

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF WASHINGTON

STATE OF IDAHO ex rel. TRUE PEARCE,
WASHINGTON COUNTY PROSECUTING
ATTORNEY,

Plaintiff,

vs.

DELTON LARY WALKER,

Defendant.

Case No. CV44-25-0154

**MEMORANDUM DECISION AND
ORDER ON MOTIONS FOR
RECONSIDERATION**

In this case Plaintiff, True Pearce, the Washington County Prosecuting Attorney, brings a complaint on behalf of the State of Idaho, alleging that Defendant, Delton Walker, usurped and/or intruded into his office. Mr. Walker moved for partial summary judgment and that motion was granted in part and denied in part. Both parties filed motions for reconsideration.

I. BACKGROUND

Mr. Walker served as the elected Prosecuting Attorney for Washington County from January 2009 to January 12, 2025. He did not run for reelection in 2024. True Pearce was elected and took office on January 13, 2025. While Mr. Walker was the Washington County Prosecuting Attorney, a dispute arose about the proper legal interpretation and application of a portion of the

Washington County Code that regulates the development of 20-acre parcels. Some citizens sought and received a legal opinion from attorney Gary G. Allen (“Allen Memo”), a then partner at Givens Pursley, about that portion of the Washington County Code. On March 25, 2021, the Allen Memo was presented to the Board of County Commissioners of Washington County (“Board”). The Allen Memo did not resolve the issue and the disagreement continued. To advise the Board, Mr. Walker obtained a legal opinion from attorney Christopher Meyer (“Meyer Memo”), who is also a partner at Givens Pursley. The Allen and Meyer Memos reached different conclusions on the issue. On September 7, 2021, Mr. Walker tendered the Meyer Memo to the Board. Shortly after Mr. Pearce became the Washington County Prosecuting Attorney in 2025, he prepared a memorandum for the Board (“Pearce Memo”) addressing issues raised by the Allen Memo, Meyer Memo, and Mr. Walker’s previous legal analysis.

On April 17, 2025, Mr. Walker sent County Commissioner Nate Marvin a text that stated:

Hello Nate. I heard from (Name Withheld) about a few things that are going on with the county. I don’t want to interfere or cause problems but I thought you might want a copy of the Chris Meyer decision on 20-acre splits. I sent it to your MTE email.

Aff. of Delton Lary Walker, ¶ 29. The same day, Mr. Walker also sent an email to Commissioner Marvin and attached a copy of the Meyer Memo. In the email, Mr. Walker stated “I wanted to send this document to you just in case you don’t have a copy of it.” *Compl.*, Exhibit 4. The email identified Mr. Walker as an attorney at law at the Walker Law Office. Mr. Pearce brought this action against Mr. Walker alleging the usurpation of office of the Washington County Prosecutor.

II. APPLICABLE STANDARD

Pursuant to I.R.C.P. 11.2(b)(1), “[a] motion to reconsider any order of the trial court entered before final judgment may be made at any time prior to ... the entry of a final judgment.” The trial court should consider any new admissible evidence or authority bearing on the

correctness of an interlocutory order. *Summerfield v. St. Luke's McCall, Ltd.*, 169 Idaho 221, 234, 494 P.3d 769, 782 (2021) (quoting *Int'l Real Estate Sols., Inc. v. Arave*, 157 Idaho 816, 819, 340 P.3d 465, 468 (2014)).

For example, if the trial court's ruling was based on a misunderstanding of the record, or if there was material evidence in the record that either side failed to present to the court on summary judgment, the court must consider such evidence on reconsideration if it would affect the correctness of its original decision. However, *Ciccarello* allows the court discretion to not consider evidence which reasonably should have been made a part of the record sooner, but was not.

Id. (citing *Ciccarello v. Davies*, 166 Idaho 153, 162, 456 P.3d 519, 528 (2019)). When deciding a motion for reconsideration, "the district court must apply the same standard of review that the court applied when deciding the original order that is being reconsidered." *Id.* The underlying motion in this matter was a motion for summary judgment.

Pursuant to I.R.C.P. 56(a), a party may move for summary judgment by identifying each claim or defense, or the part of each claim or defense, on which summary judgment is requested. 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 a judgment as a matter of law." *Bronco Elite Arts & Athletics, LLC v. 106 Garden City, LLC*, 172 Idaho 506, 513, 534 P.3d 558, 565 (2023). The moving party bears the burden of establishing there is no genuine dispute of material fact. *Oswald v. Costco Wholesale Corp.*, 167 Idaho 540, 549, 473 P.3d 809, 818 (2020).

When applying this standard, this Court construes disputed facts in favor of the non-moving party, and all reasonable inferences that can be drawn from the record are drawn in favor of the non-moving party. Where the evidence reveals no disputed issues of material fact, then only a question of law remains.

Bronco Elite, 534 P.3d at 565 (internal quotations and citations omitted).

To survive summary judgment, "an adverse party may not rest upon the mere allegations or denials of that party's pleadings, but the party's response, by affidavits or as otherwise provided

in [I.R.C.P. 56], must set forth specific facts showing that there is a genuine issue for trial.” *Id.* The party “must support its assertion by citing particular materials in the record or by showing the materials cited do not establish the ... presence of a genuine dispute.” *Owen v. Smith*, 168 Idaho 633, 640, 485 P.3d 129, 136 (2021); I.R.C.P. 56(c)(1)(B). The non-moving party, therefore, “must submit more than just conclusory assertions that an issue of material fact exists.” *Bronco Elite*, 534 P.3d at 565-66 (quoting *Jenkins v. Boise Cascade Corp.*, 141 Idaho 233, 238, 108 P.3d 380, 385 (2005)). The non-moving party also “cannot rely on mere speculation, and a scintilla of evidence is insufficient to create a genuine issue of material fact.” *Agrisource, Inc. v. Johnson*, 156 Idaho 903, 907, 332 P.3d 815, 819 (2014).

“[W]here the evidentiary facts are undisputed and the trial court rather than a jury will be the trier of fact, summary judgment is appropriate despite the possibility of conflicting inferences because the court alone will be responsible for resolving the conflict between those inferences.” *Hoffer v. Callister*, 137 Idaho 291, 293, 47 P.3d 1261, 1263 (2002) (citing *Killinger v. Twin Falls Highway Dist.*, 135 Idaho 322, 325, 17 P.3d 266, 269 (2000)). (see also *Nelsen v. Nelsen*, 170 Idaho 102, 121, 508 P.3d 301, 320 (2022)). The Idaho Supreme Court has stated:

In reviewing summary judgment decisions, this Court has held that “[g]enerally, the trial court is not permitted to weigh the evidence or resolve controverted factual issues when ruling on a motion for summary judgment.” *Nelsen v. Nelsen*, 170 Idaho 102, 121, 508 P.3d 301, 320 (2022) (quoting *AID Ins. Co. v. Armstrong*, 119 Idaho 897, 900, 811 P.2d 507, 510 (Ct. App. 1991)). “Therefore ... even when there are no genuine issues of material fact between the parties[,] ‘[a] motion for summary judgment must be denied if the evidence is such that conflicting inferences can be drawn therefrom and if reasonable [jurors] might reach different conclusions.’ ” *Id.* (quoting *Riverside Dev. Co.*, 103 Idaho at 519, 650 P.2d at 661). “Such a rule is proper,” this Court has explained, “where the matter is to be tried to a jury, because even though evidentiary facts may be undisputed, those evidentiary facts may yield conflicting inferences as to what the ultimate facts of a case are.” *Id.* “If such conflicting inferences are possible, then summary judgment should not be granted as it would deprive the parties of the right to have the jury weigh the conflicting facts and make the decision.” *Id.* “However, where the facts are not disputed and the trial court, rather than a jury, will be the trier of fact, summary

judgment is appropriate, despite the possibility of conflicting inferences because the court alone will have to resolve the conflict between those inferences.” *Id.*

Erie Props., LLC v. Glob. Growth Holdings, Inc., No. 51266, 2025 WL 2457763, at *5 (Idaho Aug. 27, 2025).

III. DISCUSSION

In the Court’s decision, it granted summary judgment, in part, and held: (1) Mr. Walker did not usurp the office of the prosecuting attorney by obtaining a copy of Mr. Pearce’s Memo or by communicating with a county employee regarding the substantive legal analysis in that document; (2) Mr. Walker did not usurp or intrude into the office of the prosecuting attorney when he texted and emailed Commissioner Marvin about a legal memorandum on April 17, 2025; and (3) Mr. Walker did not usurp the office of the prosecuting attorney by implying to Kristy Burnett that he had the authority or influence over the County Planning and Zoning Department. The Court denied summary judgment, in part, and found: (1) a jury could find that Mr. Walker intruded into the office of the Washington County Prosecuting Attorney by holding himself out to the public as the Washington County Prosecuting Attorney by claiming on his firm’s website and his personal Facebook page that he was the elected prosecuting attorney after he left office; and (2) that a jury could find that Mr. Walker usurped or intruded into the office of the Washington County Prosecuting Attorney when he threatened Ms. Soper’s client with felony charges. Both Mr. Pearce and Mr. Walker filed motions for reconsideration.

A. Mr. Pearce’s Motion for Reconsideration

In Mr. Pearce’s motion, he argued that “[t]he prosecuting attorney is the exclusive legal advisor absent a properly recorded finding of necessity.” Mem. in Supp. of State’s Mot. to Recons. Mem. Decision and Order on Summ. J., p. 3. He further argued that Mr. Walker usurped the office of prosecuting attorney by giving legal advice to the Board.

Mr. Pearce's claim for usurpation of office is based upon Idaho Code § 6-602, which states, in relevant part, that a claim for usurpation of office,

.... may be brought in the name of the people of the state against any person who usurps, intrudes into, holds or exercises any office or franchise, real or pretended, within this state, without authority of law. Such action shall be brought by the prosecuting attorney of the proper county, when the office or franchise relates to a county, precinct or city, and when such office or franchise relates to the state, by the attorney general; and it shall be the duty of the proper officer; upon proper showing, to bring such action whenever he has reason to believe that any such office or franchise has been usurped, intruded into, held or exercised without authority of law. Any person rightfully entitled to an office or franchise may bring an action in his own name against the person who has usurped, intruded into, or who holds or exercises the same.

1. The Board can receive legal advice from attorneys outside the prosecuting attorney's office, and the Board may employ outside counsel when necessary.

Mr. Pearce argued that the Court incorrectly found that it is not the exclusive role of the prosecuting attorney to give legal advice to the Board and that the Board may employ counsel when necessary. He asserted that the Court's analysis was incorrect because it conflicts with the Idaho district court decision in *Kline v. Power County Board of Commissioners*, No. CV-2011-0248 & CV-2011-0279 (Sixth Judicial District 2012). He also argued that this Court's analysis is incorrect because the "county commissioners may only employ outside counsel upon a specific finding of necessity supported by factual findings in the record." Mem. in Supp. of State's Mot. to Recons. Mem. Decision and Order on Summ. J., p. 2.

In *Kline*, the county commissioners entered into a contract with outside counsel and the prosecuting attorney filed a petition for judicial review. The district court analyzed the county commissioners' decision and whether they properly made a finding of necessity before they employed outside counsel. The district court concluded that the Board had not properly made a finding of necessity and set aside the county commissioners' decision to hire outside counsel. The

Kline decision is not binding precedent on the Court. It is a district court opinion from the Sixth Judicial District and could be considered persuasive authority.

Kline is distinguishable from the case before this Court. The district court in *Kline* analyzed what procedure county commissioners need to follow to employ outside counsel. Here, the Board did not employ Mr. Walker to provide legal advice to the Board after he left office. Instead, Mr. Walker sent an unsolicited text and email to Commissioner Marvin. The district court in *Kline* did not address the issue of whether outside counsel usurped the office of the prosecuting attorney because that issue was not raised in the case. For these reasons, the Court does not find *Kline* to be persuasive in this case.

The Board can obtain legal advice from attorneys outside the prosecuting attorney's office. The Idaho Constitution clearly states that the Board can hire outside counsel: "[t]he county commissioners may employ counsel when necessary." ID CONST. art. XVIII, § 6. The Idaho Constitution established the authority of the Board to employ outside counsel when necessary. Mr. Pearce argued that the Board can only receive legal advice from a lawyer outside the prosecuting attorney's office when the Board makes a finding of necessity that is supported by factual findings on the record. ID CONST. art. XVIII, § 6. Article XVIII, § 6 of the Idaho Constitution does not say that. It only says that the Board "may employ counsel when necessary." ID CONST. art. XVIII, § 6. Regardless, what procedure the Board must follow to employ outside counsel is not an issue that this Court needs to resolve. The Board did not employ Mr. Walker to provide legal advice after he left office. Mr. Walker was not employed by the Board when he sent the unsolicited text and email to Commissioner Marvin. Article XVIII, § 6 of the Idaho Constitution did not prohibit Mr. Walker from sending the text and email to Commissioner Marvin or prohibit Commissioner Marvin or the Board from receiving those communications.

Mr. Pearce cited some of his statutory duties in support of his argument that only the prosecuting attorney can provide legal advice to the Board. “It is the duty of the prosecuting attorney: [t]o give advice to the board of county commissioners, and other public officers of his county, *when requested* in all public matters arising out of the public business entrusted to the care of such officers.” Idaho Code § 31-2604(3) (emphasis added). “The prosecuting attorney is the legal advisor of the board of commissioners; he must attend their meetings *when required*, and must attend and oppose all claims and accounts against the county when he deems them unjust or illegal.” I.C. § 31-2607 (emphasis added). Mr. Pearce is obligated to give the Board legal advice *when requested* and attend their meetings *when required*. These statutory duties are obligations of the prosecuting attorney. These statutes do not limit the Board’s ability to receive legal advice from other attorneys or prohibit Mr. Walker from sending the unsolicited text and email to Commissioner Marvin.

Mr. Walker disputes Mr. Pearce’s contention that the text and email to Commissioner Marvin was legal advice. Even if Mr. Walker provided legal advice to the Board when he emailed and texted Commissioner Marvin, both Commissioner Marvin and the Board were free to receive that legal advice. The text and email were not requested by the Board, and Mr. Walker was not employed by the Board to provide this advice after he left office. Mr. Walker was not prohibited from sending these communications. There is no factual or legal basis upon which to conclude that Mr. Walker usurped or intruded into the office of the prosecuting attorney in violation of Idaho Code § 6-602 by sending the unsolicited text and email to Commissioner Marvin.

2. Alternatively, even if only Mr. Pearce could provide legal advice to the Board, the Court finds that Mr. Walker did not usurp or intrude into the office of the Washington County Prosecutor when he texted and emailed Commissioner Marvin.

Even if Mr. Pearce were correct that only his office can provide legal advice to the Board, Mr. Walker's text and email to Commissioner Marvin do not rise to the level of usurpation of office. Under Idaho Code § 6-602 an action for usurpation of office "may be brought in the name of the people of the state against any person who usurps, intrudes into, holds or exercises any office or franchise, real or pretended, within this state, without authority of law."

Mr. Pearce alleged that Mr. Walker usurped and intruded into his office. The terms "usurps" and "intrudes into" are not defined in title 6, chapter 6 of the Idaho Code. So, their ordinary English meaning will be applied in this case. "Usurp" means "to seize and hold (office, place, functions, powers, etc.) in possession by force or without right." Usurps, Merriam Webster Dictionary, <https://www.merriam-webster.com/dictionary/usurps> (last visited February 22, 2026). "Intrude" means "to thrust oneself in without invitation, permission, or welcome." Intrudes, Merriam Webster Dictionary, <https://www.merriam-webster.com/dictionary/intrudes> (last visited February 22, 2026).

Mr. Walker argued that "a person [sic] discussing the law or expressing their legal opinion on a matter before the board of county commissioners simply does not constitute a usurpation of the office of the county prosecuting attorney." Def's Resp. to State's Mot. to Recons. Mem. Decision and Order on Summ. J., p. 6. The Court agrees. The facts are not in dispute on this issue. The parties have stipulated to a bench trial and this Court is the finder of fact. The Court alone will weigh the evidence and resolve any conflicting inferences, and it may do so on a motion for summary judgment. *See Erie Props., LLC*, at *5. In evaluating this evidence, the Court finds that Mr. Walker's unsolicited text and email to Commissioner Marvin are simply not enough to show

usurpation of office under Idaho Code § 6-602. By sending the text and email to Commissioner Marvin, Mr. Walker did not seize and hold the office of the prosecuting attorney and he did not thrust himself into the office without welcome. The Court finds that Mr. Walker did not usurp or intrude into the office of the Washington County Prosecutor when he texted and emailed Commissioner Marvin on April 17, 2025.

3. The Court did not previously find that usurpation of office was dependent on the commissioners' belief rather than Mr. Walker's actions.

Mr. Walker argued that the Courts decision:

... overlooks that usurpation focuses on whether the defendant performed functions of the office without any authority, not whether others believed he still held office. And by continuing to represent himself publicly as 'Washington County Prosecutor' and issuing legal opinions to county officials and citizens, Mr. Walker exercised powers reserved by statute and constitution to the prosecuting attorney.

Mem. in Supp. of State's Mot. to Recons. Mem. Decision and Order on Summ. J., p. 5.

The Court's previous decision that Mr. Walker did not usurp the office of the prosecuting attorney when he texted and emailed Commissioner Marvin after leaving office was not based on whether anyone believed Mr. Walker was still in office.

For all of the reasons stated above, Mr. Pearce's Motion for Reconsideration is denied.

B. Mr. Walker's Motion for Reconsideration

In his motion, Mr. Walker argued that he never threatened Ms. Soper's client with a felony charge after leaving office. He also asserted that statements on his personal Facebook page and law firm's website that he was the elected prosecuting attorney were true when they were made and cannot be a usurpation of office. Further, Mr. Walker objects to Mr. Pearce assertion of new claims in his brief in opposition to the motion for summary judgment that are outside of the scope of the claims alleged in the complaint. Specifically, he objects to the additional claims related to

his website, Facebook page, and Ms. Soper's client because they are not in the complaint. Mr. Walker again argued that his actions are protected under the First Amendment to the United States Constitution and under Article I, Section 9 of the Idaho Constitution. The Court does not reach that free speech argument because it finds that Mr. Walker did not violate Idaho Code § 6-602.

In his complaint, Mr. Pearce alleged that Mr. Walker usurped and intruded into his office when Mr. Walker obtained a copy of a legal memorandum Mr. Pearce sent to the Board, and when Mr. Walker emailed and texted Commissioner Marvin legal advice. In response to Mr. Walker's motion for partial summary judgment, Mr. Pearce further alleged that Mr. Walker usurped the office of the prosecuting attorney when he represented to Ms. Soper's client that he was the Washington County Prosecutor and threatened felony charges and that there were statements on Mr. Walker's website and Facebook page that indicated he was still the Washington County Prosecutor. These new allegations raised in response to Mr. Walker's motion for partial summary judgment were not pled in the complaint. At oral argument, counsel for Mr. Pearce clarified that these are not the focus of the case. Idaho Rule of Civil Procedure 8(a) sets the pleading requirements: "A pleading that states a claim for relief must contain: ... (2) a short and plain statement of the claim showing that the pleader is entitled to relief. ..." "Idaho's notice-pleading requirement, [sic] requires a pleading to put the adverse party on notice of the claims brought against it." *Fulfer v. Sorrento Lactalis, Inc.*, 171 Idaho 296, 301, 520 P.3d 708, 713 (2022) (internal citation omitted). The objection is sustained because these allegations were not pled in Mr. Pearce's complaint. In addition, the Court will address the merits of these assertions.

1. Mr. Walker did not threaten Ms. Soper's client with felony charges.

In Mr. Walker's motion, he argued that he did not threaten Ms. Soper's client with felony charges. Mr. Walker submitted a declaration of Ms. Soper in support. In that declaration, she

explained that she had been mistaken as to the context and timing of the threatened felony charges against her client. Counsel for Mr. Pearce conceded at oral argument that Mr. Walker did not threaten Ms. Soper's client with felony charges after leaving office.

2. Mr. Walker's statements on his law firm website and Facebook page were not a usurpation of the Office of the Washington County Prosecutor.

While Mr. Walker was in office, he wrote on his law firm's website and personal Facebook page that he was the elected Washington County Prosecuting Attorney. Mr. Walker's law firm website stated: "Delton Walker was elected Washington County Prosecutor in 2009. The Prosecutor position is part time allowing Mr. Walker to continue his private law practice as a family and community tradition of excellence." Decl. of Plaintiff True Pearce, Ex. 7. Mr. Walker's personal Facebook page under the "Intro" section stated, "Washington County Prosecutor at Washington County, Idaho." *Id.*, at Ex. 8. These statements were true when they were made. Mr. Walker did not alter these statements until several months after he left office. These facts are not disputed. In his briefing, Mr. Walker argued that these statements were true when made and, therefore, they cannot be usurpation of the office of the prosecuting attorney in violation of Idaho Code § 6-602.

The Court finds that these statements were not usurpation or intrusion into the office of the prosecuting attorney in violation of Idaho Code 6-602. The parties have stipulated to a bench trial and this Court is the finder of fact. The Court alone will weigh the evidence and resolve any conflicting inferences, and it may do so on a motion for summary judgment. *See Erie Props., LLC*, at *5. It is undisputed that Mr. Walker's statements that he was the elected Washington County Prosecuting Attorney were true when they were made. So, clearly, Mr. Walker did not usurp or intrude into the office at the time the statements were made because they occurred during his term in office. While these statements could have been updated sooner, Mr. Walker did not usurp or

intrude into the office of the prosecuting attorney by not updating this information earlier. The Court finds that these facts are insufficient to constitute a usurpation or intrusion into the office of the prosecuting attorney under Idaho Code § 6-602. By making these statements that were factually true when made, and not updating them earlier, Mr. Walker did not seize and hold the office of the prosecuting attorney and he did not thrust himself into the office without welcome.

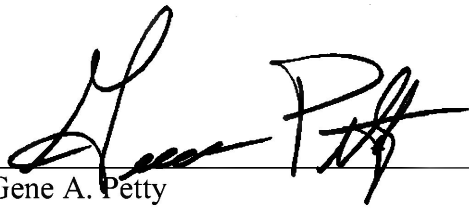
For these reasons, Mr. Walker's Motion for Reconsideration is granted, and summary judgment is granted in Mr. Walker's favor on the claim for usurpation of office.

IV. ORDER

Based on the foregoing, IT IS HEREBY ORDERED that the Mr. Pearce's Motion for to Reconsider Memorandum Decision and Order on Summary Judgment is DENIED.

It is FURTHER ORDERED that Mr. Walker's Motion to Reconsider is GRANTED, and summary judgment is GRANTED on the claim for usurpation of office.

Dated: **2/23/2026 1:58:38 PM**



Gene A. Petty
District Judge

CERTIFICATE OF SERVICE

The undersigned certifies that s/he served a true and correct copy of the original of the foregoing on the following individuals via the court's electronic filing system:

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DONNA WHITE,
Clerk of the Court



By Deputy Clerk of the Court

2/23/2026