

DATE 10/25/17 TIME: 1345 JCH

LOUISVILLE METRO COUNCIL

COMMONWEALTH OF KENTUCKY
LOUISVILLE METRO GOVERNMENT
JEFFERSON COUNTY

IN THE MATTER OF REMOVAL PROCEEDINGS AGAINST
DISTRICT 21 COUNCILMAN DAN JOHNSON

RESPONDENT'S RESPONSE TO
MOTION FOR SUMMARY JUDGMENT

Comes now the Respondent herein, Hon. Daniel Johnson, District 21 Louisville Metro Councilman, by counsel, and respectfully moves the Louisville Metro Council Court to overrule the Motion for Summary Judgment filed by the Charging Committee herein. The undersigned hereby certifies that copies hereof were mailed and emailed to the following individuals on October 25, 2017:

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Respectfully submitted,



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4 IN THE MATTER OF REMOVAL PROCEEDINGS AGAINST
5 DISTRICT 21 COUNCILMAN DAN JOHNSON

6 MEMORANDUM IN OPPOSITION TO
7 MOTION FOR SUMMARY JUDGMENT
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10 Comes now the Respondent herein, Hon. Daniel Johnson, District 21 Louisville
11 Metro Councilman, by counsel, and respectfully moves the Louisville Metro Council Court
12 to overrule the Motion for Summary Judgment filed by the Charging Committee herein,
13 declaring said Motion for Summary Judgment in clear violation of the provisions of
14 Kentucky Revised Statute §67C.143.
15

16 (1) With almost breathless impertinence, counsel for the Charging Committee has
17 petitioned the Louisville Metro Council Court for a “Summary Judgment,” finding
18 Respondent Dan Johnson guilty without a trial or full public hearing. This shameless
19 maneuver not only attempts to arrogate to the Louisville Metro Council Court powers
20 never granted to it by the Kentucky General Assembly, but evinces a total disregard for
21 the clear language of the statutory law of the Commonwealth.
22

23 (2) The Kentucky legislature has granted specific and limited powers to the
24 Louisville Metro Council to remove one of its elected members, subsequent to—and only
25 subsequent to—a full public hearing: KRS §67C.143 provides, in pertinent part:
26

27 “A decision to remove a mayor, legislative council member, or appointee to
28 a board or commission shall require a vote of two-thirds (2/3) of the *total
number of legislative council members.*” (emphasis added)

1 (3) There is no provision in Kentucky law which would empower the Louisville
2 Metro Council Court to issue a Summary Judgment. In its Memorandum in support of
3 its Motion for Summary Judgment, the Charging Committee cites no legal basis for its
4 demand for Summary Judgment, since none is known to exist.
5

6 (4) In its Memorandum in support of its Motion for Summary Judgment, the
7 Charging Committee argues:

8 "...pursuant to Rule 7 of the Louisville Metro Council Removal Hearing
9 Rules and Procedures adopted July 2011, moves this Court to enter
10 Summary Disposition in favor of the Charging Committee on the ground
11 there is no genuine issue of material fact regarding the charges against
12 Respondent, and the Charging Committee is entitled to disposition as a
13 matter of law based on the facts presented."

14 The operative section of Rule 7 of the Louisville Metro Council Removal Hearing
15 Rules and Procedures provides:

16 "Summary motions shall be ruled upon by a majority vote of the Council
17 Court at the scheduled hearing on the removal charges."

18 Clearly, this is a blatantly transparent and disingenuous attempt on the part of the
19 Charging Committee not only to deprive Respondent Dan Johnson of a fair hearing, but
20 is a fraudulent attempt to convict and remove Councilman Johnson by a mere majority
21 vote, in clear violation of the requirements of KRS §67C.143, which provides, in pertinent
22 part:

23 "A decision to remove a mayor, legislative council member, or appointee to
24 a board or commission shall require a vote of two-thirds (2/3) of the *total*
25 *number of legislative council members.*" (emphasis added)

26 Similarly, the Charging Committee, in its Motion, makes the mendacious assertion
27 that "...there is no genuine issue of material fact regarding the charges against
28 Respondent." In point of fact, nothing could be further from the truth.

1 Each and every allegation contained in the Charging Committee's Complaint has
2 been extensively challenged and denied in writing by the Respondent. To suggest that
3 there are no issues of material fact in this matter is to unethically attempt to mislead the
4 Louisville Metro Council Court.

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6 (5) The Charging Committee intentionally misstates Kentucky law in its Motion:

7 "The General Assembly has authorized this Council to use its removal
8 powers on charges that a Council member has been found at fault for
9 misconduct, incapacity and *wrongful* neglect of duty." (emphasis added)

10 The Charging Committee knows that the word "wrongful" appears nowhere in KRS
11 §67C.143, and this blatant attempt on its part to mislead the Louisville Metro Council
12 Court is egregious and unethical.

13 (6) The paucity of legal precedent or statutory authority for Metro Council Court
14 Summary Judgment is further illustrated in the Charging Committee's feeble attempt at
15 bolstering its argument by citing irrelevant and inapplicable examples:

16
17 "It is found in the United States Constitution in Article I, Section 5,
18 recognizing this innate power of the Congress: 'Each House may determine
19 the Rules of its Proceedings, punish its Members for disorderly Behavior,
20 and, with the Concurrence of two-thirds, expel a Member.'"

21 "Robert's Rules of Order, the common law for every council and
22 congregation and adopted in the Rules of the Metro Council, covers
23 removal: 'Every deliberative assembly, having the right to purify its own
24 body, must therefore have the right to investigate the character of its
25 members.'"

26 "Just as the term 'disorderly Behavior' in the U.S. Constitution is undefined,
27 so is the phrase 'misconduct, incapacity or willful neglect' as it applies to
28 this Council. The Council has adopted definitions of these terms by a
Resolution addressed to the General Assembly to establish that misconduct,
incapacity or willful neglect occurred."

1 Of course, the federal constitution only deals with the method of impeaching
2 Senators and Representatives; Roberts Rules of Order is not and never has been a part of
3 the common law of the Commonwealth of Kentucky; and the “definitions” suggested in
4 LMC R-219-11-13 were mere suggestions sent to the Kentucky General Assembly in a
5 failed attempt to have that legislative body amend KRS §67C.143, and have therefore
6 never been a part of applicable law. The Kentucky General Assembly correctly ignored
7 LMC R-219-11-13, and, by force of law, so must the Metro Council Court.

8
9 The Metro Council has adopted a specific rule of conduct prohibiting personal attacks:

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11 (7) In a rather bizarre claim, the Charging Committee in its Motion suggests that
12 somehow the Louisville Metro Council has jurisdiction over what its members can and
13 cannot say outside of Council chambers:

14 “No council member shall personally attack, malign, or impugn the
15 character or integrity of citizens who come before the Council nor of any
16 fellow Council member.’ (Attachment 6) The Rule contains no exceptions
17 and needs no interpretation. It absolutely forbids personal attacks that
belittle and dismiss the object of the attack as unworthy of good faith belief.

18 “...Councilman Johnson has shown an increasing and disturbing propensity
19 to engage in personal attacks maligning and impugning the character and
20 integrity of individual citizens, fellow Council members, and civic
organizations.”

21 First of all, the “Attachment 6” referred to in the Charging Committee’s
22 Memorandum is a copy of the Majority Caucus Resolution of July 13, 2017, and in no
23 manner describes “The Rule” to which the Memorandum attempts to refer.

24 More importantly, the Charging Committee disingenuously misrepresents the
25 legal authority of the Metro Council to limit the First Amendment rights of its members,
26 outside of Metro Council chambers. If a Council member has reason to believe that
27 another Council member is guilty of mendacity, corruption, or criminal activity, there is
28

1 no power vested in the Council by law which could prohibit any Council member from
2 disclosing what he knows. Similarly, if a Council member has reason to believe that any
3 citizen is guilty of mendacity, corruption, or criminal activity, there is no power vested in
4 the Council by law which could prohibit any him from revealing this publicly.
5

6 (8) In another outrageous claim, the Charging Committee in its Motion suggests
7 that somehow the Louisville Metro Council is the ultimate authority on the moral issues
8 of “integrity, honesty, civility, prudence, and respect”:
9

10 “The duties of a Metro Council member are not defined, but the standard
11 the Council has adopted for the conduct of its members is found in Rule 12
12 of the Rules of the Metro Council: ‘Members of the Council and employees
13 will conduct themselves in the performance of their official duties at all
14 times in a manner which manifests the highest moral and ethical standards.’
15

16 “Clearly this is an aspirational standard, a goal that Metro Council members
17 hope to achieve but sometimes fail because they are human. It is a subjective
18 standard defined by words like integrity, honesty, civility, prudence, and
19 respect, and the result of this removal hearing will serve notice what those
20 high moral standards are and whether Councilman Johnson's words and
21 actions manifest them.”
22

23 The Charging Committee seeks to arrogate unto the Louisville Metro Council and
24 its Court the power and authority to determine the definition of “high moral standards.”
25 The Lord God Himself did not grant this power to the Louisville Metro Council, and
26 neither did the Kentucky General Assembly.
27

28 For self-appointed arbiters of morality to claim such authority is tyrannical caprice
unworthy of the elected representatives of our community, and constitutes a clear
violation of the Due Process Clause of the United States Constitution. And, it clearly
violates Section 2 of the Kentucky Constitution, which famously states: *Absolute and
arbitrary power over the lives, liberty and property of freemen exists nowhere in a
republic, not even in the largest majority.*

1 (9) Finally, the arrogance of the Charging Committee is palpable in its conclusion:

2 "It is time to say, with regret, enough is enough. It is time to say that we, the
3 Metro Council are drawing the line and giving notice to the community that
4 we will repay their trust by upholding the highest, rather than the lowest,
5 moral standards."

6 Respondent respectfully suggests that a better approach would be for the Charging
7 Committee to dismount from its high horse, admit that it is not the anointed arbiter of all
8 moral virtue in the world, and finally agree to follow the law and grant Councilman Dan
9 Johnson a fair and impartial hearing, with adequate legal due process, as required by the
10 constitution and laws of the Commonwealth of Kentucky.

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12 Respectfully submitted,

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15 Thomas A. McAdam, III,
16 Attorney for Respondent
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1 **LOUISVILLE METRO COUNCIL**

COMMONWEALTH OF KENTUCKY
LOUISVILLE METRO GOVERNMENT
JEFFERSON COUNTY

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4 **IN THE MATTER OF REMOVAL PROCEEDINGS AGAINST**
5 **DISTRICT 21 COUNCILMAN DAN JOHNSON**

6 **ORDER OVERRULING**
7
8 **MOTION FOR SUMMARY JUDGMENT**
9

10 Motion having been made, and the Louisville Metro Council Court being otherwise
11 sufficiently advised, it is hereby Ordered:

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13 1. Pursuant to KRS §67C.143 18 votes to will be required convict and remove
14 Councilman Johnson in the instant proceedings, and 3 votes to find in favor of allowing
15 Councilman Johnson to retain his elected office.
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17 2. The Motion of the Charging Committee for a Summary Judgment herein is
18 overruled and denied.
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21 Louisville Metro Council Court

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23 By: _____
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