

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OTTAWA

DANIEL ZIMMER

Case No: 24-8070-CZ

Plaintiff,

Hon. Scott A. Noto

v.

**OTTAWA COUNTY and
OTTAWA COUNTY BOARD OF COMMISSIONERS,**

Defendants.

FIRST AMENDED COMPLAINT AND JURY DEMAND

Plaintiff Daniel Zimmer, by and through his attorneys, Pinsky Smith, PC, states as follows for his First Amended Complaint, and relies upon his prior Jury Demand:

JURISDICTION, VENUE, AND PARTIES

1. This is an action seeking to remedy violations of the Open Meetings Act, MCL 15.263 *et seq.* (“OMA”).
2. Plaintiff Daniel Zimmer is an individual who resides in Ottawa County.
3. Defendant Ottawa County Board of Commissioners (“the Commission”) is the governing county commission for Ottawa County, organized under state law.
4. Defendant Ottawa County (“the County”) is a local unit of government organized pursuant to the State of Michigan. It is the seventh largest county within

the State of Michigan.

5. The acts that are the subject of this action occurred in Ottawa County, Michigan.

6. This matter is within the jurisdiction of this Court.

FACTUAL ALLEGATIONS

7. The OMA requires that “[a]ll decisions of a public body must be made at a meeting open to the public.” MCL 15.263(2). The statute further requires that, with limited exceptions, “[a]ll deliberations of a public body constituting a quorum of its members shall take place at a meeting open to the public.” MCL 15.263(3).

8. The OMA provides that “[a] decision made by a public body may be invalidated if the public body has not complied with the requirements of section 3(1), (2), and (3) in making the decision.” MCL 15.270(2). Thus, a decision may be invalidated if a public body did not make the decision at a public meeting or if the public body engaged in deliberations outside a public meeting.

9. The OMA specifically enumerates the circumstances under which a public body may deliberate outside a public meeting. MCL 15.268. One example is that a public body may go into closed session to “consider the dismissal, suspension, or disciplining of, or to hear complaints or charges brought against, or to consider a periodic personnel evaluation of, a public officer, employee, staff member, or individual agent, if the named individual requests a closed hearing.” MCL 15.268(1)(a).

10. The Commission met for its regular December meeting on December

10, 2024. The Commission released the agenda for that meeting on the evening of December 9, 2024.

11. The agenda included a motion “[t]o go into closed session pursuant to MCL 15.268(1)(a) to consider the dismissal, suspension, or disciplining of, or to hear complaints or charges brought against, or to consider a periodic personnel evaluation of, a public officer, employee, staff member, or individual agent, as requested by Senior Executive Aide Jordan Epperson (requires 2/3 vote).”

12. The agenda further included a motion “[t]o go into closed session pursuant to MCL 15.268(1)(a) to consider the dismissal, suspension, or disciplining of, or to hear complaints or charges brought against, or to consider a periodic personnel evaluation of, a public officer, employee, staff member, or individual agent, as requested by Interim Administrator Benjamin R. Wetmore (requires 2/3 vote).”

13. In August 2023, former County Administrator John Gibbs hired Epperson to serve as a senior executive aide. The position was created earlier that year by upgrading an existing role and significantly increasing the pay. The County’s hiring committee chose a different candidate who the committee determined was better qualified for the job, but Gibbs overruled the committee and hired Epperson. The other candidate selected by the hiring committee who did not receive the position filed an age discrimination lawsuit against the County, which the County later settled for \$225,000.

14. In November 2023, Gibbs hired Wetmore to serve as the County’s

Deputy Administrator. Wetmore, a lawyer, former partisan legislative aide, and political activist, had no prior experience in public administration. Wetmore was named the Interim County Administrator in October 2024 when the County Administrator position became vacant.

15. Both Epperson and Wetmore were supported by Commissioners affiliated with Ottawa Impact (“OI”), a far-right Political Action Committee that the Commission’s Chairperson, Joe Moss, founded and continues to lead.¹ Candidates who ran for the Commission under the OI label won a majority of seats in the November 2022 election and held a 6-vote majority on the 11-member Commission (the “OI-affiliated Commissioners”) in 2024.

16. However, OI-affiliated Commissioners lost a majority of seats on the Commission in the November 2024 election. Only four OI-affiliated Commissioners were re-elected to the Commission for terms beginning in January 2025, which put them in a minority voting bloc for the 2025-2026 term.

17. On December 10, 2024, the Commission was not considering the dismissal, suspension, or discipline of either Epperson or Wetmore, and there were no pending complaints or charges against either of them. Furthermore, it was not the time for their periodic personnel evaluations, nor had such an evaluation been completed for any reason.

¹ Moss was the Chairperson for the Defendant Commission for the 2023-2024 term. Although Moss was not elected Chairperson when the new Commission took office in 2025, the Complaint will refer to him as Chairperson Moss to reflect his status during the events at issue.

18. Upon information and belief, Epperson, Wetmore, and the OI-affiliated Commissioner majority anticipated it was a possibility that the new Commission in January 2025 might terminate Epperson and/or Wetmore's employment. Further, Commission Chair Moss intended to champion the County offering Epperson and Wetmore lucrative severance agreements in closed session. Severance agreements also typically provide for the departing employee's release of any and all claims that he or she could have against the employer.

19. There was no legal or factual basis for either Epperson or Wetmore to sue the County if the County terminated their employment in 2025.

20. Moreover, the OMA allows a public body to go into closed session only to discuss pending litigation – not threatened litigation.

21. Despite having no lawful basis to go into closed session under OMA, the Commission voted on December 10, 2024 to go into closed session to discuss Epperson. After meeting in closed session, the Commission returned to open session and voted for “the [County] Clerk and [Commission] Chair to sign and authorize a separation and release agreement” for Epperson. There was no public discussion about the agreement prior to the vote, and the Commission did not disclose any details about the terms of the agreement.

22. Thereafter, the Commission voted to go into closed session to discuss Wetmore, despite having no lawful basis to go into closed session under the OMA. Upon return to open session, the Commission voted for “the [County] Clerk and [Commission] Chair to sign and authorize a separation and release agreement” for

Wetmore. There was no public discussion about the agreement prior to the vote, and the Commission did not disclose any details about the terms of the agreement.

23. Defendants did not make the terms of the two severance agreements public at that time of the public meeting on December 10, 2024.

24. A local news reporter, Sarah Leach, made a Freedom of Information Act request for the severance agreements, and she published them on December 16, 2024. The Epperson and Wetmore severance agreements, as signed by Chair Moss and published by Ms. Leach, are attached as Exhibit A. The County agreed to make total payments under both agreements of more than \$280,000, not including the cost of providing health insurance to Epperson in his agreement. Per the agreements, the County had to pay those amounts in a lump sum by December 17, 2024, even though Epperson and Wetmore were to work until January 1, 2025. Being paid the value of a severance agreement prior to ending work is an extremely unusual feature of such an agreement.

25. The severance agreements also required Wetmore and Epperson to relinquish control of any County confidential information as of the day that they signed the agreements.

26. Moss made a public statement after the Commission meeting that the Commission approved the severance agreements “[t]o help facilitate a smooth transition,” and that “[i]f anyone—including the press, tries to malign [Epperson and Wetmore] or say they were fired, that is completely false.” Moss went on to state that Epperson and Wetmore “are valued employees who will continue to serve

the county through the end of the year.”

27. Moss’s statements confirm that the purpose of the closed session was not to discuss dismissal or discipline of Epperson and Wetmore, nor for any other permitted purposes under the OMA. Other commissioners also confirmed in public statements that the Commission never discussed the dismissal of Epperson and Wetmore during the closed session.

28. Upon information and belief, during the closed session, Chairperson Moss stated that the County’s employment attorney – Nathaniel Wolf of the Mika Meyers law firm – had advised the Commission that Epperson had valid legal claims that could subject the County to “millions” of dollars in liability. According to public statements by Commissioner Bonnema after the meeting, Chairperson Moss had lobbied other Commissioners for an extravagant severance, allegedly to avoid what Moss claimed was a potential lawsuit that could leave the County liable for “millions” of dollars. Moss invoked the County employment attorney’s name to establish credibility for his argument, stating directly or indirectly that Attorney Wolf had provided the legal advice that Epperson and Wetmore had potentially valuable liability claims against the County.

29. Upon information and belief, Chairperson Moss’s statements were false, and the County’s employment attorney never said that Wetmore or Epperson had valid legal claims or that the County could be liable for a significant amount to either individual without executing severance agreements with them.

30. On December 16, 2024, Plaintiff filed his original complaint in this

suit, seeking invalidation of the Wetmore and Epperson severance agreements and other relief based on an OMA claim that Defendants violated OMA by meeting in closed session, and violated OMA by voting to approve agreements when the terms of those agreements were not publicly announced in open session as part of the approval vote.

31. On December 17, 2024, Wetmore requested an update from the County's Human Resources (HR) Department about the status of the background check for the newly-selected HR Director. Wetmore was not permitted access to that information, which was confidential, under the terms of his severance agreement, which he had already signed at that point. An HR employee emailed Corporation Counsel seeking advice, and Chairperson Moss responded that he would ask the Commission to amend the agreements to resolve the issue.

32. The Commission then noticed a meeting for December 19, 2024. The agenda for that meeting included the re-approval of the separation agreements with Epperson and Wetmore that the Board passed on December 10, 2024, as well as approval of amended separation agreements that would allow Wetmore and Epperson to access confidential information through the remainder of their employment with the County.

33. At the December 19, 2024 meeting, Chairperson Moss urged the Commission to reenact the Epperson and Wetmore severance agreements, citing MCL 15.270(5), which is an OMA provision.

34. MCL 15.270(5) of the OMA provides that “[i]n any case where an

action has been initiated to invalidate a decision of a public body on the ground that it was not taken in conformity with the requirements of this act, the public body may, without being deemed to make any admission contrary to its interest, *reenact the disputed decision in conformity with this act.*” (Emphasis added.)

35. During the discussion of the severance agreements, Commissioner Bonnema tried to discuss in open session the statements that Moss and others made during the previous closed-session deliberations. Upon information and belief, those statements were central to the decision of some members of the Commission to vote in favor of the severance agreements.

36. Chairperson Moss admonished Commissioner Bonnema for discussing the closed-session deliberations. Upon Chairman Moss’s request, Corporation Counsel advised Commissioner Bonnema that he could not discuss any of the closed-session deliberations publicly.

37. Chairman Moss cut off and ended discussion about the severance agreements in the December 19, 2024 public meeting, while conceding that there had been “a lot of discussions” about the agreements in closed session of the prior meeting. Moss directed the Commissioners to vote on whether to approve the severance agreements “based on everything that the Board has already had discussions on[,]” presumably referring to the deliberations in closed session.

38. The Commission voted to approve the severance agreements by a vote of 6-5, with three Commissioners changing their vote from the previous meeting. The Commissioners did not state why they had changed their vote, presumably

because Corporation Counsel had previously advised that they could not reveal closed-session deliberations through discussion in the public meeting.

39. The Commission has never agreed to release the closed session minutes. Moreover, Chairperson Moss and Corporation Counsel have instructed members of the Commission that they may not discuss the closed-session deliberations.

40. The second approval of the original severance agreements on December 19, 2025, did not serve as a proper, lawful reenactment of the decisions made at the previous meeting. MCL 15.270(5) requires a public body to reenact a disputed decision in conformity with the OMA. The Commission only meaningfully deliberated the severance agreements in closed session on December 10, 2024, rather than in an open session on December 19, 2024, as required by the OMA. The Commission has not released the minutes of the closed session from December 10, 2024. Thus, the December 19, 2024 decision to approve the severance agreements without deliberations in open session or release of the closed session minutes was not made in conformity with the OMA.

41. Following its vote to re-approve the original severance agreements, the Commission then voted to approve an amended version of the severance agreements for Wetmore and Epperson that would allow them to continue to access confidential information. These amended severance agreements are attached as Exhibit B. The approval of the amended severance agreements was still unlawful under the OMA for the same reasons that the first and second enactments of the original severance

agreements were unlawful: the decision to approve this minor change was made without permitting substantive deliberations in open session on December 19, 2024, and without releasing of the closed session minutes from December 10, 2024.

42. Before the December 19, 2024 meeting concluded, an HR employee sent an email to the Commissioners notifying them that Wetmore had asked the newly-hired HR Director to report to work that day even though his background check had not been completed. The email noted that this was a clear violation of County policy and put the County at risk because the new HR Director could access confidential information before he passed a background check and was deemed eligible for employment by the County.

43. It is highly unusual for an employer to agree to make severance payments to a departing employee prior to that employee's last day of work, and it is potentially disadvantageous to the employer to do so for a variety of reasons. Nonetheless, Chairperson Moss pushed for the County Treasurer to make immediate payment on both severance agreements as of December 17, 2024, which was the earliest date that payment could be made once Wetmore and Epperson signed them on December 10, 2024 and once a seven-day waiting period had passed for the release of claims to become effective and enforceable.

44. Chairman Moss's advocacy for the severance agreements upon the terms offered, including the size of the payments; his false representation and/or misleading insinuation about Attorney Wolf's position; and his demand that immediate payment be made on the severance agreements were all acts which were

contrary to the best interests of the County. Upon information and belief, Chairperson Moss pushed for immediate payment on or about December 17, 2024 to Epperson and Wetmore in an attempt to make it impossible as a practical matter for the agreements to be effectively rescinded if a court later invalidated them.

COUNT I – VIOLATION OF THE OPEN MEETINGS ACT, MCL 15.261 et seq.

45. Plaintiff relies on the allegations of all prior paragraphs, as if they were restated herein.

46. The OMA applies to county boards of commissioners. MCL 46.1(2).

47. The OMA requires that all deliberations and decisions of a public body must take place at a public meeting in an accessible place open to the general public at which a person can address the meeting. MCL 15.263(1).

48. The OMA requires that all deliberations of a public body constituting a quorum of its members must generally take place at a meeting open to the public. MCL 15.263(3).

49. The OMA does not allow a public body to go into closed session to discuss a severance contract unless other circumstances exist, such as pending litigation or complaints or charges against an employee.

50. Defendants did not have a valid, lawful reason to go into closed session to discuss severance agreements with Epperson and Wetmore.

51. The OMA required any deliberation about severance agreements for Epperson and Wetmore to occur in a public meeting.

52. Defendants' decision to discuss the severance agreements for Epperson and Wetmore in closed session violated the OMA.

53. After Defendants left their closed session meeting on December 10, 2024, they disclosed to the public only that they agreed by their vote to provide a "separation and release agreement" for Epperson and Wetmore. They did not provide the public with any terms of the severance agreements that the Board purported to vote to authorize offering to Epperson and Wetmore.

54. In failing to disclose terms of the agreements with Epperson and Wetmore, and the deliberations that they had prior to the vote, Defendants also violated OMA's requirement that all decisions of a public body take place in a public meeting.

55. Defendants' violation of the OMA was intentional.

56. The Commission failed to lawfully approve any enforceable severance agreement with Epperson or Wetmore on December 10, 2024 since their votes violated OMA because their deliberations were not in open session and they did not provide any details about the agreements or the decisions being made in the open meeting.

57. The Commission failed to lawfully reenact their decisions to enter into the severance agreements at the December 19, 2024 meeting because the decisions were not in conformity with the OMA. In particular, the deliberations over the severance agreements have not been conducted in an open meeting, as required by

the OMA, and the Commission did not publicly disclose the closed-session minutes prior to their attempt to reenact the decisions.

58. Accordingly, Plaintiff is entitled to relief under Section 10, 11 and 13 of Open Meetings Act, MCL 15.271.

RELIEF SOUGHT

WHEREFORE, Plaintiff requests that the Court grant the following relief:

59. Compel Defendants to produce the minutes of the closed session on December 10, 2024 for the Court's *in camera* inspection;

60. Order the disclosure of the minutes of the closed session on December 10, 2024 to the parties and the public;

61. Declare that Defendants have violated the Open Meetings Act;

62. Compel Defendants to comply with the Open Meetings Act;

63. Enjoin further non-compliance with the Open Meetings Act;

64. Invalidate all decisions of the Commission to approve agreements with Epperson and Wetmore on both December 10 and December 19, 2024; and order any and all equitable remedies still available to effectuate the invalidation of these agreements;

65. Award Plaintiff actual and exemplary damages;

66. Award Plaintiff costs and reasonable attorney fees; and

67. Award Plaintiff such other relief as may be just and equitable.

PINSKY SMITH, PC
Attorneys for Plaintiff

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Dated: March 7, 2025

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