2026 IL App (1st) 250999-U

SIXTH DIVISION

August 31, 2026

No. 1-25-0999

NOTICE: This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

GREGORY MAYER, Plaintiff-Appellant, v. HOLLISTER INCORPORATED, Defendant-Appellee.	))))))))))	Appeal from the Circuit Court of Cook County. No. 22 L 10735 Honorable Daniel J. Kubasiak, Judge, presiding.

PRESIDING JUSTICE C.A. WALKER delivered the judgment of the court.
Justices Pucinski and Hyman concurred in the judgment.

ORDER

¶ 1 ***Held:*** We affirm the circuit court's grant of summary judgment on plaintiff's claims for retaliatory discharge, promissory estoppel, and fraudulent inducement, but reverse the grant for his claim pursuant to the Illinois Whistleblower Act (740 ILCS 174/1 *et seq.* (West 2016)), which was not barred because plaintiff worked as in-house counsel, and for which plaintiff demonstrated disputes of material fact.

¶ 2 This case arises from an employment dispute following defendant-appellee Hollister Incorporated's termination of plaintiff-appellant Gregory Mayer, who worked as in-house counsel in Hollister's intellectual property (IP) law group from 2007 to 2018. In November 2018, Mayer and Timothy Murphy, Hollister's general counsel, had a disagreement about an aspect of the IP group's budget, with Mayer resisting a proposal made by Murphy. Eventually, Hollister's parent company commissioned an investigation regarding the propriety of Murphy's proposal, which concluded that the proposal did not implicate any legal or ethical concerns, but also that Mayer did not act improperly. Mayer alleges that Murphy then retaliated against him throughout the following year, culminating in his termination on October 7, 2019. Following his termination, Mayer sued Hollister, raising four claims: a violation of the Illinois Whistleblower Act (IWA) (740 ILCS 174/1 *et seq.* (West 2016)), retaliatory discharge, promissory estoppel, and fraudulent inducement. Following extensive litigation, including a previous appeal to this court in which we reversed the circuit court's dismissal of Mayer's claims pursuant to section 2-619(a)(9) of the Illinois Code of Civil Procedure (735 ILCS 5/2-619(a)(9) (West 2018)), the parties each moved for summary judgment (though Mayer did not seek summary judgment on the fraudulent inducement count). The court granted Hollister's motion in full, and Mayer appealed. For the reasons below, we affirm the court's grant as to retaliatory discharge, promissory estoppel, and fraudulent inducement, but reverse respecting the IWA claim, and remand for further proceedings on that claim only.

¶ 3 BACKGROUND

¶ 4 Mayer filed his initial complaint on October 16, 2020, which the circuit court dismissed without prejudice. He then filed the operative complaint in this case, his first amended complaint, on April 27, 2021.

¶ 5 In the first amended complaint, Mayer brought four claims based on the deterioration of his working relationship with, and ultimate termination from, Hollister—(I) an IWA violation; (II) retaliatory discharge; (III) promissory estoppel, and (IV) fraudulent inducement. In support, he alleged that, following his hiring in 2007, "[f]or nearly 12 years, [Mayer] led the intellectual property function in Hollister's law department." On October 7, 2019, Tim Murphy, Hollister's General Counsel and Mayer's boss, fired him, explaining only that it was a "business decision."

¶ 6 Mayer further alleged that the firing was the last event in a string of retaliatory actions by Murphy against Mayer arising from an incident in the fall of 2018. Specifically, a dispute arose during the 2019 budgeting process. In a November 28, 2018 email from Murphy to Mayer, Murphy stated, "I 'upped' the IP Law Team's budget request *** as a means to 'hide' or 'park' [an] additional $43k because I have no doubt other group(s) will need additional funds (SBUs for certain)." SBUs referred to corporate entities owned by KMT Medical Inc., a "sister company" also owned by Hollister's parent company (the firm of John Dickinson Schneider, Inc. (JDS)). Mayer felt his participation in Murphy's proposal would constitute "engaging in dishonest, deceitful and misrepresentative conduct," which he contended would be violations of the Illinois Rules of Professional Conduct (RPC), Code of Federal Regulations (CFR), and Hollister's Code of Conduct. He further alleged that he "learned about the instruction that he participate in the hiding or parking of $43,000 in a layman's capacity relating to a budgeting matter, not in his lawyerly capacity."

¶ 7 In Mayer's reply email to Murphy, sent November 29, 2018, Mayer stated, "[W]e of course cannot 'hide' money in the IP budget. Please take the $43k out of the IP budget." Two days later, the two met in person, with Murphy allegedly telling Mayer he was "overreacting." Mayer disagreed, citing Hollister's prohibition of legal budget reserves and the Code of Conduct. On

December 3, 2018, Mayer sent Murphy another email on the issue, which referenced Rule 8.4(c) of the Illinois Rules of Professional Conduct (Ill. R. Pro. Conduct 8.4(c) (eff. July 1, 2024)), 37 C.F.R. § 11.804 (eff June 25, 2021), and the Code of Conduct as informing his position.

¶ 8 Murphy responded in an email dated December 4, 2018, informing Mayer he forwarded the December 3 email to JDS General Counsel Jim Adduci. Adduci then conducted an investigation using the outside law firm Grogan, Tuccillo, & Vanderleeden LLP, which concluded in January 2019. In a sworn declaration on December 18, 2020, Jeffrey Schiller, Grogan's lead on the investigation, stated Mayer "had committed no wrongdoing in reporting his concerns about the budgeting."

¶ 9 Shortly thereafter, in "early 2019," Mayer alleged Murphy began engaging in retaliatory action against him, including forcing the IP Team to hire an inexperienced paralegal, which led to IP attorneys including Mayer performing additional work. Later that "spring," Murphy increased monitoring of Mayer's vacation time. Murphy also gave Mayer a negative mid-year review, and Hollister, for the first time in his 12 years of employment, did not provide Mayer with his annual opportunity to purchase shares in JDS. He also received no bonus for the 2019 fiscal year. On October 1, 2019, Mayer asked Murphy to change the midterm review, and Murphy refused. The next day, October 2, 2019, Mayer emailed Suzanne Erickson, Hollister's chief human resources officer, to express his concerns regarding retaliatory conduct. Hollister fired Mayer five days later.

¶ 10 Mayer's complaint contained a detailed employment history, including his account of a "2018 Quarterly Corporate Communications meeting" at which George Maliekel, the president and CEO of Hollister, asked those in attendance to give Mayer a standing ovation.

¶ 11 On the Code of Conduct, Mayer alleged it required all Hollister employees to report suspected illegal and unethical behavior and promised no retaliation for such reporting. Hollister

issued the Code of Conduct in 2015 and required each employee to sign it. The Code of Conduct, signed by Maliekel, stated in relevant part that all Hollister employees were obligated to report suspected illegal and unethical conduct, and promised that when an employee made such a report, they would suffer no retaliation. Mayer further alleged, "When Hollister instructed [Mayer] to sign the Code of Conduct in the Fall of 2015, Hollister knew that it did not intend to honor its part of the Code" shielding employees from retaliation for reporting dishonest conduct. As part of this instruction, Mayer alleged that Erickson personally assured him of such protection in late 2015, a statement Mayer alleged Erickson knew was false at the time. Mayer further alleged he then relied on these statements in reporting the $43,000 issue.

¶ 12 Also relevant to the pleadings, Mayer's employment agreement (attached to Hollister's motion to dismiss the original complaint) contained a term stating that the agreement could be amended by a writing signed by Hollister's president.

¶ 13 Hollister moved to dismiss the first amended complaint, which the circuit court granted. Mayer appealed, and this court reversed the circuit court and remanded for further proceedings on all counts, generally finding that Mayer had alleged sufficient facts to at least state a claim as to each count, and Hollister did not establish that any claims were barred as a matter of law due to affirmative matter. See *Mayer v. Hollister*, 2022 IL App (1st) 211163-U. On remand, the parties engaged in extensive discovery, then filed motions for summary judgment (with Mayer opting not to move regarding count IV for fraudulent inducement).

¶ 14 In Hollister's motion, it argued that it discharged Mayer for performance reasons pre-dating the $43,000 issue and thus did not retaliate against him. In support, it referenced the deposition testimony of Sharon Leaf, another Hollister attorney, who confirmed Murphy first expressed concerns on Mayer's long-term employment viability in early 2017. Murphy testified at his

deposition that he also expressed concerns to Richard Zwirner, a senior JDS attorney, that Mayer was not the right man for the job in the first half of 2017, and Zwirner later stated in July 2017 that Murphy could consider terminating Mayer. By the fourth quarter of 2017, Murphy had decided he would eventually terminate Mayer. He informed other Hollister employees of this decision throughout 2018, before the $43,000 issue arose, including a discussion with Christian Stoll on August 2, 2018. Stoll, outside counsel for Hollister, advised Murphy to wait until a particular litigation on which Mayer was working resolved. Leaf testified that when that litigation concluded in June 2019, Murphy decided he could move forward with Mayer's termination, which he informed Leaf of shortly after September 2, 2019. Murphy denied he knew of Mayer's October 2, 2019 email to Erickson.

¶ 15 Beyond deposition testimony, Hollister cited portions of Mayer's year-end and mid-year reviews pre-dating November 2018, which described his need to improve his strategic thinking and leadership. It also referenced time-record evidence and deposition testimony showing Mayer had, for years, refused to meet Murphy's working hour requirements.

¶ 16 As to Mayer's allegation that he was denied the opportunity to purchase JDS shares in 2019 shares, Hollister pointed to an affidavit from Murphy in which he averred Mayer was denied this chance because of "escalating performance issues and imminent termination," not in retaliation for the $43,000 issue.

¶ 17 Specific to each count, Hollister argued that Mayer could not establish the IWA claim because the record showed Mayer did not refuse to participate in an activity that would have violated laws, rules, or regulations, as Murphy "did not ask or invite Mayer to do anything," and instead stated Mayer could only use the amount of money he requested and leave the $43,000 untouched. Moreover, even if Mayer had agreed to the allocation, it would not have constituted a

violation of the RPC or CFR. It also argued that the gap in time between the $43,000 issue and Mayer's termination showed as a matter of law that the termination was not retaliatory, citing *Fox v. Adams and Associates, Inc.*, 2020 IL App (1st) 182470, ¶ 64.

¶ 18 As to retaliatory discharge, Hollister argued that under *Balla v. Gambro, Inc.*, 145 Ill. 2d 492 (1991), in-house attorneys cannot pursue retaliatory discharge claims. In so arguing, it denied that Mayer had developed any evidence to support his assertion that he received the budget information in a lay capacity.

¶ 19 On promissory estoppel, Hollister argued, in relevant part, that Mayer could not reasonably rely on the Code of Conduct because he had an independent duty to report unethical conduct under the RPC. It also cited *Janda v. U.S. Cellular Corp.*, 2011 IL App (1st) 103552, ¶ 88, for the general proposition that, under Illinois law, promissory estoppel is unavailable in situations where a contract exists between the parties and "the performance which is said to satisfy the requirement of detrimental reliance is the same performance which supplies the consideration for the contract."

¶ 20 Finally, as to fraudulent inducement, Hollister argued it did not make a false statement of material fact, Erickson denied in her deposition that she personally told Mayer anything about the policy, and, even if she had, it would have been an inactionable "future representation."

¶ 21 Mayer responded to Hollister's motion, arguing that Murphy first planned to fire Mayer as far back as late 2017 was incredible. He disputed the time gap between the incident and firing required a finding that there was no retaliation, pointing to the immediate alleged adverse conduct of the paralegal staffing and vacation day monitoring, followed later that year by the poor mid-year review and by not providing Mayer with the opportunity to buy JDS shares. As to *Balla*, Mayer argued this court's initial Rule 23 order allowed retaliatory discharge to move forward, which should be interpreted as an implicit rejection that *Balla* applied in this case, a rejection that

was now the law of the case and thus binding on the circuit court. On promissory estoppel, he cited his employment agreement's provision that it could be amended by a signed writing from Maliekel, as the Code of Conduct was, and argued the Code of Conduct "created rights and duties for Mayer beyond his employment agreement." Finally, regarding fraudulent inducement, Mayer contended there was a dispute of fact over whether Erickson made the statement, and the appellate court had already rejected the "non-actionable future representation" argument.

¶ 22 In Mayer's motion for summary judgment on the first three counts, he relayed in his statement of facts that he told Murphy in person on November 29, 2018, that "he believed he was being asked to engage in deceitful conduct toward his client Hollister." He described his budgeting role as follows: he "coordinated the retention and oversight of outside counsel, authorized payment of those firm's bills, oversaw the retention of experts and the payment of filing and various other fees for patent and trademark matters."

¶ 23 On Count I, Mayer contended each element of a whistleblower claim was undisputably met: (1) Mayer refused to participate in the $43,000 issue, and (2) his compliance with the request would have involved a violation of the RPC and CFR because it would have forced him to engage in conduct that violated internal Hollister and JDS policies which (1) banned legal budget reserves and (2) required Hollister and KMT to operate as separate entities. In support of these contentions, Mayer attached portions of the record, including (a) an internal document from 2014 stating a priority to remove legal budget reserves; (b) deposition testimony from multiple witnesses acknowledging budget reserves were not used in 2018, including from Adducci; and (c) an email from Murphy to Mayer on November 29, 2018, in which Murphy acknowledged legal budget reserves "were taken away early in 2013."

¶ 24 Respecting Hollister's explanation for its alleged retaliatory conduct, Mayer again contended that the explanations were so incredible that summary judgment was still appropriate. Specifically, Mayer described Murphy's testimony that he had planned on firing Mayer as far back as 2017 as "preposterous," in part because no contemporary documents supported it, and Hollister did not include the argument in Murphy's declarations in support of motions to dismiss or its affirmative defenses earlier in the litigation. Mayer acknowledged Leaf and another Hollister employee, Karyn Leafblad, testified at their depositions in support of Murphy's account, but Mayer maintained this testimony was also facially incredible. Moreover, the year-end reviews of 2017 and 2018 contained primarily positive language about Mayer's performance, and Mayer was permitted to buy JDS shares in 2018.

¶ 25 On May 9, 2025, the circuit court granted Hollister's motion. The court rejected Mayer's argument that this court had already decided *Balla* did not preclude his claims as a matter of law, explaining no law of the case was established by the first Rule 23 because, "The Appellate Court did not decide pending questions as a matter of law," and did not address *Balla*. The circuit court then concluded that *Balla* invalidated each of Mayer's four claims. It explained that the IWA claim (which the court misidentified as arising under the Illinois False Claims Act, 740 ILCS 175/1 *et seq.* (West 2016)) was a "retaliatory discharge claim by another name," and thus also barred by *Balla*. In so finding, the court noted that Mayer never reported Murphy's conduct, and if "if Mayer truly believed that there was unlawful conduct *** he was under an obligation to report that conduct and he was also obligated to resign his position." On promissory estoppel, the circuit court found that such claims "by an attorney cannot be based upon alleged retaliatory action as in-house counsel cannot pursue a retaliation claim involving their employer/client." Finally, on fraudulent

inducement, the court explained, "Mayer was an attorney subject to the holdings of *Balla*. Hollister could say one day that his position was safe and dismiss him the next day." This appeal followed.

¶ 26 JURISDICTION

¶ 27 The circuit court granted summary judgment on May 9, 2025, and Mayer filed his notice of appeal on May 27, 2025, giving this court jurisdiction pursuant to article VI, section 6 of the Illinois Constitution (Ill. Const. 1970, art. VI, § 6) and Illinois Supreme Court Rules 301 (eff. Feb. 1, 1994) and 303 (eff. July 1, 2017).

¶ 28 ANALYSIS

¶ 29 On appeal, Mayer argues that the circuit court erred in granting summary judgment on each of his claims, and that in fact he should have been granted summary judgment as to his claims for an IWA violation, retaliatory discharge, and promissory estoppel.

¶ 30 The circuit court disposed of Mayer's claims on summary judgment. Summary judgment is appropriate when 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." 735 ILCS 5/2-1005(c) (West 2022). The court will "construe the record strictly against the movant and liberally in favor of the nonmoving party." *Haase v. Kankakee School District 111*, 2025 IL 131420, ¶ 29. Summary judgment is a drastic remedy that is only appropriate where the record conclusively shows the non-moving party's right to judgment is "free and clear of doubt." *Id.* (quoting *Seymour v. Collins*, 2015 IL 118432, ¶ 42). We review the grant of summary judgment *de novo*. *Id.*

¶ 31 The circuit court rooted its analysis in the proposition that *Balla* barred not just Mayer's retaliatory discharge claim, but each of his other claims as well. On appeal, Mayer contends that this court determined *Balla* did not apply in the first Rule 23 order, a determination which became

the law of the case and should have precluded the circuit court from basing any decision on *Balla*. This is a threshold issue because if the circuit court was correct that *Balla* bars Mayer's entire case, our review on this appeal is over.

¶ 32 First, we reject Mayer's argument that the circuit court below and this court in this appeal, cannot consider whether *Balla* applies pursuant to the law of the case doctrine. "The law of the case doctrine bars relitigating an issue previously decided in the same case," meaning "an issue of law decided by the appellate court in a first appeal is generally binding upon that court in a second appeal." *People v. Peterson*, 2017 IL 120331, ¶ 25. This court, however, did not decide that *Balla* did not apply in the first case; in fact, the order does not even mention *Balla*. The procedural posture of the respective appeals reveals why. The first appeal was with respect to a section 2-619 motion to dismiss, in which this court had to accept all of Mayer's allegations as true—allegations which included that the learned of the $43,000 issue *in his lay capacity*, which, if proven, would take this case out of the purview of *Balla* per that court's own directions. See *Balla*, 145 Ill. 2d at 508. As will be discussed below, now that discovery has concluded and Mayer has failed to support the allegation that he was acting in a lay capacity, it is appropriate for this court to substantively consider whether *Balla* bars his claims.

¶ 33 In *Balla*, our supreme court established a rule that in-house counsel cannot pursue common law retaliatory discharge claims. There, the defendant Gambro distributed kidney dialysis equipment in the United States of America that it received from its German manufacturing affiliate (Gambro Germany). *Id.* at 494. Balla, employed as in-house counsel for Gambro, received a letter from Gambro Germany which he interpreted as a warning that an upcoming shipment of dialyzers did not comply with FDA regulations and posed increased medical risk to patients. *Id.* at 496. When Gambro decided to accept the dialyzers over Balla's recommendation, Balla "told the

president (of Gambro) that he would do whatever necessary to stop the sale of the dialyzers." Shortly thereafter, Gambro fired Balla, who sued Gambro under a common-law retaliatory discharge theory. *Id.* at 497.

¶ 34 The Illinois Supreme Court barred Balla's claim, holding that retaliatory discharge is not available to attorneys employed as in-house counsel under Illinois law. *Id.* at 498-501. It reasoned that as a licensed attorney, Balla had a duty under the RPC to report the non-complying dialyzers because, per Rule 1.6(b) of the RPC, "A lawyer *shall* reveal information about a client to the extent it appears necessary to prevent the client from committing an act that would result in death or serious bodily injury." *Id* at 502 (quoting Ill. R. Pro. Conduct 1.6(b) (eff. Aug. 1, 1990)). This safeguarded the public policy of protecting the citizens of Illinois from harmful conduct, the justification for the existence of the retaliatory discharge claim, thus rendering the tort unnecessary for those employed as in-house counsel. *Id.*

¶ 35 The *Balla* court then explained an additional rationale for denying attorneys employed as in-house counsel access to retaliatory discharge claims:

> "[E]xtending the tort of retaliatory discharge to in-house counsel would have an undesirable effect on the attorney-client relationship that exists between these employers and their in-house counsel," because typically "a client may discharge his attorney at any time, with or without cause," and if "in-house counsel are granted the right to sue their employers for retaliatory discharge, employers might be less willing to be forthright and candid with their in-house counsel. Employers might be hesitant to turn to their in-house counsel for advice regarding potentially questionable corporate conduct knowing that their in-house counsel could use this information in a retaliatory discharge suit." *Id.* 502-03.

The *Balla* court also rejected the plaintiff's attempt to compare his situation to a New Jersey case, *Parker v. M & T Chemicals, Inc.*, 236 N.J. Super. 451 (1989). *Parker* involved a whistleblower statute, not common law retaliatory discharge claims. *Id.* at 506-07. The *Balla* court keyed on this, explaining *Parker* was "distinguishable" on this basis. *Id.* Finally, the *Balla* court noted that in-house counsel may still maintain retaliatory discharge claims if the claim arises from counsel's role as a layperson, not as an attorney. *Id.* at 508.

¶ 36 We find *Balla* bars Mayer's retaliatory discharge claim and affirm the circuit court's grant of summary judgment on count II of the first amended complaint accordingly. The record shows Mayer worked as in-house counsel for Hollister at all relevant times. Moreover, while Mayer alleged in his first amended complaint that he learned of the $43,000 issue in his capacity as a layperson, he developed no facts to support it, and points to none in his brief on appeal. Instead, he acknowledged his concern with the $43,000 issue grew out of his concern that he might act unethically in the representation of his client Hollister and described his budgetary duties as directly relating to his role as an attorney in the conducting of litigation. While Mayer generally contends the $43,000 issue arose from a business decision, not the pursuit of legal advice, this does not demonstrate he was not acting in his capacity as an attorney; indeed, Mayer has not even established that he had a capacity of his employment that fell outside the purview of his job as in-house counsel such that the lay exception in *Balla* might be available to him.

¶ 37 Mayer argues that one justification used by the *Balla* court—that an attorney's ethical duty to report obviates the public policy need to grant in-house counsel access to retaliatory discharge claims—is irrelevant here because the conduct at issue (unlike in *Balla*) did not involve a risk of death or serious bodily injury, meaning whether to report was within his discretion. In so arguing, he notes Rule 1.6 was amended in 2010, adding situations in which attorneys "may" disclose,

which includes the present situation. See Ill. R. Pro. Conduct 1.6(b) (eff. July 1, 2025). He continues that the circuit court erroneously keyed on the mandatory reporting requirement in situations involving death or bodily harm in deciding to apply *Balla*.

¶ 38 This argument fails because we may affirm on any basis in the record, and thus even if circuit court improperly applied Rule 1.6, a plain reading of *Balla* reveals that the Supreme Court did not rely on the mandatory reporting requirement justification alone in fashioning its rule. See *Balzer v. Northeast Illinois Regional Commuter Railroad Corp.*, 2026 IL App (1st) 232227, ¶ 67. Instead, the *Balla* court discussed in detail that another, important basis for barring in-house counsel from retaliatory discharge claims existed—the preservation of the attorney-client relationship. This is a separate concern from the public policy/public health protection justification, and Mayer cannot show his attorney/client relationship with Hollister was incapable of being affected by the $43,000 issue. As such, we cannot diverge from *Balla* on the grounds that its theoretical underpinnings do not apply to Mayer's situation.

¶ 39 As to Mayer's remaining claims, however, we find *Balla* does not bar them as a matter of law. The circuit court's general statement that the other claims were retaliatory discharge claims by another name is simply inaccurate based on the record. Mayer complained of, and introduced evidence supporting, other adverse actions apart from his termination, including the removal of his opportunity to purchase stock options in 2019 for the first time in 12 years of employment. See *Owens v. Department of Human Rights*, 403 Ill. App. 3d 899, 919 (2010) (adverse employment action can include "substantial change in benefits"). Thus, while his discharge itself may not be compensable, the adverse actions he alleges were retaliatory while Hollister/Murphy decided to continue his employment after the incident but before his firing might be and require independent analysis.

¶ 40 Hollister might argue that the reasoning from *Balla*—the limitation of the attorney-client communication—would be implicated for lesser adverse employment actions as well, but such an argument would be unconvincing given that the employer retains the right to dismiss in-house counsel at any time. The court in *Balla* made clear that the law in Illinois prioritizes the client's right to freely terminate counsel over counsel's right to seek recompense for a retaliatory discharge. *Balla*, 145 Ill. 2d at 502-03. It does not follow, however, that the client must also have the right, when faced with a situation where their in-house counsel took a protected action the employer disagreed with, to decide not to terminate the attorney, but to instead engage in lesser retaliatory actions. Indeed, Hollister's version of events is that they intended to fire Mayer as far back as 2017 but decided to retain him until late in 2019 so that, at least in part, he could help the company complete a complex litigation. Such was Hollister's right, but we see no reason that while continuing to benefit from Mayer's employment—and balancing that against whatever factors informed their decision to terminate him eventually—Hollister should be protected from accountability if Mayer can introduce evidence that Hollister, during that time, took retaliatory, material adverse employment actions against Mayer.

¶ 41 Such an interpretation would extend *Balla* far beyond its language and stated intent, especially in the context of applying *Balla* to IWA claims. The purpose of the IWA, passed after *Balla* and with no express limitation on application to in-house counsel, is "to protect employees from adverse employment actions in retaliation for reporting or refusing to engage in unlawful conduct by their employers." *Young v. Alden Gardens of Waterford, LLC*, 2015 IL App (1st) 131887, ¶ 99. The text of *Balla* suggests our supreme court did not intend its finding to be so sweeping. Importantly for our purposes, the *Balla* court noted that its analysis applied only to common law retaliatory discharge claims, distinguishing *Parker*. This is a strong indication that

our supreme court would not automatically limit the application of a whistleblower act (like the IWA) based only on *Balla*. See *Balla*, 145 Ill. 2d at 506-07 (discussing *Parker*, 236 N. J. Super. at 460); see also *Crowley v. Watson*, 2016 IL App (1st) 142847, ¶ 41.

¶ 42 The IWA applies to employees at will (see *Brummel v. Grossman*, 2018 IL App (1st) 170516, ¶ 48) and expressly provides for compensation for material adverse acts falling short of discharge. Because the legislature did not expressly include or exempt attorneys from the IWA, we must interpret as consistently with *Balla* if possible. *Guzman v. 7513 West Madison Street, Inc.*, 2013 IL App (1st) 122161, ¶ 37 (citing *People v. Hickman*, 163 Ill. 2d 250, 262 (1994)). Given *Balla's* inherent limitation and the policy goals underlying both *Balla* and the IWA, we find appropriate a framework which precludes in-house counsel from seeking claims or damages based specifically on their termination but permits them to seek redress where they can prove their employer took material adverse employment actions short of termination against them in retaliation for protected behavior. Under this interpretation, with *Balla* barring only discharge-based claims, it follows that in-house counsel might also seek damages for material adverse employment actions short of termination through other legal theories such as promissory estoppel or fraudulent inducement, provided, of course, they can demonstrate the elements of each.

¶ 43 We now turn to whether each of the remaining three claims survives Hollister's motion for summary judgment beyond the *Balla* preclusion issue (and, as to the IWA and promissory estoppel claims, also whether Mayer is entitled to summary judgment), beginning with the claim under the IWA. Per section 174/20 of the IWA, "An employer may not retaliate against an employee for refusing to participate in an activity that would result in a violation of a State or federal law, rule, or regulation." 740 ILCS 174/20 (West 2016). To demonstrate retaliation, an employee must show "he or she suffered a materially adverse act." *Svec v. City of Chicago*, 2024 IL App (1st) 230893,

¶¶ 69-76. We note that in 2025, the statutory language was amended so that all that is required on behalf of the plaintiff is a good faith belief that the action at issue would result in the violation, but the statute does not state that it applies retroactively, and it involves a substantive change to the law, requiring this court to apply the law as it was at the time of the incident. See 740 ILCS 174/20 (West 2024); *Martin v. Goodrich Corporation,* 2025 IL 130509, ¶¶ 34-36. Illinois courts have found that the restriction or denial of employment benefits can constitute an adverse employment action, though whether that action is "materially" adverse may be an issue for the jury. See *Owens*, 403 Ill App 3d at 919 (significant change in benefits may qualify as an adverse employment actions).

¶ 44 The record shows after Murphy sent the November 28, 2018, email, Mayer told him the proposed action was improper, and asked Murphy to remove it. After Mayer and Murphy discussed the issue, with neither willing to change their positions, Murphy referred the issue to Adducci for a third-party review. The review determined Murphy's request was not improper, but Mayer had not acted improperly in raising his concerns either. After this sequence of events, several undisputed events occurred, which Mayer maintains were all in retaliation for the $43,000 issue. These actions included the IP team receiving a new, allegedly unqualified paralegal; Murphy monitoring Mayer's vacation days for the first time; a negative mid-term review, and the cancellation of Mayer's annual opportunity to purchase JDS shares.

¶ 45 Applying these facts to the statutory requirements, we find Mayer has demonstrated there are genuine issues of material fact regarding the elements of the IWA, and accordingly we reverse the circuit court's grant of summary judgment and remand the claim for trial. In so finding, we note that because of these disputed material facts, Mayer's request for summary judgment in his favor also fails.

¶ 46 First, there is no genuine dispute that Mayer refused to take an action. Hollister argues that Mayer did not have control over the budget and had the option to not spend the $43,000, meaning he did not "refuse" anything. This is belied by the record; Mayer's email and the undisputed accounts of Mayer, Murphy, and the internal investigation all demonstrate that Mayer's resistance to the placement of the $43,000 in the IP budget forced the internal investigation in the first place, and he was unwavering in this resistance. The contention that he was not officially asked to do anything with the money only supports Mayer's position; Murphy's request that Mayer let the $43,000 remain in the IP budget in secret, in case a SBU needed it later, would constitute the creation of the allegedly impermissible legal budget reserve. This is sufficient to establish the refusal element.

¶ 47 Hollister's citation to *Sardiga v. Northern Trust Co.*, 409 Ill. App. 3d 56 (2011), does not alter this result. There, the court found plaintiff failed to allege a section 20 refusal claim when his conduct amounted to merely "repeated complaints and questions." *Sardiga*, 409 Ill. App. 3d at 61. *Sardiga* does not apply to Mayer's conduct, however, because it is undisputed he went beyond complaints or questions and instead told Murphy to remove the $43,000 and insisted on this position until the Schiller investigation occurred. Hollister does not contend that any potential change in Mayer's stance post-Schiller investigation precludes a claim based on Mayer's initial refusal.

¶ 48 The closer question is whether there is any indication that the action Mayer refused to engage in would have constituted a violation of a qualifying rule or law. Mayer cites Rule 8.4(c) of the Illinois Rules of Professional Conduct (Ill. R. Pro. Conduct 8.4(c) (eff. July 1, 2024) and 37 C.F.R. § 11.804 (2021), both of which contain identical mandates that attorneys refrain from

"deceit, fraud, misrepresentation or dishonesty." Can Murphy's request be understood to require Mayer to engage in dishonest or deceitful conduct?

¶ 49 Mayer points to the internal Hollister policies he contends the conduct would have violated, specifically the ban of budgetary reserves, and requirement that Hollister and KMT operate separately. He cites internal documents, emails, and deposition testimony, all of which at least support an inference that Hollister maintained a policy against legal budget reserves, as Mayer contends. Hollister acknowledges this evidence but contends it does not suggest an official policy against legal budget reserves such that Murphy's suggested budget action would have constituted a violation.

¶ 50 We find that Mayer sufficiently established a genuine dispute of material fact over whether Murphy's suggestion regarding the $43,000 would have created a legal budgetary reserve in violation of the policy and practice of Hollister such that Mayer's engagement in that conduct constituted deceitful or dishonest conduct towards his client in violation of Rule 8.4(c) and 37 C.F.R. §11.804. Hollister disputes that the evidence Mayer produced demonstrates a strict policy such that its violation could be determined deceitful or dishonest conduct. But given the record, whether Hollister had such a policy, and if so, whether Murphy's conduct would be violative of it such that Mayer's participation could constitute deceitful or dishonest conduct, requires a factfinder to resolve the dispute between Mayer's and Hollister's accounts. Thus, this it is not an appropriate issue for resolution on summary judgment, in favor of either party. See *Haase*, 2025 IL 131420, ¶ 29. Additionally, because neither the RPC nor the CFR defines these terms, we cannot determine what is or is not deceitful or dishonest as a matter of law, creating another issue of fact we cannot resolve as a matter of law. See *In re Cutright*, 233 Ill. 2d 474, 490 (2009) (When considering whether attorney conduct involved fraud, dishonesty, deceit or misrepresentation,

"Each case is unique and the circumstances surround the *** conduct must be taken into consideration").

¶ 51 Hollister also contends that Illinois case law on the pre-2025 IWA still required that the plaintiff have a good faith belief that the conduct would violate a rule or law in addition to showing the action would constitute such a violation, and Mayer did not offer evidence that he had such a belief. First, Hollister's cited cases discuss retaliatory discharge, not claims under the IWA. See *Rabin v. Karlin and Fleisher, LLC,* 409 Ill. App. 3d 182,188-89 (2011); *Mackie v. Vaughan Chapter-Paralyzed Veterans of America, Inc.*, 354 Ill. App. 3d 731, 740 (2004). Even assuming this principle applies to IWA claims, the argument is belied by the record. Mayer invoked both the RPC and CFR in direct response to Murphy's email in November 2018, evidence Mayer in fact did have those concerns about the $43,000 issue. Mayer persisted with these concerns after pushback from Murphy. Given this record, and the dispute of fact discussed above regarding whether Hollister had an official policy against legal budget reserves, there is sufficient evidence to show a genuine dispute of fact over whether Mayer had a good faith belief.

¶ 52 As to the retaliation element of the IWA refusal claim, the record again demonstrates a genuine issue of material fact as to whether the actions taken by Hollister were done in retaliation for Mayer's refusal. There are facts in the record on both sides of this issue. On Mayer's side, it is undisputed that after the $43,000 issue arose, he received a negative midterm review, was denied the opportunity to purchase stock options for the first time and was ultimately fired. While the latter may not be actionable for damages, it is relevant evidence to the determination of Hollister's intent in its conduct towards Mayer throughout 2019. See *Hubert v. Board of Education of City of Chicago,* 2020 IL App (1st) 190790, ¶ 24 ("We are presented with a classic case of both sides presenting evidence to support their positions and advancing a narrative that could be true. In such

a case, summary judgment is not appropriate."). Likewise, on Hollister's side, multiple witnesses testified that internal plans to terminate Mayer had predated the $43,000 issue. Additionally, previous midterm and year-end reviews, though generally positive, contained consistent criticisms about specific issues that Mayer never corrected. The resolution of which of these accounts is more credible is an issue that must be resolved by the factfinder. *Berglind v. Paintball Business Ass'n*, 402 Ill. App. 3rd 76, 90 (2010). This is true no matter how vociferously Mayer characterizes Hollister's account as an incredible, post-litigation creation to avoid liability. It is not for a court at summary judgment to determine the credibility of witnesses who offer conflicting accounts over a material issue. *Id.*

¶ 53 Finally, Hollister argues that the gap in time between the $43,000 issue in November 2018 and Mayer's dismissal on October 7, 2019, prevents him from establishing that the acts were done in retaliation. This argument fails because Mayer has created an issue of fact about whether conduct throughout 2019, including immediately after the Schiller investigation concluded, was done in retaliation, limiting any influence of the body of law permitting courts to find that a significant gap in time between employee conduct and adverse action can preclude a retaliation claim as a matter of law. See *Fox*, 2020 IL App (1st) 182470, ¶¶ 64-67 (explaining this issue is generally an issue of fact, and summary judgment is only appropriate in specific circumstances); see also *Wynn v. Illinois Department of Human Services*, 2017 IL App (1st) 160344, ¶ 71. This again, makes the issue inappropriate for resolution on summary judgment. *Hubert*, 2020 IL App (1st) 190790, ¶ 24.

¶ 54 Next, Mayer seeks recovery under a promissory estoppel theory, contending he relied to his detriment on the representation in the Code of Conduct (also allegedly relayed personally by Erickson to Mayer himself) that he would not be retaliated against for reporting what he believed

to be ethical or legal violations. To establish a claim for promissory estoppel, a plaintiff must show (1) the defendant made an unambiguous promise, (2) the plaintiff relied on that promise, (3) plaintiff's reliance was expected and foreseeable by the defendant, and (4) the plaintiff suffered damages due to his reliance. *Newton Tractor Sales, Inc. v. Kubota Tractor Corp.*, 233 Ill. 2d 46, 51 (2009). A plaintiff cannot pursue a promissory estoppel claim if a contract exists between the parties for which the detrimental reliance alleged is part of that contract's performance. *Janda*, 2011 IL App (1st) 103552, ¶ 88 (citing *Prentice v. UDC Advisory Services, Inc.*, 271 Ill. App. 3d 505, 512 (1995)).

¶ 55 The record shows Mayer's employment was governed by a written contract between the two parties, the employment agreement. The contract contained a provision that it could be amended by a signed writing from Hollister's president. In 2015, Hollister issued a new Code of Conduct applicable to all employees, including Mayer. Signed by Maliekel, the president, the Code stated in relevant part that all employees had an "obligation" to report any potentially unethical or illegal behavior, and if they did so, they would not be retaliated against.

¶ 56 Resolution of this claim requires contract interpretation. When reviewing a contract, this court's primary goal is to give effect to the parties' intent as expressed by the plain language of the contract. *Clanton v. Oakbrook Healthcare Centre, Ltd.*, 2023 IL 129067, ¶ 30. When language is unambiguous, we will apply it as written without resort to extrinsic evidence. *Id.* ¶ 33. We review the interpretation of a contract *de novo*. *In re Marriage of Dynako*, 2021 IL 126835, ¶ 15.

¶ 57 We find the Code of Conduct became part of the terms of Mayer's employment agreement with Hollister. As such, Mayer's claim that Hollister did not honor the language in the Code promising it would not retaliate for reporting suspected unethical behavior had to be brought in a breach of contract claim and could not be pursued via promissory estoppel. *Janda*, 2011 IL App

(1st) 103552, ¶ 88. We affirm the circuit court's grant of summary judgment on this claim on this basis alone. *Balzer*, 2026 IL App (1st) 232227, ¶ 67.

¶ 58 The Code imposed an obligation on all Hollister employees. The only reasonable interpretation of the use of this requirement is that should an employee fail to do so, they would be in violation of their employment duties. It follows that the Code was not an extraneous document unrelated to the terms of Hollister employee contracts, including Mayer's, but an intrinsic part of them. See *Unterschuetz v. City of Chicago*, 346 Ill. App. 3d 65, 74-75 (2004); *Duldulao v. Saint Mary of Nazareth Hospital Center*, 115 Ill. 2d 482, 491-92 (1987). It was thus incumbent upon Mayer to seek relief for breach of contract for Hollister's failure to follow the express terms that governed Mayer's employment with Hollister, and his choice to pursue promissory estoppel instead has proven to be a consequential one, given *Janda*.

¶ 59 Mayer argues in his reply brief that this court already precluded any argument that the claim the Code-of-Conduct-based claim sounded in breach of contract, not promissory estoppel, in its initial Rule 23 order. Mayer is mistaken. In finding that Mayer's claim was not subject to dismissal on via a section 2-619(a)(9) motion, this court made no attempt to predict what the discovery process might ultimately reveal about the proper interpretation of the employment argument and Code of Conduct. This court did, however, expressly note that the employment agreement stated it could be amended by a signed writing by the Hollister's president, and cited *Unterschuetz* and *Duldulao* for the general proposition that employee handbooks can create *contractual* rights for employees. See *Mayer*, 2022 IL App (1st) 211163-U, ¶¶ 40-46.

¶ 60 We turn to Mayer's final claim, fraudulent inducement. To establish a claim for fraudulent inducement, a plaintiff must show the following elements: "(1) a false representation of material fact, (2) made with knowledge or belief of that representation's falsity, (3) made with the purpose

of inducing another party to act or to refrain from acting, and (4) the other party reasonably relies upon the representation to its detriment." *Id.* ¶ 48 (citing *Enterprise Recovery Systems, Inc. v. Salmeron*, 401 Ill. App. 3d 65, 72 (2010)); see also *Merrilees v. Merrilees*, 2013 IL App (1st) 121897, ¶ 30 (fraudulent inducement is a variant of a common-law fraud claim and requires a high level of specificity). A fraud claim generally cannot be based on future actions, typically referred to as "promissory fraud," except for comments that themselves are "alleged to be the scheme employed to accomplish the fraud." *Henderson Square Condominium Ass'n v. LAB Townhomes, LLC*, 2015 IL 118139, ¶ 69.

¶ 61 We find that Hollister is entitled to summary judgment on this claim because Mayer has presented no evidence that Hollister, in issuing the Code of Conduct, or Erickson, in making her alleged general representation to Mayer regarding the Code, knew their statements were false at the time they made them. Instead, they made general, non-actionable statements about potential future conduct, with no demonstrated intent not to honor the statements in the future. Again, though the circuit court did not rely on this basis, we may affirm on any basis supported by the record. *Balzer*, 2026 IL App (1st) 232227, ¶ 67.

¶ 62 Mayer could not reasonably maintain a claim that the anti-retaliation provision in the code—issued in 2015—or the alleged statement by Erickson—made in 2016—were made with any specific intent to induce Mayer's actions surrounding the $43,000 issue in 2018. His only theory, then, is that Hollister perpetrated a fraud on its entire workforce by issuing a Code of Conduct containing an anti-retaliation provision it knew at the time it did not intend to honor, with the specific intent to induce its employees to report unethical or illegal behavior by tricking them into thinking they would be protected from retaliation when they did so. Then Erickson, with knowledge of this scheme, ensured Mayer knew it specifically applied to him such that he would

be sure to be so induced, should an applicable situation arise in the future. That the record contains no evidence of anything even approaching such an unlikely scenario cannot be contested in good faith. As such, the claim fails.

¶ 63 Finally, we deny Mayer's request that this court assign the case to a new judge on remand, as the record reveals no indication of bias or prejudice that can overcome the presumption of judicial impartiality. See, *Eychaner v. Gross*, 202 Ill. 2d 228, 280 (2002). Mayer bases this request on the circuit court's alleged failure to honor the law of the case on *Balla*, but as discussed above, the court was right on this issue. Moreover, the examples Mayer lists to show alleged "deep-seated antagonism" consist of unfavorable rulings, which generally cannot form the basis of a bias finding. *Id.* ("A judge's rulings alone almost never constitute a valid basis for a claim of judicial bias or partiality."). And finally, while Mayer accurately notes that the court improperly focused on Hollister's conduct, not Mayer's, when analyzing whether the $43,000 issue involved a potential violation of a law, rule or regulation, there is no indication this was done out of bias or prejudice, or that the court will be unwilling or incapable of correcting the error on remand.

¶ 64 CONCLUSION

¶ 65 For the foregoing reasons, we affirm the circuit court's grant of summary judgment on all claims except count I for a violation of the IWA, and remand for further proceedings on that claim alone.

¶ 66 Affirmed in part; reversed in part; remanded.