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DATE: 10/18/17 TIME: 5:10pm
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LOUISVILLE METRO COUNCIL

COMMONWEALTH OF KENTUCKY
LOUISVILLE METRO GOVERNMENT
JEFFERSON COUNTY KENTUCKY

IN THE MATTER OF CHARGES AGAINST
DISTRICT 21 COUNCILMAN DAN JOHNSON

PROPOSED INSTRUCTIONS TO THE COUNCIL COURT

Comes the Charging Committee, by counsel, submits the following proposed instructions for the Council Court's consideration:

THE COURT INSTRUCTS AS FOLLOWS:

ROLE OF THE COUNCIL COURT:

Pursuant to the Rules, the President of the Louisville Metro Council shall be Chair of the Council Court.

After the Charging Committee and Respondent have completed the presentation of evidence, the Chair will convene the Council Court in executive session along with the Jefferson County Attorney to serve as the legal adviser. Council Court will determine in executive session if one or more of the seven (7) Charging Committee's Charges are proven and sustained. It will take a vote of 2/3 of the Council Court to sustain each charge. In the event one or more of the Charges are supported it will warrant further proceeding to remove Councilman Dan Johnson from the Louisville Metro Council.

The Council Court is to decide the facts based on the evidence heard and observed during the hearing. The evidence includes the testimony of the witnesses and the exhibits admitted. The exhibits will be available during the deliberations. In deciding the facts, you must be loyal to the Oath taken and not be swayed by sympathy or prejudice towards any of the parties.

After you decide the facts, you need to apply the law and determine if the evidence is of sufficient weight to find for the Charging Committee, even if you do not agree with it.

Statements, objections, or arguments made by the lawyers are not evidence in the case. The lawyers' job is to point out those things that are most significant or most helpful to their side of the case.

INFERENCES FROM THE EVIDENCE:

In considering the evidence, you are not limited to what the witnesses said. You may draw reasonable conclusions from the testimony and exhibits based on common sense and experience. However, you may not guess what testimony or exhibits not admitted might have shown.

DIRECT AND CIRCUMSTANTIAL EVIDENCE:

There are two kinds of evidence: Direct and circumstantial. Direct evidence is testimony by a witness about what a witness personally saw or heard or did. Circumstantial evidence is indirect evidence, that is, proof of one or more facts from which one can find another fact.

You may consider both direct and circumstantial evidence in deciding this case. The law permits you to give equal weight to both, but it is for you to decide how much weight to give to any evidence.

CREDIBILITY OF WITNESSES:

You must consider all of the evidence. This does not mean that you must believe all of the evidence. It is up to you, and only you, to decide whether the testimony of a witness was reliable, as well as how much weight to give the testimony.

You may believe as much or as little of each witness's testimony as you think

appropriate. Keep in mind that people sometimes forget things, and sometimes they make honest mistakes. You must decide whether an omission or a mistake is innocent or minor, or whether it is something more serious that affects the rest of their testimony.

PREPONDERANCE OF THE EVIDENCE:

In this case, The Charging Committee has the burden of proving to you each of the seven (7) charges filed, separately, by a preponderance of the evidence. In other words, do you believe that each charge is more likely true than not? Think of the test as the 51% Rule.

Preponderance of the evidence is a matter of quality, not quantity. The party who has the burden must present the more convincing evidence. It is not enough to just present the most witnesses.

In light of the evidence and the law, do you believe that each charge is more likely true than not? If so, you should decide in favor of Charging Committee. On the other hand, if the evidence does not meet this standard or tends to be equally balanced, the Charging Committee cannot succeed on one or more of their claims.

ROLE CALL VOTE:

Following your deliberations the Council Court will return to the open and public session of this hearing. Each of the Charging Committee's seven (7) charges will be voted on separately, in a roll call vote.

CHARGES

1. A. On the Count of Misconduct, Improper Sexual Behavior, if you are satisfied that the Charging Committee presented sufficient evidence that it is more likely that not that Respondent Councilman Dan Johnson did inappropriately touch Councilwoman Jessica Green, did expose his buttocks to Legislative Aide Erin Hinson, and did proposition an employee of Greater Louisville Inc., you must find the Respondent committed the wrongful acts constituting Misconduct.

B If you believe that the Respondent did commit Misconduct, you must so find:

Did commit: Yes _____ No _____

2. A. On the Count of Misconduct, Intimidation if you are satisfied that the Charging Committee presented evidence that it is more likely that not that Respondent Councilman Dan Johnson did wrongfully intimidate Councilwoman Jessica Green, Legislative Aide Erin Hinson, Councilwoman Angela Leet, former President David Tandy, and the leadership and employees of Greater Louisville Inc. with physical intimidation and/or threats of legal action or demeaning and degrading public statements you must find the Respondent committed the wrongful acts constituting Misconduct.

B If you believe that the Respondent did commit Misconduct, you must so find:

Did commit: Yes _____ No _____

3. A. On the Count of Misconduct, Personal Attacks, if you are satisfied that the Charging Committee presented evidence that it is more likely that not that Respondent Councilman Dan Johnson violated the Metro Council's prohibition of personal attacks in his attacks on Councilwoman Jessica Green, Legislative Aide Erin Hinson, the leadership and employees of GLI, the leadership and employees of the Kling Center and former President Tandy you must find the Respondent violated a definite and established rule constituting Misconduct.

B If you believe that the Respondent did commit Misconduct, you must so find:

Did commit: Yes _____ No _____

4. A. On the Count of Incapacity, Memory, if you are satisfied that the Charging Committee presented evidence that it is more likely that not that Respondent Councilman Dan Johnson lacks capacity to remember significant events involving his exposure to Erin Hinson and his propositioning of a GLI employee you must find the Respondent incapable of performing the duties of his office.

B If you believe that the Respondent is Incapable of performing the duties of his office, you must so find:

Did commit: Yes _____ No _____

5. A. On the Count of Willful Neglect, Dishonesty, if you are satisfied that the Charging Committee presented evidence that it is more likely that not that Respondent Councilman Dan Johnson has failed in his duty to act in a way that manifests the highest moral standards of honesty and truthfulness by falsely accusing Councilwoman Green of sexually harassment and defamation, falsely accusing

former President David Tandy of physical aggression, falsely accusing the Kling Center Board of a politically motivated wrongful termination and falsely accusing GLI of a politically motivated act designed to embarrass him, you must find the Respondent failed in his moral duty to speak truthfully.

B If you believe the Respondent failed in his duty to speak honestly and truthfully you must so find:

Did commit: Yes _____ No _____

6. A On the Count of Willful Neglect, Disrespect, if you are satisfied that the Charging Committee presented evidence that it is more likely that not that Respondent Councilman Dan Johnson has failed in his duty to act in a way that manifests the highest moral standards for civility and respect for authority by defying and dismissing the Office of the President of the Council request, falsely accusing the Majority Caucus of political maneuvering, and undermining the legitimacy of the Metro Council's proceedings you must find the Respondent violated his moral duty to respect the government and the people of Metro Louisville.

B If you believe the Respondent failed in his duty to act with civility and respect, you must so find:

Did commit: Yes _____ No _____

7. A On the Count of Willful Neglect, Fiduciary Mismanagement, if you are satisfied that the Charging Committee presented evidence that it is more likely that not that Respondent Councilman Dan Johnson has failed in his duty wisely manage public resources by hiring a friend engaged in a challenge to an incumbent as his Aide, causing disruption and embarrassment to the Council, you must find the Respondent violated his duty to wisely use the public's money to serve the people rather than disrupt the Council.

B If you believe that the Respondent failed his duty act with prudence, you must so find:

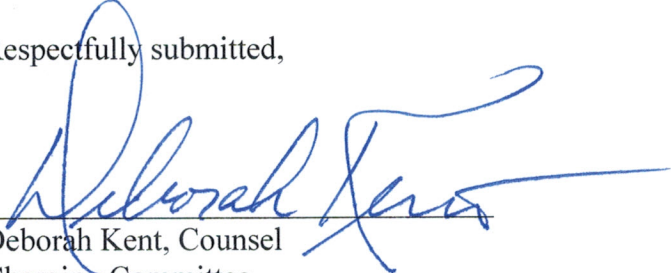
Did commit: Yes _____ No _____

AT CLOSE OF DELIBERATIONS

When the Council Court completes its deliberations, the Chair shall tally the votes on each Charge. The Chair shall adjourn the executive session and reconvene in public session to announce the results and call for a motion to ratify and adopt the Court's findings on each

Charge. The Chair shall then adjourn the Court and, as President of the Metro Council, shall call the entire Metro Council to order so that the Council can determine whether Respondent Dan Johnson shall be removed, or not, based on the Court's findings.

Respectfully submitted,


Deborah Kent, Counsel
Charging Committee

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing was sent via email ~~and first class mail~~ to the following on October 18, 2017:

Hon. Stephen Ott
Metro Council Clerk
601 W. Jefferson St.
Louisville, Ky. 40202

Hon Mike O'Connell
Jefferson County Attorney
600 W. Jefferson St.
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Hon. Thomas McAdam
2950 Breckenridge Lane Ste 9
Louisville, Ky. 40220
Counsel for Respondent


Deborah Kent