Engage in abusive conduct to fellow employees or to the public, or use abusive language in the presence of fellow employees or the public. Abusive language shall include profanity and loud or harassing speech.
2. Engage in malicious gossip and/or spreading rumors; engaging in behavior designed to create discord and lack of harmony; willfully interfering with another employee's work output or encouraging others to do the same.
3. Use telephones or computers in the office or workplace in a manner that violates policy or which disrupts the work or work flow, nor shall workplace telephones be used for non-local, personal calls or calls relating to the employee's business or other personal interests.

**NOTICE OF PROPOSED PERSONNEL ACTION – TERMINATION AND NOTICE OF  
SUSPENSION WITH PAY PENDING DECISION - 1**

1. On several occasions I have received complaints regarding your use of profanity in the City Hall Office setting from city staff and citizens. Regardless of past warnings, you have continued to use profanity in the workplace without any regard to who may be present. Your continuing disregard for others and lack of professionalism in the work place will no-longer be tolerated.
2. It has been brought to my attention that on July 30, 2007 you willingly, and with malice, engaged in a conversation with Diana Sterk. During this conversation you slandered my name and reputation by stating that the information that I presented to Diana Sterk, regarding Hailey Street project, was a lie. You also encouraged Diana Sterk to confront me in an attempt to cause me public embarrassment during a Public Council Meeting that was to be held on August 2, 2007. Regardless of your knowledge or lack of, regarding the Hailey Street project, you willfully took it upon yourself to mislead a citizen by maliciously informing a citizen that the information I presented to her was a lie, even though you were present during the conversation I held with Diana Sterk.
3. On August 6, 2007 all Public Works and City Hall computers were audited for internet activity. Your assigned PC showed significantly more internet activity than other PC's throughout the City Hall office and Public Works. Your internet history is stored for 22 days. Out of the 22 days only 16 days are identified as working days. Your internet history revealed over 1179 hits to websites that are not work related. 1110 of these websites are video downloads to watch news stories or other videos. These videos average two minutes of play time apiece. The illustration below shows how much time you have spent surfing the web on city time.

22 days of history - 6 weekend days = 16 working days

(1179 hits of unrelated to work websites; 2 minute average) = 2,358 non-work related minutes

2,358 non-work related minutes = 39 hours on non-work related websites

60 minutes in an hour

39 hours on non-work related websites = 5 working days

8 hour a work day

39 hours on non-work related websites – 5 lunch hours website surfing = 34 non-work related hrs.

34 non-work related hrs. - 16 Potential morning surfing hours = 18 non-work related hrs.

18 non-work related hrs. = 2.25 working days of surfing non-work related websites.

8 hour a work day

Your internet activity has wasted 2.25 working days of your employer's time.

**Based on the foregoing** it appears to me that your acts or omissions with regard to the matters referred to in the foregoing documentation constitute violations of the following, including but not limited to:

1. Engage in abusive conduct to fellow employees or to the public, or use abusive language in the presence of fellow employees or the public. Abusive language shall include profanity and loud or harassing speech.
2. Engage in malicious gossip and/or spreading rumors; engaging in behavior designed to create discord and lack of harmony; willfully interfering with another employee's work output or encouraging others to do the same.
3. Use telephones or computers in the office or workplace in a manner that violates policy or which disrupts the work or work flow, nor shall workplace telephones be used for non-local, personal calls or calls relating to the employee's business or other personal interests.

**NOTICE OF PROPOSED PERSONNEL ACTION-TERMINATION AND NOTICE  
SUSPENSION WITH PAY PENDING DECISION-2**

**Accordingly, you are hereby notified that,** pending receipt of any response by you to the information set forth and/or referred to herein attach hereto, it is my intention to impose the following discipline:

**YOU WILL BE TERMINATED FROM YOUR EMPLOYMENT.**

**If you do not desire to respond,** but prefer that your employment records with the City of Wendell show that you terminated your employment by resignation, please submit your written resignation to me on or before the expiration date of the above-noted time period, so that your records may be documented in accordance with your request and your final pay check can be prepared and delivered to you.

**EFFECTIVE IMMEDIATELY AND UNTIL YOU HAVE PROVIDED ANY RESPONSE YOU DESIRE ME TO CONSIDER IN ARRIVING AT A FINAL DECISION AND I HAVE MADE MY DECISION, YOU ARE SUSPENDED WITH PAY.**

**PENDING OUTCOME OF THIS MATTER, YOU ARE DIRECTED NOT TO** perform any of the regular duties of your office or to make any statements as a representative of the City of Wendell. You are hereby directed to immediately notify me of any and all work in progress or projects which are your responsibility and which need to be reviewed or acted upon in your absence. You are also directed, as a condition of your continued receipt of your pay during this period of suspension, to respond honestly to inquiries from me or any other individual designated by me concerning any aspect of this proposed action and any matters of business which are within your knowledge and within the normal course of your employment. **You are hereby**

directed not to make contact (directly or indirectly or personally or through any other person) with any person who may have filed a complaint against you or been a witness to any such event. Until this matter is completed, you are directed not to discuss this matter with anyone other than your attorney. You are further directed not to contact directly or indirectly any city public officials or any other organizations or associations that is directly or reasonable related to the City of Wendell's. If you feel that it is necessary to contact any or all of the above stated people, staff, organizations and associations to plead your case, please inform me so that I may schedule a phone conference or meeting.

**YOU ARE FURTHER DIRECTED THAT, EFFECTIVE IMMEDIATELY, you will remain on suspension with pay, and during the period of your suspension, you are not authorized to be present in any of the offices of any City facility, which are not accessible to any other members of the general public, without express written permission from me. You are hereby directed to immediately surrender to the person serving this Notice upon you any and all identification cards, business cards, or any items that identify you as an employee of the City of Wendell along with any and all keys which you have to any and all City automobiles, buildings or facility of any nature. Finally, you are directed not to remove any documents or other City of Wendell property (excluding only your personal effects unconnected with the City of Wendell) from any City facility. You are hereby notified that any violation of these directives may result in administrative and/or criminal charges against you.**

**NOTICE OF PROPOSED PERSONNEL ACTION-TERMINATION AND NOTICE  
SUSPENSION WITH PAY PENDING DECISION-3**

Please be advised that, since this matter involves proposed personnel action, I would recommend that no comment be made regarding this matter until a final decision has been made and this matter has been concluded.

Date this 14 day of August, 2007

  
Rex Strickland  
City of Wendell Mayor

I, Carol Boudreau, acknowledge receipt of this foregoing Notice of Proposed Personnel Action – Termination and Notice Suspension with Pay Pending Decision on this \_\_\_\_ day of August, 2007. My receipt of this referenced Notice does not mean I am agreeing with the content of the Notice.

  
Carol Boudreau

# City of Wendell

375 1<sup>st</sup> Ave East P.O. Box 208

Wendell, ID 83355

(208) 536-5161

Fax: 536-5527

Honorable Mayor  
Rex L. Strickland  
539-7773  
[mayor@safelink.net](mailto:mayor@safelink.net)

Council President:  
Ilene Rounsefell  
Councilman Don Bunn  
Councilman Rick Cowen  
Councilman Jason Houser

## **PERSONAL AND CONFIDENTIAL**

August 29, 2007

TO: CAROL BOUDREAU, WENDELL CITY CLERK

FROM: REX STRICKLAND, MAYOR, CITY OF WENDELL

RE: **NOTICE OF DECISION REGARDING PENDING PERSONNEL  
ACTION – TERMINATION/UNAPPOINTMENT**

**You are hereby notified that**, after considering your verbal response to me and all other related information which you have provided and which the City has provided to you, regarding this matter, I believe it is in the best interest of the City of Wendell, that your employment be terminated at this time. In short, in light of your response to the Notice previously served on you, I have recommend that you be removed from your appointment as City Clerk for the City of Wendell and you be terminated from employment with the City for the following reasons:

1. You have previously been disciplined by reprimand and administrative leave on February 1<sup>st</sup>, 2007 for:
  - a. Engaging in malicious gossip and or spreading rumors; engaging in behavior designed to create discord and lack of harmony; willfully interfering with another employee's work output or encouraging others to do the same;
  - b. Not using time productively;
  - c. Failure to report serious issues to supervisor.
  
2. Unprofessional and insubordinate conduct by intentionally and inaccurately contradicting me to a resident member of the public by telling the resident that I had lied to the resident and by advising the resident to confront me at a public meeting and that you would confirm that I had lied to the resident when in fact I had given the resident accurate information; and,

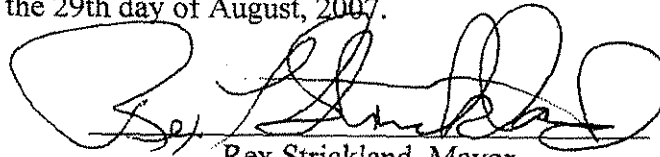
3. For excessive use of the internet for non-work related purposes during hours of employment.

**Accordingly, the Council having moved and voted to remove you from your appointment as City Clerk for the City of Wendell, you are hereby notified that your employment as the City Clerk for the City of Wendell is hereby terminated effective this 29<sup>th</sup> day of August, 2007.**

You are further notified that, to the extent you have not already done so, you should return any and all property belonging to the City of Wendell and/or the city office within twenty-four (24) hours of service of this Notice.

Your paycheck for all services rendered and all leave accrued through this date is attached herewith.

DATED the 29th day of August, 2007.



Rex Strickland, Mayor



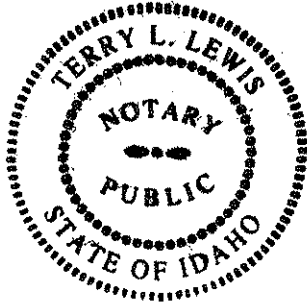
STATE OF IDAHO            )  
  : ss.  
County of Twin Falls    )

CAROL A. BOUDREAU, Being first duly sworn on oath, depose and say:

That I am the Plaintiff in the above-entitled action; that I have read the above and foregoing Verified Complaint and that the facts stated therein are true as I verily believe.

Carol A. Boudreau  
CAROL A. BOUDREAU

SUBSCRIBED AND SWORN To before me this 18<sup>th</sup> day of September,  
2007.



Terry L. Lewis  
Notary for State of Idaho  
Residing at Twin Falls  
Commission Expires 01-22-13

DISTRICT COURT  
GOODING CO. IDAHO  
FILED

2007 OCT -4 AM 9:09

GOODING COUNTY CLERK

BT  DEPUTY

JAMES J. DAVIS  
Attorney at Law  
406 W. Franklin St.  
P. O. Box 1517  
Boise, ID 83701-1517  
Telephone: (208) 336-3244  
Facsimile: (208) 336-3374  
Email: jdavis@davisjd.com  
ISB# 2185

Attorney for Defendants City of Wendell,  
Rex L. Strickland, Ilene Rounsefell,  
Rick Cowen, Don Bunn, and Jason Houser

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF GOODING

CAROL A. BOUDREAU, )  
 )  
 Plaintiff, )  
 )  
 )  
 v. )  
 )  
 CITY OF WENDELL, a Political )  
 Subdivision of the State of Idaho, and )  
 an incorporated municipality; and )  
 REX L. STRICKLAND, Mayor; ILENE )  
 ROUNSEFELL, Council President; )  
 RICK COWEN, Councilman; DON )  
 BUNN, Councilman; and JASON )  
 HOUSER, Councilman, Individually and )  
 in their official capacity, and DOES )  
 I-X, )  
 )  
 Defendants, )  
 )  
 \_\_\_\_\_ )

Case No. CV 2007-607

ANSWER

COME NOW Defendants City of Wendell, Rex L. Strickland, Ilene Rounsefell, Rick Cowen, Don Bunn, and Jason Houser, and for answer to Plaintiff's Complaint, allege as follows:

FIRST DEFENSE

Plaintiff's Complaint and each and every count thereof fails to state a claim against these Defendants upon which relief can be granted.

SECOND DEFENSE TO COUNT I

I.

These answering Defendants deny each and every allegation of the Complaint not specifically and expressly admitted herein.

II.

These answering Defendants are without information to form a belief as to the truth of the allegations contained in Paragraph 1, and, therefore, deny the same.

III.

For answer to Paragraph 2, it is admitted that City of Wendell is a "political subdivision" as those terms are defined by the Idaho Tort Claims Act, Idaho Code § 6-901, et seq. It is further admitted that Defendant Rex L. Strickland was the duly-elected mayor of the City of Wendell, and Defendants Ilene Rounsefell, Rick Cowen, Don Bunn, and Jason Houser were the duly-elected city council members of the City of Wendell.

IV.

For answer to Paragraph 3, it is admitted that Plaintiff was appointed, pursuant to Idaho Code § 50-204, as the city clerk of the City of Wendell in which

position she remained until her removal, effective August 29, 2007. It is specifically denied that Plaintiff had an "employment agreement" with the City of Wendell.

V.

For answer to Paragraph 4, it is denied that a copy of a Personnel Manual is attached to the copy of the Complaint served upon the Defendants. It is further affirmatively asserted that the City of Wendell adopted a Personnel Manual on April 18, 2006, by Resolution No. 80 that replaced any previously adopted Personnel Manual. Plaintiff, as an appointed official under Idaho Code § 50-204, was subject to removal from office under the terms of Idaho Code § 50-206, and any termination provisions in the Personnel Manual adopted April 18, 2006, do not apply to Plaintiff's removal from office.

VI.

For answer to Paragraph 5, the Personnel Manual speaks for itself. These answering Defendants are without information to form a belief as to the truth of the allegations in Paragraph 5 concerning whether Plaintiff read and reviewed the Personnel Manual, and, therefore, deny the same. It is specifically denied that Plaintiff followed the directives of the Personnel Manual.

VII.

For answer to Paragraph 6, it is admitted that Plaintiff was appointed as the city clerk of the City of Wendell and she had various duties as the city clerk.

VIII.

For answer to Paragraph 7, it is denied that Plaintiff "duly" performed all of the conditions of her appointment as city clerk and it is specifically denied that Defendants prevented her from "duly" performing her duties.

IX.

The allegations in Paragraph 8 concerning "disciplinary action" are denied on the basis that those terms are vague and ambiguous.

X.

For answer to Paragraph 9, it is denied that Plaintiff received numerous promotions. She was appointed to be the city clerk and she served in the capacity of city clerk until she was removed from that position, effective August 29, 2007. It is admitted, however, that Plaintiff, like other elected officials, appointed officials, and employees of the City of Wendell received pay raises and other accolades.

XI.

For answer to Paragraph 10, it is admitted that on or about February 1, 2007, Plaintiff was presented with a written Reprimand, a copy of which is attached to the Complaint served upon Defendants. As to the remainder of the allegations in Paragraph 10, the Reprimand speaks for itself.

XII.

For answer to Paragraph 11, it is admitted that on August 9, 2007, Plaintiff received a Notice of Proposed Personnel Action—Termination and Notice of Suspension with Pay Pending Decision, a copy of which is attached to the Complaint served upon Defendants.

XIII.

The allegations in Paragraph 12 are admitted.

XIV.

The allegations in Paragraphs 13, 14, 15, and 16 are denied.

SECOND DEFENSE TO COUNT II

XV.

For answer to Paragraph 17, these answering Defendants reallege their answers to Paragraphs 1 through 16 as if the same were set out herein in full.

XVI.

For answer to Paragraph 18, it is admitted that Rex L. Strickland was the duly-elected mayor of the City of Wendell.

XVII.

For answer to Paragraph 19, it is denied that Plaintiff had a contract of employment with the City of Wendell with respect to the city council's right to remove her from office under Idaho Code § 50-206, and, therefore, Mayor Rex L. Strickland could not have had knowledge of the rights Plaintiff claims in this lawsuit.

XVIII.

The allegations in Paragraphs 20, 21, 22, and 23 are denied.

SECOND DEFENSE TO COUNT III

XIX.

For answer to Paragraph 24, these answering Defendants reallege their answers to Paragraphs 1 through 23 as if the same were set out herein in full.

XX.

The allegations in Paragraphs 25, 26, 27 and 28 are denied.

SECOND DEFENSE TO COUNT IV

XXI.

For answer to Paragraph 29, these answering Defendants reallege their answers to Paragraphs 1 through 28 as if the same were set out herein in full.

XXII.

The allegations in Paragraph 30 are admitted.

XXIII.

For answer to Paragraph 31, Defendants state that officials designated in Idaho Code § 50-204 are subject to removal under the terms of Idaho Code § 50-206.

XXIV.

For answer to Paragraph 32, these answering Defendants are without information to form a belief as to the truth of the allegations as to whether Plaintiff reviewed and read a Personnel Manual or any revisions or updates to said Manual and, therefore, deny the same. As to the allegation that Plaintiff followed the terms of the Personnel Manual, the allegations are denied.

XXV.

As to the allegations in Paragraph 33, these answering Defendants are without information to form a belief as to the truth thereof, and, therefore, deny the same.

XXVI.

For answer to Paragraph 34, it is denied that the "Employee Discipline Procedures and Principles as set forth on pages 26-28 of the City of Wendell Personnel Manual" applied to Plaintiff's removal from office. Instead, the terms of Idaho Code § 50-206 applied to Plaintiff's removal from office. Assuming, arguendo, that the terms of the Personnel Manual did apply to Plaintiff's removal from office, it is denied that Plaintiff was deprived of any rights under the Personnel Manual.

XXVII.

The allegations in Paragraphs 35, 36, 37, and 38 are denied.

FIRST AFFIRMATIVE DEFENSE

Plaintiff did not have an employment contract with the City of Wendell with respect to her appointment and removal from office. Her appointment and removal are governed by Idaho Code §§ 50-204 and 50-206, respectively.

SECOND AFFIRMATIVE DEFENSE

Assuming, arguendo, that Plaintiff had an employment contract with the City of Wendell, she, not the City of Wendell, breached the contract.

THIRD AFFIRMATIVE DEFENSE

Assuming, arguendo, that Plaintiff had a contract of employment with the City of Wendell, the terms of that contract are explicit and preclude any claim for implied covenant of good faith and fair dealing.

FOURTH AFFIRMATIVE DEFENSE

Count II of Plaintiff's Complaint is couched as a contract claim with the heading "Interference with a Contract," and is not a viable legal theory in Idaho. In the



alternative, if Plaintiff intends to assert a tortious interference with contract claim in Count II, it is barred by the Idaho Tort Claims Act, Idaho Code § 6-901, et seq.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff's quasi-estoppel claim in Count IV is not a viable legal theory against these Defendants, or, in the alternative, there is no factual support for such a claim.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff had no property interest in her appointed position as city clerk, and, therefore, is not entitled to due process under the United States Constitution.

SEVENTH AFFIRMATIVE DEFENSE

To the extent that Plaintiff asserts a constitutional right to due process under the Idaho Constitution, Defendants affirmatively assert that there is no private cause of action for damages for a purported violation of an Idaho constitutional provision. Even if there was such a cause of action, there is no factual support for such a claim.

EIGHTH AFFIRMATIVE DEFENSE

Defendants did not enter into a conspiracy, scheme, or plan to deprive Plaintiff of any rights.

NINTH AFFIRMATIVE DEFENSE

To the extent that Plaintiff is asserting a Title VII claim in Paragraph 28 of the Complaint by the use of the terms "hostile work environment," the claim is premature, and, therefore, precluded.

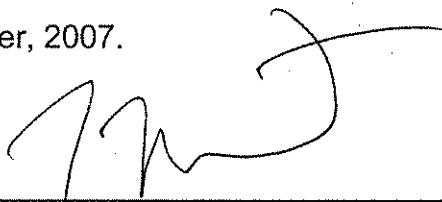
TENTH AFFIRMATIVE DEFENSE

Plaintiff has failed to mitigate any alleged damages.

WHEREFORE, Defendants having fully answered Plaintiff's Complaint, pray as follows:

1. Plaintiff's Complaint be dismissed with prejudice.
2. These answering Defendants be awarded their costs of suit herein incurred.
3. For such other and further relief as to the Court seems just and equitable in the premises.


DATED this 3rd day of October, 2007.

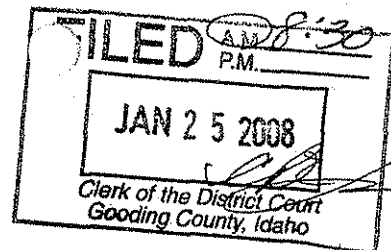
  
\_\_\_\_\_  
JAMES J. DAVIS

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 3rd day of October, 2007, I served a true and correct copy of the foregoing ANSWER upon the following attorneys by depositing a copy thereof in the United States Mail, postage prepaid, in an envelope addressed to said attorneys at the following address:

Greg J. Fuller  
Daniel S. Brown  
Fuller Law Offices  
161 Main Ave. W.  
P. O. Box L  
Twin Falls, ID 83301

  
\_\_\_\_\_  
JAMES J. DAVIS



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO IN AND FOR THE COUNTY OF GOODING

CAROL A. BOUDREAU

The Plaintiff,

v.  
CITY OF WENDELL, *et al.*

The Defendants.

Case No. CV-2007-0000607

---

**ORDER ON MOTION TO STRIKE PORTIONS OF THE AFFIDAVIT OF CAROL A.  
BOUDREAU AND ORDER ON MOTION TO DISMISS, OR IN THE ALTERNATIVE,  
MOTION FOR SUMMARY JUDGMENT**

---

I.

ORIENTATION

- Counsel:** Daniel Brown, of Fuller Law Offices for the Plaintiff.  
James J. Davis for the Defendants.
- Court:** Barry Wood, District Judge, presiding.
- Holding:** The Motion for Summary Judgment is GRANTED.

II.

BRIEF PROCEDURAL AND FACTUAL HISTORY

1. The plaintiff became the Wendell City Clerk on July 14, 2003. She was removed from her position as City Clerk on August 29, 2007, after a unanimous vote by the Wendell City Council.
2. The plaintiff filed a Verified Complaint on September 19, 2007 alleging wrongful termination, interference with a contract, breach of covenant of good faith and fair dealing, and quasi estoppel.
3. The defendants filed an Answer on October 4, 2007.
4. On October 24, 2007, the defendants filed this Motion to Dismiss, or in the Alternative, Motion for Summary Judgment, and also filed a memorandum in support of the motion.
5. The plaintiff filed a memorandum in opposition to the defendant's motion on December 3, 2007, and the defendants filed a reply on December 11, 2007.
6. On December 11, 2007, the defendants also filed a Motion to Strike Portions of the Affidavit of Carol Boudreau.
7. On December 18, 2007, at the hearing on these motions, plaintiff's counsel indicated that he had only just learned of the Motion to Strike, and that he has not been afforded an opportunity to meet the allegations of that motion.

III.

**MATTER DEEMED FULLY SUBMITTED FOR FINAL DECISION**

Oral argument on the Motion to Dismiss, or in the alternative, Motion for Summary Judgment was heard before this Court on December 18, 2007. At the conclusion of the hearing no party requested additional briefing and the Court requested none. The Court therefore deems this matter fully submitted for decision on the next business day, or December 19, 2007.

IV.

**APPLICABLE STANDARDS**

A. Motion to Quash Portions of the Affidavit of Carol A. Boudreau:

On a motion for summary judgment, supporting or opposing affidavits must be based on personal knowledge, set forth such facts as would be admissible in evidence, and shall affirmatively show that the affiant is competent to testify to the matters stated in the affidavit. I.R.C.P. 56(e); State v. Shama Resources Ltd. Partnership, 127 Idaho 267, 271 (1995). The Court will only consider material that is based on personal knowledge or that would be admissible at trial. Id.

Furthermore, the Court may permit affidavits to be supplemented or opposed by depositions, interrogatories, or additional affidavits. Id. Evidentiary rulings, such as whether to admit the facts set forth in an affidavit supporting or opposing summary judgment, are a question

of discretion for the Court. Sprinkler Irrigation Co., Inc. v. John Deere Ins. Co., Inc., 139 Idaho 691, 696 (2004). Thus a Court may, in its discretion, strike an affidavit, or portions thereof, that contains information that would not be admissible at trial.

This Court recognizes that a Motion to Strike should be ruled on before determining a Motion for Summary Judgment. The plaintiff has not had the opportunity to respond to the Motion to Strike; however, this Court has determined that the contested portions of the Affidavit of Carol A. Boudreau are immaterial to this summary judgment determination. Thus, for the purpose of summary judgment, the contested portions of Carol Boudreau's affidavit will not be stricken.

B. Motion for Summary Judgment:

Summary judgment is proper if "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to *any* material fact and that the moving party is entitled to judgment as a matter of law." Loomis v. City of Hailey, 119 Idaho 434, 436, 807 P.2d 1272 (Idaho 1991) (emphasis in original); see also Bonz v. Sudweeks, 119 Idaho 539, 541, 808 P.2d 876, 878 (Idaho 1991); I.R.C.P. 56(c). The Court must "liberally construe the facts in the existing record in favor of" the nonmoving party, and "draw all reasonable inferences from the record in favor of the nonmoving party." Loomis, 119 Idaho at 436; see also G & M Farms v. Funk Irrigation Co., 119 Idaho 514, 517, 808 P.2d 851, 854 (Idaho 1991); Tusch Enterprises v. Coffin, 113 Idaho 37, 740 P.2d 1022 (Idaho 1987). The burden of proving the absence of an issue of material facts rests at all times upon the moving party.

When such a showing is made by the moving party, an adverse party may not simply rest upon the mere allegations or denials from his pleadings, but must set forth specific facts showing that there is a genuine issue for trial. M & H Rentals, Inc. v. Sales, 108 Idaho 567, 570, 700 P.2d 970 (Idaho App. 1985).

V.

### ANALYSIS

The issue is whether the City of Wendell was required to give Boudreau notice and a hearing before terminating her from her position as City Clerk. Alternatively stated, does the City of Wendell have to satisfy its own employee handbook, in addition to the statute, or is it *only* bound to follow the scheme for termination set forth in I.C. § 50-206?

All parties agree that the plaintiff is subject to the statutory scheme of I.C. §§ 50-204, 50-206. I.C. § 50-204 enumerates a city clerk as an appointed officer. I.C. § 50-206 states

Any appointed officer, unless appointed under sections 50-801 through 50-812, may be removed by the mayor for any cause by him deemed sufficient; but such removal shall be by and with the affirmative vote of one half (1/2) plus one (1) of the members of the full council; provided, that the city council, by the unanimous vote of all its members, may upon their own initiative remove any appointive officer.

A reading of this statute makes clear that a city clerk may be removed by a unanimous vote of the city council. However, Boudreau contends that this statutory scheme is not exclusive; in essence she argues that the City can and did contractually obligate itself to go beyond the requirements of the statute when terminating her as an appointed officer.

This argument requires an analysis of the principles of statutory construction as they apply to I.C. § 50-204 and I.C. § 50-206.

Where the language of a statute is plain and unambiguous, this Court must give effect to the statute as written without engaging in statutory construction. Unless the result is palpably absurd, this Court assumes that the legislature meant what is clearly stated in the statute. . . . When the Court must engage in statutory construction, it has the duty to ascertain the legislative intent, and give effect to that intent. To ascertain the intent of the legislature, not only must the literal words of the statute be examined, but also the context of those words, the public policy behind the statute, and its legislative history.

State v. Rhode, 133 Idaho 459, 462 (1999) (citations omitted).

The language set forth in I.C. §50-204 and I.C. §50-206 is plain and unambiguous. Furthermore, in 1967 the statutes governing municipal corporations were comprehensively revised and recodified; as noted in Bunt v. City of Garden City, 118 Idaho 427 (1990). I.C. § 50-204 is among the statutes that were amended. The amendment removed the Office of Chief of Police from enumeration in I.C. 50-204 as an appointed official – but the Office of City Clerk remained enumerated as an appointed official.

The analysis in Bunt concerning whether the chief of police was an employee or an appointed official was required because the Office of Chief of Police was no longer enumerated as an appointed official. See Bunt v. City of Garden City, 118 Idaho 427 (1990).

Moreover, the Bunt case is instructive in the instant matter. In Bunt, the question was whether the former Garden City Police Chief – a position that is no longer enumerated as an appointed official under I.C. § 50-204 – was entitled to notice and a hearing before termination. The Idaho Supreme Court held that the answer hinged on “whether Bunt was an ‘appointed’



official or an 'employee' of the City." Bunt, 118 Idaho at 428. Finding that Bunt was an appointed official, the Court held that the City needed to only comply with the terms of I.C. § 50-206. Id.

In this case, Boudreau clearly was an appointed official under the terms of I.C. § 50-204. She was removed in strict accordance with one of the two terms of I.C. § 50-206; the Wendell City Council unanimously voted to remove her. While portions of her employment may have been governed by the Wendell City Employment Handbook – the scheduling and method of her payroll for example – this Court finds that the Idaho Legislature has determined that the means by which a city clerk is removed is to be exclusively governed by the terms of I.C. § 50-206. The Wendell City Council met those terms when it unanimously voted to remove Boudreau. Accordingly the defendant's Motion for summary Judgment is GRANTED.

IT IS SO ORDERED.

Dated:

January 25, 2008

Signed:

Barry Wood

Barry Wood, District Judge

NOTICE OF ORDER ON MOTION FOR SUMMARY JUDGMENT

Certificate of Service Rule 77(d)

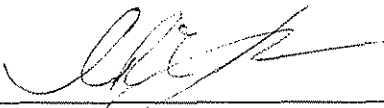
25 I, Cynthia Eagle-Ervin Deputy Clerk of Gooding County do hereby certify that on the 25 day of January 2008, I filed the above document, and further on the 25 day of January 2008, I caused to be delivered a true and correct copy of the within and foregoing instrument to the parties listed below:

Counsel:

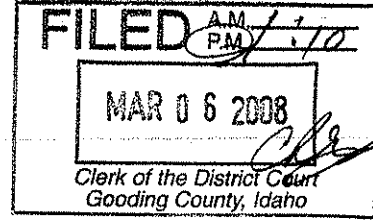
Greg J. Fuller  
Daniel S. Brown  
Fuller Law Offices  
161 Main Ave. W.  
PO Box L  
Twin Falls, ID 83301

James J. Davis  
PO Box 1517  
Boise, ID 83701

DATED Jan 25, 2008  
CLERK OF THE DISTRICT COURT

BY:   
Cynthia Eagle-Ervin  
Deputy Clerk

**Greg J. Fuller**  
**Daniel S. Brown**  
**FULLER LAW OFFICES**  
Attorneys at Law  
161 Main Avenue West  
P. O. Box L  
Twin Falls, ID 83303  
Telephone: (208) 734-1602  
Facsimile : (208) 734-1606  
ISB # 1442  
ISB #7538



Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF GOODING

\*\*\*\*\*

CAROL A. BOUDREAU,	)	Case No. CV-2007-0000607
	)	
Plaintiff,	)	Filing Fee Category: T
	)	\$101.00
vs.	)	
	)	
CITY OF WENDELL, <i>et al.</i>	)	<u>NOTICE OF APPEAL</u>
	)	
Defendants.	)	

\*\*\*\*\*

TO: James J. Davis, attorney for Defendants, and to the Clerk of the above-entitled Court:

1. The Plaintiff/Appellant appeals against the Defendants/Respondents to the Idaho Supreme Court from the Order on Motion to Strike Portions of the Affidavit of Carol A. Boudreau and Order on Motion to Dismiss, or in the Alternative, Motion for Summary

ORIGINAL

Judgment entered on the 25<sup>th</sup> day of January, 2008, the Honorable R. Barry Wood, presiding.

2. The Appellant has a right to appeal to the Supreme Court, and the judgments or orders described in paragraph 1 above are appealable orders under and pursuant to I.A.R.

11(a)(1).

3. A preliminary statement of the issues on appeal which the appellant then intends to assert in the appeal include, but are not limited to, the following:

(A) Whether the Court erred in granting Defendant's Motion to Strike Portions of the Affidavit of Carol A. Boudreau and Defendant's Motion to Dismiss, or in the Alternative, Motion for Summary Judgment

4. A reporter's transcript is requested.

5. The appellant requests the documents included in the Clerk's Record automatically under I.A.R. 28.

6. I certify:

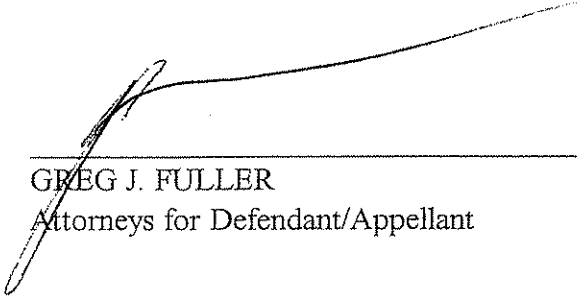
(A) A copy of this Notice of Appeal has been served on the reporter.

(B) Appellant will deposit the estimated sum of the report's transcript and fees with the Clerk of the Court, Gooding County, Idaho, within fourteen (14) days, and will pay any remaining funds to pay for the Clerk's Record, if further funds are necessary.

(C) Service has been made on all parties required to be served pursuant to Rule 20.

DATED This 5<sup>TH</sup> day of March, 2008.

FULLER LAW OFFICES

  
GREG J. FULLER  
Attorneys for Defendant/Appellant

CERTIFICATE OF MAILING

I, the undersigned, do hereby certify that on the 5<sup>th</sup> day of March, 2008, a true and correct copy of the foregoing Notice of Appeal was mailed, United States Mail, to the following:

James J. Davis  
Attorney at Law  
P.O. Box 1517  
Boise, ID 83701

Gooding County Clerk  
P. O. Box 477  
Gooding, ID 83330

Linda Ledbetter  
PO Box 27  
Gooding, ID 83330

  
RANEE M. MARSING

**Greg J. Fuller**  
**Daniel S. Brown**  
**FULLER LAW OFFICES**  
 Attorneys at Law  
 161 Main Avenue West  
 P. O. Box L  
 Twin Falls, ID 83303  
 Telephone: (208) 734-1602  
 Facsimile : (208) 734-1606  
 ISB # 1442  
 ISB #7538

DISTRICT COURT  
 GOODING CO. IDAHO  
 FILED

2008 MAR 31 AM 10:47

GOODING COUNTY CLERK

BY:  DEPUTY

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
 STATE OF IDAHO, IN AND FOR THE COUNTY OF GOODING

\*\*\*\*\*

CAROL A. BOUDREAU,	)	Case No. CV-2007-0000607
	)	
Plaintiff,	)	Filing Fee Category: T
	)	\$101.00
vs.	)	
	)	<u>AMENDED</u>
CITY OF WENDELL, <i>et al.</i>	)	<u>NOTICE OF APPEAL</u>
	)	
Defendants.	)	

\*\*\*\*\*

TO: James J. Davis, attorney for Defendants, and to the Clerk of the above-entitled Court:

1. The Plaintiff/Appellant appeals against the Defendants/Respondents to the Idaho

Supreme Court from the Order on Motion to Strike Portions of the Affidavit of Carol A. Boudreau and Order on Motion to Dismiss, or in the Alternative, Motion for Summary Judgment entered on the 25<sup>th</sup> day of January, 2008, the Honorable R. Barry Wood, presiding.

2. The Appellant has a right to appeal to the Supreme Court, and the judgments or orders described in paragraph 1 above are appealable orders under and pursuant to I.A.R.

11(a)(1).

3. A preliminary statement of the issues on appeal which the appellant then intends to assert in the appeal include, but are not limited to, the following:

(A) Whether the Court erred in granting Defendant's Motion to Strike Portions of the Affidavit of Carol A. Boudreau and Defendant's Motion to Dismiss, or in the Alternative, Motion for Summary Judgment

4. A reporter's transcript is requested of the Motion for Summary Judgment hearing which was conducted on December 18, 2007.

5. The appellant requests the documents included in the Clerk's Record automatically under I.A.R. 28.

6. I certify:

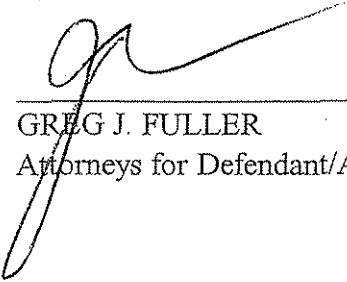
(A) A copy of this Notice of Appeal has been served on the reporter, Linda Ledbetter, by mailing same to 570 Rim View Drive, Twin Falls, Idaho 83301.

(B) Appellant will deposit the estimated sum of the report's transcript and fees with the Clerk of the Court, Gooding County, Idaho, within fourteen (14) days, and will pay any remaining funds to pay for the Clerk's Record, if further funds are necessary.

(C) Service has been made on all parties required to be served pursuant to Rule 20.

DATED This 29<sup>th</sup> day of March, 2008.

FULLER LAW OFFICES



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GREG J. FULLER  
Attorneys for Defendant/Appellant


CERTIFICATE OF MAILING

I, the undersigned, do hereby certify that on the 29<sup>th</sup> day of March, 2008, a true and correct copy of the foregoing Notice of Appeal was mailed, United States Mail, to the following:

James J. Davis  
Attorney at Law  
P.O. Box 1517  
Boise, ID 83701

Gooding County Clerk  
P. O. Box 477  
Gooding, ID 83330

Linda Ledbetter  
570 Rim View Drive  
Twin Falls, ID 83301



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RANEE M. MARSING



# In the Supreme Court of the State of Idaho

CAROL A. BOUDREAU, )

Plaintiff-Appellant. )

v. )

CITY OF WENDELL, DON BUNN, RICK )  
COWEN, RICK HOUSER, JASON HOUSER, )  
ILENE ROUNSEFELL, REX STRICKLAND, )

Defendants-Respondents. )

ORDER GRANTING  
STIPULATION TO AUGMENT  
AND RESET BRIEFING  
SCHEDULE

Supreme Court Docket No. 35077  
Gooding County Case No. 2007-607

A MOTION TO AUGMENT/MOTION TO STAY BRIEFING SCHEDULE with attachments was filed by counsel for Appellant on September 15, 2008. Further, a STIPULATION TO AUGMENT was filed by counsel for the parties on September 15, 2008. Therefore, good cause appearing,


IT HEREBY IS ORDERED that the MOTION and STIPULATION TO AUGMENT be, and hereby is, GRANTED and the augmentation record shall include the documents listed below, file stamped copies of which accompanied the Motion, as EXHIBITS:

1. Memorandum in Opposition to Defendants' Motion to Dismiss or, in the alternative, Motion for Summary Judgment, file stamped December 3, 2007; and
2. Affidavit of Carol A. Boudreau in Opposition to Defendants' Motion for Summary Judgment with attachments, file stamped December 3, 2007.

IT FURTHER IS ORDERED that as to the BRIEFING SCHEDULE, the due date for APPELLANT'S BRIEF SHALL BE RESET and Appellant's Brief shall be filed with this Court on or before seven (7) days of the date of this Order.

DATED this 9<sup>th</sup> day of October 2008.

For the Supreme Court

  
\_\_\_\_\_  
Stephen W. Kenyon, Clerk

cc: Counsel of Record

ORDER GRANTING STIPULATION TO AUGMENT AND RESET BRIEFING SCHEDULE

**EXHIBIT LIST**

BOUDREAU VS CITY OF WENDELL  
Gooding County Case #CV 2007-607  
Supreme Court Case #35077

(No Exhibits offered or admitted)

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF GOODING

BOUDREAU, CAROL A. )  
Plaintiff/Appellant, )  
vs. ) Supreme Court No. 35077  
CITY OF WENDELL, )  
Defendant/Respondent. )  
CLERKS CERTIFICATE

---

I, Cynthia R. Eagle-Ervin, Deputy Clerk of the District Court of the Fifth Judicial District, of the State of Idaho, in and for the County of Gooding, do hereby certify that the above and foregoing Record in the above entitled cause was compiled and bound under my direction as, and is a true, full and correct Record of the pleadings and documents as are automatically required under Rule 28 of the Idaho Appellate Rules.

I, do further certify that all exhibits offered or admitted in the above entitled cause will be fully lodged with the Clerk of the Supreme Court along with the Court Reporter's Transcript and the Clerk's Record as required by Rule 31 of the Idaho Appellate Rules.

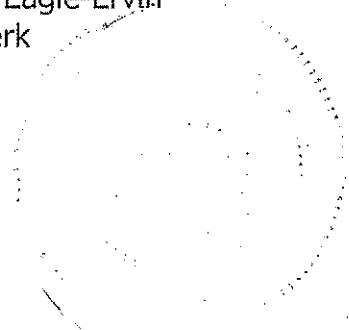
IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 28th day of May, 2008.

Clerk of the District Court

By: 

Cynthia R. Eagle-Ervin  
Deputy Clerk

CLERK'S CERTIFICATE



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF GOODING

\*\*\*\*\*

BOUDREAU, CAROL A.	)	
Plaintiff/Appellant,	)	
	)	Supreme Court No. 35077
vs.	)	
	)	CERTIFICATE OF SERVICE
	)	
CITY OF WENDELL,	)	
Defendant/Respondent.	)	

I, Cynthia Eagle-Ervin, Deputy Clerk of the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Gooding, do hereby certify that I have personally served or mailed, by United States mail, one copy of the Clerk's Record and the Court Reporter's Transcript, and any Exhibits offered or admitted to each of the Attorneys of Record in this case as follows:

Daniel Brown  
FULLER LAW OFFICES  
P.O. Box L  
Twin Falls, ID 83303

James J. Davis  
Attorney at Law  
P.O. Box 1517  
Boise, ID 83701

IN WITNESS WHEREOF, I have hereunto **set my hand and affixed the seal** of said Court this 28TH day of May, 2008.

CLERK OF THE DISTRICT COURT

By:



C. R. Eagle-Ervin, Deputy Clerk

CERTIFICATE OF SERVICE

