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CIVIL ACTION NO. 23-CI-_____

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JEFFERSON CIRCUIT COURT
DIVISION _____
JUDGE WHAS

ANTHONY B. PIAGENTINI,

PLAINTIFF,

v.

LOUISVILLE/JEFFERSON COUNTY METRO
GOVERNMENT ETHICS COMMISSION

Serve: Todd Lewis
Counsel
Louisville/Jefferson County Metro
Government Ethics Commission
111 West Washington Street, Suite 200
Louisville, Kentucky 40202

-AND-

KEVIN E. FIELDS, SR.,

Serve: 1300 West Muhammad Ali Boulevard
Louisville, Kentucky 40203

DEFENDANTS.

VERIFIED PETITION

Comes the Plaintiff, Anthony B. Piagentini (“Councilman Piagentini”), by counsel, and, for his Petition against Defendants, Louisville/Jefferson County Metro Government Ethics Commission (the “Ethics Commission”), and Kevin E. Fields, Sr. (“Fields”) (collectively, the “Defendants”), states as follows:

I. INTRODUCTION

1. This action is an appeal taken pursuant to, but not limited to, Louisville/Jefferson County Metro Government Ordinance (“Metro Ordinance”) § 21.06(C) of Findings of Fact and Conclusions of Law (“Findings”) issued by the Ethics Commission on October 19, 2023, stating that Councilman Piagentini violated certain provisions of the Louisville/Jefferson County Metro

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Government Code of Ethics (the “Code of Ethics”) following an Ethics Complaint that was filed against Councilman Piagentini by Fields on or about March 3, 2023.

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2. At virtually every turn during the proceedings leading up to, including, and after a full hearing of this matter, the Ethics Commission embarked upon an arbitrary course of conduct that deviated from clear procedural requirements set forth in both the Metro Ordinance that governs its proceedings and its own rules and regulations, all to Councilman Piagentini’s prejudice. Furthermore, the Ethics Commission repeatedly violated Councilman Piagentini’s due-process rights, including, but not limited to, by delegating – over Councilman Piagentini’s objections – the Ethics Commission’s legal duty to conduct an impartial and unbiased prosecution of the allegations against Councilman Piagentini to the attorney appointed to represent the Complainant, Fields, despite the fact that his interests are most prejudicial towards Councilman Piagentini, and by allowing – again, over Councilman Piagentini’s objections – the chairperson of the Ethics Commission to participate in the final deliberations concerning the allegations made against Councilman Piagentini, the Chair of Republican members of Metro Council, despite her contemporaneous publication of opinions expressing personal prejudice toward Republicans. As a result of the deprivations of Councilman Piagentini’s constitutional rights, the entirety of the Ethics Commission’s Findings against him are tainted by bias and must be reversed.

3. Furthermore, the Findings of the Ethics Commission must be reversed as a matter of law because they are arbitrary and capricious and are not supported by substantial evidence – much less clear and convincing evidence that is required to convict a Metro Officer of a violation of the Code of Ethics. In fact, key “factual” findings made by the Ethics Commission are based entirely upon speculation and ignore undisputed proof that conclusively refute the conclusions that Councilman Piagentini violated the Code of Ethics. In addition, the Ethics Commission

Presiding Judge: HON. SARAH E. CLAY (630456)

COM : 000002 of 000051

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11/20/2023 03:33:28

PM

fundamentally misapplied, misinterpreted, and/or simply chose to ignore key provisions of the Code of Ethics to support its erroneous findings that Councilman Piagentini violated the Code of Ethics. As a result, the Ethics Commission has perpetuated a fundamental miscarriage of justice against Councilman Piagentini, and the Findings must be reversed.

WHAS

II. THE PARTIES

4. Councilman Piagentini is a duly-elected Member of Metro Council, having been elected to represent Metro Council District 19 in November 2018 and sworn into office in January 2019. Councilman Piagentini was re-elected to Metro Council in 2022 and sworn into a second term in 2023. Pursuant to KRS 67C.103(4), Councilman Piagentini serves a term of four (4) years. In 2021, Councilman Piagentini was elected by the Members of the Minority Caucus – *i.e.*, members of Metro Council who are members of the Republican Party – to serve as Chair of the caucus, and he was re-elected to serve in this position in 2022 and 2023. Councilman Piagentini also is a veteran of the United States Marine Corps, was deployed to serve in Operation Iraqi Freedom, and was honorably discharged in 2011 after eight years of service. And Councilman Piagentini is a businessman with more than twenty (20) years of experience in the healthcare industry.

5. The Ethics Commission is an agency of Louisville/Jefferson County Metro Government created by Metro Ordinance § 21.05(A)(1) to enforce and administer the Code of Ethics. As an agency of Louisville/Jefferson County Metro Government (“Metro Government”), the Ethics Commission has its principal place of business in Jefferson County, Kentucky. Pursuant to Metro Ordinance § 21.06(C), since this action is an appeal of determinations by the Ethics Commission that Councilman Piagentini violated the Code of Ethics, the Ethics Commission must

be served via its legal counsel, Todd Lewis, 111 West Washington, Street, Suite 200, Louisville, Kentucky, 40202.

6. Fields is the President and Chief Executive Officer of the Louisville Central Community Center, Inc., and, upon information and belief, is a resident of Jefferson County, Kentucky. Fields was the complainant of the ethics complaint filed against Councilman Piagentini which was the subject of the Ethics Commission’s Findings. Fields is made a party to this action because he may have an interest which would be affected by this action. Fields may be served at his place of business located at 1300 West Muhammad Ali Boulevard, Louisville, Kentucky, 40203.

III. JURISDICTION AND VENUE

7. This Court has general jurisdiction over the subject matter of this action pursuant to KRS 23A.010(4) and Metro Ordinance § 21.06(C).

8. Venue is proper in this Court because the cause of action arose in Jefferson County, Kentucky, and because the Defendants have their place of business and/or reside in Jefferson County.

9. This Court has personal jurisdiction over the Ethics Commission because it is a governmental entity with its principal place of business in Jefferson County, Kentucky.

10. This Court has personal jurisdiction over Fields because, upon information and belief, he resides and/or does business in Jefferson County, Kentucky.

IV. THE FACTS

A. The Ethics Commission Is Created to Enforce and Administer the Code of Ethics Set Forth in Metro Ordinance Chapter 21.

11. Metro Ordinance § 21.05(A)(1) creates the Ethics Commission and vests it with the responsibility “for the enforcement and administration of the Code of Ethics adopted in this chapter

in the manner set forth in this chapter,” *i.e.*, Metro Ordinance Chapter 21. Metro Ordinance § 21.05(A)(1).

12. In addition, Metro Ordinance § 21.05(B)(1) proclaims: “The investigation and determination of whether a person or entity has committed any violation of [Metro Ordinance Chapter 21] shall be the responsibility of the Ethics Commission. In order to ensure a thorough investigation, the Commission is authorized to appoint an investigating officer.” Metro Ordinance § 21.05(B)(1).

B. The Code of Ethics Obligates the Ethics Commission to Afford Alleged Violators the Right to Due Process and Fundamental Fairness in the Adjudication Process.

13. To ensure the fair and impartial administration of the Code of Ethics, Metro Ordinance § 21.06 establishes certain requirements governing the Ethics Commission’s investigation and adjudication of complaints alleging violations of Metro Ordinance Chapter 21.

14. Importantly, Metro Ordinance § 21.06(B) expressly requires the Ethics Commission to afford due process, generally, to Metro Officers accused of violating the standards set forth in Chapter 21.

15. The Supreme Court of Kentucky has recognized: “A central tenet of procedural due process is that with respect to adjudicatory matters, whether they be judicial or administrative in nature, ‘Kentucky citizens [must] be assured of fundamentally fair and unbiased procedures.’” *Whitley v. Robertson Cty.*, 406 S.W.3d 11, 20 (Ky. 2013).

16. The Supreme Court of Kentucky also recently determined that, in administrative settings, procedural due process requires the disqualification of administrative decisionmakers in matters when a “reasonable question of impartiality” is raised. *Friends of Louisville Public Art, LLC v. Louisville/Jefferson County Metro Historical Landmarks and Preservation Districts Commission*, 671 S.W.3d 209, 214 (Ky. 2023).

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11/20/2023 03:33:28

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17. In addition, Metro Ordinance § 21.06(B) enumerates additional, specific, non-exclusive due-process rights that must be afforded by the Ethics Commission to persons alleged to have violated the Code of Ethics.

18. Among the specific due-process rights which the Ethics Commission is required to afford an alleged violator is the right to have evidence presented at a hearing by an impartial and unbiased representative of the Ethics Commission. In fact, Metro Ordinance § 21.06(B)(11) expressly provides that “[n]o person other than counsel for the Ethics Commission, or the alleged violator involved in a proceeding before the Ethics Commission, or the alleged violator’s counsel, who refuses to be placed under oath may speak at any such proceeding.” Metro Ordinance § 21.06(B)(11). Conspicuously absent from the list of persons who may “speak” at Ethics Commission proceedings without being placed under oath are the complainant and his or her attorney, indicating that the Code of Ethics envisions that a duly designated agent of the Ethics Commission is to serve as prosecutor of charges of ethical violations. *See id.*

19. Metro Ordinance § 21.06(C) also aims to protect due process by requiring clear and convincing proof to convict an alleged violator. As defined by the Kentucky Supreme Court, a clear and convincing evidence burden of proof “requires the party with the burden of proof to produce evidence *substantially more persuasive than a preponderance of the evidence*, but not beyond a reasonable doubt.” *Fitch v. Burns*, 782 S.W.2d 618, 622 (Ky. 1989) (emphasis added).

20. In addition to the requirements set forth in Metro Ordinance § 21.06, the Ethics Commission has promulgated rules and regulations which “shall govern the procedure for filing and investigating all complaints; the practice in all hearing of complaints before the Metro Ethics Commission,” among other things. *See Ex. A*, Rules and Regulations of Louisville/Jefferson County Metro Ethics Commission (the “Ethics Commission Rules”), § 1.2.

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21. For instance, Section 6.6 of the Ethics Commission Rules requires the Ethics Commission to “commence an independent investigation into the facts alleged in the complaint.”

Ex. A, § 6.6.

22. Like Metro Ordinance §§ 21.05 and 21.06, the Ethics Commission Rules reflect the notion that it is the legal obligation of the Ethics Commission to prosecute alleged violations of the Code of Ethics. For instance, Ethics Commission Rule 7.3, which governs “The Hearing,” provides unambiguously that “[t]he parties to the hearing shall be the Respondent and the Investigating Officer(s).”

23. Moreover, Rule 7.3 specifically provides: “The burden of going forward shall be with the appointed Investigating Officer,” thereby places the burden of proof on the Investigating Officer. Ex. A, § 7.3(E). In fact, in a previous case involving allegations against a Democrat member of Metro Council, the Ethics Commission expressly found that “The burden of proof in this matter *is on the Investigating Officer* to prove the allegations against Councilwoman Shanklin by clear and convincing evidence. Ex. QQ, Findings Re: Councilwoman Barbara Shanklin, at 50 (emphasis added).

24. In addition, Rule 7.3 states: “Opening and closing statements shall be allowed by both parties,” again reflecting the idea that it is the obligation of the Ethics Commission to prosecute alleged violations. Ex. A, § 7.3(B), (I).

25. Section 7.3(C) provides that “[u]pon motion to the Commission, the Complainant may intervene as a party to the hearing.” Ex. A, § 7.3(C). Section 7.3(C), however, provides no guidance as to how the Ethics Commission is to determine whether to grant a motion to intervene. *See id.*

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11/20/2023 03:33:28

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26. Furthermore, as stated above, Metro Ordinance § 21.06 expressly limits the role that a complainant may play during Ethics Commission proceedings. The only provision that provides any “right” to the Complainant is contained within Rule 7.3(G), which permits the Complainant to remain present at all times during a hearing. *See* Ex. A, § 7.3(G). By comparison, the Ethics Code only allows a complainant to present sworn testimony; it expressly denies a complainant’s right to examine witnesses or even to speak at a hearing unless testifying under oath. Metro Ordinance § 21.06(B)(11).

C. The Facts Leading Up to the Ethics Complaint.

27. In or about November 2021, Councilman Piagentini was employed as an executive with a company called Wellcare of Kentucky. *See* Ex. B, Hrg. Tr. 152:4-9, Aug. 22, 2023 (Testimony of Councilman Piagentini) (hereinafter “Ex. B, Piagentini Testimony”).

28. In or about November 2021, Rob Givens (“Givens”) contacted Tammy York Day (“York Day”), the CEO of the Louisville Healthcare CEO Council, Inc. (the “CEOc”), and suggested that she meet with Councilman Piagentini because Councilman Piagentini was “a healthcare executive,” because York Day was “connected to the largest healthcare companies in our state,” and because, according to Givens, Councilman Piagentini “was determining what he was going to do next in his career.” Ex. B, Hrg. Tr. 11:24-12:3; 12:10-15, Aug. 22, 2023 (Testimony of Tammy York Day) (hereinafter “Ex. B, York Day Testimony”).

29. In or about November 2021, at Givens’s request, York Day and Councilman Piagentini met for the first time. Ex. B, York Day Testimony, 11:10-14; Ex. B, Piagentini Testimony, 156:23-3.

30. At the time of that meeting, Councilman Piagentini knew nothing significant about the CEOc, Ex. B, Piagentini Testimony, 155:23-25, and did not ask York Day if the CEOc had employment opportunities, *id.* 156:22-157:7. *See also* York Day Testimony, 11:17-20 (“What –

NOT ORIGINAL

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11/20/2023 03:33:28

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how this was communicated to me by Rob was that Mr. Piagentini was deciding what he was going to do next and wanted to network, and he was a healthcare executive.”).

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31. After that meeting, York Day agreed that she would speak with her healthcare contacts and would “put feelers out to see if there were any opportunities” for Councilman Piagentini in the healthcare industry. *Id.* 17:6-15. Around that time, Givens sent a copy of Councilman Piagentini’s résumé to York Day. *Id.* 14:19-20.

32. In or about January 2022, Councilman Piagentini sent a copy of his résumé to York Day, the purpose of which was “that if she was going to recommend anybody for – for me to speak to, she could just forward my r[é]sum[é] on.” Ex. B, Piagentini Testimony, 157:24-158:2. This exchange did not occur through a meeting of any type between Councilman Piagentini and York Day, whether virtual or in-person, and did not lead to any subsequent meeting in January 2022 between Councilman Piagentini and York Day to discuss Councilman Piagentini’s résumé or any potential job opportunities. In fact, Councilman Piagentini submitted his résumé “out to probably every healthcare – executives within every healthcare organization [he] knew of in the city at that point, including . . . Norton Healthcare, UofL Health, and others.” *Id.* at 158:15-22.

33. That same month, at the suggestion of the CEOc’s lobbyist, York Day met with Councilman Piagentini, Councilman Markus Winkler, and Councilman David James to “be on the radar of the Council.” Ex. B, York Day Testimony, 16:17-22. At the time of that meeting, York Day did not know who was handling workforce development funding efforts for Metro Council. *Id.* at 16:25-17:5. But no part of that meeting was intended to discuss networking or job opportunities for Councilman Piagentini. *See id.* at 16:17-17:5.

34. In or about March 2022, York Day introduced Councilman Piagentini to the Chief Administrative Officer of Delta Dental “because [she] felt it aligned with [Councilman

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11/20/2023 03:33:28

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Piagentini's] background." *Id.* at 17:16-25. That meeting, however, was considered to be a general networking opportunity and did not result in the creation of any job opportunities for Councilman Piagentini. *See id.* at 18:1-3; *see also* Ex. B, Piagentini Testimony, 163:17-24.

35. In or about April 2022, Councilman Winkler and Councilman Piagentini were given the evaluations of thirty (30) responses to a request by Metro Council for applications related to funds given to Louisville Metro via the federal American Rescue Plan ("ARP"). Ex. B, Piagentini Testimony, 163:25-164:3. Included in those responses was a \$9.2 million funding request by the CEOc. *See id.* at 164:4-6; *see also* York Day Testimony, 110:17-25.

36. Neither Councilman Winkler nor Councilman Piagentini took any of those evaluations seriously, Ex. B, Piagentini Testimony, 222:17-20, and Councilman Winkler, in particular, expressed his disappointment with all of the ARP submissions to that point, *see* Ex. B, York Day Testimony, 58:4-10. *See also* Ex. C, Hrg. Tr. 122:12-123:11, Aug. 23, 2023 (Testimony of Councilman Winkler) (hereinafter "Ex. C, Winkler Testimony").

37. At the same time, a coalition of healthcare workforce organizations had submitted a grant proposal to the federal government for funding under the so-called "Build Back Better" program ("BBB"). *See* Ex. B, Piagentini Testimony, 217:8-13; Ex. C, Winkler Testimony, 113:16-19. That coalition consisted not only of the CEOc, but also the Urban League, the Metro United Way, Greater Louisville, Inc. ("GLI"), and the Louisville Metro Government, among other partners (hereinafter, the "Coalition"). *See* Ex. B, Piagentini Testimony, 220:2-6; *see also* Ex. B, York Day Testimony, 51:20-52:1; Ex. C, Winkler Testimony, 114:11-115:4. Councilman Piagentini became aware of that proposal only after Councilman Winkler shared it with him and convinced him to get on board. *See* Ex. B, Piagentini Testimony, 217:8-13; *see also id.* at 218:20-

NOT ORIGINAL

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11/20/2023 03:33:28

22 (“He had sort of sold me on it, and I was like, yeah, that sounds flipping – I mean, the description he gave me sounded great.”); Ex. C, Winkler Testimony, 117:20-118:14.

WHAS

38. At a meeting held on or about April 14, 2022, Councilman Winkler and Councilman Piagentini agreed to withhold any funding for ARP projects until the Coalition project learned whether it would receive funding under BBB with the express intent that Councilmen Winkler and Piagentini would recommend allocating ARP funding for the Coalition if BBB funding was not provided. *See* Ex. B, Piagentini Testimony, 223:8-224:4; Ex. C, Winkler Testimony, 119:5-10. After that meeting, all of the relevant parties agreed not to talk about any of the funding proposals again until September 2022. *See* Ex. B, Piagentini Testimony, 223:22-224:4; Ex. C, Winkler Testimony, 118:15-119:4.

39. In or about May 2022, Councilman Piagentini took a job with a different company, Wellcare of North Carolina. Ex. B, Piagentini Testimony, 161:2-3. Councilman Piagentini took that job and stopped looking for any other employment opportunities after he spoke with the CEO of Wellcare of North Carolina and was informed that they were in need of help. *Id.* at 160:13-23.

40. On or about September 1, 2022, the Coalition learned that it would not be receiving funds through BBB. Ex. B, York Day Testimony, 58:11-14; Ex. C, Winkler Testimony, 127:23-128:3. On September 16, 2022, York Day met with Councilman Winkler to discuss how the Coalition might receive funds for the project through ARP. *See id.* at 58:15-59:11; *see also* Ex. C, Winkler Testimony, 131:14-132:15. Councilman Piagentini was not included in that meeting, *see id.* at 59:3-6; Ex. C, Winkler Testimony, 132:16-18, but he was informed of Councilman Winkler’s effort to provide ARP funds to the Coalition and was supportive of that effort, *id.* at 60:22-61:6; Ex. C, Winkler Testimony, 132:19-23.

Presiding Judge: HON. SARAH E. CLAY (630456)

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11/20/2023 03:33:28

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41. Around the same time as her meeting with Councilman Winkler, York Day invited Councilman Winkler, Councilman Piagentini, and Councilman David James to attend a conference related to the healthcare industry scheduled for September 21-22 in Louisville called “Optimize.” *Id.* at 20:16-21:9; 102:10-15; Ex. C, Winkler Testimony, 134:8-11. Although Councilman Winkler attended a separate conference sponsored by GLI during that timeframe, *see* Ex. C, Winkler Testimony, 135:3-6, Councilman Piagentini did attend, *see, e.g.*, Ex. B, Piagentini Testimony, 171:9-12. At the time, however, there was no rule within the Code of Ethics or elsewhere that prohibited Metro Council members from accepting free invitations to events. *Id.* at 170:1-171:3.

42. At the Optimize conference, York Day approached Councilman Piagentini briefly about a possible government-affairs initiative being considered by the CEOc. Ex. B, York Day Testimony, 32:11-17. At no point during that conversation, however, did York Day indicate that she had a job for Councilman Piagentini to consider. *Id.* at 32:23-33:1 (“Those were not the words I used. I – I think I stated what I said both to the investigator, and here, that if we moved forward with an initiative, I wanted to speak with him.”); Ex. B, Piagentini Testimony, 173:4-7 (“If she had this hypothetical conversation with me, first of all, I would’ve distinctly remembered that. I don’t forget it when people are offering me jobs or want to speak specifically about jobs.”). And Councilman Piagentini was continuing to work for Wellcare of North Carolina. Ex. B, Piagentini Testimony, 171:21-24.

43. In fact, CEOc’s Board of Directors did not approve the creation of any government-affairs initiative until November 7, 2022. Ex. B, York Day Testimony, 83:6-18.

44. Ten days later, on the morning of November 17, 2022, York Day spoke with members of CEOc’s Board of Directors about possible partners in this new venture. *Id.* at 84:15-85:10. During that meeting, York Day raised the possibility of bringing Councilman Piagentini

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11/20/2023 03:33:28

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on board, but was unsure whether he was available because she was aware that he was working with Wellcare of North Carolina at the time. *Id.* at 85:10-14 (“I brought up Anthony Piagentini to them and said, ‘I don’t know if he’s available. I know he’s consulting, you know, elsewhere, but his skills would seem to align with this.’”).

45. Later that morning, York Day sent Councilman Piagentini a non-disclosure agreement (“NDA”), by e-mail. **Ex. D**, York Day Nov. 17, 2022 E-Mail (with Attachment). According to York Day, sending an NDA was a standard practice for the CEOc when attempting to engage with individuals about potential business opportunities. **Ex. B**, York Day Testimony, 88:7-16. The purpose of doing so was to ensure that initiatives contemplated by the CEOc did not become public prematurely. *Id.* at 88:18-20 (“Because we’re – there’s a lot of interest in the Council and what we do. We don’t want things getting out prematurely.”). That said, York Day did not explain to Councilman Piagentini at the time why she was sending him an NDA. *See Ex. D; see also Ex. B*, Piagentini Testimony, 189:19-190:3.

46. Councilman Piagentini did not speak with Ms. York Day about any NDA prior to receiving it in the morning of November 17, 2022. *See Ex. B*, Piagentini Testimony, 190:1-3. And he did not know that York Day was interested in speaking with him about an opportunity with CEOc before York Day sent him the NDA on November 17, 2022. *Id.* at 190:7-12.

47. At 5:00 PM on the evening of November 17, 2022, Metro Council’s Budget Committee met to vote on the Coalition’s ARP proposal, *id.* at 185:20-186:7, and Councilman Piagentini spoke in favor of the proposal, *id.* at 186:1-4. Up to that point, however, Councilman Piagentini had not spoken with York Day about the NDA or anything related to the proposed government-affairs initiative approved by CEOc’s Board of Directors on November 7, 2022. *See id.* at 190:13-17.

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11/20/2023 03:33:28

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48. At 10:38 the next morning, November 18, 2022, Councilman Piagentini signed the NDA and returned it York Day. **Ex. E**, Piagentini Nov. 18, 2022 E-Mail (with Attachment). At noon that same day, Councilman Piagentini called York Day to follow-up on that e-mail. **Ex. B**, Piagentini Testimony, 190:19-23.

49. At the outset of that November 18, 2022 phone call, upon hearing from York Day that the conversation would entail discussion about a business opportunity with the CEOc, Councilman Piagentini immediately cut off York Day and stated to her that he would have to abstain from any further support of the Coalition ARP proposal. *Id.* at 233:3-8 (“And I – you know, I sort of stopped her right there. I said, okay, I’m interested. I said, but – I said, we continue this conversation in the slightest – I said, you know – I explained the whole abstention process.”); **Ex. B**, York Day Testimony, 120:6-9 (“Again, he said, ‘Before we – we have this discussion before we say another word, I will have to recuse myself. You’re going to basically – you’re going to lose a vote.’”). York Day had no concern about losing Councilman Piagentini’s support for the Coalition proposal because, in her own words: “[A]s the minority, you know, caucus lead[, he] did not really have any – he didn’t bring any value in terms of this Metro Council vote for these ARP funds.” **Ex. B**, York Day Testimony, 120:14-17. In addition, Councilman Piagentini inquired if the opportunity was related to or dependent on the ARP funding proposal, and York Day confirmed to him that the potential opportunity was completely separate from the ARP proposal. **Ex. B**, York Day Testimony, 92:6-93:6; Piagentini Testimony, 233:8 – 234:2. With those assurances, Councilman Piagentini agreed to learn more about the potential position. **Ex. B**, York Day Testimony, 92:6-13; *see* Piagentini Testimony, 234:2-11]

50. Once he learned that the nature of the conversation with York Day included a possible business opportunity, Councilman Piagentini understood that he had a potential conflict

NOT ORIGINAL

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11/20/2023 03:33:28

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of interest in continuing to support the Coalition ARP proposal. Ex. B, Piagentini Testimony, 192:6-12. At that moment, he also believed that he was required, in his words, “to end all advocacy whatsoever for that ordinance, and [] would have to walk onto the floor [of Metro Council] and abstain.” *Id.* at 199:20-23.

51. The following week, Councilman Piagentini spent the entire week in the Outer Banks of North Carolina for the Thanksgiving holiday. *Id.* at 226:23-227:5. At no point from November 18, 2022, until December 1, 2022, did Councilman Piagentini promote the Coalition ARP proposal or speak with any member of Metro Council about the Coalition ARP proposal. *Id.* at 235:10-17.

52. The next public meeting of Metro Council after November 18, 2022, was on Thursday, December 1, 2022. *Id.* at 226:18-22.

53. On or about December 1, 2022, at 1:06 PM, York Day sent an e-mail to Councilman Piagentini, copying CEOc staff, regarding the onboarding process for Councilman Piagentini. Ex. F, York Day Dec. 1, 2022 E-Mail (with Accompanying E-Mails) 1. Councilman Piagentini responded eight (8) minutes later, indicating that his schedule was open the next day, December 2, 2022, to go over details. *Id.* at 2. At that time, however, Councilman Piagentini had not signed a statement of work with the CEOc and believed he had every right to walk away from the potential opportunity. Ex. B, Piagentini Testimony, 198:9-14; 199:4-16 (“There could have been terms in there I disagreed with. There could have – all kinds of things could have gone sideways, which I’ve seen before in contract negotiations.”).

54. At 6:00 PM that evening, Metro Council met to approve the Coalition ARP proposal, among other items. Ex. B, Piagentini Testimony 194:13-17; *see also* Ex. G, Minutes of Dec. 1, 2022 Metro Council Meeting.

NOT ORIGINAL

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11/20/2023 03:33:28

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55. When the question of the Coalition ARP proposal came up for consideration, Councilman Piagentini made a point of order, asked that he be removed as a co-sponsor of the ordinance approving the proposal, and indicated that he would be “abstaining due to a potential conflict of interest.” Ex. G, p. 19.

56. The ordinance supporting the Coalition ARP proposal then passed Metro Council by a vote of twenty-five (25) in favor, zero (0) in opposition, and one (1) – Councilman Piagentini – abstention. *Id.*

57. At the time he abstained, Councilman Piagentini believed his explanation was sufficient because he had observed other members of Metro Council use similar terminology to abstain from votes. Ex. B, Piagentini Testimony, 229:7-19. Indeed, Councilman Kevin Kramer, who has served on Metro Council for twenty (20) years, testified that he has observed other Metro Council members abstain from voting on matters on the basis of a “potential conflict of interest” and that, in his experience, disclosures of such a nature are not at all unusual. Ex. C, Kevin Kramer Testimony, 94:7-95:1. And at no point during Metro Council’s consideration of the Coalition ARP proposal, or any point thereafter during the Metro Council meeting, did anyone ask Councilman Piagentini to explain his abstention or give further information about the potential conflict of interest. *See generally* Ex. G.

58. On or about the next day, December 2, 2022, Councilman Piagentini, for the first time, reviewed the proposed statement of work with the CEOc. Ex. B, Piagentini Testimony, 228:6-17; Ex. B, York Day Testimony, 100:24-101:2. Although Councilman Piagentini signed the statement of work on December 2, 2022, he backdated the document to December 1, 2022, because, for compensation purposes, dating the document effective December 2, 2022, would require CEOc to prorate Councilman Piagentini’s pay. *Id.* at 232:9-13 (“And – and if we signed

NOT ORIGINAL

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11/20/2023 03:33:28

PM

it on, like, the 2nd, now you've got to calculate one day out of 31 in [sic] prorate it, and – and I don't think either of us were interested in doing that."); *see also* Ex. B, York Day Testimony, 100:16-19 ("Q. Why did you date it December 1? A. Administratively, that's just how – how we always do it when we're, you know, engaging in initiative, so it was administrative.").

59. Later that month, Councilman Piagentini sent out a family Christmas card that made reference to his work with CEOc. **Ex. H**, Piagentini 2022 Christmas Card 2.

60. On or about February 13, 2023, Councilman Piagentini engaged in a conversation with Jacob Ryan, a reporter with Louisville Public Media ("Ryan"), regarding Councilman Piagentini's work with the CEOc and his abstention on the vote to approve the Coalition ARP request. Ex. B, Piagentini Testimony, 248:23-249:7. During that conversation, Councilman Piagentini realized that he had not updated his financial disclosure information to account for his new position with the CEOc. *Id.* at 249:6-15. Two days later, on February 15, 2023, Councilman Piagentini submitted an updated financial disclosure form with the Ethics Commission. **Ex. I**, Feb. 15, 2023 Financial Disclosure Form; Ex. B, Piagentini Testimony, 248:21-22.

61. At no point prior to March 3, 2023, did Councilman Piagentini take any action, whether by himself or through a third-party, to solicit or request a job or a contract with York Day or any other representative of CEOc.

62. Every action by, and every inaction of, Councilman Piagentini was either undertaken or not undertaken by Councilman Piagentini due to Councilman Piagentini's good-faith understanding that his actions or inactions were consistent with both the letter and spirit of the laws of the United States and the Commonwealth of Kentucky, any and all Metro Ordinances, including the Ethics Code, and any and all common practices of Metro Council.

D. Fields Files an Ethics Complaint Against Councilman Piagentini.

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63. On or about March 3, 2023, Fields filed a “Metro Ethics Commission Complaint Against Metro Officer” (the “Ethics Complaint”) alleging that Councilman Piagentini violated Metro Ordinance § 21.02 by using his “position for personal gain or accepting gifts that could influence their decision-making.” Per Mr. Fields, his understanding of the factual basis for filing the Ethics Complaint derived entirely from what was shared in a local media story. Ex. C, Hrg. Tr. 55:25-56:2, Aug. 23, 2023 (Testimony of Kevin E. Fields, Sr.) (hereinafter “Ex. C, Fields Testimony”).

64. Councilman Piagentini was served with the Ethics Complaint on March 9, 2023.

65. Shortly after Fields filed the Ethics Complaint, the Ethics Commission hired Jim Griffin (“Griffin”) to investigate the allegations against Councilman Piagentini.

66. On or about March 28, 2023, Councilman Piagentini filed his Answer to the Ethics Complaint, which answer was styled: “Response of Hon. Anthony Piagentini to Ethics Complaint.”

E. The Ethics Commission Ensures Fields Has Counsel Appointed to Represent Him, the Costs of Which Were to Be Borne by Metro Government, Without Any Finding That Such Representation Is Necessary to Protect Due Process During the Hearing.

67. Metro Ordinance § 21.06(A)(9) permits the Ethics Commission to “request that the Jefferson County Attorney to contract independent counsel to represent the complainant at the cost of Louisville Metro Government when the Commission deems such representation necessary to ensure due process in hearings conducted before the Commission.” Metro Ordinance § 21.06(A)(9).

68. At no point did the Ethics Commission determine that the appointment of counsel for Fields was necessary “to ensure due process in hearings before the Commission.” In fact, Fields testified under oath that (a) the Ethics Commission never sought any information from him

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to determine that legal representation was necessary to protect due process; and (b) the Ethics Commission proactively informed him after he filed the Ethics Complaint that legal representation could be appointed for him. Ex. C, Fields Testimony, 72:16-73:3.

WHAS

69. Furthermore, Fields testified under oath that, even though his organization's own application for workforce development-related ARP funding was denied, he was not looking to undo the grant award to the Healthcare Workforce Innovation Coalition. *Id.* at 63:14-17. As such, Fields had no recognized legal interest in the proceedings before the Ethics Commission that required the protection of due process of law.

70. Despite the fact that the Ethics Commission never determined that legal representation was necessary to ensure due process at the hearing, and the fact that Fields, himself, subsequently acknowledged that he, in fact, had no legal interest that would require the protection of due process, the Ethics Commission improperly arranged for counsel to be appointed to represent Fields at the cost of Metro Government, even well before a determination was made to hold a hearing in this matter.

F. Almost Immediately After Appointing Fields Legal Representation, the Ethics Commission Improperly Grants Fields the Rights of an Adversarial Party, Effectively Appointing Him as the Prosecutor of the Allegations Against Councilman Piagentini.

71. Almost immediately after the appointment of counsel for him, Fields attempted to intervene in the Ethics Commission proceedings and commandeer the prosecution of the allegations against Councilman Piagentini. First, on or about March 29, 2023, counsel for Fields, citing Ethics Commission Rule 7.3(C), filed a Motion to Intervene "to ensure that all relevant evidence is present to the Commission," despite the fact that the investigation had just begun and that the Ethics Commission had not yet determined to hold a hearing regarding the Ethics Complaint. *See Ex. J*, Mot. to Intervene.

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72. Second, on or about April 11, 2023 – and before the Ethics Commission had even ruled on his Motion to Intervene – Fields filed a Motion to Appoint Investigating Officer. **Ex. K**, Mot. to Appoint Investigating Officer. In that motion, Fields, *inter alia*, requested that the Ethics Commission appoint *his counsel* as the Investigating Officer ostensibly so that he could serve as a party to any hearing of this matter and present witnesses and make opening and closing statements. *See id.* ¶ 6. Alternatively, Fields asked the Commission to appoint its own counsel, F. Todd Lewis (“Lewis”), whom Fields described in the Motion as “a talented and experienced attorney,” to serve as the Investigating Officer. *Id.* ¶ 10.

73. On or about April 12, 2023, Councilman Piagentini filed a Response in Opposition to Motion to Intervene. **Ex. L**, Resp. in Opp. to Mot. to Intervene. In his response, Councilman Piagentini argued that due process, Metro Ordinance §§ 21.05 and 21.06, and the Rules of the Ethics Commission place the obligation to enforce the Code of Ethics specifically upon the Ethics Commission, and do not permit it to confer upon a complainant, or his attorney, the status of an adversarial party or the responsibility of prosecuting allegations of ethical violations. *See id.* Additionally, Councilman Piagentini objected to the Motion on the grounds that it was premature because Rule 7.3(C) of the Commission’s Rules permit intervention only at the hearing and the Ethics Commission had not yet determined to hold a hearing. *See id.*

74. Thereafter, on or about April 17, 2023, Councilman Piagentini filed a Response in Opposition to Motion to Appoint Investigating Officer. **Ex. M**, Resp. in Opp. to Mot. to Appoint Investigating Officer. In that response, Councilman Piagentini reiterated his argument that Fields’s attempt to intervene was inappropriate and that Fields had no standing to file a motion seeking the appointment of his attorney as the Investigating Officer because Fields’s Motion to Intervene had not been granted in the first instance. *See id.*

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75. The Ethics Commission held meetings on or about April 26, 2023, and May 11, 2023, to consider the Motion to Intervene and the Motion to Appoint Investigating Officer. At those meetings, counsel for Councilman Piagentini argued, *inter alia*, that the motions should be denied because counsel for Fields owed a fiduciary obligation to act in the interest of his client, a duty which is incompatible with the legal obligations of the Ethics Commission set forth in Metro Ordinance § 21.05 and elsewhere to independently and impartially investigate allegations and enforce the Code of Ethics.

76. On or about May 12, 2023, the Ethics Commission entered an Order purporting to deny both the Motion to Intervene and the Motion to Appoint Investigating Officer. Ex. N, Order of May 12, 2023. Specifically, and in the context of his request to intervene, the Ethics Commission stated that “Mr. Fields may not offer evidence, by statement or otherwise, at any proceeding in which he is not placed under oath.” *Id.* at 1. Likewise, in the context of Fields’s request for his attorney to be appointed as the Investigating Officer, the Commission held that it “employs Jim Griffin as an investigator of the allegations made in Mr. Fields’ complaint, and Mr. Griffin has been serving as the appointed Investigating Officer since his employment. Mr. Griffin[] will continue in the role of the Investigating Officer, until further order of the Commission.” *Id.* at 3-4.

77. That said, and despite the clear statement that it was *denying* Fields’s Motion to Intervene and the Motion to Appoint Investigating Officer, the Ethics Commission, in that very same Order, and contrary to the express language set forth in Metro Ordinance §§ 21.05(A)(1) and 21.06(B)(11) and Ethics Commission Rule 7.3(C), conferred upon Fields certain rights of an adversarial party, including the right for his attorney to speak at proceedings before the Ethics

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Commission “when called upon by the Commission and otherwise to ensure due process” and to file motions or pleadings on behalf of Fields. *See id.* at 2.

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78. Furthermore, on or about May 16, 2023, the Ethics Commission compounded its error via a Scheduling Order. **Ex. O**, Scheduling Order of May 16, 2023 (the “First Scheduling Order”). In addition to setting certain deadlines, including an initial date for a hearing of this matter even though the investigation was not yet complete, *id.* at unnumbered p. 1, the First Scheduling Order granted certain rights to Fields that were not authorized anywhere in the Code of Ethics or the Commission’s Rules, including the right to respond to dispositive motions that might be filed by Councilman Piagentini, to exchange with Councilman Piagentini witness and evidentiary lists for use at the hearing, and to request subpoenas to compel witnesses for attendance at the hearing. *See id.* at unnumbered pp. 2-3. Absent from the First Scheduling Order, however, was any express ruling by the Ethics Commission that it had overturned its previous holding that Fields “may not offer evidence, by statement or otherwise, at any proceeding in which he is not placed under oath,” *i.e.*, as a witness. *See generally id.*

G. Councilman Piagentini Unsuccessfully Requests That the Ethics Commission Follow the Requirements of the Code of Ethics and Its Own Rules.

79. On or about May 22, 2023, Councilman Piagentini filed a Motion to Alter, Vacate, or Amend Order on Intervention and Final Scheduling Order. **Ex. P**, Mot. to Alter, Vacate, or Amend Order of May 22, 2023 (the “First Motion to Alter”). In that Motion, Councilman Piagentini argued, *inter alia*, that in the Order Denying Motions to Intervene and Appoint Investigating Officer and its May 16, 2023 Scheduling Order, the Ethics Commission acted arbitrarily and exceeded the legal authority granted to it under the Code of Ethics and its own Rules and acted arbitrarily by conferring certain rights and privileges afforded an adversarial party upon Fields. *See generally id.* Councilman Piagentini, therefore, requested that the Ethics Commission

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amend its order to confine its actions to the Code of Ethics and its own Rules by removing the provisions conferring extraordinary rights upon Fields. *Id.* at 16-17.

WHAS

80. The Ethics Commission met on or about June 23, 2023, to consider the pending motions with respect to the Ethics Complaint against Councilman Piagentini, including the First Motion to Alter. During that meeting, and in a subsequent Scheduling and Procedural Order issued on June 30, 2023 (but erroneously dated May 31, 2023), the Ethics Commission denied the First Motion to Alter without explanation. **Ex. Q**, Order of June 30, 2023 (the “Scheduling and Procedural Order”).

81. The Commission also proclaimed in the Scheduling and Procedural Order that it had “ordered the appointment of Commissioner Robert Boyd as additional investigating officer for the purpose of presenting evidence in this matter[,]” *id.* at 1, and further ordered that “the Investigating Officers will be investigator Jim Griffin and Robert Boyd, pending any further order of the Commission[,]” *id.* at 2. And the Scheduling and Procedural Order reaffirmed the Ethics Commission’s granting extraordinary rights upon Fields, including the right to exchange witness and exhibits lists and the right to request the issuance of subpoenas to compel the attendance of witnesses. *Id.* at 3-4. But nowhere in the Scheduling and Procedural Order did the Ethics Commission expressly overturn its previous admonition that Fields “may not offer evidence, by statement or otherwise, at any proceeding in which he is not placed under oath.” *See generally id.*

H. The Ethics Commission Violated Kentucky’s Open Records Act, Including the Willful Withholding of Requested Records That Would Have Undermined a Legal Position the Ethics Commission Took in a Civil Action Filed by Councilman Piagentini.

82. Metro Ordinance § 21.06(E) requires that “[a]ll Ethics Commission records, including the complaint and *the answer* and other records relating to a preliminary inquiry, shall

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be confidential until a final determination is made by the Ethics Commission,” subject to certain exceptions. Metro Ordinance § 21.06(E) (emphasis added).

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83. On or about April 21, 2023, Ryan approached Councilman Piagentini and advised Councilman Piagentini that he had (a) obtained a copy of Councilman Piagentini’s Answer; and (b) shared it with multiple purported “experts” for the purpose of another news story he was working on regarding the Ethics Complaint.

84. On or about April 24, 2023, counsel for Councilman Piagentini sent an e-mail to Lewis inquiring if the Ethics Commission had received a request to inspect or produce Councilman Piagentini’s Answer pursuant to the Kentucky Open Records Act, KRS 61.870 *et seq.* (the “ORA”). **Ex. R**, Smith-Lewis Apr. 24, 2023 E-Mail Thread 2.

85. Lewis responded to counsel for Councilman Piagentini by e-mail approximately fourteen (14) minutes later, copying Ethics Commission Chairwoman Delores Pregliasco (“Chairwoman Pregliasco”), saying: “Apparently, personnel *in city government* turned it over to the WFPL [*sic*] without informing me or the Commission that the request had even been received. I have a phone call to the reporter requesting that he not use it. I believe the radio station intends to interact with me through counsel after he meets with his editor today.” *Id.* at 1.

86. On or about April 24, 2023, counsel for Councilman Piagentini submitted a request pursuant to the ORA to Metro Government and the Ethics Commission via Metro Government’s online portal, NextRequest, which was designated as Request 23-4356. **Ex. S**, Request 23-4356.

87. In Request 23-4356, counsel for Councilman Piagentini requested, *inter alia*, any and all requests from Ryan for Councilman Piagentini’s Answer to the Ethics Complaint, written communications sent or received by employees of Metro Government regarding Ryan’s request,

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and written communications sent to or by members and/or staff of the Ethics Commission regarding a request by Ryan for Councilman Piagentini's Answer. *See id.* at unnumbered pp. 1-3.

WHAS

88. Despite the fact that KRS 61.880(1) requires public agencies to respond to ORA requests within five (5) business days, neither Metro Government nor the Ethics Commission responded within the statutorily prescribed timeframe. *See id.* at 4 (noting an initial response of May 3, 2023, seven (7) business days after the request was submitted).

89. On or about May 2, 2023, Councilman Piagentini filed a civil action against the Ethics Commission and its members in the Jefferson Circuit Court styled *Anthony Piagentini v. Delores Pregliasco, et al.*, Jefferson Circuit Court, Civil Action No. 23-CI-002692 (the "Circuit Court Action."). Among other things, the Circuit Court Action concerned the disclosure of Councilman Piagentini's Answer by unidentified "personnel in city government" to Ryan and sought an injunction requiring the Ethics Commission to maintain the confidentiality of its records confidential in accordance with Metro Ordinance § 21.06(E).

90. On or about May 3, 2023 – six (6) business days after Request 23-4356 was submitted, and *the day after* Councilman Piagentini filed the Circuit Court Action – Metro Government and the Ethics Commission responded to Request 23-4356 that the requested records "are in active use, storage, or not otherwise available [] because the department needs additional time to gather your request." Ex. S, unnumbered p. 4. According to the response, more time was necessary because the request "[r]equire[d] legal review" and because of the need for "[g]athering and review of responsive records." *Id.* But Metro Government and the Ethics Commission promised to make the responsive records available "on or before close of business May 10, 2023." *Id.*

Presiding Judge: HON. SARAH E. CLAY (630456)

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91. Despite the foregoing promise, no responsive records were made available by May 10, 2023. *See id.* at unnumbered p. 4. Instead, on May 15, 2023, a new response to Request 23-4356 was provided via NextRequest indicating the need for further delay. *Id.* Once again, the reasons given by Metro Government and the Ethics Commission for the delay in responding was due to the need to “search for paper and electronic records” and to perform a “legal review.” *Id.* Accordingly, Metro Government and the Ethics Commission said they would need until “close of business June 7, 2023” – *nearly three weeks later* – to produce responsive records. *Id.*

92. Meanwhile, on or about May 11, 2023, Councilman Piagentini filed a Motion for Temporary Injunction in the Circuit Court Action seeking an injunction prohibiting the Ethics Commission from publicly disclosing or releasing records of the Ethics Commission before it made a final decision with respect to the Ethics Complaint.

93. Also, on or about May 11, 2023, the defendants in the Circuit Court Action filed a Motion to Dismiss. **Ex. T**, Mot. to Dismiss (and Memorandum). One of the arguments made by the defendants was that Councilman Piagentini lacked standing to invoke the exception set forth in KRS 61.878(1)(h) of the ORA. *Id.* at unnumbered p. 8 (p. 4 of the Memorandum).

94. KRS 61.878(1)(h) exempts from disclosure:

Records of law enforcement agencies or agencies involved in administrative adjudication that were compiled in the process of detecting and investigating statutory or regulatory violations if the disclosure of the information would harm the agency by revealing the identity of informants not otherwise known or by premature release of information to be used in a prospective law enforcement action or administrative adjudication. . . .

95. The defendants in the Circuit Court Action argued that because KRS 61.878(1)(h) applies to records of administrative agencies “if the disclosure of the information would harm the agency by revealing the identity of informants not otherwise known or by premature release of

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information,” “it is the agency alone who even has standing to claim this exemption from release of documents pending investigation.” *Id.* at unnumbered p. 9 (p. 5 of the Memorandum). ^{WHAS}

96. On or about May 16, 2023, pursuant to KRS 61.880(2) and (4), counsel for Councilman Piagentini filed an appeal with the Office of the Kentucky Attorney General (“OAG”) on the grounds that the responses of Metro Government and the Ethics Commission to Request 23-4356 violated the ORA because (a) their successive extensions the deadlines for producing responsive documents were improper; and (b) the explanations for why additional time was needed were unreasonable. **Ex. U**, May 16, 2023 Smith Letter.

97. On or about that same day, the Jefferson Circuit Court scheduled a hearing on Councilman Piagentini’s Motion for Temporary Injunction and the defendants’ Motion to Dismiss for June 8, 2023 – the day after Metro Government and the Ethics Commission’s second self-imposed deadline for producing records that were responsive to Request 23-4356.

98. On or about May 31, 2023, the defendants in the Circuit Court Action filed a Response to Motion for Temporary Injunction. **Ex. V**, Resp. to Mot. for Temp. Inj. In that response, the defendants argued (a) Councilman Piagentini was not entitled to injunctive relief because he “can not [*sic*] show any violation of law in the first place, or likely success on the merits[.]” *id.* at 6, and (b) the Ethics Commission’s preliminary files (like Councilman Piagentini’s Answer) “are simply not exempt from disclosure under the existing provisions of the Open Records Act; and which have already been disclosed under the Open Records Act[.]” *id.* at 7.

99. Despite their previous assurances, Metro Government and the Ethics Commission failed to produce any documents that were responsive to Request 23-4356 by June 7, 2023. *See* **Ex. S**, unnumbered pp. 3-4.

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100. On or about June 8, 2023, the Circuit Court held the hearing on the pending Motion for Temporary Injunction and Motion to Dismiss.

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101. On or about June 12, 2023, the Circuit Court entered an Opinion & Order in which it denied the Ethics Commission's Motion to Dismiss and, with certain exceptions, denied Councilman Piagentini's Motion for a Temporary Injunction. In doing so, the Circuit Court ruled that procedural documents, such as pleadings filed with the Ethics Commission, are not exempt under KRS 61.878(1)(h).

102. On or about the next day, June 13, 2023, the OAG issued a decision, designated as 23-ORD-134, that Metro Government and the Ethics Commission violated the ORA when they delayed access to records and failed to provide records by the date promised. **Ex. W**, 23-ORD-134. In that decision, the OAG concluded: "Neither the [Ethics] Commission nor Metro [Government] have explained why it would take more than a month to produce copies of records that have allegedly been produced once before and for which no exception to inspection is readily apparent." *Id.* at 3.

103. In addition, the OAG determined that "Metro [Government] and the [Ethics] Commission missed their self-imposed deadline to produce copies of the Metro [Government] employees' and the [Ethics] Commission members' written communications regarding the request. For that, both agencies violated the Act." *Id.*

104. KRS 61.880(5) and 61.882 permit a party aggrieved by a decision of the OAG to appeal such decision to a circuit court within thirty (30) days of the decision.

105. Neither Metro Government nor the Ethics Commission filed an appeal of 23-ORD-134 within thirty (30) days of the OAG's decision.

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106. On or about June 14, 2023 – seven (7) days after their second, extended deadline, two (2) days after the Jefferson Circuit Court issued its Opinion & Order, and one (1) day after the OAG determined that Metro Government and the Ethics Commission violated the ORA, Metro Government and the Ethics Commission produced responsive documents to Request 23-4356. *See* Ex. S, unnumbered pp. 3-4.

107. The total documents produced included six (6) e-mail chains (that altogether consisted of nineteen (19) pages) and a copy of Councilman Piagentini’s Answer to the Ethics Complaint that was produced to reporter Ryan. *See id.* at unnumbered p. 3.

108. Included in the documents produced was an April 2023 e-mail chain between Lewis and Metro Government Director of Records Robin Berry (“Berry”), on which Chairwoman Pregliasco and two other Metro Government employees were also copied. **Ex. X**, Lewis-Berry E-Mail Thread.

109. In that e-mail chain, on or about April 14, 2023, Lewis requested that Metro Government inform him and Chairwoman Pregliasco of any ORA request directed to the Ethics Commission. *Id.* at 4-5. Later that day, Lewis sent a separate e-mail to Berry, Chairwoman Pregliasco, and others stating as follows:

The most important thing right now is that *we believe ALL documents connected to the currently-pending investigation are exempt under KRS 61.878(h)*, (i) and (j) [*sic*], at this time. This is important because one of the participants to that process is objecting to disclosure, *and improper disclosure will harm our ability to carry out this case.*

Id. at 3-4 (emphasis added).

110. In addition, in an e-mail sent on or about April 24, 2023, to Berry, Lewis repeated the Ethics Commission’s position regarding the disclosure of documents related to the Ethics Commission’s investigation, including documents produced by counsel for Councilman Piagentini, writing: “These records are *ALL not subject to disclosure.* . . . The exceptions to

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disclosure are that *these are preliminary matters and part of a pending investigation, KRS 61.878(1)(h)*. It is my understanding that the request for Brooken Smith documents had already been fulfilled to Louisville Public Media (that is how this came to my attention).” *Id.* at 1 (emphasis added).

111. In other words, before Councilman Piagentini filed the Circuit Court Action regarding that disclosure, the Ethics Commission privately took the position that Councilman Piagentini’s Answer *was exempt* from disclosure under KRS 61.878(1)(h). However, in the briefs it filed in the Circuit Court Action, the Ethics Commission publicly took the position that (a) Councilman Piagentini had no standing to assert the exemption under KRS 61.878(1)(h); *and* (b) the documents created during the preliminary part of the matter, including Councilman Piagentini’s Answer, *were not – and could not be – exempt* from disclosure under KRS 61.878(1)(h). *Compare id. with* Ex. T at unnumbered p. 9 (p. 5 of the Memorandum), *and* Ex. V, 7.

112. Disclosure of the April 14 and 24, 2023 e-mails from Lewis would have undoubtedly severely damaged the position taken by the defendants in the Circuit Court Action. And those e-mails were not disclosed to counsel for Councilman Piagentini, even though they were responsive to a valid and timely ORA request, until after the Circuit Court Action had concluded. Thus, it appears that the successive, improper extensions granted by Metro Government and the Ethics Commission in response to Request 23-4356 – extensions for which OAG found no other justifiable reason – coupled with the production of damaging e-mails two (2) days *after* the Circuit Court issued its Opinion & Order, evidenced a *willful* violation of the ORA by the Ethics Commission.

I. The Ethics Commission Amends the Complaint Against Councilman Piagentini and Inexplicably Grants Fields the Right to Amend His Own Complaint.

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113. On or about July 5, 2023, Councilman Piagentini filed a Motion for Definite Statement of Allegations. **Ex. Y**, Mot. for Def. Statement of Allegations. Because the Ethics Complaint was based entirely on an article published on the Internet and contained threadbare allegations of ethical violations, Councilman Piagentini asked the Ethics Commission to issue a clear statement of the specific charges leveled against him and the standards of the Code of Ethics which he was alleged to have violated. *See id.* at 6-8.

114. On or about the next day, July 6, 2023, the Ethics Commission held a meeting to consider pending matters with respect to the Ethics Complaint. During that meeting, as memorialized in a subsequent Order, the Ethics Commission granted Councilman Piagentini's Motion for Definite Statement of Allegations and determined that the hearing of the Ethics Complaint would be held between August 21, 2023, and August 24, 2023. *See Ex. Z*, July 7, 2023 Order Re: Scheduling, Amendments, and Protective Order (hereinafter, the "July 7, 2023 Order"). The July 7, 2023 Order also stated that the Commission would "issue an amended complaint in that regard." *Id.* at 1.

115. In that same Order, the Ethics Commission also granted *sua sponte* Fields the right to receive a copy of the Ethics Commission's investigative record and, within ten (10) days of receipt of that record, "leave to file *his own* amended complaint in this action." *Id.* at 1-2 (emphasis added). Thus, pursuant to that Order, the Ethics Commission essentially endorsed the creation of two (2) distinct complaints against Councilman Piagentini – complaints that were scheduled to be heard at a hearing before the Ethics Commission the following month.

116. Nowhere in the July 7, 2023 Order did the Ethics Commission expressly overturn its May 12, 2023 holding that Fields "may not offer evidence, by statement or otherwise, at any proceeding in which he is not placed under oath." *See generally id.*

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117. On or about July 14, 2023, the Ethics Commission issued a Notice of Formal Proceedings, Charges and Amended Complaint (the “Amended Complaint”). **Ex. AA**, Amended Complaint. The Amended Complaint charged Councilman Piagentini, for the first time, with seven (7) violations of the Code of Ethics. *See generally id.*

118. The decision to allow Fields to file an amended complaint prompted Councilman Piagentini on or about July 18, 2023 to file a Motion to Alter, Vacate, or Amend Order Re: Scheduling, Amendments and Protective Order. **Ex. BB**, Mot. to Alter, Vacate, or Amend Order Re: Scheduling, Amendments and Protective Order. Through that Motion, Councilman Piagentini argued that the Ethics Commission’s decision to permit Fields to file an amended complaint while the Ethics Commission intended to issue its own amended complaint violated due process, and reiterated his objection to conferring certain extraordinary rights upon Fields. *Id.* at 6-10.

119. On or about July 20, 2023, the Ethics Commission met to discuss pending matters with respect to the Ethics Complaint. *See Ex. CC*, Order Re: Respondent Mot. to Amend, Alter or Vacate; Req. for Subpoenas 1. At that meeting, counsel for Fields advised the Ethics Commission that he would not file an amended complaint. *See id.* at 2. But the Ethics Commission nonetheless permitted Fields to have access to its investigative file, even though the Investigating Officer, Griffin, had not yet issued a final report. *See id.*

J. Metro Government and the Ethics Commission Violate the ORA for a Second Time and Reveal That Virtually All Records Pertaining to Two (2) Prior Ethics Complaints Against Metro Councilmembers Have Been Lost.

120. On or about July 25, 2023, and in preparation for the hearing of this matter, counsel for Councilman Piagentini, pursuant to the ORA, submitted a request to Metro Government and the Ethics Commission to inspect, *inter alia*, a copy of all hearing transcripts and pleadings, motions, and orders filed and/or entered in Ethics Commission proceedings against then-Metro

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Councilmembers Judith Green and Barbara Shanklin, which was designated as Request 23-7629 by Metro Government's NextRequest portal. **Ex. DD**, Request 23-7629, 3.

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121. Neither Metro Government nor the Ethics Commission responded to Request 23-7629 within five (5) business days as required by KRS 61.880(1). *See generally id.* Accordingly, on or about August 10, 2023 – twelve (12) business days after making the ORA request pursuant and just eleven (11) days before the scheduled hearing of the matter before the Ethics Commission, counsel for Councilman Piagentini filed an appeal of Metro Government's and the Ethics Commission's failure to respond with the OAG. **Ex. EE**, Aug. 10, 2023 Smith Letter.

122. On or about the next day, August 11, 2023, Lewis submitted a response to the ORA appeal with the OAG. **Ex FF**, Aug. 11, 2023 Lewis Letter. In that response, Lewis averred that “[t]he members of the Commission, including its counsel, undersigned, have no physical access to records of the Commission, nor physical access to the space where any such records may be located.” *Id.* at unnumbered p. 2. Nowhere in this response, however, did Lewis explain how the Ethics Commission came to lose “physical access” to any public record created by, or on behalf of, the Ethics Commission in the first instance or why the Ethics Commission did not respond to counsel for Councilman Piagentini's ORA request – of which it was well-aware – independently of Metro Government's response. *See generally id.*

123. On or about August 18, 2023, counsel for Metro Government filed a response to the ORA appeal. **Ex. GG**, Aug. 18, 2023 Lyon Letter. In its response, Metro Government stated that it “has determined that it does not possess responsive records for the request underlying this appeal” and, specifically, that “[n]o hearing transcripts, pleadings, motions, or findings from the two requested hearings were located.” *Id.* at 1.

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124. By virtue of Metro Government's response, it appears that the entire administrative record for two (2) prior Ethics Commission proceedings against Metro Councilmembers have been completely lost or destroyed. As a result, it was, with limited exceptions set forth in more detail herein, virtually impossible for Councilman Piagentini to determine if the Ethics Commission was acting, or had acted, toward him in a manner that was consistent with previous actions and decisions the Ethics Commission made in prior cases.

125. The failure of Metro Government and/or the Ethics Commission to fulfill one of its/their most basic duties – to preserve official records of the Ethics Commission – prejudiced Councilman Piagentini in his defense of the allegations made against him by depriving him of important information regarding the Ethics Commission's prior proceedings against Metro Councilmembers, including how the Ethics Commission handled the prosecution, the involvement, if any, of previous complainants in hearings, and Ethics Commission's rulings on evidentiary and other legal matters.

126. On or about September 11, 2023, the OAG issued an opinion, designated as 23-ORD-237, in which it found that Metro Government and the Ethics Commission violated the Open Records Act when they failed to respond to Request 23-7629. **Ex. HH**, 23-ORD-237. Specifically, the OAG determined that Metro Ordinance, citing Metro Ordinance § 21.10, placed the burden on the Ethics Commission to maintain its own records, *id.* at 2, and that even if Metro Government failed to respond to an ORA request in a timely manner the ultimate burden of responding to ORA requests for Ethics Commission records falls *on the Ethics Commission itself, id.*

K. The Ethics Commission Denies Councilman Piagentini's Motion to Confine Fields and His Attorney to the Limited Role Prescribed by the Code of Ethics and Ethics Commission Rules.

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11/20/2023 03:33:28

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127. On or about August 14, 2023, and in furtherance of the scheduled hearing of the matter before the Ethics Commission, Councilman Piagentini filed Motions *in Limine*. **Ex. II**, **WHAS** Mots. in Limine. Among his motions, Councilman Piagentini again asked the Ethics Commission to conform its proceedings to the requirements of Metro Ordinance §§ 21.05(A)(1), (B)(1), 21.06(B) and the Ethics Commission Rules by requiring the appointed *Investigating Officer* to prosecute the allegations against Councilman Piagentini and not permitting Fields or his attorney to serve as a, or the, *de facto* prosecutor. *Id.* at 2-8.

128. The Ethics Commission failed to rule on Councilman Piagentini's request to limit Fields's participation prior to the commencement of the hearing of the matter on August 21, 2023.

129. Then, at the beginning of hearing proceedings on or about August 21, 2023, the Ethics Commission, and without deliberation or explanation, denied Councilman Piagentini's Motion *in Limine* to confine the prosecution of the matter to the appointed Investigating Officer, Robert Boyd. **Ex. JJ**, Hrg. Tr. 20:18-22, Aug. 21, 2023 (Statement of Chairwoman Pregliasco). As a result, and despite the fact that the Ethics Commission previously denied Fields' Motion to Intervene and expressly admonished that Fields "may not offer evidence, by statement or otherwise, at any proceeding in which he is not placed under oath[,]" Ex. N, 1, and), and despite the precedent established in the case involving Councilwoman Shanklin that the Investigating Officer had the burden of proving a violation of the Code of Ethics, and in direct contravention to Metro Ordinance § 21.06 and the Ethics Commission Rules, the Ethics Commission permitted counsel for Fields to present the prosecution's case against Councilman Piagentini beginning on August 21, 2023.

L. The Ethics Commission's Appointed Investigating Officer Declines to Participate in the Hearing, and, at Closing, Appeals to His Relationship with the Remaining Ethics Commission Members in Consideration of the Charges Against Councilman Piagentini

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11/20/2023 03:33:28

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130. In the context of a hearing before the Ethics Commission, the Ethics Commission Rules provide unambiguously that “[t]he parties to the hearing shall be the Respondent and the Investigating Officer(s).” Ethics Commission Rules § 7.3(B).

131. Additionally, the Ethics Commission Rules clearly state: “The burden of going forward shall be with *the appointed Investigating Officer.*” Ethics Commission Rules § 7.3(E) (emphasis added).

132. As noted in Paragraph 81, the Ethics Commission appointed Griffin and Commissioner Robert Boyd (“Boyd”) to serve as the Investigating Officers of the matter involving Councilman Piagentini. *See also* Ex. Q, 1, 2.

133. On the first day of the hearing, August 21, 2023, Boyd began by asking the Ethics Commission to “contain any opinions or basis of your opinions to the evidence contained in the record[,]” Ex. JJ, Hrg. Tr. 52:21-22, Aug. 21, 2023 (Statement of Robert Boyd), and further reminded the Ethics Commission that “the standard in this matter is that of clear and convincing evidence, as to whether or not Councilman Piagentini in fact violated or did not violate any section of the Louisville Metro Ethics Code[,]” *id.* 52:23-53:2. But then Boyd immediately turned over the matter to counsel for Fields “to begin with opening statements.” *Id.* 53:2-4.

134. Boyd did not speak again on the first day of the hearing, *see generally* Ex. JJ, except to express an opinion that counsel for York Day should be precluded from sitting in the room as a means of perpetuating the separation of presumed witnesses, Ex. JJ, 190:20-191:1, deferring, instead, to counsel for Fields to put on and examine, or cross-examine, witnesses.

135. Boyd did not speak at all during the second day of the hearing, deferring, instead, to counsel for Fields to put on and examine, or cross-examine, witnesses. *See generally* Ex. B.

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11/20/2023 03:33:28

PM

136. Boyd asked three (3) total questions of one (1) witness during the third day of the hearing, deferring, instead, to counsel for Fields to put on and examine, or cross-examine, witnesses. *See generally* Ex. C.

WHAS

137. On the fourth and final day of the hearing, having asked only three (3) total questions during the previous three (3) days of testimony, and after counsel for Fields had already given a closing statement on behalf of the prosecution, Boyd, the appointed Investigating Officer, was invited to make, and thereafter made, a *second* closing statement for the prosecution to the Ethics Commission. *See Ex. KK*, Hrg. Tr. 54:9-56:24, Aug. 24, 2023 (Closing Statement of Boyd). After briefly concurring with the first closing statement given by counsel for Fields on behalf of the prosecution, Boyd pivoted to a question regarding the political motives of the Ethics Commission. *See id.* 54:13-15.

138. In support of the argument that the Ethics Commission should find Councilman Piagentini guilty of the charges made against him, Boyd invoked his position as a member of the Ethics Commission.

While there are no doubt political implications for Councilman Piagentini and this Commission itself is a bipartisan commission intentionally, this is not a political body. This Commission has never functioned with a political agenda since I've been here. I am a Republican. I've been on this commission for five years. I actually believe I'm the longest serving current member of those on the Commission at this point. Prior to Monday morning, I've never known anybody – any of my colleagues' political affiliations. Over the years as we've reviewed complaints, I've never once felt the politics were calculated in any of our decisions. I'm proud to say that we only ever judge complaints based on the facts or allegations contained in the complaints and how those allegations would interact with the ethics code. Everything's not a political game. It was alluded to that my role as investigating officer would somehow deny Councilman Piagentini a presumably friendly Republican vote. I could assure Councilman Piagentini that he would not want me voting. At this point, I would urge the Commission to find Councilman Piagentini guilty of all seven counts that were described in Mr. Wicker's closing. . . .”

Id. 54:15-55:14 (emphasis added).

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11/20/2023 03:33:28

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139. Boyd also acknowledged in his closing statement for the prosecution that “[w]hile I played a very small role in presentation of evidence in this matter, I’m not going after Councilman Piagentini.” *Id.* 55:16-18 (emphasis added).

140. After Boyd made a second closing statement for the prosecution, the Ethics Commission invited counsel for Fields and counsel for Councilman Piagentini – and not Boyd, the appointed Investigating Officer – to supplement the Record with additional findings of fact and conclusions of law before the Ethics Commission rendered a final opinion. *Id.* 57:1-6.

M. The Ethics Commission, over Councilman Piagentini’s Objections, Permits the Inclusion of Speculation Testimony As Evidence and Permits Fields’s Attorney to Mischaracterize Testimony in Examination Throughout the Duration of the Hearing.

141. As the Kentucky Supreme Court has held, “speculation and supposition are insufficient to justify a submission of a case to the jury, and that the question should be taken from the jury when the evidence is so unsatisfactory as to require a resort to surmise and speculation.” *O’Bryan v. Cave*, 202 S.W.3d 585, 588 (Ky. 2006) (citation omitted).

142. Overruling Councilman Piagentini’s many objections, the Ethics Commission permitted the inclusion of speculative evidence throughout the entirety of the hearing of this case, including what actions, if any, Metro Council *might have taken* if Councilman Piagentini had taken any different action that was found in the Record. *See, e.g.*, Ex. JJ, 89:19-90:12 (Objection of Counsel for Councilman Piagentini on Grounds of Speculation and Overruling by the Ethics Commission), 185:12-18 (same), 227:13-17 (same); Ex. B, 26:7-9 (same); *and* Ex. C, 148:13-15 (same), 154:1-7 (same).

143. Additionally, the Ethics Commission, over Councilman Piagentini’s objection, routinely permitted counsel for Fields to ask questions during direct examination or cross-examination using mischaracterized testimony of other witnesses. *See, e.g.*, Ex. JJ, 138:1-12

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11/20/2023 03:33:28

PM

(Objection of Counsel for Councilman Piagentini on Grounds of Mischaracterized Testimony and Overruling by Ethics Commission); *and* Ex. B, 31:20-32:9 (same).

WHAS

N. The Ethics Commission Refuses to Declare a Mistrial or Disqualify Chairwoman Pregliasco After She Authors An Article in the *Courier-Journal* in Which She Expresses Personal Animus and Bias Against Republican Legislators – While Deliberating on the Allegations Against Councilman Piagentini, a Republican Legislator.

144. Not quite two (2) weeks before the hearing, on or about August 9, 2023, was the first day of school for students enrolled in the Jefferson County Public Schools (“JCPS”). However, opening day witnessed what JCPS Superintendent, Dr. Marty Pollio, aptly characterized as “transportation disaster” as the school district failed to implement a new plan that involved staggered school-start times to accommodate a shortage of bus drivers.

145. In response to JCPS’s botched handling of the first day of school, twelve (12) members of the Kentucky General Assembly representing various legislative districts in Jefferson County – specifically, State Representatives Jason Nemes, Jared Bauman, Kevin Bratcher, Emily Callaway, John Hodgson, Ken Fleming, and Susan Witten and State Senators Matt Deneen, Julie Raque Adams, Mike Nemes, Adrienne Southworth, and Lindsay Tichenor – authored an open letter to the Jefferson County community (hereinafter the “Open Letter”). **Ex. LL**, Open Letter.

146. All twelve (12) of the authors of the Open Letter are members of the Republican Party.

147. On or about September 6, 2023 – *while the Ethics Commission was still deliberating the charges against Councilman Piagentini* – Chairwoman Pregliasco published an op-ed in the *Courier-Journal* titled: “*When JCPS busing failed GOP legislators went into attack mode instead of offering to help.*” **Ex. MM**, Pregliasco Op-Ed.

148. As the headline of the op-ed suggests, Chairperson Pregliasco was well-aware that all twelve (12) authors of the Open Letter were members of the Republican Party.

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11/20/2023 03:33:28

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149. Although much of the op-ed lambasted the Open Letter as an “attack,” rather than an extension of a hand for help, the conclusion of the op-ed revealed Chairwoman Pregliasco’s true opinion of the Republican legislators, imputing upon them the following motive: “We part-time legislators, who don’t like diversity, equity, marginalized students, non-English-speaking immigrants and poor people, we will show JCPS.” *Id.* at unnumbered p. 2. In other words, instead of simply responding to the merits of a public policy proposal, Chairwoman Pregliasco effectively used well-worn political tropes leveled against Republicans generally to make an *ad hominem* accusation that these Republican legislators are racists, bigots, and xenophobes. *See id.*

150. On or about September 21, 2023, Councilman Piagentini filed a Motion for a Mistrial or, in the Alternative, to Disqualify. **Ex. NN**, Mot. for a Mistrial, or, in the Alternative, to Disqualify. In that Motion, Councilman Piagentini asked the Ethics Commission to declare a mistrial or, alternatively, to disqualify Chairwoman Pregliasco from participating further in the proceedings against him because her evident personal animus against Republican legislators, as demonstrated in her op-ed, created, at a minimum, a reasonable question of her impartiality toward Councilman Piagentini, a Republican legislator, and, thus, her continued participation would violate Councilman Piagentini’s right to due process under the Fourteenth Amendment of the United States Constitution and Metro Ordinance § 21.06(B). *See generally id.*

151. On or about, October 19, 2023, beginning around 9:00 a.m., the Ethics Commission met to consider pending motions with respect to the Ethics Complaint, including Councilman Piagentini’s Motion for a Mistrial or, in the Alternative, to Disqualify. After hearing argument from counsel for Councilman Piagentini, the Ethics Commission approved a motion to go into closed session to deliberate on the Motion for a Mistrial or, in the Alternative, to Disqualify.

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11/20/2023 03:33:28

PM

152. At 10:17 a.m. Lewis notified certain representatives of local media organizations that the Ethics Commission would reconvene in public session at 10:30 a.m.

WHAS

153. At 10:27 a.m., Lewis notified counsel for Councilman Piagentini that the Ethics Commission had made a decision with respect to the Motion for a Mistrial or, in the Alternative, to Disqualify and would announce its decision shortly in open session.

154. At the open session, which occurred at approximately 10:40 a.m., the Ethics Commission announced that it was denying Councilman Piagentini's Motion for a Mistrial or, in the Alternative, to Disqualify.

155. Just eight (8) minutes later, at 10:48 a.m., despite the fact that the Ethics Commission had not held a meeting between the date Councilman Piagentini filed his Motion for a Mistrial or, in the Alternative, to Disqualify and the October 19, 2023 meeting, and less than two (2) hours after oral arguments on the Motion *began*, the Ethics Commission issued, via an e-mail from Lewis, an seven (7) page written Order setting forth the purported reasons why it had denied Councilman Piagentini's Motion for a Mistrial or, in the Alternative, to Disqualify. **Ex. OO**, Oct. 19, 2023 Lewis E-Mail (with Attachment).

156. At no point during the meeting did the Chairperson of the Ethics Commission deny knowing that all twelve (12) of the signatories to the Open Letter were Republicans. *See id.* at unnumbered pp. 5-11. Rather, the Order concluded that it was too much of a leap to say that Chairwoman Pregliasco exhibited even an *appearance* of bias, *see id.* at unnumbered pp. 9-10, and took Councilman Piagentini to task for suggesting that politics had anything to do with the proceedings against him, *id.* at unnumbered p. 10-11.

O. The Ethics Commission Finds That Councilman Piagentini Violated Six (6) Standards of the Code of Ethics While Ignoring Undisputed Proof on Key Points.

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11/20/2023 03:33:28

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157. After denying Councilman Piagentini's Motion for a Mistrial or, in the Alternative, to Disqualify the six (6) deliberating members of the Ethics Commission, including Chairwoman Pregliasco, went back into closed session to continue deliberations on the allegations against Councilman Piagentini.

158. Later, on or about the afternoon of October 19, 2023, the deliberating members of the Ethics Commission came back into open session and announced their determination that Councilman Piagentini was guilty of Counts I, II, III, IV, V and VII of the Amended Complaint. **Ex. PP**, Findings and Conclusions (hereinafter, the "Findings"). The Ethics Commission, however, determined that Councilman Piagentini did not intentionally violate Metro Ordinance § 21.03(F) by failing to update his financial disclosure form, as embodied in Count VI of the Amended Complaint, and, therefore, pursuant to Metro Ordinance § 21.99 issued a notice of mootness with respect to that charge. *Id.* at 42.

159. More particularly, with respect to Count I, the Ethics Commission determined, *inter alia*, that Councilman Piagentini violated Metro Ordinance § 21.02(C) "either by soliciting or accepting a thing of value which was actually offered for the purpose of influencing his official duties; [*sic*] or under circumstances from which it could reasonable be inferred this was the purpose." *Id.* ¶ 67.

160. With respect to Count II, the Ethics Commission determined, *inter alia*, that "Piagentini did use or attempt to use his official position to secure unwarranted privileges and advantages from the Healthcare CEOc." *Id.* ¶ 79.

161. With respect to Count III, the Ethics Commission determined that Councilman Piagentini violated Metro Ordinance § 21.02(B) acted in his capacity as a Metro Councilmember

NOT ORIGINAL

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11/20/2023 03:33:28

PM

in a matter in which he had a financial interest that might reasonably be expected to impair his objectivity or independence of judgment. *Id.* ¶ 88-89.

WHAS

162. With respect to Count IV, the Ethics Commission apparently determined that Councilman Piagentini violated Metro Ordinance § 21.03(F) by failing to *disqualify* himself from a matter in which he had a financial or personal interest. *See id.* ¶ 90.

163. With respect to Count V, the Ethics Commission determined that Councilman Piagentini violated Metro Ordinance § 21.03(F) by failing to disclose a financial or personal interest in a matter before Metro Council. *See id.* ¶ 92.

164. With respect to Count VII, the Ethics Commission determined that Councilman Piagentini violated Metro Ordinance § 21.02(A) by using his position to obtain an invitation to the “Optimize” conference hosted by the CEOc. *See id.* ¶ 105.

165. Following its so-called “Findings of Fact,” the Ethics Commission recommended that Metro Council remove Councilman Piagentini from the office of Metro Councilmember, arguing that Councilman Piagentini “took advantage of a perilous moment in government finance and did so with the intent to personally enrich himself.” *Id.* ¶ 111.

166. Additionally, the Ethics Commission cited Metro Ordinance § 21.99(A)(2) to impose the maximum fine of five hundred dollars (\$500.00 U.S.) for each violation, or a total fine of three thousand dollars (\$3,000.00). *Id.* ¶ 120.

167. The Ethics Commission’s determinations with respect to Counts I, II, III, IV, V, and VII are arbitrary, clearly erroneous, and are not supported by substantial evidence – much less by its heightened burden of proving violations by clear and convincing evidence.

168. While the Ethics Commission’s errors of law and fact are too numerous to delineate herein, to cite a few examples of how the Findings are not supported by substantial evidence, the

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11/20/2023 03:33:28

PM

Ethics Commission completely ignored – and, in fact, did not even address – *corroborated* and *undisputed* proof that Councilman Piagentini never *solicited* employment from the CEOc. ^{WHAS}

169. Likewise, the Ethics Commission entirely failed to mention or address that York Day presented the potential business opportunity with the CEOc to Councilman Piagentini only *after* it was approved by the CEOc’s Board of Directors on November 7, 2022, and long *after* Councilman Piagentini had expressed public support for the Coalition’s ARP proposal.

170. Similarly, the Ethics Commission’s Findings entirely fail to even mention the corroborated and undisputed testimony that Councilman Piagentini entered into discussions with York Day about the potential business opportunity on or about November 18, 2022, only *after* expressing *his concern* that it could not be tied to the Coalition ARP proposal in any way and that once he engaged in the conversation with York Day on or about November 18, 2022, he *ceased to take any action* on the Coalition’s ARP proposal. It similarly casually overlooks the undisputed fact, that *he removed himself* as a co-sponsor of the Coalition ARP proposal and *publicly abstained* from the vote on the Coalition ARP proposal at the very next meeting of Metro Council on December 1, 2022.

171. Likewise, the Ethics Commission omitted entirely undisputed testimony that at the time Councilman Piagentini came to support ARP funding for the Coalition in the spring of 2022, he was actively seeking (and ultimately obtained) employment from Wellcare of North Carolina, a healthcare company that had no connection with the Coalition or the ARP funding process.

172. In addition, the Ethics Commission relied entirely upon conjecture and supposition, as exemplified by its wholesale reliance upon Fields’s *opinion* of Councilman Piagentini – an opinion Fields formed after reading an article on the Internet – to conclude that Fields somehow “suffer[ed] an inchoate harm, in the sense that his testimony revealed a great deal of reasonably

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11/20/2023 03:33:28

PM

placed resulting mistrust in the fairness of Metro Council’s handling of grant awards, at least in this instance,” *id.* ¶ 115, necessitating Councilman Piagentini’s removal from office. **WHAS**

173. Elsewhere, the Ethics Commission engages in speculation and simply makes up facts to fit its desired narrative that Councilman Piagentini and York Day had extensive discussions about the prospect of Councilman Piagentini going to work for the CEOc. For instance, the Ethics Commission found that “Piagentini had twice interacted with York Day about the issue of available employment with the CEOc, in November 2021 and January 2022.” Ex. PP ¶ 62. But there is no evidence in the Record to support this finding, and it is, in fact, refuted by undisputed testimony. In particular, York Day testified that she was introduced to Councilman Piagentini in November 2021 by a mutual acquaintance because Councilman Piagentini was considering his professional options in the healthcare industry and York Day was well-connected in that field. Ex. B, York Day Testimony, 80:10-24. York Day further testified that the only thing that came out of that meeting was that she would be happy to introduce him to other persons in the healthcare industry. *Id.* at 80:25-81:10.

174. In addition, Councilman Piagentini testified that the supposed “interaction” in January 2022 was simply him sending his résumé to York Day so that she could forward it on to healthcare companies who might have positions available, Ex. B, Piagentini Testimony, 157:24-158:2, which was entirely consistent with York Day’s testimony that the only thing that resulted from the November 2021 meeting was the possibility of future introductions, Ex. B, York Day Testimony, 80:25-81:10. There was *no* evidence of *any* interaction in January 2022 which concerned the possibility of Councilman Piagentini going to work for the CEOc.

175. Similarly, the Ethics Commission found as a “fact” that Councilman Piagentini and York Day “again engaged in conversations, on September 21 and 22, 2022, about Piagentini

NOT ORIGINAL

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11/20/2023 03:33:28

PM

becoming employed by the CEOc.” Ex. PP ¶ 63. The Ethics Commission then uses this manufactured “fact” to conclude that Councilman Piagentini knew since September “that CEOc was working on creating an employment position for which he was the considered candidate.” *Id.*

176. There is absolutely no evidence in the Record that York Day and Councilman Piagentini had multiple discussions on either September 21 or September 22, 2022 – much less conversations about the CEOc employing Councilman Piagentini or that he knew the CEOc was creating a position for him. As stated above, York Day testified that she had a *single, brief* encounter with Councilman Piagentini at a cocktail reception during the two-day conference that if the CEOc moved forward with a proposal to establish a government-affairs initiative she would “want to talk to” him – full stop. Ex. B, York Day Testimony, 22:18-25. Furthermore, the Ethics Commission ignored York Day’s undisputed testimony that at the time she said she would want to “talk to” Councilman Piagentini if the CEOc established a government affairs initiative, the CEOc did not have a job available because the initiative had not been approved, and, therefore, she could not talk to him about a job. *Id.* at 23:14-15. Likewise, the Ethics Commission simply ignores Councilman Piagentini’s testimony that if this encounter had, in fact, concerned the prospect of a job, he would have remembered it. Ex. B, Piagentini Testimony, 173:4-7.

177. Moreover, the Ethics Commission’s determinations with respect to Counts IV and V are arbitrary in that the Ethics Commission blatantly misapplied the definition of “financial interest” set forth in Metro Ordinance § 21.01 to a Non-Disclosure Agreement that, according to its own terms and the undisputed testimony of Councilman Piagentini and York Day, did not increase or decrease Councilman Piagentini’s income or net worth. In fact, “financial interest” is specifically defined to mean “a right, title, legal or equitable share in an asset or transaction which

NOT ORIGINAL

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11/20/2023 03:33:28

PM

will result in an increase or decrease in the income or net worth of a Metro Officer . . .” Metro Ordinance § 21.01 (emphasis added).

WHAS

178. In addition, in applying Metro Ordinance § 21.02(A) to Councilman Piagentini, the Ethics Commission used a meaning of “unwarranted” that is different than the meaning it applied in *In re: Councilwoman Barbara Shanklin*, a previous case alleging a violation of the same provision of the Code of Ethics (but codified at the time as Metro Ordinance § 21.02(B)) against Democrat Metro Councilmember Barbara Shanklin. **Ex. QQ**, Findings Re: Councilwoman Barbara Shanklin p. 19.

179. And the Ethics Commission recommended the imposition of the maximum fine against Councilman Piagentini despite the fact that in a prior case, *In re: Ethics Complaint Against Dr. Judith Green*, Cause No. 11-P-001, the Ethics Commission determined somehow that “Section 21.99(A)(2) of the Ordinance [wa]s not available to the Commission as a penalty” related to claims made against a *Democrat* member of Metro Council who was found to have *intentionally* violated Metro Ordinance §§ 21.02(A), (B), and (C) and § 21.04(B). **Ex. RR**, Findings Re: Dr. Judith Green unnumbered p. 10.

COUNT I: VIOLATION OF PROCEDURAL DUE PROCESS

180. Councilman Piagentini hereby realleges and reiterates each and every allegation set forth above as if fully set forth herein.

181. Councilman Piagentini is entitled to the protection of due process under Section 1 of the Fourteenth Amendment to the United States Constitution and Metro Ordinance § 21.06(B).

182. The Ethics Commission violated Councilman Piagentini’s due-process rights when it arbitrarily allowed counsel for Fields to serve as the *de facto* prosecutor of the allegations against Councilman Piagentini – particularly when the Ethics Commission had prohibited Fields from presenting any evidence and when the Ethics Commission had appointed another individual, Boyd,

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11/20/2023 03:33:28

PM

to serve as the Investigating Officer of this case – in violation of Metro Ordinance §§ 21.05 and 21.06 and the Ethics Commission Rules.

WHAS

183. The Ethics Commission further violated Councilman Piagentini’s due-process rights when it permitted the introduction of speculation as evidence – over the objections of Councilman Piagentini – and placed the burden on witnesses to determine whether the mischaracterized testimony proffered by Fields’s counsel on examination was accurate.

184. The Ethics Commission further violated Councilman Piagentini’s due-process rights when it permitted the Investigating Officer, Boyd, who introduced no witnesses and offered no evidence in support of the Amended Complaint, to offer a second closing statement and appeal to his colleagues on the Ethics Commission by referring to his own membership on the Ethics Commission in support of his argument that Councilman Piagentini should be held accountable.

185. The Ethics Commission further violated Councilman Piagentini’s due process rights when it refused to declare a mistrial or to disqualify the Chairwoman Pregliasco from participating in the final deliberations of the allegations made against Councilman Piagentini after she expressed a clear animus toward Republican lawmakers that raised a reasonable question of her impartiality toward Councilman Piagentini.

186. As result of the Ethics Commission’s violations of Councilman Piagentini’s due-process rights, its Findings, including its determinations that Councilman Piagentini violated the Code of Ethics, must be reversed and the Amended Complaint against him must be dismissed.

COUNT II: ARBITRARY AND CAPRICIOUS EXERCISE OF AUTHORITY

187. Councilman Piagentini hereby realleges and reiterates each and every allegation set forth above as if fully set forth herein.

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11/20/2023 03:33:28

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188. Section 2 of the Constitution of the Commonwealth of Kentucky prohibits governmental agencies, including in the Ethics Commission, from exercising its legal authority in an arbitrary manner.

WHAS

189. The Ethics Commission acted arbitrarily when it abrogated its legal responsibility to impartially investigate and prosecute allegations of ethics misconduct by allowing counsel for Fields to function as the *de facto* prosecutor concerning the allegations against Councilman Piagentini, all in violation of Metro Ordinance §§ 21.05 and 21.06 and the Ethics Commission Rules.

190. The Ethics Commission acted arbitrarily when it issued a “Findings of Fact” despite the fact that the Investigating Officer, Boyd, upon whom the burden of proof rested, failed to offer a single witness or submit a single piece of evidence in support of the Amended Complaint over the course of three (3) days of testimony and proof.

191. The Ethics Commission acted arbitrarily when it imposed the maximum fine on Councilman Piagentini despite its prior determination that it lacks the power to impose fines under Metro Ordinance § 21.99.

192. As a result of the violation of Section 2 of the Constitution of the Commonwealth of Kentucky, the Findings of the Ethics Commission must be reversed, and the Amended Complaint made against Councilman Piagentini be dismissed.

**COUNT III: ARBITRARY AND CAPRICIOUS FINDINGS UNSUPPORTED BY
SUBSTANTIAL EVIDENCE**

193. Councilman Piagentini hereby realleges and reiterates each and every allegation set forth above as if fully set forth herein.

194. The Findings, including the determinations that Councilman Piagentini violated the Code of Ethics, must be reversed because they are arbitrary, capricious, based upon

fundamental misapplications of law, and are not based on substantial evidence, much less the standard of clear and convincing evidence that is required under Metro Ordinance § 21.06(C).

WHAS

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, Anthony Piagentini, prays for the following:

- A. That the Court enter a schedule for briefing and oral argument;
- B. That the Court reverse the Findings of Fact and Conclusions of Law of the Ethics Commission and dismiss the Amended Complaint, with prejudice;
- C. Any and all other relief to which Councilman Piagentini may appear to be entitled.

Respectfully submitted,

/s/ J. Brooken Smith

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*Counsel for Plaintiff,
Anthony B. Piagentini*

Presiding Judge: HON. SARAH E. CLAY (630456)

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11/20/2023 03:33:28

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VERIFICATION

I, Anthony B. Piagentini, do hereby swear that the statements in the foregoing ~~Verified~~ Petition are true to the best of my knowledge and belief.


ANTHONY B. PIAGENTINI

COMMONWEALTH OF KENTUCKY)
) SS:
COUNTY OF Jefferson)

I, John Torsky III, a Notary Public in and for the State and County aforesaid, do hereby certify that the foregoing Verified Petition was this day produced before me in the said State and County and was subscribed, sworn to, and acknowledged before me by Anthony B. Piagentini to be his free act and deed.

Witness my hand this 16 day of November, 2023.


Notary Public, State-at-Large

My Commission Number is 41960 and expires 1-23-26, 20 .

