

LOUISVILLE/METRO
COUNCIL COURT

COMMONWEALTH OF KENTUCKY
LOUISVILLE/METRO GOVERNMENT
JEFFERSON COUNTY



**IN THE MATTER OF THE REMOVAL CHARGES AGAINST DISTRICT TWENTY-
ONE COUNCILMAN DAN JOHNSON**

MEMORANDUM OPINION AND ORDER

This matter is before the Council Court on a motion of the Respondent, Dan Johnson, by counsel, for the separation of witnesses during the removal hearing, including all but one Charging Committee member. The Charging Committee, by counsel, has filed a response to Respondent's motion. Having considered the Respondent's motion and the Charging Committee's response, the Council Court provides the following findings:

Respondent has requested that there be a separation of witnesses pursuant to KRE 615. In addition to the separation of witnesses, Respondent has requested that the Charging Committee members who will be called as witnesses also be separated.¹ Respondent relies solely on Rule 16 of the Louisville Metro Removal Hearing Rules and Procedures. This rule states in regards to evidentiary standards, "Procedural and evidentiary rules will be those generally accepted in Kentucky for administrative proceedings." Respondent then references KRE 615, the judicial rules for evidence.

Administrative hearings are not as rigorous or stringent as judicial hearings. "The hearing officer may on his own motion or motion of a party separate the witnesses while testimony is being offered and may limit cumulative testimony by any witness." 13 Ky. Admin. Regs. 2:070. However, to ensure the greatest possible due process available to Respondent some witnesses shall be separated prior to their testimony.

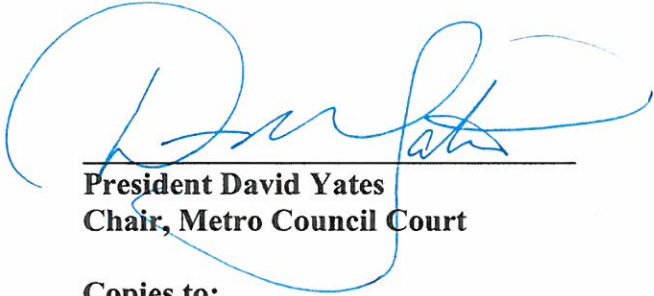
Even when the Council Court chooses to adhere to the more stringent evidentiary rules stipulated in KRE 615, the Charging Committee members would still have the right to be present. "At the request of a party the court shall order witnesses excluded so that they cannot hear the testimony of other witnesses and it may make the order on its own motion. This rule does not authorize exclusion of: (1) A party who is a natural person[.]" KRE 615. The Charging

¹ Respondent does concede that one Charging Committee member may be present as a representative.

Committee is made up of five natural persons that are each a party to the case. Thus, they would not be required to be separated.

Since the rules for evidence in this case, as set out in Rule 16 of the Louisville Metro Removal Hearing Rules and Procedures, only requires that which are generally accepted in administrative hearings in Kentucky, there is no requirement that mandates a granting of Respondent's motion to separate all of the witnesses. Even if KRE 615 was enforced the Charging Committee members are not subject to separation.

Therefore, the Council Court, by its Chair, having considered the motion of the Respondent and the response of the Charging Committee and being sufficiently advised, **IT IS HEREBY ORDERED** that the request for separation of witnesses is **GRANTED in part** and **DENIED in part**. Charging Committee members, Council Court members, and the Respondent shall not be required to be separated during the Removal Hearing. All other witnesses shall be required to be separated before their testimony and shall not discuss their pending testimony with other witnesses or view the proceedings through any medium, e.g. televised or tape portions. Witnesses are not prohibited from discussing their testimony with their attorney.



President David Yates
Chair, Metro Council Court

10/24/2017
DATE

Copies to:

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Members, Council Court

Matthew Golden, Assistant Jefferson County Attorney

Sarah Martin, Assistant Jefferson County Attorney

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