

**IN THE IOWA DISTRICT COURT FOR POLK COUNTY**

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**ASHFORD UNIVERSITY, LLC,**

**Plaintiff,**

vs.

**IOWA DEPARTMENT OF  
EDUCATION and the IOWA STATE  
APPROVING AUTHORITY,**

**Defendants.**

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**CASE NO. CVCV 54775**

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**ASHFORD UNIVERSITY, LLC and  
MICHAEL BLACKWELL,**

**Plaintiffs,**

vs.

**IOWA DEPARTMENT OF  
EDUCATION and the IOWA STATE  
APPROVING AUTHORITY,**

**Defendants.**

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**CASE NO. EQCE 80188**

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**RULING ON REQUESTS TO VACATE JUDGMENT**

A contested hearing on the plaintiffs' requests to vacate judgment was held before the undersigned on April 11, 2018 as previously scheduled. Upon consideration of the arguments made at the hearing, and having reviewed the files and being otherwise duly advised in the premises, the court rules as follows:

This court has been directed by the Iowa Supreme Court following a limited remand ordered in Case No. 17-1357 to address outstanding requests to vacate judgment filed by the plaintiffs in these consolidated proceedings. The procedural backdrop for

what has been presented to the district court is uncommon, yet straightforward. The initial dispute between these parties began as a judicial review proceeding in Polk County Case No. EQCE 80188, in which the plaintiffs challenged the Iowa Department of Education's interpretation of federal statutes governing eligibility for G.I. Bill benefits. In 2017, the case rotated to the docket of Judge Eliza Ovrom; while on her docket, Judge Ovrom denied the plaintiff's motion to compel further discovery and ultimately dismissed the petition for judicial review in a ruling dated July 17, 2017. A subsequent motion to reconsider was denied on August 17, 2017, and an appeal was taken on August 29. A stay order was entered in the Iowa Supreme Court following the posting of an appeal bond.

After EQCE 80188 was dismissed, but prior to the notice of appeal, the plaintiffs filed a second action in Case No. CVCV 54775 pursuant to Iowa Rule of Civil Procedure 1.1012(6), seeking to vacate the ruling of July 17 in EQCE 80188 on the grounds of newly discovered evidence. That case was transferred to the docket of Judge Ovrom, as she had been the presiding judge in EQCE 80188. During a hearing on October 12, 2017 on the defendants' motion to dismiss, Judge Ovrom addressed what she described as a "housekeeping matter" due to the fact that the Attorney General's office was of record in both cases; namely, that her husband is the Consumer Advocate with the Iowa Utility Board by virtue of an appointment made by the Attorney General and that her son is an assistant attorney general working with the Child Support Recovery Unit in Council Bluffs. She acknowledged that she ordinarily brings these issues up on every case in which the Attorney General's office is of record, but neglected to do so in EQCE 80188.<sup>1</sup> She gave counsel for the plaintiffs an opportunity to confer with their clients; plaintiffs'

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<sup>1</sup> A formal disclosure order was also entered that same date in both cases.

response was to authorize a formal motion for her recusal in CVCV 54775, which was granted and the undersigned was assigned the case.

At about the same time, plaintiffs/appellants filed a motion to vacate judgment, or in the alternative for limited remand, in the appeal from EQCE 80188 (S.Ct. Case No. 17-1357). This request was premised on the argument that Judge Ovrom's failure to timely disclose her family's connections to the Attorney General's office, while inadvertent, necessitated the vacation of her prior rulings in EQCE 80188, either by the supreme court directly, or by the district court upon limited remand. The Iowa Supreme Court elected to provide for a limited remand to allow the undersigned (having been assigned the case in the interim) to address the issues raised in the motion to vacate filed in the appeal of EQCE 80188. At the supreme court's suggestion, this court then consolidated EQCE 80188 and CVCV 54775 so that both requests could be heard in a single hearing. While the separate requests seek the vacation of Judge Ovrom's rulings on different grounds, the court believes that the issues raised in the motion filed in EQCE 80188 are dispositive of the matter.

One of the grounds for vacating a final order or judgment is "[i]rregularity... practiced in obtaining it." IowaR.Civ.P. 1.1012(2).<sup>2</sup> A party seeking relief under this rule must establish the following: 1) the party has suffered an adverse ruling because of some action or inaction on the part of the court or some court personnel; 2) the action or inaction must be contrary to some prescribed rule, mode of procedure or court practice

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<sup>2</sup> The defendants make the argument that the procedure available under this rule is not applicable to a judicial review proceeding undertaken pursuant to Iowa Code chapter 17A. The court disagrees. Unless a rule of civil procedure is inconsistent with any provision of the Iowa Administrative Procedure Act, those rules "shall be applicable to proceedings for judicial review of agency action brought under that Act." IowaR.Civ.P. 1.1601. The defendants have not established that allowing a party on judicial review to challenge the viability of a final order entered in a judicial review proceeding based on a purported irregularity is in any manner inconsistent with the procedure set out in Iowa Code chapter 17A. Accordingly, the rules governing vacation of a final order or judgment should apply.

involving the conduct of a lawsuit; and 3) the complaining party must not have caused, been a party to, or had prior knowledge of the breach of the rule, the mode of procedure or the practice of the court. Costello v. McFadden, 553 N.W.2d 607, 612 (Iowa 1996) (predecessor to rule 1.1012) (citations omitted). It is well-settled that a trial judge's failure to identify a potential conflict of interest that deprives a party of the opportunity to make a timely request that the judge recuse herself constitutes the type of "action or inaction" that could constitute an irregularity under the rule. Forsmark v. State, 349 N.W.2d 763, 768 (Iowa 1984) (denial of petition to vacate judgment reversed).

The defendants appear to concede this point, but argue that Judge Ovrom's ruling dismissing the judicial review petition was not entered "because of" her failure to disclose the aforementioned conflict. The gist of this argument is that her ruling was correct and unaffected by her participation in the proceeding. The flaw in this position is that it ignores the fact that an attempt to vacate an order or judgment based on irregularity does not concern itself with the merits of the challenged ruling, but rather with whether a proceeding has been conducted in a fair and orderly manner. Costello, 553 N.W.2d at 612; In re Marriage of Cutler, 588 N.W.2d 425, 429 (Iowa 1999). The issue is not whether Judge Ovrom's ruling was correct or incorrect, but rather whether she should have been in a position to rule at all. As in many ethical issues, it is the appearance of a lack of impartiality that is at the heart of Judge Ovrom's failure to disclose a potential conflict. Had she done so, and assuming she would have recused herself at an earlier stage of the proceedings in response to a similar request, she would logically have not been the author of any such rulings. This connection between her action or inaction and the rulings at issue herein satisfies the "because of" element of a claimed irregularity.

The first and second prongs of the test to establish an “irregularity” have been met. There is no indication that the plaintiffs had any involvement or prior knowledge in Judge Ovrom’s failure to disclose her conflict; accordingly, that factor has also been established. As a result, this court concludes that Judge Ovrom’s prior rulings in EQCE 80188 were the result of an irregularity and should be vacated pursuant to rule 1.1012(2).<sup>3</sup>

**IT IS THEREFORE ORDERED** that the plaintiffs’ motion to vacate judgment in EQCE 80188 is granted, pursuant to Iowa Rule of Civil Procedure 1.1012(2). Further proceedings shall be scheduled in that matter, once procedendo issues in the pending appeal of that case. The prior order consolidating EQCE 80188 and CVCV 54775 is set aside

**IT IS FURTHER ORDERED** that the petition to vacate judgment in CVCV 54775 filed pursuant to Iowa Rule of Civil Procedure 1.1012(6) is dismissed with prejudice, at the cost of the plaintiffs.

In addition to all other persons entitled to a copy of this order, the Clerk shall provide a copy to the following:

Clerk of Supreme Court  
Iowa Judicial Branch Building  
1111 East Court Avenue  
Des Moines, IA 50319  
Re: Case No. 17-1357

Hon. Eliza Ovrom

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<sup>3</sup> As noted earlier, this moots the issue of whether those rulings should be vacated on the grounds of newly discovered evidence. Whether the plaintiffs will be able to utilize what they claim is new evidence, either at the agency level or before the court, is for another day.



State of Iowa Courts

**Type:** OTHER ORDER

**Case Number** EQCE080188  
**Case Title** CV54775\*\* ASHFORD UNIVERSITY ET AL VS IOWA DEPT OF ED ET AL

So Ordered

A handwritten signature in black ink, appearing to read 'Michael D. Huppert', written over a horizontal line.

Michael D. Huppert, District Court Judge,  
Fifth Judicial District of Iowa