

IN THE IOWA DISTRICT COURT IN AND FOR POLK COUNTY

LATRICE LACEY,  
Petitioner,

v.

CITY OF DAVENPORT,  
Respondent.

WJC  
NEW  
TAK  
1420  
05771 CVCV057494

RESPONDENT'S RULE 1.421  
PRE-ANSWER MOTION  
MOTION TO DISMISS

COMES NOW the City of Davenport<sup>1</sup>, by and through its attorneys, and pursuant to Iowa Rule of Civil Procedure 1.421 hereby moves the Court for a Dismissal of this action, and in support thereof states:

1. Subject matter jurisdiction is lacking because the petitioner did not timely file her petition as required by law.

Regardless of the correct avenue for Petitioner's challenge – Chapter 17A Judicial Review as the petition alleges or writ of certiorari – petitioner had thirty (30) calendar days to file her petition. See, Iowa Code Section §17A.19(3) and Iowa Rule of Civil Procedure 1.1402(3). In computing time, the first day is excluded and the last day is included unless the last day falls on a Sunday or holiday in which case the time is extended to the next day. Petitioner received the City of Davenport ruling on December 4, 2018 and did not file her petition in Polk County until January 4, 2019. That means December 5<sup>th</sup> was day one, which means January 3<sup>rd</sup> was day thirty (30). January 4<sup>th</sup> – the day she filed her petition – was day thirty-one (31).

<sup>1</sup> The City of Davenport makes this limited appearance upon receiving an Order Establishing Schedule for Conduct of Proceeding entered by the Polk County District Court on January 14, 2019, which came in an envelope postmarked January 15, 2019, and which was received on January 17, 2019. Upon receipt of the Court's mailed Order the City of Davenport was able to obtain a copy of the subject Petition for Judicial Review through EDMS as it had not been served upon the City of Davenport. See, paragraph 6, below.

Timely petition for judicial review to the district court is a jurisdictional prerequisite for review of final agency action. Sharp v. Iowa Dept. of Job Service, 492 N.W.2d 668, 669, (Iowa 1992).

Untimely petition for writ of certiorari deprives the reviewing court of subject matter jurisdiction. Sergeant Bluff-Luton School Dist. V. City Council of City of Sioux City, 605 N.W.2d 294, 297, (Iowa 2000).

By filing on her petition on the 31<sup>st</sup> day, petitioner's action is untimely. Her failure to timely file her petition deprives the court of subject matter jurisdiction.

2. Even if plaintiff had filed her petition in a timely manner, pursuant to Iowa Code §616.3(2) and §616.16, the Polk County District Court lacks jurisdiction of the case as actions against public officers are to be brought "in the county where the cause, or some part of it arose" and actions against municipalities "must be brought in the county and at the place where court is held nearest to where the cause or subject of the action originated."

An appeal to the State Appeal Board from school board's determination of its budget and levy arose in county in which school district was located and not in county in which the state capitol was located. State Appeal Bd. v. District Court of Pottawattamie County, 280 N.W. 525, 527-528 (Iowa 1938).

3. Venue of this matter is not proper in Polk County. Petitioner has cited Iowa Code §17A.19(2) in support of her claim that venue in Polk County is proper. However, Iowa Code Chapter 17A, by definition, is only applicable to the "operation of all state agencies." See, Iowa Code §17A.1(1). "Agency" as defined in §17A.2(1) expressly excludes "a political subdivision" such as the City of Davenport, the sole-named Respondent in this matter. Thus, this cannot be an Iowa Code Chapter 17A matter.

a. For argument's sake, if Chapter 17A were applicable to this matter, Petitioner failed to timely serve notice upon Respondent. Iowa Code §17A.19(2) mandates service "Within ten days after the filing of the petition for judicial review . . . by the means provided in the Iowa rules of civil procedure for the personal service of an original notice, or shall mail copies of the petition to all parties named in the petition, if the petition involves review of agency action in a contested case, all parties of record in that case before the agency. Such personal service or mailing is jurisdictional." Petitioner filed her petition for judicial review on January 4, 2019 and failed to serve it upon the City of Davenport until January 17, 2019. Thus, if this were a 17A action for judicial review petitioner's failure to serve the petition within the statutory time frame acts to deprive the court of jurisdiction.<sup>2</sup> Because this matter does not involve a Chapter 17A petition for judicial review, petitioner's method of service is altogether improper.

4. Petitioner has failed to serve and provide original notice to Respondent as required by Iowa Rule of Civil Procedure 1.302.

5. Petitioner has failed to serve and provide any notice to Respondent as required by Iowa Rule of Civil Procedure 1.305.

6. Petitioner certified in her certificate of service that she "served upon the attorneys of record<sup>3</sup> for each party to the above entitled cause at the address shown

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<sup>2</sup> On January 17, 2019, petitioner filed an "Amended Affidavit of Mailing" in which she certifies that ". . . on January 17, 2019, she mailed the Petition for Judicial Review and Original Notice in this matter to the City of Davenport . . . pursuant to Iowa Code 17A.19(2)." Her mailing was postmarked January 17, 2019. Based upon the four corners of petitioner's Amended Affidavit of Mailing she has failed to serve her petition for judicial review "within ten days after the filing of the petition" as mandated by Iowa Code §17A.19(2). In addition, petitioner's purported affidavit is improper and insufficient.

<sup>3</sup> Contrary to the petitioner's assertion, Mr. Warner did not participate in the city's administrative hearing was never an attorney of record in that proceeding. See, attachment to petitioner's Petition for Judicial Review.

below on January 3, 2019: City of Davenport, Attn: Tom Warner, 226 W. 4<sup>th</sup> Street, Davenport, Iowa 52801, Telephone: 563-326-7711, Email: [tdw@ci.davenport.ia.us](mailto:tdw@ci.davenport.ia.us), BY: X Email /s/ Latrice Lacey”. Email is not one of the authorized methods of service under Chapter 17A and it is not one of the authorized methods of service of original notice. See, §17A.19(2) and Iowa Rule of Civil Procedure 1.305.

Contrary to the petitioner’s certified statement that she served her petition for judicial review by sending an email to Tom Warner,

a. As shown by the attached affidavits, no email has been received by Tom Warner from the Petitioner’s stated email address: [llacey21@gmail.com](mailto:llacey21@gmail.com) at his stated email: [tdw@ci.davenport.ia.us](mailto:tdw@ci.davenport.ia.us) on January 3, 2019, or since that date. He has, in fact, only ever received one email from her stated email address which was received on May 15, 2017.

b. Neither Respondent nor Tom Warner has consented in writing to service by email. In addition, such consent, if given, would only apply to pleadings after service of original notice and process in accord with Iowa Rule of Civil Procedure 1.302 and 1.305.

7. Petitioner has filed this matter as a pro se litigant. Petitioner is, however, a licensed attorney authorized to practice law in the State of Iowa. Further, Petitioner is employed as the Director of the City of Davenport Civil Rights Department and in that capacity has or should have familiarity with Iowa Code Chapter 17A; and knows, or should know, of the inapplicability of Chapter 17A of the Iowa Code to this matter.

WHEREFORE, based upon the foregoing arguments establishing lack of jurisdiction based upon untimely filing of appeal depriving the Court of jurisdiction, lack of subject matter jurisdiction by improper filing, improper venue, and improper service,

the Respondent, the City of Davenport, prays for an Order from the Court dismissing petitioner's petition with prejudice and assessing all costs associated with this action to the petitioner.

The City of Davenport



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Latrice Lacey served through EDMS.