

LOUISVILLE METRO COUNCIL      COMMONWEALTH OF KENTUCKY  
LOUISVILLE METRO GOVERNMENT  
JEFFERSON COUNTY

---

IN THE MATTER OF CHARGES AGAINST  
DISTRICT 21 COUNCILMAN DAN JOHNSON

---

REMOVAL PROCEEDINGS

Transcript of November 1, 2017, Hearing  
before Chairman David Yates at City Hall, 601 West  
Jefferson Street, Third Floor, Louisville, Jefferson  
County, Kentucky.

LAURA J. KOGUT, RMR, CRR, CRC  
McLendon-Kogut Reporting Service, LLC  
Anchorage Office Plaza  
2525 Nelson Miller Parkway, Suite 204  
Louisville, Kentucky 40223  
(502) 585-5634  
lkogut@mclendon-kogut.com  
www.mclendon-kogut.com

C O N T E N T S

	<u>Page</u>
Appearances	3
Call to order	4
Roll call	4
Preliminary Matters	6
Introduction of Chairman Yates	26
GLI and Kent Oyler's Motion to Quash Subpoena Issued to Kent Oyler	26
GLI Motion for Protective Order	42
Charging Committee Motion for Summary Disposition	50
Charging Committee Withdrawal of Motion for Summary Disposition	72
Council Member Questions	72
Respondent Motion for Censure and Dismissal of Removal Proceedings	76
Motion for closed session	89
Motion to end executive session	90
Reading of Stipulation and Agreed Order	90
Discussion of Stipulation and Agreed Order	94
Vote on Stipulation and Agreed Order	123
Adjournment	124
Notary Certificate	125

\*

\*

\*

## APPEARANCES

## COUNSEL FOR CHARGING COMMITTEE:

Ms. Deborah K. Kent  
Deborah Kent Law Office  
120 Sears Avenue, Suite 211  
Louisville, Kentucky 40207-5072  
(502) 712-9988  
dkent@twc.com

and

Mr. Christophe G. Stewart  
Stewart Law Office  
120 Sears Avenue, Suite 211  
Louisville, Kentucky 40207-5072  
(502) 419-7983  
cgstew94@gmail.com

## COUNSEL FOR RESPONDENT:

Mr. Thomas A. McAdam, III  
2950 Breckenridge Lane, Suite 9  
Louisville, Kentucky 40220-1462  
(502) 584-7255  
thomas@mcadam.com

## COUNSEL TO COUNCIL COURT:

Mr. Matthew Golden  
Jefferson County Attorney's Office  
531 Court Place, Suite 900  
Louisville, Kentucky 40202  
(502) 574-6336

## METRO COUNCIL CLERK:

Mr. H. Stephen Ott  
601 West Jefferson Street  
Louisville, Kentucky 40202  
(502) 574-3902  
Stephen.Ott@louisvilleky.gov

\*

\*

\*

1 (Hearing commenced at 1:13 p.m.)

2 CHAIRMAN YATES: The Louisville Metro Council  
3 Court of November 1st, 2017, will please come to  
4 order.

5 Mr. Clerk.

6 Where is Mr. Clerk?

7 Mr. Clerk.

8 MR. OTT: I'm sorry about that.

9 CHAIRMAN YATES: A roll call, please.

10 MR. OTT: Council Member Shanklin.

11 COUNCIL MEMBER SHANKLIN: Present.

12 MR. OTT: Council Member Woolridge.

13 COUNCIL MEMBER WOOLRIDGE: Present.

14 MR. OTT: Council Member Sexton Smith.

15 COUNCIL MEMBER SEXTON SMITH: Present.

16 MR. OTT: Council Member Bryant Hamilton.

17 COUNCIL MEMBER BRYANT HAMILTON: Here.

18 MR. OTT: Council Member James.

19 COUNCIL MEMBER JAMES: Here.

20 MR. OTT: Council Member Hollander.

21 COUNCIL MEMBER HOLLANDER: Here.

22 MR. OTT: Council Member Mulvihill.

23 COUNCIL MEMBER MULVIHILL: Here.

24 MR. OTT: Council Member Kramer.

25 COUNCIL MEMBER KRAMER: Here.

1 MR. OTT: Council Member Aubrey Welch.  
2 COUNCIL MEMBER AUBREY WELCH: Here.  
3 MR. OTT: Council Member Fowler.  
4 COUNCIL MEMBER FOWLER: Here.  
5 MR. OTT: Council Member Butler.  
6 COUNCIL MEMBER BUTLER: Here.  
7 MR. OTT: Council Member Reed.  
8 COUNCIL MEMBER REED: Here.  
9 MR. OTT: Council Member Stuckel.  
10 COUNCIL MEMBER STUCKEL: Here.  
11 MR. OTT: Council Member Parker.  
12 COUNCIL MEMBER PARKER: Here.  
13 MR. OTT: Council Member Denton.  
14 Council Member Benson.  
15 COUNCIL MEMBER BENSON: Present.  
16 MR. OTT: Council Member Peden.  
17 COUNCIL MEMBER PEDEN: Here.  
18 MR. OTT: Council Member Flood.  
19 President Yates.  
20 CHAIRMAN YATES: Present.  
21 MR. OTT: Council Member Ackerson.  
22 COUNCIL MEMBER ACKERSON: Here.  
23 MR. OTT: Council Member Denton.  
24 Council Member Flood.  
25 Mr. President, you have 18 in attendance and

1 a quorum.

2 CHAIRMAN YATES: Thank you, Mr. Clerk.

3 Would you please cause the record to reflect  
4 that Councilwoman Flood has provided compelling  
5 reasons for her absence and has been provided an  
6 excuse from the Council Court for her service.

7 MR. OTT: So noted.

8 CHAIRMAN YATES: I'm sorry. Was there a  
9 question on it?

10 COUNCIL MEMBER ACKERSON: Yeah. Did you say  
11 excused from the Council Court altogether?

12 CHAIRMAN YATES: She is. She has provided in  
13 confidentiality a compelling reason. There has been  
14 no objection from either counsel. We have -- we  
15 have discussed and she has been excused from Council  
16 Court due to personal issues.

17 COUNCIL MEMBER ACKERSON: Okay. And I guess  
18 at some point someone will explain how that affects  
19 the numbers and the vote and everything else, I  
20 presume?

21 CHAIRMAN YATES: It can be. And if the  
22 County -- if the Assistant County Attorney would  
23 like to do so shortly. Let me do introductions.  
24 And right now it will be the entire sitting body.  
25 So in the event that one member could not sit for

1       either excuse or any other reason, then it would be  
2       the remainder of the -- the percentage of the  
3       remainder of the sitting body.

4               Okay. And I've also requested an excused  
5       absence just for today from Councilwoman Denton.

6               Any members know that in the event that you  
7       miss any part of a proceeding, you shall make up  
8       that in its entirety through watching it on the  
9       video, and you will be required to sign an  
10      acknowledgment under testimony, under the penalty of  
11      perjury, that you have done so.

12              With that being said --

13              COUNCIL MEMBER SHANKLIN: Mr. President, I  
14      want to know why --

15              MR. OTT: You need to put your mike on.

16              CHAIRMAN YATES: And let me ask, just as we  
17      move on, because people for -- we have to get a  
18      transcript, so I'm going to ask no one speak unless  
19      you put in your queue, click on it, then I'll call.  
20      Throughout this we'll have certain times to have  
21      breaks, but we won't be interrupting throughout it,  
22      but I -- Councilwoman Barbara Shanklin, just  
23      because I acknowledged you before I got started, you  
24      can go ahead and --

25              COUNCIL MEMBER SHANKLIN: I'm in the queue.

1 CHAIRMAN YATES: It's --

2 COUNCIL MEMBER SHANKLIN: You probably didn't  
3 look.

4 CHAIRMAN YATES: I think it's -- may not be  
5 on. It's not on. So maybe you gotta click on the  
6 floor and then click in the queue.

7 COUNCIL MEMBER SHANKLIN: I just want to --

8 CHAIRMAN YATES: If the clerk would help her  
9 with that, please.

10 COUNCIL MEMBER SHANKLIN: I just want to know  
11 why -- if we decided we didn't want to be involved,  
12 can we not, since you allowed Madonna Flood not to  
13 be involved?

14 CHAIRMAN YATES: Councilwoman, in the event  
15 that -- just like any juror in any case, there will  
16 be some times that there may be a family emergency  
17 or some reason that you would have a compelling  
18 reason that would be presented to the Chair and to  
19 counsel.

20 In this particular case, without getting into  
21 her personal facts, this is a situation that rose to  
22 such a level that I felt that it was necessary to  
23 excuse her, and neither counsel for the Respondent  
24 or the Charging Committee objected, and they all  
25 agreed.



1 COUNCIL MEMBER SHANKLIN: Well, okay. I'll  
2 see about getting excused too.

3 MS. KENT: Mr. Chair, for the record, if I  
4 could just say, the Charging Committee did not  
5 object but asked if that final decision could be  
6 delayed until late tonight or tomorrow in case that  
7 situation changed, but the expectation was there  
8 would be no change in her situation.

9 MR. MCADAM: And on behalf of the Respondent,  
10 we didn't object to Mrs. Flood not attending because  
11 of her family emergency, but we reserve the right to  
12 argue about how that affects the vote total, how  
13 many votes it takes to retain and how many votes it  
14 takes to remove. It does affect the total, and we  
15 may eventually want to argue that this hearing  
16 cannot go forward if we don't have an adequate  
17 Council Court as established by state law.

18 CHAIRMAN YATES: And I didn't take either  
19 waiver from either party, or nonobjection from a --  
20 to say that you are waiving an argument over the  
21 proceeding.

22 In this situation, the counsel for the  
23 Charging Committee did make that statement that  
24 asked, but in the decision of the Chair, after  
25 discussion with the councilwoman, I made the

1 decision that she shall be excused and she can deal  
2 with those without the worry of this proceeding. I  
3 think it rose to that level.

4 Councilman Ackerson.

5 COUNCIL MEMBER ACKERSON: Thank you, Mr.  
6 President.

7 Also when we're talking about attendance --  
8 no offense to Mr. Golden, fine lawyer, but two times  
9 before we've had a hearing here, those two times  
10 women were before us on removal proceedings, you  
11 know, the County Attorney -- I mean, it's -- I get  
12 Matt is his -- is an employee of his and he is here,  
13 but is this not important enough -- it's important  
14 enough that we're all taking our time for this  
15 community to be here. Why is it that -- has the  
16 County Attorney got an excused absence from this  
17 proceedings or his involvement?

18 CHAIRMAN YATES: As Chair, you know,  
19 obviously that is not my decision to make. Matt  
20 Golden is serving as counsel for this Court, and  
21 I've made no objection to Mr. Golden sitting in.

22 Mr. Golden, would you want to respond to  
23 that?

24 MR. GOLDEN: And to tell you -- I'm sorry.  
25 To tell you just how serious the County Attorney's

1 Office believes that this issue is, we have no less  
2 than six people from the County Attorney's Office in  
3 this room at present to deal with Council Court.

4 I appreciate your acknowledgment that I am  
5 sufficient to be a lawyer in the matter, but no one  
6 will contest the fact that the County Attorney's  
7 Office believes this is an exceedingly serious  
8 matter, and we have put our best and brightest on  
9 it, and me, as you would note.

10 COUNCIL MEMBER ACKERSON: That wasn't my  
11 issue as far as -- I can see there's a number of  
12 attorneys here. My concern was: Twice before this  
13 has been important enough to this community and  
14 important enough to this body that we've had the  
15 County Attorney here advising and taking part in  
16 this, and all of a sudden there's a pass this year,  
17 and so I don't understand if he was sick or if  
18 there's been, you know, some --

19 MR. GOLDEN: No, I don't think that that's  
20 the case at all. And I'm not exactly sure that this  
21 is germane to the hearing. We were provided by your  
22 rules that Assistant County Attorneys serve you in  
23 any number of ways.

24 So again, I think the County Attorney, Mike  
25 O'Connell, has decided that his best and brightest

1 will be on this issue, and I think we've been  
2 working with the President since day one to assist  
3 the process.

4 But with that being said, I don't think it's  
5 germane to what we're here for today.

6 COUNCIL MEMBER ACKERSON: Well --

7 CHAIRMAN YATES: Your objection is noted,  
8 though, Councilman. Thank you.

9 Councilman James.

10 COUNCIL MEMBER JAMES: Before we start, I  
11 just wanted to ask a question for clarity purposes.  
12 I read in the Courier-Journal this morning the  
13 discussion about whose lawyer was being paid and  
14 whose lawyers weren't being paid, and just trying to  
15 see if I could hear from one of the two of you what  
16 is actually going to happen.

17 CHAIRMAN YATES: That is a contract that has  
18 taken place entirely through the County Attorney's  
19 Office. This body, nor myself, have had any  
20 decision-making capacity as far as picking counsel  
21 or contracting with counsel.

22 Mr. Golden, do you want to follow up on that?  
23 Go ahead.

24 MR. GOLDEN: I'll just say briefly that fees  
25 and representation issues for the attorneys that are

1 before you should not take away from the gravity of  
2 the situation that we have before us today, which is  
3 the Respondent's hearing.

4 I'll be happy to address fees after the  
5 hearing, but I think it's important that we proceed  
6 on the issue at hand.

7 COUNCIL MEMBER JAMES: I was just curious as  
8 to why, in the previous two times we've had these  
9 issues, that the attorney fees were not paid but in  
10 this one they will be.

11 MR. GOLDEN: I'm not sure that that's  
12 completely accurate, but we're looking into it.

13 CHAIRMAN YATES: And again, that would not be  
14 a decision that would be made by the Chair or this  
15 body. That would be done through the County  
16 Attorney's Office.

17 COUNCIL MEMBER JAMES: Okay. Thank you.

18 CHAIRMAN YATES: Councilwoman Barbara -- oh,  
19 she's out.

20 Okay. Colleagues, if I may continue --  
21 Councilwoman Barbara Sexton Smith is back.

22 COUNCIL MEMBER SEXTON SMITH: Yes. I was  
23 just wanting to follow up on Councilman James' line  
24 of questioning about the compensation, and I agree  
25 completely that the matter of the funds is not

1        what's in question. I'm trying to figure out if  
2        there is a standard or a precedent, because I'm  
3        going to focus on process and procedures as much as  
4        I possibly can as we go along, and so it appears  
5        that there have been two female respondents in the  
6        past who did not receive the same financial  
7        assistance in doing this, and now we have a male  
8        respondent that is receiving the benefit, and I'd  
9        like some explanation on that as it relates to  
10       precedence and standards.

11           CHAIRMAN YATES: Well, that would be outside  
12       my purview or knowledge about that contract. If the  
13       Assistant County Attorney would want to comment,  
14       he's more than welcome.

15           But I do want to make sure, after addressing  
16       that question, that we do move forward with the  
17       issue at hand and move -- and go ahead and move  
18       forward, but if Assistant County Attorney Matt  
19       Golden would like to try to answer that to the best  
20       of his ability.

21           MR. GOLDEN: Yeah. To the best of my  
22       ability. And please understand I was not made civil  
23       division director or was in the civil division  
24       during the period of time when the two previous  
25       matters occurred, so I'm only speaking with some

1       general knowledge, but I am not -- I don't know with  
2       regard to the very first proceeding if there was  
3       actually a hearing. I do not know that, but someone  
4       told me that there -- that there was only a summary  
5       disposition of the matter at the beginning, but I'm  
6       looking into that fact, along with the fact that we  
7       believe there was payment -- there were payments  
8       made potentially in the second proceeding.

9               So as I said to you before, I think that the  
10       focus that we should be looking at is the proceeding  
11       that we're here for today. It is Mr. Johnson's day  
12       in court, and the rules have guaranteed him due  
13       process, and the statute has guaranteed him a public  
14       hearing.

15              CHAIRMAN YATES: And, Colleagues, for  
16       clarification, I had submitted a question, legal  
17       question to the County's -- the County Attorney's  
18       Office in making a decision of whether or not this  
19       body would have to file any kind of objections based  
20       on any kind of past act, and the legal response was  
21       yes, that any charged Council member has due process  
22       rights to be represented by counsel during the  
23       removal proceeding and went on to state that they  
24       did feel, in their -- their best legal decision,  
25       that that shall be paid.

1 I did not believe it was our position to make  
2 the objection on it. Again, that would be a  
3 decision to be made by the County Attorney's Office.

4 Councilwoman Woolridge.

5 COUNCIL MEMBER WOOLRIDGE: Mr. President, my  
6 remarks are to you. I left a message in your office  
7 with your very capable assistants yesterday  
8 afternoon asking you to phone me for some  
9 clarifications as it regards to how many it'd take  
10 to keep Councilman Johnson on the committee, was it  
11 the two-thirds of the entire Council, either -- or  
12 was it the 2 -- the 18 or was it 16?

13 After I didn't hear from you, around  
14 10:00 o'clock last night I emailed you, and I still  
15 did not get a response from you.

16 So I guess my question to you, Mr. President,  
17 I know you're busy, and I stated that in my email to  
18 you, but I think you have time for some of the  
19 Council members, there's 26 of us, and this is  
20 probably the only -- maybe the second time I've even  
21 contacted your office this year, so I'm a little  
22 disappointed with the lack of response from you.

23 CHAIRMAN YATES: Well, Councilwoman --

24 COUNCIL MEMBER WOOLRIDGE: And I still need  
25 the answer to the question. Is it two-thirds of



1 the -- of the entire Council or what is the number  
2 that it takes?

3 CHAIRMAN YATES: As I explained in my message  
4 that I returned this morning and left on your voice  
5 mail, I apologized for getting back to you.  
6 Yesterday was Halloween, I have young kids, so I got  
7 your email 10:00 o'clock at night, was obviously  
8 getting kids ready for bed. This morning at 7:45 I  
9 phoned you back and left you a voice message.

10 Mr. Golden, I will make sure that -- sends  
11 out an email to everyone explaining the legal  
12 reasoning behind the determination of the votes.

13 We -- as Chair, I have followed the advice of  
14 counsel, because it's an interpretation of the  
15 statute and the legislative intent, not of our  
16 rules, and for that reason, I believe that it is in  
17 the best interest of this body to follow the advice  
18 of counsel, and they have put together -- put  
19 together a well-reasoned argument, and that's been  
20 requested by several members. I know it is work  
21 product, but I'll make the determination to make  
22 sure that every member of this body gets that email.

23 MR. MCADAM: Mr. President --

24 MR. GOLDEN: If I -- if I could just follow  
25 up with that.

1           CHAIRMAN YATES: Please.

2           MR. GOLDEN: The Court has already issued an  
3 order on numerical requirements. It was an order  
4 dated October 25th, 2017. It's of record. It  
5 should be in the agenda line item. We'll provide a  
6 copy of that order as well. But it lays out the  
7 numerical requirements for removal, and it, again,  
8 was -- will be in your box again today.

9           CHAIRMAN YATES: And I think the request is  
10 not the order -- you're asking for the reasoning  
11 behind that, is that correct, Colleagues? And so  
12 I'll make sure that email comes over.

13          MR. MCADAM: Mr. President, could I request  
14 that if you're going to send that to each Council  
15 member that you also send them a copy of my legal  
16 memorandum that shows that the state law, KRS  
17 67C.143, as amended in the last General Assembly,  
18 says it takes two-thirds of the total Council, not  
19 just the Court.

20          CHAIRMAN YATES: Counsel, I'll -- I'll --

21          MR. MCADAM: And with all due respect to Mr.  
22 Golden, he is absolutely wrong in his interpretation  
23 of the law. The law means what it says. You can't  
24 make the law say what you want it to.

25          CHAIRMAN YATES: Okay. Now, I --

1 MR. MCADAM: And so --

2 CHAIRMAN YATES: Counsel, let me -- let me  
3 stop you there, because --

4 MR. MCADAM: -- we will -- we will go on --

5 CHAIRMAN YATES: Counsel, let me stop you,  
6 because what I want to go ahead and do is set the  
7 stage. Right now wasn't the appropriate time to go  
8 ahead and make that argument. What you asked is  
9 that your -- that your motion be attached as well --

10 MR. MCADAM: That's correct.

11 CHAIRMAN YATES: -- and my response was going  
12 to be yes --

13 MR. MCADAM: Okay.

14 CHAIRMAN YATES: -- that'll be fine that  
15 everyone has it, but what I'm going to ask is you  
16 please respect the Chair, each -- each colleagues.  
17 We want this to be fair and expeditiously move  
18 forward, so whenever I go to stop you, I will ask  
19 that you please stop then. Do not speak over top of  
20 me.

21 MS. KENT: Mr. Chair, I was going to make the  
22 same request, that the Charging Committee's --

23 CHAIRMAN YATES: Sure.

24 MS. KENT: -- response be attached.

25 CHAIRMAN YATES: And so that you know that

1 all of these documents will be, obviously, published  
2 for the --

3 MS. KENT: Right.

4 CHAIRMAN YATES: -- entire committee.

5 Councilman Ackerson.

6 COUNCIL MEMBER ACKERSON: Thank you, Mr.  
7 President.

8 In response to Councilwoman Sexton Smith's  
9 question about processes, I mean, the reality of the  
10 situation is we've had two of these before. Both  
11 involved African-American women. They were --  
12 neither one was summarily dismissed, so there were  
13 full hearings.

14 Neither one of those folks -- because I know  
15 the attorneys there. One was Derwin Webb. He was  
16 never paid by this Council, and number two was  
17 Aubrey Williams, who was paid for the ethics -- when  
18 there was an ethics hearing, he was paid for the  
19 ethics hearing, but he was never paid anything by  
20 Metro Government. I spoke to him this morning for  
21 clarification. Never paid anything by Metro  
22 Government for the trial before this body. He was  
23 paid for the ethics commission hearings.

24 So if you're worried about process, that's  
25 the process we're faced with.

1           CHAIRMAN YATES: Thank you, Colleague.

2           And again, obviously that determination was  
3           made wholly by the Office of the County Attorney,  
4           not by this body, and it's not currently before us.

5           Councilman James.

6           COUNCIL MEMBER JAMES: Thank you, Mr. Chair.

7           I was just going to basically say what  
8           Councilman Ackerson just said, that there were two  
9           hearings, and both were African-American women, and  
10          their attorneys were not paid for by the County  
11          Attorney's Office, but yet we have changed the  
12          process, and I'm trying to find out why.

13          CHAIRMAN YATES: Counsel, I do not know why  
14          that determination was made. In fact, I don't know  
15          even the facts of the previous hearings, how they  
16          were paid or whatnot, because that contract would  
17          not have come through this body. That was done --  
18          if there was a contract, if there was a payment,  
19          either for the ethics remove -- you know, for the  
20          trial or there was not, that decision would have  
21          been made by the Office of the County Attorney.

22          The decision here came from a legal response  
23          in which I sent legal questions over and they  
24          answered it, and I believe because they are our  
25          statutory counsel here, I'm following that legal

1       advice.

2               But I think that those questions have been  
3       presented to them, and I think that there's nothing  
4       stopping this body -- because it is outside of this  
5       proceeding, it's outside of this hearing, that  
6       there's nothing to stop any member of that from  
7       asking for a written request or response that would  
8       be outlining that, because it sounds pertinent and  
9       important; however, I don't want to detract from the  
10      hearing before for Councilman Johnson.

11              COUNCIL MEMBER JAMES:   Thank you.

12              CHAIRMAN YATES:   Councilwoman Barbara Sexton  
13      Smith.

14              COUNCIL MEMBER SEXTON SMITH:   Yes.   Thank  
15      you, Mr. Chair.

16              Can we hear a verbal report on how many  
17      people make up the Council Court given there was a  
18      change that was introduced and you shared with us  
19      today related to Councilwoman Flood?

20              So my first question is:   How many make up  
21      the number of the Council Court?   And then if you  
22      would do the math for us and state it verbally, how  
23      many represent a simple majority of that number and  
24      how many represent a two-thirds of that number, and  
25      then state what the number will take to remove

1 Respondent and what number will it take to retain  
2 Respondent.

3 CHAIRMAN YATES: And that's under --

4 COUNCIL MEMBER SEXTON SMITH: Thank you.

5 CHAIRMAN YATES: And that's under the  
6 assumption that all members of the Council Court  
7 will be able to remain with the exception of  
8 Councilwoman Madonna Flood, because she --

9 COUNCIL MEMBER SEXTON SMITH: Right.

10 CHAIRMAN YATES: -- does have an excused  
11 absence. I believe that number will be 13.

12 Mr. Golden, if you want to go ahead and break  
13 that down as legal counsel.

14 MR. GOLDEN: Absolutely. So the present  
15 members of the Council Court are 19. For removal,  
16 pursuant to statute, requires two-thirds of the  
17 Council Court to remove. That's 13 out of 19 will  
18 be required to remove. Alternatively, seven votes  
19 requesting the retention would be what it would be  
20 required to be retained in office.

21 With regard to other motions that are before  
22 you, there is a summary disposition motion that has  
23 been filed by the Respondent pursuant to Rules 4 and  
24 7. That requires a simple majority. Again, as  
25 there are 19 voters voting, the 10-person majority

1 rule would carry the day on the Respondent's vote  
2 for a dismissal. I'm sorry. The Respondent's  
3 motion for a dismissal.

4 So I hope those answer both of your questions  
5 that are there.

6 CHAIRMAN YATES: And additionally, as we go  
7 through this proceeding, I'll allow some questions  
8 to the end. I think some of them may be addressed  
9 through this process, because I know that we're kind  
10 of jumping out of order and asking different ones.

11 So if we would go ahead and kind of move  
12 forward, then it may be at the close some of these  
13 questions we could ask.

14 MR. MCADAM: Mr. President, is this --

15 CHAIRMAN YATES: Mr. Adams [sic].

16 MR. MCADAM: -- a decision that you've just  
17 arrived at? I realize that the conversation with  
18 Mrs. Flood was -- only recently occurred, but will  
19 this decision be in writing and made part of the  
20 record.

21 CHAIRMAN YATES: Yeah. As you know,  
22 obviously we just made that determination together.

23 MR. MCADAM: You just -- you just decided to  
24 change it from 18 to 14, and now it's 14 to 13 to  
25 remove. Is that the gravamen of it?



1           CHAIRMAN YATES: What we just decided is that  
2 we would allow one Council member an excused absence  
3 so they would not longer be in the court, which  
4 would change the number.

5           MR. MCADAM: Right.

6           CHAIRMAN YATES: So that would change it,  
7 because it's the sitting body. And so all we did  
8 was just do the simple math.

9           MR. MCADAM: Well --

10          CHAIRMAN YATES: But, yeah, I will. I will  
11 ask for that.

12          MR. MCADAM: And there's nothing in the  
13 statute that allows you to do that, nothing --

14          CHAIRMAN YATES: The argument is, there's  
15 nothing to allow you -- in the statute to allow that  
16 a member be recused?

17          MR. MCADAM: That's right. Doesn't mention  
18 it.

19          CHAIRMAN YATES: Okay. Is that an objection  
20 now that you -- because I thought that we --

21          MR. MCADAM: Well, yes. I mean, you haven't  
22 done it in writing. When you do, I'll write -- I'll  
23 file a formal objection to that. The rules keep  
24 changing as the game is being played.

25          CHAIRMAN YATES: Well, okay. Colleague,

1 during our conversation there was not an objection  
2 because of the -- I think that it was stated very  
3 clearly because of the severity of what she is going  
4 through.

5 MR. MCADAM: No, you misinterpreted.  
6 Absolutely. You are misinterpreting what I said. I  
7 said if she was having family medical problems, I  
8 had no objection to her not being here.

9 CHAIRMAN YATES: Okay.

10 MR. MCADAM: I reserve the right to argue  
11 that that affects the vote total.

12 CHAIRMAN YATES: And I said you have not  
13 waived that argument, so it's not needed to be  
14 addressed right now.

15 All right. For the record, if we're moving  
16 forward, I'm President David Yates, and per Metro  
17 Council Rule 4 of the Louisville Metro Council  
18 Removal Proceeding, I'm serving as Chair.

19 Everyone knows Matt Golden, who is our  
20 Assistant Attorney, who will serve as legal counsel.

21 The first motion for organizational matters  
22 was a motion to quash the subpoena that was filed on  
23 behalf of GLI, Mr. Oyler. He's averred that he was  
24 not present during the GLI trip and has no personal  
25 knowledge of the same, and he seeks to quash the

1 subpoena.

2 I'm sorry?

3 Oh, Counsel, yeah, you may approach. This is  
4 your motion. If you'd just state your name for the  
5 record, please.

6 MS. WYRICK: Yes, Your Honor. I'm Mitzi  
7 Wyrick from Wyatt Tarrant & Combs, and I'm  
8 representing GLI and Kent Oyler in this matter.

9 CHAIRMAN YATES: Thank you.

10 Well, before we proceed forward, I would ask  
11 the parties on both sides whether or not that they  
12 believe that Mr. Oyler is a necessary witness, and  
13 if so, why. Either party may begin.

14 MS. KENT: Your Honor, we do not believe Mr.  
15 Oyler is a necessary witness. We believe that Sarah  
16 Davasher can testify to the facts needed and that  
17 she, in fact, as the chief operating officer, is the  
18 appropriate corporate officer to appear.

19 CHAIRMAN YATES: So, Counsel, may I infer  
20 that there is no objection to quashing the subpoena  
21 of Mr. Oyler?

22 MS. KENT: No objection.

23 CHAIRMAN YATES: Mr. Adams [sic].

24 MR. MCADAM: Well, of course I have an  
25 objection. In his affidavit requesting a protective

1 order against the subpoena, he said that under no  
2 circumstances is he or Ms. Davasher going to reveal  
3 the name of Jane Doe, Mrs. X, Miss X, whatever.

4 Here we've got -- here we've got in America,  
5 in 2017, a man being accused of saying something  
6 that we don't know what he said because nobody's  
7 going to repeat what he said, at a location in  
8 another state by a person who is unnamed, and that's  
9 one of the grounds that the Charging Committee has  
10 to remove Dan Johnson and change the election for  
11 the 21st Metro District. Okay? An anonymous source  
12 who's -- who is -- would have told somebody  
13 something and nobody wants to talk about it.

14 And I want Kent Oyler to come in here because  
15 he made public statements in the newspaper about how  
16 egregious Dan Johnson's behavior was and how he was  
17 barred from any more functions of GLI, and so I  
18 think he's a -- I think he's a necessary and  
19 important witness, and I have the right, under 13B  
20 of the Kentucky Revised Statutes and under the rules  
21 of this Court, to subpoena witnesses. He's  
22 material, he has been involved in this case, and I  
23 want to know that young woman's name so we can issue  
24 a subpoena.

25 This Council Court has a right to hear what

1 she's going to say. She cannot hide behind  
2 anonymity. This is America. You can't do that.

3 CHAIRMAN YATES: So as related to Mr. Oyler,  
4 it looks like what the -- the attempt is get hearsay  
5 evidence from hearsay evidence. I believe that he  
6 was served with a subpoena by the counsel for the  
7 Charging Committee.

8 MS. KENT: Correct.

9 CHAIRMAN YATES: Counsel for the Charging  
10 Committee has agreed to quash that subpoena.

11 Mr. Adams [sic], have you subpoenaed Mr.  
12 Oyler?

13 MR. MCADAM: Yes, I have.

14 MS. KENT: Mr. Chair, I'm sorry, but no, we  
15 didn't subpoena.

16 CHAIRMAN YATES: You did not?

17 MS. KENT: No. Not Kent Oyler.

18 CHAIRMAN YATES: Okay. So we're just on Mr.  
19 Oyler right now.

20 MS. KENT: Right.

21 CHAIRMAN YATES: Counsel, I know you wrote a  
22 written response why this should be quashed. You  
23 may address.

24 MS. WYRICK: Yes. Mr. Oyler doesn't have any  
25 direct knowledge of the event in question that

1 occurred in the Austin GLI trip. He didn't witness  
2 it. He didn't communicate the decision to ban to  
3 this Council, Ms. Davasher did, and she will be here  
4 to testify. And his only knowledge of this incident  
5 is what -- his discussion with Ms. Davasher. We  
6 think it's unnecessary, cumulative, and will add  
7 nothing to the proceedings.

8 CHAIRMAN YATES: Thank you, Counsel.

9 Councilwoman Kent -- I mean Counsel Kent.

10 MS. KENT: Counselor.

11 CHAIRMAN YATES: Counselor Kent, I'm -- we'll  
12 quash the subpoena as it relates to Mr. Oyler  
13 because we're getting everything there, but in doing  
14 so, it is the opinion of the Chair that none of his  
15 statements, his information or hearsay of Mr. Oyler  
16 should be brought in.

17 Is there any objection to that by any party?

18 MS. KENT: Your Honor, the reason that Sarah  
19 Davasher is appearing is to explain this  
20 unprecedented ban, and that is the question that we  
21 believe people want to know, how did this bizarre  
22 and unprecedented thing come to be?

23 CHAIRMAN YATES: And if that comes from Sarah  
24 Wisdom, then that's fine, it comes from her, but it  
25 would not be -- we would have any remarks to some

1       hearsay evidence to a witness that would not be  
2       appearing; is that correct?

3               MS. KENT: Well, Your Honor, I have to point  
4       out that hearsay testimony is acceptable in an  
5       administrative hearing. Since we're not in a court  
6       of law, we have a different set of evidentiary  
7       rules, and hearsay can be heard. It's up to this  
8       Court to decide the weight of that hearsay  
9       testimony, the reliability of that hearsay  
10      testimony, but under the common law of  
11      administrative law, it is acceptable.

12             CHAIRMAN YATES: And -- and --

13             MR. MCADAM: But Mr. -- Mr. President --

14             CHAIRMAN YATES: -- correction. In a --  
15      hearsay in this kind of proceeding would only be --  
16      only be admissible in the event that -- I think the  
17      words is it's reliable and that a reasonable and  
18      prudent person would rely on such.

19             MR. MCADAM: That's what --

20             CHAIRMAN YATES: So while there are  
21      exceptions --

22             MR. MCADAM: That's what 13B says, yes.

23             CHAIRMAN YATES: -- and I'm -- okay. And I'm  
24      coming to that as I go through, because we also come  
25      to the next one. I'm making a ruling on the Court

1 is to quash as it relates to --

2 MR. MCADAM: May I -- may I ask one  
3 question --

4 CHAIRMAN YATES: You may.

5 MR. MCADAM: -- of counsel? Either counsel.  
6 Will either of the witnesses available at GLI tell  
7 us the name of the young woman who has brought this  
8 ridiculous complaint so that she can be compelled to  
9 testify what was said and what the context was? If  
10 that's --

11 CHAIRMAN YATES: And who is that question  
12 directed to?

13 MR. MCADAM: Anybody that can answer it.  
14 Apparently nobody can answer it.

15 CHAIRMAN YATES: Yeah.

16 MR. MCADAM: I want --

17 CHAIRMAN YATES: I think that would be hard  
18 for them to tell us what an individual will be  
19 testifying. I think that if we have the --

20 MR. MCADAM: Just what's her name? I just  
21 want to know what her name is.

22 CHAIRMAN YATES: So what you're saying, Mr.  
23 Oyler is being -- I'm going to quash the subpoena of  
24 Mr. Oyler and I am going to limit any mention of the  
25 ban and everything to the testimony which is brought



1       forth by at least some witnesses that can be before  
2       this Court, and that's meant -- as far as what Mr.  
3       Oyler decided, it would have to be attested to by  
4       Sarah or someone else who's over here.

5               MS. KENT:   Mr. Chair.

6               CHAIRMAN YATES:   Yes.

7               MS. KENT:   I just have one thing to say.

8               CHAIRMAN YATES:   Uh-huh.

9               MS. KENT:   We both agree that hearsay is  
10       admissible, but I think I'd like to correct what you  
11       just said.  The problem with hearsay is that in  
12       order for the Court to rely on hearsay, that hearsay  
13       must be corroborated.  The question -- the normal  
14       questions of relevance and weight, of course they  
15       will apply in deciding who to believe.  But as far  
16       as the admission of hearsay, it is to be admitted,  
17       but if it is not corroborated, it cannot be the  
18       basis of a finding.

19               And that ultimately is how the hearsay rule  
20       boils down in administrative law.  You can hear it,  
21       you can decide if it's relevant, you can decide if  
22       it has any weight, but in the end, if it isn't  
23       corroborated, you can't use it to base a finding on.

24               CHAIRMAN YATES:   And I do not want to get in  
25       a debate on the finding of fact.  I do have our

1 Assistant County Attorney, whom I believe agrees  
2 with my opinion on it, because it can't be  
3 sufficient in and of itself, and then -- but what  
4 I'm saying is, if I quash this individual, where he  
5 does not have to appear, I'm not going to allow the  
6 Charging Committee to put words that he would have  
7 said had he been here.

8 MS. KENT: Oh, absolutely not.

9 CHAIRMAN YATES: Okay. Mr. Golden, do you  
10 want to respond to the basis of the hearsay evidence  
11 and that it should only be admitted in the event  
12 that the agency --

13 MR. GOLDEN: Yeah. I would stress -- my  
14 apologies. I would stress that hearsay evidence is  
15 admissible in an administrative proceeding if and  
16 only if it is such evidence that reasonable and  
17 prudent persons would rely upon it in their daily  
18 affairs.

19 And the statute goes on to say, (Reading) but  
20 it shall not be sufficient in and of itself to  
21 support an agency's findings of facts --

22 MS. KENT: Absolutely.

23 MR. GOLDEN: -- unless it would be admissible  
24 over objections in civil actions.

25 And what that means is, the rules of

1 evidence, specifically KRE 803, begin to pick up and  
2 say these are the type of exceptions to the hearsay  
3 rule.

4 So we can't just say all evidence is  
5 admissible in an administrative proceeding such as  
6 this because it is not. It must have some inherent  
7 reliability to it to be given any deference or  
8 weight.

9 MS. KENT: But if it is reliable, it is  
10 admitted, with the caution that if it's not properly  
11 corroborated, and if a finding is based on  
12 uncorroborated hearsay, that that finding may be  
13 overturned by --

14 MR. MCADAM: That's not what 13B says. She's  
15 making that up.

16 MS. KENT: But 13 --

17 MR. MCADAM: You have a copy right in front  
18 of you.

19 MR. GOLDEN: Is that 803?

20 MR. MCADAM: That's not what the law is.

21 MR. GOLDEN: Yeah, and I'll just read the  
22 statute again. It's --

23 MR. MCADAM: It doesn't mention  
24 corroboration.

25 MR. GOLDEN: Well, in a way, you cannot carry

1 the day with hearsay.

2 MR. MCADAM: Correct.

3 MR. GOLDEN: I think that's what she's trying  
4 to say.

5 MS. KENT: That's exactly, yeah.

6 CHAIRMAN YATES: Something more.

7 MR. GOLDEN: There has to be something more  
8 than that. So an agency cannot issue findings of  
9 fact based upon --

10 MR. MCADAM: You can't have two people that  
11 heard the same rumor both say, "Yeah, I heard the  
12 same rumor." That's not corroboration.

13 MR. GOLDEN: That's still hearsay; that's  
14 correct.

15 MR. MCADAM: Of course it is, and it's not  
16 enough to sustain the burden of proof.

17 CHAIRMAN YATES: That would still be hearsay,  
18 yes.

19 MS. KENT: And, Mr. Chair --

20 CHAIRMAN YATES: Yes.

21 MS. KENT: -- since it came up, and this is  
22 the first time it has come up, I would like to talk  
23 about the perception that 13B has any application to  
24 this proceeding. I believe it's -- it's within the  
25 first couple of pages of 13B. 13B.020, Application

1 of This Chapter, Exemptions. Paragraph 2 says, "The  
2 provisions of this chapter shall not apply to," and  
3 we go down the list to (f), which says,  
4 "Administrative hearings conducted by any city,  
5 county, urban-county, charter county, or special  
6 district contained in KRS Chapters 65 to 109, or any  
7 other unit of local government operating strictly in  
8 a local jurisdictional capacity."

9 Now, this 13B then goes on to exempt a whole  
10 bunch of state hearings, which hearings of the  
11 Cabinet for Health and Family Services, Justice and  
12 Public Safety, etcetera, are also exempt from 13B.

13 CHAIRMAN YATES: And the -- I just -- just to  
14 keep -- because the argument --

15 MS. KENT: Yeah.

16 CHAIRMAN YATES: -- under Rule 16, the  
17 evidentiary standards, we chose to accept that, this  
18 body did.

19 MS. KENT: Chose to accept 13B?

20 CHAIRMAN YATES: No, the procedural and  
21 evidentiary rules will be those generally accepted  
22 in Kentucky for administrative --

23 MS. KENT: Right.

24 CHAIRMAN YATES: -- for administrative  
25 proceedings. That was under Rule 16, and which this

1 body agreed to accept, and so on advice of  
2 counsel -- and obviously this is a very different  
3 kind of proceeding, as we all know.

4 MS. KENT: Uh-huh.

5 CHAIRMAN YATES: That was the advice of the  
6 counsel is why.

7 MS. KENT: Well, and I don't want to belabor  
8 this, but there is a reason why local administrative  
9 hearings are exempted and why this long list of  
10 state hearing adjudicative bodies are also exempted.  
11 And while many people would like to see a uniform  
12 body of administrative law and would love it if 13B  
13 would serve that purpose, it does not. It is not  
14 the common law of administrative bodies in Kentucky.  
15 It is -- it only applies to the agencies that the  
16 legislature has put under 13B.

17 MR. MCADAM: Mr. President, this is not an  
18 administrative hearing. This is a legislative  
19 hearing. Counsel is mistaken in that regard.

20 And what this Council has done is they have  
21 adopted the procedures and evidentiary rules of the  
22 state law in 13B at -- they could have adopted the  
23 Hammurabi code and it would still be -- in other  
24 words, I'm agreeing with you.

25 CHAIRMAN YATES: Okay. And again, we don't

1 want to belabor the point because it --

2 MS. KENT: I do have to correct one thing --

3 CHAIRMAN YATES: Please do.

4 MS. KENT: -- Mr. Chair. I'm sorry. But  
5 this is an administrative hearing. I think we have  
6 a case going back -- ah. Let's see. Arbogast, and  
7 it was --

8 MR. STEWART: 1935.

9 MS. KENT: I'm sorry? 1935, Arbogast, and it  
10 was attached in my motion, and that is where it  
11 states that removal proceedings are administrative  
12 proceedings. That's black -- that's court-made law.

13 CHAIRMAN YATES: Councilwoman Barbara Sexton  
14 Smith.

15 COUNCIL MEMBER SEXTON SMITH: Yes. Mr.  
16 Chair, could you or Mr. Golden explain to me and  
17 everyone else, do we have something -- is this an  
18 administrative hearing, is it a removal hearing, or  
19 is it a legislative hearing, or is it two or three  
20 of the above? And do we have specific guidelines  
21 that we can use to guide us as we go through these  
22 hearings? So what kind of hearing is this  
23 officially?

24 MR. GOLDEN: This is a removal hearing that  
25 exists under 67C.143.

1 COUNCIL MEMBER SEXTON SMITH: Does 13B govern  
2 what we're going to do here?

3 MR. GOLDEN: The Council as a body, not just  
4 the Council Court, but the Council as a body has  
5 adopted removal rules. Those were emailed to every  
6 member of this body early on in the proceeding as a  
7 guideline, a talisman, and a touchstone for this  
8 proceeding.

9 That rule, specifically Rule 16 that  
10 President Yates mentioned, within those removal  
11 rules adopts for this body the administrative  
12 hearing rules that exist in Kentucky. So we use  
13 those as part of the due process -- the Council as a  
14 whole, not just the Council Court, the due process  
15 that you-all have afforded within your rules in Rule  
16 Number 2.

17 So again, in thinking about our different  
18 layers, 67C sets forth that this is a removal  
19 hearing. You-all as a body have determined what  
20 your rules are. Those rules talk about things like  
21 due process and evidentiary standards and so on, and  
22 much of what I would suggest everyone does, much of  
23 your questions will be answered by those rules  
24 unless they are somehow superseded or in conflict  
25 with 67C.143.



1 MS. KENT: Mr. Chair, if I could just say, I  
2 understand evidentiary -- "Rule 16. Evidentiary  
3 Standards. Procedural and evidentiary rules will be  
4 those generally accepted in Kentucky for  
5 administrative proceedings."

6 It does not say "will be found in 13B."  
7 That's my problem. There's a lot -- in order to  
8 practice administrative law in this state, you have  
9 to rely on case law, because every administrative  
10 body is different.

11 MR. GOLDEN: Well, if it helps at all, the  
12 seminal case of Drummond on administrative hearings  
13 talks exactly about the same standard with regard to  
14 hearsay. Back to the subject at hand, Drummond  
15 mentions the rules under 13B as applicable in  
16 administrative hearings.

17 So again, if the body has chosen to follow  
18 administrative hearing law, the body should follow  
19 Drummond and 13B.

20 MS. KENT: But you cannot declare 13B as the  
21 common law of administrative law in Kentucky. In  
22 some -- for example, the Kentucky Commission on  
23 Human Rights, on which I served for almost ten  
24 years, we never looked to 13B, ever.

25 If we did not have in our enabling statute or

1 within the rules and -- procedural rules drawn up by  
2 the Commission, quite honestly, rather than 13B, we  
3 would more likely look at civil rules to see how  
4 they handled questions of due process. But it was a  
5 matter of the adjudicative body wrote it, wrote its  
6 rules and, when there were gaps in the rule, looked  
7 to see what solutions we could find in civil rules,  
8 not in 13B, to do the one thing, the main thing that  
9 an adjudicative body has to do, and that is see to  
10 it that due process occurs. But it's not -- due  
11 process is not always found in 13B.

12 CHAIRMAN YATES: Counsel, I know that you're  
13 still at the mike, and we have another motion. We  
14 have ruled on a motion as it regard to Mr. Oyler.  
15 The next -- could you -- will you please let us know  
16 your next motion to quash?

17 MS. WYRICK: My next motion is a motion for  
18 protective order. Mr. -- the Respondent has made it  
19 clear that they intend to question witnesses about  
20 the identity of Jane Doe, who is a GLI staffer, and  
21 to subpoena her if her identity is revealed, and  
22 we're asking for a protective order to prevent that  
23 from occurring.

24 Our staffer came forward after the Austin  
25 trip with a complaint about Councilman Johnson's

1 behavior. She asked that her identity be concealed  
2 and that she be able to make this compliant  
3 confidentially. That was done.

4 GLI made the determination that Councilman  
5 Johnson's behavior was inappropriate and that it  
6 would ban Mr. Johnson from attending any future GLI  
7 events.

8 The Respondent is free to question our  
9 witness regarding that ban and what led to the  
10 institution of that ban. If he then wants to argue  
11 that the evidence is insufficient, so be it, but we  
12 think this is simply an attempt to drag a third  
13 party who has asked that her confidentiality be  
14 maintained, to intimidate and embarrass her publicly  
15 in this proceeding.

16 So we would ask that a protective order be  
17 granted.

18 CHAIRMAN YATES: And just to lay out what we  
19 have before us, in going through the -- with regard  
20 to the motion of Jane Doe, she is an anonymous  
21 witness. The Charging Committee alleged that during  
22 the GLI-sponsored event, Respondent engaged in  
23 misconduct directed at Miss Doe. We have that  
24 allegation. The Charging Committee alleges that  
25 Miss Doe reported these events to a superior at GLI,

1 and that's where that you would have Sarah Wisdom.  
2 The Charging Committee would seek to provide  
3 evidence of this report and Miss Doe's statements in  
4 the matter.

5 In reviewing, to the extent that the Charging  
6 Committee proffers Miss Doe's statements to her  
7 supervisors as truth, in the event that that's put  
8 forward, that her statements were, in fact, true,  
9 Respondent's statements of misconduct, the  
10 statements are hearsay, and we all would know that,  
11 and I know that we discussed what would be  
12 admissible and what's not. They're out-of-court  
13 statements offered to prove the truth of the matter  
14 asserted.

15 And upon review and advice of counsel and on  
16 the pleadings, the only source of information as to  
17 the allegations of Respondent's misconduct on the  
18 GLI event that the Charging Committee has tendered  
19 is Miss Doe, so we know that because that is the  
20 primary source.

21 The Charging Committee has previously stated  
22 that -- and we went through this, that the hearsay  
23 is admissible in administrative proceedings.  
24 That's -- and we talked about why this body may not  
25 believe that's entirely accurate in all matters, and

1       that we have decided the proper legal standard is  
2       that hearsay is admissible in administrative  
3       proceedings only if it is reliable and that  
4       reasonable and prudent persons rely on such.

5               And that -- I know Matt Golden briefly  
6       touched on that, that they rely on such evidence in  
7       their daily affairs and that it would be so -- it  
8       would be that high. But it can't be sufficient in  
9       and of itself to support an agency's finding of  
10      facts unless it would be admissible over objections  
11      in a civil -- in our civil actions. And that's  
12      where we get back to 13B, and we've already had that  
13      whole debate and argument over that. But that is  
14      the opinion of the legal counsel, which has given me  
15      some direction on this.

16             It's unlikely that an anonymous statement  
17      would be inherently reliable, and therefore it is  
18      not, I don't believe, an exception to hearsay  
19      without something more.

20             So in short, the allegations concerning Jane  
21      Doe's anonymous statement, they don't satisfy either  
22      prong on the face, as we are right now, concerning  
23      the Charging Committee's allegation.

24             So what we have to do is look at it and say  
25      regardless of the nature of the allegations against

1        Respondent, anonymous statements, they -- as law, we  
2        know from our civil practice, a lot of us, that even  
3        on the basis they would offend the Fifth and the  
4        Fourteenth amendments' due process right to question  
5        witnesses.

6                Now, I agree that this is much more relaxed  
7        here, and I believe that it's much more relaxed in  
8        the Sixth Amendment right to criminal cases.  
9        However -- and there's an assortment of case law  
10       that's been provided. That even our recently  
11       enacted sexual harassment policy here on the Metro  
12       Council does not allow anonymous statements and  
13       grants the accused a right to confront or, you know,  
14       to be consistent with due process. And again, that  
15       was on advice of counsel as well.

16               Thus, we're left with the decision that if  
17       the Charging Committee wishes to proceed on the  
18       allegations of misconduct concerning the GLI trip,  
19       just that allegation, the accused will have the  
20       right to examine the presently anonymous witness.

21               If the only evidence the Charging Committee  
22       can offer are these anonymous statements conveyed to  
23       another without granting the accused the right to  
24       examine Jane Doe, then the evidence would not be  
25       admissible and would not be sufficient by itself to

1 warrant a finding of misconduct. That decision was  
2 met after significant research and looking into this  
3 and advice of counsel.

4 When I had sent all of this over to both  
5 parties in an email this afternoon and had asked the  
6 Charging Committee if they still wished to proceed  
7 in reliance on Jane Doe's allegation, after an  
8 explanation that we've just made, and that's an  
9 explanation that's been bind through the advice of  
10 counsel, the Office of the County Attorney, and  
11 that's the interpretation of the law as it relates  
12 to the proceedings, and if they do -- and I know  
13 there may be some determination of how we want to  
14 proceed, but if they do, which is the absolute right  
15 of the Charging Committee, they trigger the  
16 collateral right of the Respondent to examine her.

17 In the event that does, I will do everything  
18 in this Court's, or this -- in our -- whatever we  
19 have at our purview to let her proceed in her  
20 pseudonym, under Jane Doe, to ask all cameras not be  
21 directed towards her, ask Metro TV not to do so, and  
22 then ask that her information and any kind of  
23 protected information, pertinent, intimate,  
24 otherwise, be kept within this body. So that's  
25 based on my legal advice.

1           And so I guess my question is, to the  
2           Charging Committee, do they wish to proceed forward  
3           on that and move forward based on Jane Doe's  
4           allegation? If so, that's what it triggers. Or if  
5           not, we can move forward on the other charges.

6           MS. KENT: Mr. Chair, could we take a short  
7           recess?

8           CHAIRMAN YATES: Please.

9           MS. KENT: Thank you. Ten minutes? What you  
10          gonna give us?

11          CHAIRMAN YATES: Counsel, I know you asked  
12          for the recess. How long do you need? Do you --

13          MS. KENT: Ten minutes.

14          CHAIRMAN YATES: Ten minutes.

15          MS. KENT: Okay.

16          CHAIRMAN YATES: We'll recess for ten  
17          minutes.

18          MS. KENT: Thank you.

19          (Recess from 2:02 p.m. to 2:19 p.m.)

20          CHAIRMAN YATES: All right. Council Court is  
21          back in session after a short break.

22          MS. KENT: Mr. Chair.

23          CHAIRMAN YATES: Counsel.

24          MS. KENT: May we have a brief conference  
25          with you with the counsel for GLI --



1 CHAIRMAN YATES: You may approach.

2 MS. KENT: -- and Mr. McAdams [sic]? Thank  
3 you.

4 (Bench conference from 2:20 p.m. to 2:27 p.m.)

5 CHAIRMAN YATES: Before we go back on, I'm --  
6 I guess we're still on. I wanted to recognize our  
7 colleague, Councilwoman Denton, has joined us some  
8 time again -- some time ago. I apologize for just  
9 now mentioning that for the record.

10 And any members who were late, tardy, or miss  
11 will be watching all proceedings on the video.

12 We just had a short chat at -- up here at  
13 the -- I guess the bench is what we call it. I  
14 anticipate going ahead and drafting a protective  
15 order, a proposed protective order based upon the  
16 information I have received from both colleagues,  
17 and as they will decide whether or not it's  
18 pertinent, necessary, if that individual is called  
19 as a witness.

20 If the -- if counsel for either party decide  
21 to call her, she will only be called pursuant to  
22 that protective order, and we'll get something in  
23 place now and I'll -- again, we can have a  
24 discussion over the parameters of it, but I will  
25 anticipate doing everything within this Council

1 Court's power to protect her identity, to protect  
2 the record, making sure that she is not visible for  
3 any of the cameras but would be present for this  
4 Council.

5 MS. KENT: Thank you, Mr. Chair.

6 CHAIRMAN YATES: Thank you.

7 Next up, Counsel Deborah Kent, you had -- the  
8 Charging Committee has filed a motion for summary  
9 judgment. It's back out on this, but I believe  
10 there is a significant legal prohibition pursuant to  
11 67C.143. 67C.143.

12 You know, and everybody -- I guess for the  
13 members of this body, this is the statute that says  
14 you only allow removal after a full public hearing.  
15 To my knowledge, Mr. Johnson has not waived his  
16 right to this hearing. As such, it's statutorily  
17 impermissible for motions to proceed in affirmative  
18 vote for a summary removal without a full public  
19 hearing, on advice of counsel, will result in an  
20 appeal, and then I would urge my colleagues to vote  
21 no pursuant to that advice as we would be denying a  
22 fundamental due process.

23 Again, that has nothing to do with the  
24 individual charges or the individual, but based on  
25 the advice of our counsel from the Office of the

1 County Attorney, and pursuant to our rules, which  
2 are in conflict with the statute, this is a simple  
3 majority vote.

4 So again, as a matter of law, I would urge  
5 you that we -- that it's impermissible to vote no.  
6 I'm going to let -- before I let counsel discuss it,  
7 I'll let our attorney on the matter, Mr. Golden,  
8 address that in any more detail, why we have come to  
9 that conclusion.

10 MR. GOLDEN: Yes. Again -- again, as  
11 Councilwoman Sexton Smith had noted before, to try  
12 and understand what process we're going through, the  
13 removal process is sort forth for you by 67C, and it  
14 does entitle the Respondent, any respondent, to a  
15 full public hearing without -- any vote by this body  
16 that acts to deny the full public hearing would be a  
17 denial of the statutory rights set forth by that  
18 statute. So there's no expedited manner to remove  
19 an official without a hearing, at least not under  
20 67C.

21 So with that being said, if this body votes  
22 to grant a summary removal, the matter will likely  
23 be appealed, and it will be, relatively speaking,  
24 automatic, because there is a statutory right  
25 guaranteed.

1           Obviously the parties are going to have to  
2           address the issue anyway as to why a summary motion  
3           would be applicable despite the statute.

4           One thing to keep in mind for conflicts  
5           between statutes and ordinal rules: Statutes  
6           supersede ordinal rules. So the fact that the  
7           ordinal rules may talk about summary judgment  
8           motions without specifically addressing a Charging  
9           Committee's right to make a summary judgment is of  
10          no import. The touchstone of this inquiry has to be  
11          67C's -- 143's guarantee of that public hearing  
12          right.

13          So again, we have great discomfort with  
14          granting a summary motion in the circumstance.

15          CHAIRMAN YATES: At this time I'm going to  
16          allow a couple questions before we vote. In the  
17          queue is Councilwoman Cheri Bryant Hamilton.

18          COUNCIL MEMBER BRYANT HAMILTON: Thank you.

19          I was just wondering, this is a motion that  
20          the full Court will vote on.

21          MR. GOLDEN: That's correct.

22          COUNCIL MEMBER BRYANT HAMILTON: Are there  
23          other motions that -- because other ones you have  
24          ruled from the Chair.

25          CHAIRMAN YATES: Yeah, there will be --

1 COUNCIL MEMBER BRYANT HAMILTON: And I was  
2 just wondering, what's the difference in allowing us  
3 to vote on this motion?

4 MR. GOLDEN: Just briefly, again, those rules  
5 that you set forth are your touchstones. So Rules 4  
6 and 7 and those rules that we circulated before --  
7 and we'll circulate them again, along with a couple  
8 of the orders that addressed other questions. But  
9 Rules 4 and 7 designate the presiding officer, in  
10 this case President Yates, as the decision-maker on  
11 things procedural. And then on things substantive,  
12 like removal itself, that goes to the full Council  
13 Court. So Rule 4 and Rule 7 address exactly this  
14 scenario, that motions to dismiss and summary  
15 motions would need to be addressed by the full  
16 Council Court. The easiest way to think about it,  
17 again, is the procedural versus the substantive.

18 MS. KENT: Mr. --

19 COUNCIL MEMBER BRYANT HAMILTON: Thank you.

20 MS. KENT: Mr. Chair.

21 CHAIRMAN YATES: Yes.

22 MS. KENT: I'm sorry, this is -- you're  
23 moving ahead with a vote on the summary judgment  
24 motion, but the summary judgment motion hasn't been  
25 heard. And before we even get there, I would just

1       like to say --

2               CHAIRMAN YATES:   And, Counsel, let me just --  
3       I'm going to let you make your argument.   What I  
4       wanted to do before, because I didn't want you -- to  
5       interrupt your argument, people were in the queue,  
6       and I think they were asking more of kind of the  
7       substantive, how that was happening, the vote, and  
8       why.   So I want to get some of that out of the way,  
9       and then --

10              MS. KENT:   Okay.   And I think I might be able  
11       to answer some questions.

12              CHAIRMAN YATES:   Okay.

13              MS. KENT:   That's what I wanted to say.  
14       These rules were written back in 2011, and I presume  
15       that they were written by a lawyer, and that lawyer  
16       provided for summary disposition motions.   The  
17       reason I think that lawyer wrote the rules the way  
18       they did is because, when they read 67C and they  
19       read the sentence, "No elected officer shall be  
20       removed without having been given the right to a  
21       full public hearing," they read that and thought  
22       what I believe, and that is, all of us, when brought  
23       before a court on charges, have the right to be  
24       heard, have a right to present a defense.

25              So this applies to the Respondent in this

1 case just as it applies to a defendant over in  
2 circuit court. They have the right to have their  
3 defense heard. They have their right -- and that  
4 defense will be in public, in a public courtroom.

5 I don't think that Section 2 says any more  
6 than that. It does not say that you must be removed  
7 after a full trial. It says a hearing.

8 Now, normally what we do with a summary  
9 judgment motion is we present that motion to the  
10 Court, a response is filed by the Respondent, and  
11 then the Court schedules time to hear the summary  
12 judgment motion, and in hearing that summary  
13 judgment motion, they hear the defense.

14 So I don't see how a summary judgment  
15 motion -- and that's why I jumped ahead when it  
16 seemed like you were going to a vote. I don't  
17 understand how the Court can vote on the summary  
18 judgment motion until they have heard it argued,  
19 because that is where the Defendant -- the  
20 Respondent's due process rights are honored.

21 He was given notice, he was presented with  
22 the evidence, he was given an opportunity to file a  
23 response, and then he gets an opportunity to argue  
24 that response in front of the Court. And I think  
25 that satisfies the right to a full public hearing.

1 It is not the right to a trial.

2 If this is a court, then this Council Court  
3 has the same responsibility that every court across  
4 the street has, and that is to run your proceedings  
5 in an efficient manner. And that's why courts  
6 entertain summary judgment motions, because if  
7 there's no need for a trial, there shouldn't be a  
8 trial. If the summary judgment motion shows that  
9 there is no way the defendant can prevail, then the  
10 summary judgment motion is granted.

11 So I do -- I definitely do not agree with  
12 this new interpretation of this rule when I do not  
13 see anything in 67C that says anything other than  
14 the Respondent has a right to be heard in his  
15 defense and that hearing will take place in public.

16 He now has all the evidence in front of him  
17 from the summary judgment motion and knows what the  
18 facts are to be presented at trial and presumably is  
19 prepared to respond.

20 CHAIRMAN YATES: I'm going to let the  
21 Assistant County Attorney respond for the legal  
22 analysis and then I'm going to let Councilman  
23 Hollander, who is in the queue, also come in.

24 MR. GOLDEN: And I don't want to foreclose  
25 Mr. McAdams [sic] from responding to --



1 MR. MCADAM: Well --

2 MR. GOLDEN: Why don't --

3 MR. MCADAM: -- just say briefly that I agree  
4 with Counsel's interpretation of 67C. I don't think  
5 there's any question about it. A summary judgment  
6 in the civil court, as she is referring to, you have  
7 to come to the court and say, "If everything the  
8 defendant says is true is true, I still win." Okay?  
9 The plaintiff still wins. You have to admit that  
10 everything they said is true.

11 So she, to get a summary judgment, is going  
12 to have to admit that everything we filed is true.  
13 You don't have summary judgments in criminal cases  
14 where people are accused of misconduct. You can't  
15 have a directed verdict. The verdict -- the judge  
16 can't come in and say, "Jury, you must find this  
17 person guilty. I'm finding a summary judgment."

18 What does a -- what does fairness have to do  
19 with any of this stuff? The rules that this body  
20 has adopted says he has the right to a fair hearing.  
21 Fair hearing with due process. 67C says he has the  
22 right to a hearing.

23 Is it a fair hearing when we can't  
24 cross-examine witnesses, that we have to take all of  
25 their affidavits at face value, take all of their

1 exhibits at face value?

2 This is a sad day. I've never heard of  
3 anything so silly as to ask for a directed verdict  
4 in a -- in an impeachment hearing. It's -- well, I  
5 agree with what Mr. Golden is about to say.

6 MS. KENT: Mr. Chair, I'll just say this,  
7 that anyone who has been found against in a court  
8 based on a summary judgment motion has been denied  
9 due process, if I understand your logic, that to  
10 dispose of a case in a summary fashion denies the  
11 defendant due process rights, then I don't  
12 understand how any court grants summary judgment  
13 motions.

14 MR. GOLDEN: Well, I can tell you how courts  
15 grant summary judgment motions, because there's a  
16 particular rule that talks about summary judgment  
17 motions under Rule 56. It's been interpreted  
18 several ways. That says that assuming everything  
19 that the nonmovant said is true, under such  
20 circumstances you can grant summary proceedings in  
21 litigation.

22 This is a removal hearing and slightly  
23 different, because one of the rights that's not  
24 technically guaranteed to a litigant, that is to  
25 have their day in court, to have a jury trial, is

1       guaranteed in this case. It is guaranteed under  
2       67C.143, and with permission I'd like to read (2).  
3       "No elected officer shall be removed without having  
4       been given the right to a full public hearing."

5               Following that, with regard to the rules  
6       adopted by the body, the body has determined that  
7       they know what a due process means, the right to  
8       call witnesses, to subpoena them, to have a hearing,  
9       to consider what evidence, to present exhibits.  
10      That is the full public hearing, i.e. the due  
11      process that this body, the entire body, determined  
12      was due.

13              Again, I urge the vote of no. I think  
14      President Yates would urge the vote of no on this  
15      matter simply because it's a guarantee for an  
16      appeal. Because the statute says "full public  
17      hearing," if it goes up, it'll come back down and  
18      we'll try the case again, because there is no  
19      question in my mind what "full public hearing" would  
20      mean. You've defined it, or the Council has defined  
21      "full public hearing" in its rules.

22              MS. KENT: Without -- I'm sorry.

23              CHAIRMAN YATES: And before -- before you  
24      jump in, after Mr. Golden is finished.

25              MR. GOLDEN: I'm done.

1           CHAIRMAN YATES: I'm going to let Councilman  
2 Hollander jump in the queue and then I'll go back to  
3 you.

4           COUNCIL MEMBER HOLLANDER: Thank you, Mr.  
5 Chair.

6           I think that Rule 2 of our own rules are  
7 applicable here, not just the statute, although  
8 obviously the statute governs. The statute says no  
9 member -- no elected officer shall be removed  
10 without the right to a full public hearing.

11          I have a couple of questions, though, for  
12 either the Chair or the County Attorney. I was not  
13 here for the other two removal proceedings, but it's  
14 my understanding that this motion wasn't even  
15 brought by the Respondents in those cases. Is that  
16 your understanding as well?

17          CHAIRMAN YATES: You wanted to know whether  
18 or not this motion was brought previously by the  
19 respondents in the other removal hearings?

20          MR. GOLDEN: No. This is the first time that  
21 I've ever heard of a summary proceeding for removal.

22          COUNCIL MEMBER HOLLANDER: That seemed  
23 apparent to me. And I guess one other question I  
24 had: As I understand it, we did not give the  
25 Respondent the opportunity to take depositions in

1       this matter; is that correct?

2               MR. GOLDEN:  No, but I will -- I will say  
3       this:  No discovery order was sought by the parties,  
4       but I would -- I would like to add one other subject  
5       here regarding summary removals, and it's a conflict  
6       between the rule and the statute.  The rule would  
7       say summary matters can be dealt with by a simple  
8       majority.  I believe that you-all had asked  
9       previously how many votes are required under a  
10      summary motion.  It's a simple majority.  However,  
11      for removal, pursuant to the statute, it is  
12      two-thirds of the Council Court.  So the conflict  
13      exists between the rule and the statute in question.

14             And then, you know, back to your -- your  
15      question, Councilman Hollander, how many -- whether  
16      this particularly expedited proceeding, was the  
17      party afforded the opportunity to develop their case  
18      and develop witnesses?

19             COUNCIL MEMBER HOLLANDER:  Well, that's my  
20      point.  Rule 2 provides -- we have provided as a  
21      Council that the member charged has the right to be  
22      represented, the right to introduce evidence, and  
23      the right to examine witnesses, and unless there has  
24      been a right to have depositions in this case, I  
25      don't know how the Respondent has been -- has had a

1 right to examine witnesses if we -- if we proceed  
2 with a summary disposition.

3 That's quite different than a summary  
4 judgment in a civil court. I've never seen a judge  
5 grant a summary judgment and say, "You can't take  
6 any evidence beforehand, you can't question any  
7 witnesses, I'm just going to grant a summary  
8 judgment." In most cases -- in fact, I think it's  
9 part of the rule that you can delay a summary  
10 judgment while you have an opportunity to examine  
11 witnesses.

12 So it seems to me that this is just -- just  
13 simply does not constitute fundamental due process  
14 or meet the statute or meet our rule, and it  
15 certainly is not, apparently, in keeping with what  
16 we've ever done before in these proceedings.

17 Thank you.

18 CHAIRMAN YATES: Counsel, I know that you  
19 stated, so has there been -- are you wanting to  
20 present the argument on the motion for summary  
21 judgment now or were you wanting to reserve that  
22 right, because my understanding was that was  
23 presented now, at the beginning of this process, and  
24 it was to be ruled on by this Council. I felt like  
25 your statement may have been otherwise just a second

1       ago.

2               MS. KENT:  No.  It was my understanding that  
3       the summary judgment motion would be heard and  
4       argued today at 1:00 o'clock and that the Council  
5       could then -- after hearing the arguments, after  
6       hearing the evidence, after hearing the Respondent,  
7       could then, by simple majority, vote on the motion.  
8       Now, that would still require two-thirds to vote on  
9       the ultimate question of removal.

10              CHAIRMAN YATES:  Okay.  And so it has been  
11       the decision of the Chair, on advice of counsel,  
12       that that would be -- it would not be permissible to  
13       do that at this point, and so -- and not to waste --  
14       because in the event that it's impermissible by the  
15       advice of our counsel, I think to go ahead and have  
16       a full hearing on that motion for summary judgment,  
17       wait for a vote, knowing that the vote is  
18       impermissible, would be a waste of this time and  
19       your time, your colleagues and everyone here.

20              So I would ask -- and you may object.  I'd  
21       ask that we go ahead and move forward on the vote on  
22       the motion for summary judgment, ask that this body  
23       follow the advice of counsel, vote no on that, and  
24       then we would -- that way we would be closer to the  
25       actual trial.  That would be the advice of counsel,

1 correct?

2 If you wanted to make some statements early  
3 on, but I would want, obviously, in the interest of  
4 time, because we know how that ruling has been  
5 advised, that we go ahead and vote no on that.

6 MR. MCADAM: Mr. President, a point of order,  
7 I guess. Who gets to vote on this? The entire  
8 Council? The Court? Does Dan Johnson get to vote  
9 on it? Does the Charging Committee get to vote on  
10 it?

11 MR. GOLDEN: The Council Court has been  
12 identified as the 19 members you see before you.  
13 The two-thirds -- I'm sorry. Those are the voters  
14 at hand.

15 CHAIRMAN YATES: And because this is a  
16 substantive matter, it has to be. So even though I  
17 would give the advice of our counsel to my  
18 colleagues, they're still entitled under our rules  
19 the right to vote.

20 MR. MCADAM: But it passes or fails by a  
21 simple majority?

22 CHAIRMAN YATES: Yes. That's correct.

23 MR. GOLDEN: That's --

24 MR. MCADAM: Is that --

25 MR. GOLDEN: That is the unfortunate aspect



1 of these rules.

2 MR. MCADAM: Is that 10 or 11?

3 MR. GOLDEN: My understanding of a majority  
4 of 19 would be 10, if I'm doing my math right. I  
5 can take my shoes off and get to 20.

6 MR. MCADAM: Okay. Because -- is the  
7 President voting then is what you're saying?  
8 Majority of those --

9 MR. GOLDEN: Yes.

10 MR. MCADAM: -- present voting?

11 MR. GOLDEN: Yes.

12 MR. MCADAM: Okay. Fine.

13 CHAIRMAN YATES: Councilman Ackerson.

14 COUNCIL MEMBER ACKERSON: Thank you, Mr.  
15 President.

16 I think that Councilman Hollander spoke very  
17 eloquently about summary judgment in this sort of  
18 instance. I'm baffled that we're even talking about  
19 it without giving Councilman Johnson the right to  
20 present a full case.

21 I'm looking at the 67C.143 and I'm -- you  
22 know, I'm confused also by the numbers we're talking  
23 about here, why we're even holding a vote for a  
24 summary disposition. Why are we even having that?  
25 I would have -- I personally would object to us even

1        voting on it with -- under the recommendation that  
2        we vote it down. I don't think that's proper under  
3        the due process that Councilman Johnson is -- should  
4        be afforded here.

5                And I'm looking at the 67C.143, and it's  
6        clearly stating that five members have to bring the  
7        charges, and it clearly states that no legislative  
8        council member proffering a charge shall sit as a  
9        member of the legislative council when it tries that  
10       charge.

11               So 26 minus the 5 leaves us with 21, you  
12       know. And so when I'm hearing 19, which then --  
13       simple majorities are 10. It's two-thirds also for  
14       any -- for any conviction under this statute. And  
15       so if we're talking about a conviction being  
16       summarily, that would also require more than a  
17       simple majority.

18               So, you know, I'm just concerned here about,  
19       you know, giving my colleague at least his fair day  
20       in court before we -- before anyone rushes to  
21       decisions, and as Councilman Kramer is big on  
22       procedures, that the procedures are properly  
23       followed. The statute I don't think could be any  
24       more clear.

25               MR. GOLDEN: No, Councilman Ackerson, I will

1 say this for the record: I agree with you fully.

2 COUNCIL MEMBER ACKERSON: Thank you.

3 MR. GOLDEN: The issue -- the issue at hand  
4 is, there is a conflict between the rules and the  
5 statute over the majority versus the two-thirds of  
6 the Council Court. I'd almost urge the Charging  
7 Committee to withdraw this so that if there is an  
8 appeal had that the record is clear. The statute is  
9 very clear about public -- full public hearings, the  
10 statute is very clear about the numbers requisite  
11 for removal, and this needlessly confuses the issues  
12 on appeal, I feel. So it's a -- it is a path to an  
13 appeal.

14 MS. KENT: I think there are some other paths  
15 as well, so I'm not sure that withdrawing this  
16 motion would eliminate those.

17 CHAIRMAN YATES: From my Council Court,  
18 Colleagues, are there any other questions on this  
19 motion at hand before we ask for a roll call vote?

20 Councilman -- well, I got Councilman Peden  
21 and then Councilwoman Barbara Sexton Smith clicked  
22 in.

23 COUNCIL MEMBER PEDEN: Knowing that this is  
24 somewhere between court and a regular Council  
25 meeting --

1 CHAIRMAN YATES: Somewhere.

2 COUNCIL MEMBER PEDEN: -- somewhere in that,  
3 knowing that taking a vote on this actually ends  
4 that motion, which some people don't necessarily  
5 want to do, I mean, at least on counsel level,  
6 there -- counsel, lower level. Sorry. The lawyers  
7 involved.

8 CHAIRMAN YATES: Right.

9 COUNCIL MEMBER PEDEN: Is it -- are we in  
10 order just to -- someone make a motion to move item  
11 3 to the end and let it hang out there for a while  
12 until we get a little further along in this?

13 MR. GOLDEN: I'm consulting with my  
14 parliamentarian. She says absolutely.

15 COUNCIL MEMBER PEDEN: Then --

16 CHAIRMAN YATES: I feel like that motion  
17 would almost -- because the motion by the Charging  
18 Committee brought before us, and obviously I think  
19 the way you present your evidence would be important  
20 in any kind of trial proceeding, would that be the  
21 will of the members, to -- or is this asking to be  
22 presented at the moment?

23 MS. KENT: Your Honor, just a second.

24 COUNCIL MEMBER PEDEN: Mr. Chair, I make a  
25 motion that we delay this until day two, till the

1 end, till a date certain, which typically seems to  
2 be something that we do.

3 CHAIRMAN YATES: Is there a second for that?

4 COUNCIL MEMBER BENSON: Second.

5 CHAIRMAN YATES: And let me -- let me check  
6 with counsel whether or not -- because this is  
7 obviously such an odd animal, because that's  
8 normally what we would do in Council, we have a  
9 motion, second come in. I'm not sure that in a  
10 removal proceeding --

11 COUNCIL MEMBER BRYANT HAMILTON: Mr. Chair?

12 CHAIRMAN YATES: Somebody's --

13 COUNCIL MEMBER BRYANT HAMILTON: Is there a  
14 question on the motion? Can I have a question on  
15 the motion?

16 CHAIRMAN YATES: Yeah, go ahead. While  
17 they're -- while we're consulting with counsel.

18 COUNCIL MEMBER BRYANT HAMILTON: Okay. I'm  
19 wondering about the necessity for the delay of not  
20 doing it today. What was the reasoning? I mean,  
21 were we waiting on another answer or another opinion  
22 or --

23 CHAIRMAN YATES: I think the advice of legal  
24 counsel is that they're entitled to the full  
25 hearing.

1 COUNCIL MEMBER BRYANT HAMILTON: Right.

2 CHAIRMAN YATES: And then -- so they would --  
3 and as Councilman Hollander had kind of went on, and  
4 Councilman Ackerson and Matt Golden, so I'm not sure  
5 that by waiting a couple days or a day that it would  
6 relieve us from that finding. That was the motion,  
7 and I think maybe sometimes -- that's before us,  
8 deciding if that is correct parliamentary procedure.

9 MR. GOLDEN: Yeah. I talked to Sarah Martin,  
10 who is our official parliamentarian. She would  
11 agree that tabling it until the end almost moots the  
12 issue anyway, because you've had your full public  
13 hearing.

14 MS. KENT: Right. Uh-huh.

15 MR. GOLDEN: And then the numbers -- the  
16 numbers will be what the numbers will be for removal  
17 pursuant to the statute. So I think that if that  
18 would be the motion to be made, to table it until  
19 end of the hearing, it --

20 MS. KENT: Well, if I may offer, it doesn't  
21 necessarily have to be till the end of the hearing.  
22 Do we want to pick up -- put it on the table till  
23 tomorrow?

24 CHAIRMAN YATES: I think the dangerous word  
25 is "entitled to a full hearing," and in the event

1       that we cut the hearing off, we cut off the "full"  
2       part, and I think that's been the advice of counsel.

3               And so in the event that we move through  
4       these proceedings, almost towards the end or  
5       whatever that is, and then proceed against advice of  
6       counsel, I would urge against that.

7               Councilwoman Barbara Sexton Smith had put  
8       into the queue and I had clicked you out.

9               COUNCIL MEMBER SEXTON SMITH: Yes, Mr. Chair.

10              So I just need to seek clarification again  
11       before we take a vote. Are we going -- is everyone  
12       seated in the chamber going to be the total number,  
13       and now that Councilwoman Flood has been dismissed  
14       from all proceedings, does that mean 19 is the  
15       number and are we all here? I haven't done a count  
16       around the room. Is 19 our base number when we  
17       determine whether or not we have the simple majority  
18       should we choose to take this vote?

19              CHAIRMAN YATES: It doesn't look like we're  
20       missing anybody.

21              MR. GOLDEN: No. That is -- and 19 is the  
22       number.

23              COUNCIL MEMBER SEXTON SMITH: Thank you.

24              MS. KENT: Mr. Chair.

25              CHAIRMAN YATES: Yes, ma'am.

1 MS. KENT: We will withdraw the motion.

2 CHAIRMAN YATES: Okay. Thank you.

3 Councilman, you're in the queue. Councilman  
4 Ackerson, was it over this motion that has just  
5 been withdrawn or something else?

6 COUNCIL MEMBER ACKERSON: It was over  
7 clarification on the question Councilwoman Barbara  
8 Sexton Smith just asked.

9 CHAIRMAN YATES: Okay.

10 COUNCIL MEMBER ACKERSON: And again, my  
11 concern is, just going by the strict statute, the  
12 statute says five people proffering the charges  
13 shall not be considered part of the body. That  
14 leaves 21. I mean, whether you're sick or not, at  
15 the end of the day it's very analogous to  
16 overturning a Planning Commission vote. It takes  
17 14. It doesn't -- it doesn't -- not a majority of  
18 those present, but a majority of the body, and  
19 because of the clear language here I've got some  
20 concern whether or not our numbers are accurate.  
21 And it's important that we have accurate numbers.

22 MR. GOLDEN: Absolutely. Let me do this: We  
23 will recirculate the Court's orders, our opinion  
24 letters on the subject, and explain that (1) of  
25 67C.143 defines for us what the Council Court is.



1       Clearly it -- clearly Council Court consists of a  
2       body. It may change from 21 to 10 to 26, depending  
3       upon who's being removed. It may also change based  
4       upon malice, fraud, or, in this particular case, the  
5       emergency nature.

6               Let me do this: Let me circulate these  
7       numbers. The numbers will become germane --

8               CHAIRMAN YATES: They should be in their  
9       documents.

10              MR. GOLDEN: And -- and --

11              CHAIRMAN YATES: That's what I'm -- I'm  
12       checking with the clerk.

13              Does the clerk have those orders? Are  
14       they -- are they uploaded into our documents?

15              MR. OTT: Uh-huh.

16              CHAIRMAN YATES: They should be on your --  
17       everyone should be able to pull them up. They're  
18       all -- all available. So if anybody needs those  
19       documents, all you gotta do is click in.

20              MR. GOLDEN: And they were emailed as they  
21       were issued. I'm sure that you all saw a lot of  
22       blanket emails coming, both of the parties' original  
23       pleading, the response or the other pleading, and  
24       the ultimate orders were emailed to everybody as  
25       they -- as they were filed by Mr. Ott, so they're

1       there.

2               But we will circulate the ones addressed  
3       again, just to be sure. With regard to the specific  
4       numbers, they'll become germane at the time of the  
5       vote on ultimate removal.

6               CHAIRMAN YATES: And so we've made sure, and  
7       counsel both should know that every motion they put  
8       in and every ruling has been part of and will be  
9       part of the record so that all my colleagues -- so  
10      that way a lot of the questions we're having today  
11      are repetitive, have already been answered, so if  
12      everybody would take the time to please read the  
13      motions and the answers, I think that'll save us a  
14      lot of time.

15              Councilwoman Woolridge.

16              COUNCIL MEMBER WOOLRIDGE: Thank you, Mr.  
17      President.

18              I would like to know from you or from Mr.  
19      Golden, whose rules -- which rule is -- if we have  
20      the Council rule and then we have a statute, which  
21      one of these rules actually rule? That's what --

22              CHAIRMAN YATES: The statute is always -- we  
23      are preempted from making a Council rule that would  
24      be -- that would override a state statute. They  
25      would always be bearing. We're created by the state

1       statue, so theirs would be -- they would always  
2       override us. We would be preempted.

3               COUNCIL MEMBER WOOLRIDGE: Simple answer for  
4       me, please, Mr. President. Please. The statute or  
5       is it our rule? Which one supersedes the other?  
6       That's --

7               CHAIRMAN YATES: The statute.

8               COUNCIL MEMBER WOOLRIDGE: Well, thank you.

9               CHAIRMAN YATES: Does that make -- that's  
10       like when we passed the minimum wage -- well, that  
11       was -- that was a -- and then the Supreme Court of  
12       Kentucky held that it was in violation and we were  
13       preempted. We have to act within state statute.  
14       We're created by the state statute and so our rules  
15       cannot be in conflict with them.

16               COUNCIL MEMBER WOOLRIDGE: Well, what --  
17       what --

18               CHAIRMAN YATES: In the event they are, then  
19       the state statute would be -- would be the higher.

20               COUNCIL MEMBER WOOLRIDGE: Well, then, Mr.  
21       President, I think the statute, and I stand to be  
22       corrected, says that a removal vote requires a  
23       two-thirds vote of the total legislative council.

24               Thank you.

25               CHAIRMAN YATES: Okay. And I know that

1 hopefully everybody -- and if you click on the  
2 documents, there should be the explanation. I could  
3 have Mr. Golden give that explanation again to the  
4 body, I know he's done it a few times, but it's in  
5 the -- sometimes it's easier, because if you read  
6 the writing, it's been actually laid out and  
7 explained, and so if everybody would kind of take a  
8 few minutes this evening and the next day and make  
9 sure that -- that you take the time to read the  
10 motions and the answers and findings, I think that  
11 would give a lot of direction.

12 Okay. That's -- the Charging Committee has  
13 withdrawn their motion for summary judgment.

14 The next that is before us is the motion for  
15 censure and dismissal of removal proceedings and the  
16 Council Court order, and that's been filed by the  
17 Respondent and counsel.

18 And just to -- I know I sent that email out  
19 explaining, and I know that my colleagues have this  
20 information, but I want to go ahead and state for  
21 the record that -- verbatim that our rules allow the  
22 Respondent to move for summary disposition.  
23 Respondent has asked for the dismissal of the  
24 charges against him, having filed a motion to  
25 dismiss, and then the Charging Committee responded.

1 Both parties have filed pleadings in support of  
2 their positions.

3 Pursuant to Rules 4 and 7, a motion to  
4 dismiss will require a majority vote by the Council  
5 Court stating the charges against Dan Johnson should  
6 be dismissed.

7 And I'll open that for discussion to my  
8 colleagues first, if they have questions on that.  
9 Again, this is procedural, so it will be set up for  
10 a vote. And again, this would be the Respondent,  
11 Councilman Dan Johnson's -- he has moved for summary  
12 disposition.

13 Seeing no questions, counsel -- would either  
14 counsel like to make a brief argument or statement  
15 concerning this?

16 MR. MCADAM: I would.

17 Mr. President, Mrs. Kent, ladies and  
18 gentlemen of the Louisville Metro Council Court, at  
19 the risk of sounding impertinent, I'm going to guess  
20 not many of us want to be here this afternoon. Most  
21 of us have lives, a lot better way to spend an  
22 afternoon than to sit in judgment of our colleagues.  
23 But here we are.

24 I think this is a situation that has kind of  
25 got out of hand, to be perfectly blunt about it, and

1 I think my Motion Number 1 may be the solution that  
2 you're looking for.

3 I don't know what happened at Wyandotte Park.  
4 I wasn't there. Some of you were. A lot of people  
5 were there, nobody saw it. But whatever it was,  
6 Councilwoman Jessica Green was offended by something  
7 that Councilman Johnson did or said, and she sent a  
8 confidential memorandum to some people in the  
9 leadership. Somehow or another it ended up on the  
10 front page of the newspaper, and then all sorts of  
11 people started getting involved, and constant  
12 pounding in the newspaper and on the television and,  
13 well, so there we are, we're having an impeachment  
14 hearing.

15 Back -- I don't know. I've spent a lot of  
16 time in this chamber over the years, and most of it  
17 more enjoyable than -- than tonight, or this  
18 afternoon. It used to be that if a -- if a lady or  
19 a gentleman did something or said something that was  
20 offensive to another lady or gentleman, they would  
21 have it brought to their attention, they would  
22 apologize, and then the lady or gentleman that was  
23 offended would graciously accept the apology.  
24 Apparently we don't do that anymore.

25 Mr. Johnson, Councilman Johnson, has

1       apologized several times. He was told if he  
2       apologized this would all go away. He did that.  
3       Said, "Well, if you'd apologize in writing, it will  
4       go away." He did that. Said, "Well, if he'd agree  
5       to go to counseling, it'll go away." He did that.

6               The President just sent out a proposal to try  
7       to arrive at a compromise settlement, and we  
8       accepted most of it and responded. The Charging  
9       Committee won't even talk about it. They said it's  
10      dead on arrival. A nonstarter, I believe Mrs. Kent  
11      said.

12             So nowadays we don't apologize and accept  
13      apologies, we go to court, we sue each other. And  
14      you're saying, "Isn't that the guy that sent out the  
15      letters to cease and desist?" Yep.

16             That's the problem with lawyers. When you've  
17      only got one tool in your -- in your bag and it's a  
18      hammer, everything looks like a nail. But sometimes  
19      you don't have to hit everything with a hammer.  
20      Sometimes there's a way to accomplish things without  
21      dragging dirty laundry out for the whole world to  
22      see.

23             The Charging Committee will have you believe  
24      that you've only got one tool, and that's the  
25      guillotine, right? You either find him completely

1 innocent of any wrongdoing or you cut off his head.  
2 Metaphorically. The only punishment is the death  
3 sentence. There are no misdemeanors, there are only  
4 felonies. Any violation, any offense, somebody gets  
5 their feelings hurt, you lose your job, you lose  
6 your career, you lose your livelihood, you overturn  
7 a democratic election. You substitute your judgment  
8 for the will of the people of the 21st District, the  
9 people who have returned him to office nine times.  
10 What was his last majority? 85 percent? Sometimes  
11 he doesn't even have opposition.

12 Here's what I want to propose to you: A wise  
13 man said one time the punishment should fit the  
14 crime. Actually, it was Pat Mulvihill, Counselor,  
15 who said that. And he's exactly right. The  
16 punishment should fit the crime.

17 Did Dan Johnson steal money? Did he assault  
18 somebody? Did he -- I mean, it seems to me there  
19 ought to be a middle way, something short of  
20 decapitation. There ought to be a compromise. And  
21 that's what my Motion Number 1 is.

22 What I'm saying in Motion Number 1 is that he  
23 be censured, that this body go on record and say  
24 whatever conduct that he did, whether it was  
25 intentional or accidental, whatever, it was



1       offensive. A reasonable person would find it  
2       offensive. And it embarrassed the Council. And he  
3       ought to be chastised for that.

4               So he could be publicly censured, and I --  
5       the words I use, "for conduct tending to bring  
6       himself and the Louisville Metro Council into  
7       disrepute, dishonor, and ignominy." You might have  
8       to look that one up. The matter of the removal  
9       proceedings are hereby dismissed.

10              In other words, you agree to censure him  
11       publicly and then let's stop all this silliness.  
12       Let's stop the circus before the clowns get in.

13              See this book (indicating)? This is just --  
14       this is just part of the documents that we've  
15       exchanged in this thing so far. I don't want to  
16       make a career out of this, and you don't either.  
17       You don't want to be here. Maybe -- well, maybe  
18       something -- I can't speak for the Charging  
19       Committee.

20              This isn't about vengeance. This is about  
21       what's the reasonable way that we can let the  
22       community know that maybe there's some behavior that  
23       shouldn't be countenanced. We've all done stupid  
24       things. We've all said stupid things. We have all,  
25       at one time or another in our lives, done something

1       that gave somebody offense. Always. Did we lose  
2       our job over it?

3               And let's face it -- let's say that  
4       everything that Jessica Green says happened  
5       happened. Okay? She could have taken a warrant for  
6       him for assault, sexual harassment. What do you  
7       think he -- you think he'd lose his job over that?  
8       You think he'd go to jail? You think he'd get  
9       anything other than a hundred-dollar fine suspended?  
10      Of course not.

11             Or she could have sued him in civil court.  
12      When the jury stopped laughing, do you think that  
13      there would have been any monetary judgment for  
14      something like that? Okay.

15             But you have the power -- you have more than  
16      power, you have the duty to sit in judgment of him  
17      and say whether or not he's going to lose his job,  
18      say whether or not you're going to overturn an  
19      election. That's pretty serious stuff.

20             Here's what I'm thinking: You can add to  
21      this. You can amend this motion. You can add some  
22      things like -- like President Yates suggested, some  
23      rules. He has to advise people 30 -- 30 minutes  
24      before he gets here, he has to leave 30 minutes  
25      after the last hearing. He only comes down to City

1 Hall when there's a committee meeting or when  
2 there's a general meeting of the Council. He  
3 conducts all his other business through his aides  
4 and on the telephone. He agrees not to have any  
5 face-to-face confrontation with the aggrieved  
6 parties. And he agrees not to run for reelection in  
7 2018. He's already said that, but you could -- you  
8 could make that a part of the stipulation in this.  
9 You can make that a part of the order. He will  
10 agree to it. Okay?

11 That seems to accomplish a lot. That shows  
12 that you take these charges seriously. It shows  
13 that he takes them seriously. It shows that you  
14 have a little bit of compassion and you don't cut  
15 his head off for something that, in the great scheme  
16 of things, when we got dead bodies out on the  
17 street -- in the great scheme of things is a  
18 relatively minor incident.

19 So I think you could do that. That cuts this  
20 thing short. We don't go through all the silliness  
21 of the witnesses and the testimony and the --  
22 there's going to be some hard feelings. I mean,  
23 there's going to be some things said that, you know,  
24 maybe people will regret later.

25 This legislative body that you're a member of

1 and its predecessor, the Louisville Board of  
2 Aldermen, has a proud and noble history of doing  
3 good for this community. We're the first city in  
4 the South to have a public accommodations ordinance,  
5 the first city in the house [sic] to have an open  
6 housing ordinance. We integrated our schools here  
7 in Louisville before Brown versus Education. We  
8 were one of the first states -- cities in the -- in  
9 the South, at least, to have a fairness ordinance.

10 Isn't that what you want to be remembered  
11 for? Isn't that what you want to be remembered for,  
12 for the good that this body has done for the  
13 community? We got a lot of problems out there. You  
14 know. Your phone rings off the hook, you know what  
15 problems we got. And the people who put you here  
16 are looking to you for solutions. They want you to  
17 help them with their problems instead of this silly  
18 distraction. This doesn't make anybody look good.  
19 Nobody's -- win, lose, or draw, nobody's going to  
20 come out of this thing looking good.

21 So I'm asking you to do the brave thing. I'm  
22 asking you to get some courage. Okay? Because  
23 here's what's going to happen: You vote for Motion  
24 Number 1, and you can add some stuff in there if you  
25 want, and this thing's over with. And tomorrow Phil

1 Bailey will write an article saying that you're all  
2 a bunch of cowards and you've let the women down and  
3 this is gonna be -- there's gonna be rapes in the  
4 halls and stuff like that, and then the next day,  
5 you know --

6 MR. STEWART: Object.

7 MR. MCADAM: -- you'll get slimed in the --  
8 in the --

9 MS. KENT: Mr. Chair --

10 MR. MCADAM: -- Courier.

11 MS. KENT: -- I object. We're talking about  
12 rape in the halls. Where is this going? We're  
13 talking about the glorious history of the Board of  
14 Aldermen.

15 CHAIRMAN YATES: I know --

16 MS. KENT: Where is this heading?

17 CHAIRMAN YATES: I know your objection.

18 If you can, if you would stay on focus and --

19 MR. MCADAM: Okay. What I'm saying --

20 CHAIRMAN YATES: -- stay on your motion.

21 MR. MCADAM: What I'm saying is --

22 CHAIRMAN YATES: And also, I have people that  
23 are popping the queue. What I'm going to do is, I'm  
24 going to allow Ms. Kent to respond and then I'll  
25 address all our motions in the queue.

1           MR. MCADAM:   Okay.   What I'm saying is, in a  
2   week, ten days, this will be forgotten.   There will  
3   be new news in the newspaper.   There will be new  
4   people to be vilified in the Courier-Journal.   A  
5   year from now nobody will remember it.   A year from  
6   now Dan will be gone and you will be able to go  
7   out -- and you're all going to be running for --  
8   well, half of you will be running for reelection in  
9   a year.   You'll be able to go tell your  
10   constituents, "Look, this is the good things we did.  
11   These are the things we've built.   These are the  
12   laws that we passed.   This is how we've benefited  
13   the community."

14           Let's put this thing behind you.   Vote for  
15   Motion Number 1 to censure Dan Johnson.   Let's get  
16   on with the business the people elected you for.

17           Thanks for your attention.

18           CHAIRMAN YATES:   Thank you, Counsel.

19           MS. KENT:   Mr. Chair, and I'll be pretty  
20   brief.   First of all, this motion is not appropriate  
21   at all.   There is no censure.   In the past we -- a  
22   councilwoman actually resigned before the  
23   proceedings began and the proceedings went on,  
24   because the Council Court was told once it starts,  
25   you cannot stop the removal proceedings.

1           But more important is this -- where the  
2           Respondent's trying to push this. This -- the  
3           Respondent talks about aggrieved parties and  
4           offended women. This is much greater than what  
5           happened with Councilwoman Green and Erin Leet, and  
6           so to try minimize it and call this silliness  
7           because of an apology and how ladies and gentlemen  
8           act in public I think show a deliberate  
9           misunderstanding of what this removal proceeding is  
10          about.

11          The reason -- there's a reason that censure  
12          is not available. Because censure is a form of  
13          punishment. What's happening here, the Respondent  
14          is saying, "I'll take punishment from you for my bad  
15          deeds." That's not what a removal proceeding is  
16          about. It's about housekeeping. It's not about a  
17          Council member getting vengeance against another  
18          Council member, it's about the reputation of the  
19          Council in the community and it's how the Council  
20          maintains the public trust.

21          A removal is a -- is intended to remove the  
22          elected official who is violating that public trust  
23          and thereby bringing shame upon the Council.

24          It's not about seeking vengeance. And he did  
25          say that and I agree, this is not about vengeance.

1       This is about how do we continue to operate? What  
2       do we do to remove a problem that has been growing  
3       over the past couple of years and getting worse all  
4       the time?

5               So I think to offer to take a punishment is  
6       not allowed under the statute because punishment is  
7       not the intent. The intent is not to punish one  
8       member, the intent is for 25 members to be in the  
9       community, hold their head up high, not get teased  
10      about the latest exposure, not get teased about the  
11      latest attack, but just to be able to carry on the  
12      business in the district without having to account  
13      for a colleague who is not performing up to the  
14      standard that his peers try to maintain.

15             Fail? We all do. But we all try to be  
16      truthful, to be honest, to be civil, to respect the  
17      institutions that we serve.

18             And so this is greater than just Dan --  
19      Councilman Johnson saying, "I'll agree I've been a  
20      bad boy, so you can put me in the corner, you can  
21      punish me." No. That's not what the intent is.  
22      The intent is to get the Council back -- to remove a  
23      distraction, to remove an embarrassment that impedes  
24      the work of the Council, that continually presents  
25      the appearance that the members of the Metro Council



1       simply aren't capable of maintaining the public's  
2       trust.

3               Thank you.

4               CHAIRMAN YATES:   Thank you.

5               Mr. Adams [sic], I'll allow a very short  
6       response if you want, one or two minutes.

7               (Mr. McAdam shook head.)

8               CHAIRMAN YATES:   Okay.   Set it up for  
9       discussion amongst the Council Court.

10              Councilwoman Butler.

11              COUNCIL MEMBER BUTLER:   Thank you, Mr.  
12       President.

13              I make a motion that we go into closed  
14       session per KRS 61.810(1)(k) for attorney-client  
15       privilege.   I believe this Court has some questions  
16       for the County Attorney that we need to ask in  
17       closed question -- in closed court.

18              COUNCIL MEMBER BRYANT HAMILTON:   Second.

19              CHAIRMAN YATES:   Second.

20              All those in favor, signify by saying aye.

21              (Vote.)

22              CHAIRMAN YATES:   Those opposed.

23              The ayes have it.   We will now entertain a  
24       motion to go into closed session.

25              (Closed session from 3:16 p.m. to 6:05 p.m.)

1           CHAIRMAN YATES: I'll entertain a motion to  
2 go out of executive session.

3           COUNCIL MEMBER PEDEN: So moved.

4           COUNCIL MEMBER AUBREY WELCH: Second.

5           CHAIRMAN YATES: Okay. Moved and seconded.

6           There's no official Council business  
7 discussed in executive session outside of the Court  
8 tribunal issue.

9           Mr. McAdams [sic], I understand that before  
10 this Court you have an amendment by substitution on  
11 the stipulation and agreed order.

12          MR. MCADAM: That's correct, Mr. President.

13          CHAIRMAN YATES: And that has now been -- a  
14 copy has been handed out to each member here in this  
15 body and given to the clerk.

16          Mr. Clerk, would you please read in the  
17 record, so we have that, this stipulation and agreed  
18 order?

19          MR. OTT: (Reading) In the Matter of the  
20 Removal Charges Against District 21 Councilman Dan  
21 Johnson. Stipulation and Agreed Order. Comes the  
22 Charging Committee, by counsel, and the Respondent,  
23 Dan Johnson, by counsel, and for their stipulation  
24 and agreed order in the above-referenced matter,  
25 they respectfully submit the following to the

1 Council Court for review and approval.

2 Stipulations: Respondent Dan Johnson hereby  
3 waives all right to a full public hearing provided  
4 under KRS Subsection 67C.143, Section 2.

5 The parties stipulate that KRS Subsection  
6 67C.143 does not allow for any discipline of its  
7 members short of removal.

8 The parties further agree that questions  
9 arising because of the Kentucky General Assembly's  
10 recent amendments to KRS Subsection 67C.143  
11 jeopardize the swift and efficient administration of  
12 this removal hearing which will likely result in  
13 costly appeals borne by the taxpayers.

14 Respondent admits to both transgressions and  
15 wrongdoings and stipulates that there is sufficient  
16 evidence against him warranting removal.

17 And Respondent Dan Johnson stipulates that he  
18 is subject to removal in this matter, that his  
19 stipulations may be used against him, and agrees to  
20 consent to his removal under the below conditions.

21 Based upon these stipulation, the parties  
22 agree that Dan Johnson's removal be stayed  
23 conditioned solely upon the following:

24 Dan Johnson will be permitted in Old City  
25 Hall only during the 20 minutes before, during, and

1 the 20 minutes after regularly scheduled committee  
2 meetings and Council meetings and at all other times  
3 shall remain off the premises of Metro Council.

4 Dan Johnson shall be permitted to accomplish  
5 any other Metro Council business of which he has an  
6 interest from his home, including participating in  
7 Council-related meetings by conference call.

8 Dan Johnson shall be free to vote on any  
9 matter and engage in any public debate.

10 Dan Johnson shall not attend any ceremonial  
11 functions outside District 21, where it can be  
12 assumed he represents Louisville Metro Council.

13 Dan Johnson agrees that any intentional or  
14 accidental exposure of his genitals or buttock will  
15 result in review by the triumvirate -- I  
16 apologize -- established under paragraph 13.

17 Other than with his own personnel, Dan  
18 Johnson is not to initiate contact with any other  
19 Metro Council member or staffer except by phone or  
20 email. Nothing within this prohibition shall limit  
21 Dan Johnson's aforementioned rights to debate or to  
22 express an opinion on any matter in a forum or  
23 session of Metro Council.

24 Dan Johnson agrees to comply with the  
25 Louisville Metro Code of Ethics, Metro Council

1 rules, and Metro Council policies and procedures  
2 fully and shall comport himself in such a manner as  
3 to not bring scorn or disrepute on his office, Metro  
4 Council, the Louisville Metro Government, or the  
5 people whom he serves.

6 A councilperson selected by the Charging  
7 Committee, a councilperson selected by the  
8 Respondent, but not the Respondent, and a  
9 councilperson selected by the Council President  
10 shall act as a triumvirate reviewing Dan Johnson's  
11 conduct and comportment for the balance of his term.  
12 Any finding by a two-third majority of this  
13 triumvirate -- I'm not saying that right -- that Dan  
14 Johnson has violated the letter or spirit of this  
15 agreement will result in his immediate and summary  
16 removal. The Respondent waives any right to appeal  
17 this triumvirate's decision and will abide by any  
18 finding that they may issue. The Respondent hereby  
19 irrevocably waives its rights under KRS 67C.143 for  
20 a removal hearing or appeal in any action or  
21 proceeding arising out of this agreement for the  
22 transactions relating to its subject matter. To be  
23 clear, there will be no trial or appeal of the  
24 decision by the triumvirate.

25 Dan Johnson agrees to obtain staff and

1 volunteer approval from the triumvirate.

2 Dan Johnson agrees not to run for Louisville  
3 Metro Council.

4 Read in full.

5 CHAIRMAN YATES: Okay. It's been properly  
6 presented before us.

7 May I have a motion to accept?

8 UNIDENTIFIED COUNCIL MEMBER: So moved.

9 CHAIRMAN YATES: May I have a second?

10 COUNCIL MEMBER BENSON: Second.

11 CHAIRMAN YATES: Properly moved and seconded.

12 This is just the amendment to substitute the  
13 stipulation and agreed order so read for us. All  
14 those in favor, respond by saying aye.

15 (Vote.)

16 CHAIRMAN YATES: Those opposed?

17 The ayes have it, the stipulation and  
18 agreement before us.

19 Colleagues, is there any discussion on the  
20 stipulation and agreed order? It's been read into  
21 the record.

22 MS. KENT: Your Honor -- Mr. Chair, if I may  
23 speak.

24 CHAIRMAN YATES: You may.

25 MS. KENT: Let me first say I don't

1 understand how it is that this removal hearing ends  
2 with this agreed order without the Charging  
3 Committee having -- not having been given what we  
4 were so concerned about previously on the summary  
5 judgment motion, and that's the right to a full  
6 hearing.

7 CHAIRMAN YATES: And I'll let -- I'll let the  
8 County Attorney first answer that question as it  
9 legally -- and we'll do it in pieces, because I  
10 think that people will click in, and I'll want to  
11 make sure, before we go to a vote, there's people in  
12 the queue as well.

13 So the first question was: How does that  
14 proceed without the full hearing and why is it  
15 different for the Charging Committee as compared to  
16 the -- or the --

17 MR. GOLDEN: So, Deborah, if we take a look  
18 at (2), the elected officer has the right for  
19 removal, and no elected officer shall be removed  
20 without being given the full public hearing. All  
21 right? So that the --

22 MS. KENT: I understand that.

23 MR. GOLDEN: -- statutorily there is a right.  
24 I think that that same confident and right doesn't  
25 exist under the statute.

1 MS. KENT: I believe there is a duty of fair  
2 play, of fairness, and I find this to be incredibly  
3 unfair that the Charging Committee has been working  
4 all of this time and the people who are expecting to  
5 hear the charges and hear the evidence, your  
6 constituents, I don't think this is fair to them  
7 either.

8 With that said, I have to say that I'm  
9 astonished that the Council Court would even  
10 consider this. I think that what you are being  
11 lured into doing is condoning behavior that has  
12 been -- that has been shown all across the country,  
13 with all types, whether it's Bill O'Reilly or Harvey  
14 Weinstein, those organizations removed the offending  
15 party, but here at the Metro Council, you're going  
16 to condone this, and you're going to condone this  
17 based on an agreement that you know is worthless.  
18 You know that there have been promises made, there  
19 have been apologies made and then apologies  
20 withdrawn and denied. I don't know why you think  
21 this is going to work any better, because I think  
22 everybody just rolls over and goes back to sleep and  
23 carries on, business as is. We've accepted the fact  
24 Dan will be Dan.

25 And I want to know what happens now, not with



1       this triumvirate, but with the next victim and with  
2       the liability. You worry about appeals, you worry  
3       about the cost of the trial, but what's the  
4       liability of this Council and this government when  
5       you've not addressed this problem, this problem that  
6       begins with total disrespect for women and expands  
7       outward to demonstrate total disrespect for this  
8       Council, for the Democratic Caucus, for the Office  
9       of the President, for all the people who have tried,  
10      tried to resolve this before it got to the point of  
11      removal.

12             And I find it astonishing that if nothing  
13      worked in June and nothing worked in July and  
14      nothing worked in August and nothing worked in  
15      September, why you think this is going to work.

16             I find this extremely disappointing. I know  
17      the members of the Charging Committee have never  
18      anticipated anything but removal. That's why they  
19      went to a removal proceeding. And because they  
20      stood up, they had the guts, they took on the work,  
21      now you think you have an agreement that will stick  
22      when you've tried it individually, an institution of  
23      the Council such as the Caucus tried to work out a  
24      resolution. That didn't work. The Council  
25      President tries to limit the damage. That didn't

1 work. But suddenly this is going to work? I don't  
2 know why you believe that.

3 And let me make sure that you remove "Comes  
4 the Charging Committee" from this document. The  
5 Charging Committee has not agreed to any of this and  
6 does not plan to agree to any of this.

7 And with that said, my last question is:  
8 There will be a roll call vote on this, will there  
9 not?

10 CHAIRMAN YATES: There will be. And,  
11 Counsel, if I may just respond briefly. There is in  
12 this signed agreement, based on the stipulation that  
13 has now been signed by Councilman Johnson and Tom  
14 McAdams [sic], this Council has received an opinion  
15 from the County Attorney Mike O'Connell's office  
16 which advises us that even if we go through these  
17 proceedings and we go through the entire process and  
18 we spend the hundreds of thousands of dollars and  
19 the time and call the witnesses, even if we do that,  
20 we've been advised that more likely than not there  
21 will be a stay and that Councilman Johnson will, in  
22 essence, never really be removed from this Council,  
23 and that it potentially would exceed the time that  
24 he is here, because of the timing in which he has to  
25 leave his term, and so that -- we do have a written

1 opinion with that, and so I think that this goes  
2 into the forefront.

3 As far as the matters, you're absolutely  
4 correct that I have tried to mediate this and it did  
5 not work. There was not an agreement between the  
6 parties, whether the Charging Committee or  
7 Councilman Johnson, to it. At this point it was  
8 presented -- this is the way it was explained: It  
9 was presented -- the Charging Committee brought the  
10 charges to the Council, the Council Court made that  
11 decision, and then it was presented to the Council  
12 Court. Councilman Johnson for the first time has  
13 agreed to these terms just now.

14 And what was explained, that in the event  
15 that now if there's a violation of these principles,  
16 there will be a removal, and there'll -- and it'll  
17 happen instantaneously, without the need of the  
18 Council Court, and he's forfeited his right to  
19 appeal.

20 So in essence, by signing this agreement, if  
21 Councilman Johnson does anything else, that is the  
22 only way he will be removed.

23 In the event that we went through the  
24 proceedings and Councilman Johnson does not do this,  
25 Councilman Johnson -- and even if everything gets

1 proven, in that light, Councilman Johnson stays on  
2 this Council to the end. That's what's been  
3 explained.

4 And if the County Attorney wants to explain  
5 that better, that's fine, but this -- so with that  
6 information -- and this Council Court is also  
7 individual Council members who have had, obviously,  
8 besides just being a jury, somewhat, in there, has  
9 to weigh what is the endgame. If we spend the  
10 hundreds of thousands of dollars and the time and we  
11 call the witnesses in -- and nobody in here wants to  
12 call that young lady from GLI and have her named.  
13 There are so many things that -- so we had to figure  
14 out what the endgame is. That was part of the  
15 discussion.

16 So I wanted to make sure that you understood  
17 that, I wanted to make sure the Charging Committee  
18 understood that. And that's what we heard through  
19 there, and based on that information that's been  
20 received to us, that -- that's how we're here.

21 Now, no vote has been taken, there are some  
22 people coming in the queue, but I wanted to at least  
23 set the stage.

24 That document will be put into the record,  
25 so you'll have a copy of that too, and not -- no,

1 not the appeal letter, no, because that would be  
2 work product from the County Attorney's Office.  
3 But that has been -- that was made clear to this  
4 body. That is our legal counsel, and we are -- we  
5 would have to follow the advice of the legal  
6 counsel and assume that their opinion is correct.  
7 While you may disagree with that, that that is  
8 where we're at.

9 Councilwoman Parker.

10 COUNCIL MEMBER PARKER: Yes. Thank you.

11 I think this sets a terrible precedent for  
12 this body and I will not be voting for it.

13 CHAIRMAN YATES: Councilman Ackerson.

14 COUNCIL MEMBER ACKERSON: Thank you, Mr.  
15 President.

16 A couple things. One is, much as when we  
17 were talking about summary dispositions earlier and  
18 my position was Councilman Johnson deserved his day,  
19 well, on that same thought process is, I think the  
20 voters of Metro Louisville and I think the Charging  
21 Committee deserve their day to let the facts play  
22 out.

23 Ultimately what we've heard here is we've  
24 heard the argument that on one hand this doesn't  
25 remove Councilman Johnson. On the other hand, had

1 he appealed this, the odds are he wouldn't have  
2 gotten removed anyway. So the endgame was Dan  
3 Johnson would still be sitting in this chair,  
4 period, under either procedure, but at least the  
5 charging party would have had their opportunity to  
6 proffer the evidence. The evidence -- the community  
7 would have then seen what was real evidence and what  
8 wasn't real evidence. You know, what was -- you  
9 know, was there substantiation of these charges.  
10 That will not come into play now.

11 Finally, I have a disagreement with the  
12 ruling of this body on the number of votes needed.  
13 Pursuant to 67C.143, I'm of the opinion that it  
14 takes two-thirds of this body less the Charging  
15 Committee and the person. Even though one Council  
16 member is not here, that takes us down to 19, at the  
17 end of the day it should be two-thirds of 20,  
18 because the statute doesn't say two-thirds of those  
19 present, it says two-thirds of the Council excluding  
20 the people that it listed as the Charging Committee.

21 So I will be a no vote on this, but I wanted  
22 to explain my position to my constituents and to my  
23 voters out there and let them know that I think that  
24 the evidence should have been put forth, the same --  
25 for the same reason that Councilman Johnson should

1 not have had a summary judgment against him, he  
2 should have been able to defend himself, the  
3 evidence should have been allowed to come out and  
4 play out, so --

5 CHAIRMAN YATES: Thank you, Councilman.

6 And in this agreement, this is, in essence, a  
7 guilty plea in which it actually stipulates that the  
8 evidence presented is correct.

9 And there's also a Number 3, and that was the  
10 other thing that some colleagues thought was  
11 material to put in there, is that because of the  
12 General Assembly's recent amendments to KRS 67C  
13 there's a jeopardize the swift and efficient  
14 administration of removal, which likely there will  
15 be an issue there, because it is -- just like you  
16 said, there's some question over the number. There  
17 are some things that are not clear in this body.

18 And so there is a stipulation of where  
19 Councilman Johnson has before this body, before the  
20 constituent base, and before the community has  
21 stipulated what he had done. That's the first time  
22 that he has done that. He signed his name, put it  
23 in writing, and I know that was very important to  
24 many members, including members of the Charging  
25 Committee early on, before this process began, and I

1 think that it's important now that this be in  
2 writing, that there is a stipulation that he did  
3 make violations as laid out here.

4 Kevin Kramer. Councilman Kramer.

5 COUNCIL MEMBER KRAMER: Thank you, Mr. Chair.

6 I've tried to get in the habit of -- because  
7 I have a tendency to just speak, to not repeat what  
8 others said, but I think tonight's vote is such that  
9 it demands some repetition. We refused to accept a  
10 summary judgment to convict. It seems only  
11 appropriate then that they would we would refuse to  
12 accept a summary judgment to dismiss or to accept  
13 anything less.

14 Councilman Johnson refused to accept  
15 responsibility and acknowledge what he did. That  
16 may be because he didn't do those things. At this  
17 point we don't know. We don't know what he did, we  
18 just know that he is willing to accept this deal  
19 tonight. We don't know if he's accepting the deal  
20 to cover up the evidence or if it's just to keep his  
21 job.

22 You know, the President says that he's  
23 accepting the evidence. Well, he is, but we haven't  
24 seen the evidence. All we've seen is the charges,  
25 so we don't know if he's innocent or not, we only



1 know he's willing to accept a deal. And we don't  
2 know if he's willing to accept a deal because he  
3 wants to keep the evidence private or if he's  
4 willing to accept the deal because he wants to keep  
5 his job, and this could go either way.

6 Our responsibility, I believe, is to hear all  
7 of the evidence and do the best we can to remain  
8 objective through the entire process and make a vote  
9 based on what's presented.

10 And I know folks have made decisions, I know  
11 a lot of conversations have been had, I know it's  
12 been in papers all over the place. I know every one  
13 of us, when we go out in public, somebody has some  
14 comment. I know that's hard, but I think we owe it  
15 to our constituents to at least make an effort to do  
16 our job, and that is to hear the evidence and do the  
17 best we can based on the evidence, and that's  
18 hard -- I know it's hard to do because there's a lot  
19 out there, but do the best we can based on the  
20 evidence to make a decision.

21 And if there is evidence that suggests that  
22 it's as bad as we're being told by the Charging  
23 Committee, then maybe removal is appropriate. If  
24 there isn't sufficient evidence, as Councilman  
25 Johnson assures us there's not, then maybe we should

1 agree that he's innocent and move on.

2 If he's innocent, he deserves to have the  
3 evidence exonerate him, and if he's not, then I  
4 think as a Council Court we're obligated to know the  
5 details of the guilt in order to determine what our  
6 next right step should be.

7 So I'm going to have a hard time voting --  
8 actually, I'm not going to have a hard time voting  
9 yes because I'm not going to vote yes, and I'm going  
10 to implore my colleagues who are considering a yes  
11 vote to reconsider. I know we're being told that  
12 there's some expense, I know we're being told that  
13 there may or may not be -- well, we're being told  
14 that there will be an appeal. You know, we do  
15 things on this Council all the time that we know may  
16 end up in an appeal, and the reality is, some things  
17 there's going to be an appeal regardless how we  
18 vote.

19 So I just don't know that making the argument  
20 that an appeal is a reason not to move forward. I  
21 think we have an obligation to do -- to do the right  
22 thing, I think we have the obligation to hear the  
23 facts and make as informed a decision as we can  
24 make, and I think this is unfortunately another  
25 instance where we choose not to get all the

1 information because we've already made up our minds  
2 and we don't want to be bothered with what might be  
3 out there that might change our minds, and I just  
4 think we should at least try to stay open-minded.

5 CHAIRMAN YATES: Thank you, Councilman.

6 It's Number 4 where it does state "Respondent  
7 admits to both transgressions and wrongdoings and  
8 stipulates that there is sufficient evidence against  
9 him warranting removal." So that is a stipulation.

10 COUNCIL MEMBER KRAMER: Then, Mr. President,  
11 if I may, we don't know what that evidence is, we  
12 just know he stipulated to it, and how do we know  
13 that he's not just trying to keep the evidence from  
14 becoming public?

15 CHAIRMAN YATES: No, but in the event -- he  
16 has the right to a hearing. In the event that he  
17 wants to waive that and stipulate in an agreement  
18 that he is waiving that and he is pleading otherwise  
19 that we are correct.

20 Councilwoman Barbara Shanklin.

21 COUNCIL MEMBER SHANKLIN: Thank you, Mr.  
22 President.

23 You know, this is a really hard vote for me.  
24 I mean, when I say that, I mean it's a hard vote  
25 because I've been in this situation.

1           But at one point I was under the impression  
2           that everybody had agreed to some type of a deal  
3           except two people on the Charging Committee. I see  
4           you shaking your head, but you were one of the  
5           people that said no. But I was under the impression  
6           there was only two people that said they would not  
7           be willing to do this, and the rest of them were  
8           willing to -- you know, to.

9           But like I said, it's very hard for me, but I  
10          just have to make a decision and stick with it.

11          I would love to see Mr. Johnson stay on  
12          because he's -- the type of person he is, he's never  
13          given me a problem or anything, but I know there's  
14          been some problems over the years.

15          So as I said, it's hard. It's hard for me  
16          just to be here, and I didn't want to be here.

17          So I don't know which way I'll go, but I'll  
18          make that decision in a minute.

19          MS. KENT: Mr. Chair, could I clarify  
20          something about that, the Charging Committee?

21          CHAIRMAN YATES: I think your Charging  
22          Committee clarified it pretty good from behind me.

23          MS. KENT: Okay.

24          CHAIRMAN YATES: But go ahead.

25          MS. KENT: There has never, ever been any

1       wavering on the part of the Charging Committee. All  
2       five members have been very clear. They began a  
3       removal proceeding, they intended to see it through  
4       the end, just as the expectation was that those  
5       people on the Democratic Caucus who voted for the  
6       resolution and said in that resolution if there is  
7       no resignation by August 1, we, the Democratic  
8       Caucus, will proceed to removal.

9               But there has never been any wavering with  
10       the Charging Committee. When the Court ordered that  
11       we attempt mediation, we in good faith did that  
12       because that was the Court order. And we have  
13       followed the Court's rules, we have followed the  
14       Court's procedures, and that's -- and it didn't do  
15       any good, and that's one of the reasons I don't know  
16       why you're going to depend on this document, because  
17       the rules, for example --

18               CHAIRMAN YATES: Thank you, Counsel.

19               Councilwoman Julie Denton.

20               COUNCIL MEMBER DENTON: Thank you, Mr.  
21       President.

22               Almost a week ago this body -- or almost two  
23       weeks ago this body unanimously voted for Marsy's  
24       law so that victims could have their day in court,  
25       could have a say, could be kept current as to what's

1       going on, and today what we're doing doesn't feel  
2       like we meant what our vote stated previously.

3               The folks on the Charging Committee, the  
4       folks who have been potential victims in this  
5       particular situation have not had the ability to  
6       have their day in court, so to speak.

7               You know, I've heard people say, "Oh, this  
8       could last three weeks. It could take a lot of  
9       time. We all have better things we'd rather be  
10      doing."

11              Well, sure. Nobody wants to sit here for  
12      hours on end and participate in this, but that's why  
13      we're here is to do the tough jobs. If it was easy,  
14      everybody would do this. And it's not easy. It's a  
15      tough job. This is a difficult situation that  
16      nobody wants to be in, but we are.

17              And I think what Councilman Kramer said, that  
18      you've gotta be fair to all sides so that the facts  
19      are out there and people can make a determination.  
20      My preference would have been that we would have had  
21      that, and then we would have decided whether there  
22      was guilt or not, and then if we decided -- if the  
23      body had decided they wanted to take an agreement,  
24      maybe at that point that would have been a better  
25      opportunity, but I think that it's premature to do

1       this.

2               And I'll have to say, it just -- this is not  
3       how this body has operated before. And whatever  
4       Councilman Johnson would decide to do, if he were to  
5       be voted off, that's a decision he'd have to make,  
6       but we can't always make our decisions based upon  
7       what somebody else might do. And I just feel like  
8       this is an abdication of our duties, which is why  
9       I'm going to be voting no.

10              CHAIRMAN YATES: Thank you, Councilwoman.

11              And I will clarify, because -- I'll make sure  
12       there's no misinformation out there as far as Chair  
13       and Mediator, or I did try to encourage mediation  
14       discussion. I know there was a mediation, I  
15       appreciate all parties participating in that, and  
16       also a -- I did put together a proposed stipulation  
17       that I presented to all parties and tried to keep  
18       that conversation going back and forth, so I do  
19       believe there may have been some misinformation in  
20       the media that was put out that that was proposed  
21       by the Charging Committee, and that was not. That  
22       was proposed by my chair of just -- as just things  
23       that the parties may consider of reaching an  
24       agreement and tried to encourage that open  
25       communication continuously, especially in light of

1 the opinion of the County Attorney and the changes  
2 to KRS, kind of debacle on knowing what the numbers  
3 of the removals are and the other things, I was  
4 hoping that the parties would continue that open  
5 negotiation.

6 At that time the parties were the Charging  
7 Committee and Councilman Johnson. At the time when  
8 the removal hearing began and they swore a Council  
9 Court, then all of a sudden that decision was  
10 between the Council Court and Councilman Johnson,  
11 and so continued that negotiation. The Charging  
12 Committee, they filed the charges. The five members  
13 brought it to the Council Court, the Council Court  
14 participated in that negotiation back and forth, and  
15 that's where the vote will come today.

16 Councilman Bill Hollander.

17 COUNCIL MEMBER HOLLANDER: Thank you, Mr.  
18 Chair.

19 Let me just correct the record for a minute.  
20 What the Democratic Caucus said was that if  
21 Councilman Johnson did not resign, there would be a  
22 removal action by members of our caucus. And in  
23 fact, three members of our caucus did, in fact, file  
24 a removal action, just as we said they would.

25 I thank them for doing that, because had they



1 not done that and brought us to this day, we would  
2 not be having this rather extraordinarily --  
3 extraordinary stipulation in which guilt essentially  
4 is admitted and in which Councilman Johnson's  
5 behavior in this building and elsewhere for the  
6 remainder of his term is severely limited.

7 When we say what makes us think it will be  
8 followed, there's a triumvirate established, and if  
9 two members of that triumvirate don't think it's  
10 being followed, he will be summarily removed. He  
11 signed that stipulation. I mean, that's an  
12 extraordinary document. We won't be having another  
13 trial, he will be summarily removed. We will not be  
14 paying an attorney to do that, but he will be  
15 summarily removed.

16 And had we not had the Charging Committee  
17 filing this action, we would not be in this  
18 position. So I thank them for their work. I think  
19 exactly what the Democratic Caucus said would happen  
20 has happened, there was a removal action filed, and  
21 we're now in a situation in which really some -- I  
22 would encourage anybody in the public to really read  
23 the stipulation, because it is frankly extraordinary  
24 and extremely stringent.

25 I'll be voting yes.

1 CHAIRMAN YATES: Thank you, Councilman.

2 Councilman Kramer, you're back in the queue.

3 COUNCIL MEMBER KRAMER: I am. Thank you, Mr.  
4 President, Mr. Chair at this point.

5 The public will have every opportunity to see  
6 exactly the document that we are discussing, and it  
7 is -- it does limit the Councilman from District 21  
8 very severely, which begs the question for the folks  
9 who live in District 22 -- I mean District 21.  
10 District 22 is not at issue here.

11 It begs the question for the folks who live  
12 in District 21, do they have full Council  
13 representation or not? They have full Council  
14 representation for 20 minutes before and 20 minutes  
15 after in any meeting he happens to attend. They  
16 have full Council representation from the  
17 Councilman's home, should he work from there. They  
18 have full Council representation at ceremonial  
19 events in District 21 but not anywhere else.

20 You know, I have to wonder, if I'm a  
21 constituent in District 21, am I getting the same  
22 level of representation as every other citizen in  
23 this community? And if the answer to that is no,  
24 who's responsible for that?

25 If Councilman Johnson is guilty of the things

1       he has done allegedly, he's guilty of those things,  
2       and his victims should get justice, and his  
3       constituents should not be forced to continue on  
4       with a councilperson who is guilty of those kinds of  
5       activities.

6               If he's not guilty -- which we just keep  
7       skipping over that. If he's not guilty, then his  
8       constituents absolutely should have an expectation  
9       that their Council member is just as available and  
10      just as active as any other councilperson in this  
11      building.

12             Every one of us in this room, the 19 of us  
13      sitting on the Charging Committee -- on the Council  
14      Court and the five members of the Charging  
15      Committee, every one of us has to acknowledge that  
16      there are conversations that take place in this  
17      building in hallways and in elevators that help  
18      inform us on issues that are before this body. If a  
19      person is limited not by their choice but by ours,  
20      we are limiting the ability for them to perform  
21      their responsibilities.

22             It means that they're now going to have to  
23      make a phone call to talk to somebody about an issue  
24      that they may not even have thought they needed to  
25      talk to someone about.

1 I'm not advocating that you change the  
2 stipulations and say Councilman Johnson is free to  
3 roam about the building whenever he wants to. I  
4 understand why that stipulation is there, but I also  
5 believe if that's -- if, in fact, he's guilty and  
6 that stipulation is necessary, then the constituents  
7 of District 21 don't have a full representative on  
8 this Council anymore, and I -- again, I implore my  
9 colleagues, please think hard about what it is  
10 you're doing tonight.

11 If there is evidence sufficient to suggest  
12 that there are victims here who deserve our  
13 protection, we should be protecting them. If there  
14 isn't sufficient evidence for that, then the  
15 constituents in District 21 deserve to have a fully  
16 functioning Council member.

17 CHAIRMAN YATES: Thank you, Councilman.

18 And as was discussed and explained in legal  
19 opinion, you're absolutely correct that any victims  
20 deserve us to protect them, and what has been  
21 explained to us, that this stipulation and agreement  
22 provides oversight and protections within this body.

23 If we play politics and we cast the political  
24 vote and go through the process and we vote to  
25 remove, there are no stipulations, there are no

1       agreement, and there are no control. There's no  
2       time period in which to control and there is no  
3       protection for any victims. So I would hope that --  
4       and I believe that is actually what is in the  
5       forefront of almost everyone's mind, but thank you  
6       for bringing that about.

7               Councilwoman Barbara Shanklin.

8               COUNCIL MEMBER SHANKLIN: Thank you, Mr.  
9       President.

10              Sitting here thinking about it, if Dan has  
11       already admitted guilt, there's no way in the world  
12       he can have a fair trial now. So maybe think about  
13       that. Once you've already admitted guilt, you can't  
14       have a fair trial, so --

15              CHAIRMAN YATES: Now, he has signed this  
16       agreement and stipulation agreement and thrown it on  
17       the mercy of the Council Court; that's correct.

18              Councilwoman Julie Denton again.

19              COUNCIL MEMBER DENTON: Following up to  
20       Councilwoman Shanklin's comment just now, the  
21       admission of guilt, if this -- if the vote is lost  
22       on this and it does not prevail, then wouldn't --  
23       would that admission of guilt then be used to -- in  
24       the trial?

25              CHAIRMAN YATES: No. Right now this is a

1 stipulation and agreed order. If it's -- if it is  
2 agreed to by this body, then the trial will be over  
3 and this -- all -- this will be implemented  
4 immediately. The three persons will be put together  
5 and also these restrictions and oversight will be  
6 implemented immediately. In the event they vote no,  
7 we'll proceed forward with the trial.

8 COUNCIL MEMBER DENTON: So this really is not  
9 an admission of guilt? Is that what you're saying?

10 CHAIRMAN YATES: It is an agreement, an  
11 admission, if we accept it. If we do not accept it,  
12 it's no longer binding, if it does not accept it.  
13 It's up to this body to accept this stipulation and  
14 agreed order would be an admission.

15 COUNCIL MEMBER DENTON: I'm not an attorney.  
16 It just seems like an admission -- if you sign  
17 something that says, "I admit I did these things and  
18 that there is evidence to show," unlike -- and not  
19 being an attorney, I know enough about an Alford  
20 plea to be dangerous, but my understanding is that's  
21 only saying that there's enough evidence to convict  
22 you, but you're maintaining your innocence, and this  
23 is -- am I correct on that?

24 CHAIRMAN YATES: You are correct.

25 COUNCIL MEMBER DENTON: Okay.

1 CHAIRMAN YATES: This is not an Alford  
2 plea --

3 COUNCIL MEMBER DENTON: I'm not --

4 CHAIRMAN YATES: -- this is a full admission  
5 that he -- and stipulation.

6 COUNCIL MEMBER DENTON: And that's why I'm  
7 questioning you. If he is willing to sign that yes,  
8 he agrees that he's guilty of everything that's in  
9 what the Charging Committee submitted, and he's  
10 willing to sign it, is that not an admission of  
11 guilt?

12 CHAIRMAN YATES: No. This is a document  
13 that's been tendered to us to accept. In the event  
14 that we accept it as well, then it would be  
15 something entered in the record.

16 I know as a layperson, in a lay stance that  
17 you would say that there's an admission. It would  
18 be not -- it would not be admitted to this Council  
19 Court in the event we did not accept it.

20 COUNCIL MEMBER DENTON: Well, I just want  
21 everybody to be clear: If I hadn't done anything, I  
22 sure as heck wouldn't be signing something that said  
23 I did it.

24 CHAIRMAN YATES: Sure. And I think that's --

25 COUNCIL MEMBER DENTON: So I think --

1 CHAIRMAN YATES: -- the idea. I think he's  
2 agreed --

3 COUNCIL MEMBER DENTON: -- this is --

4 CHAIRMAN YATES: -- stipulated that he's done  
5 this, yes.

6 COUNCIL MEMBER DENTON: All right. This --  
7 it just doesn't make a whole lot of sense. I --  
8 this just seems unusual that we let him agree that  
9 yes, he's done these things and then we don't  
10 continue on with the trial. Right. But I'm just  
11 saying if we didn't accept it, I don't know how,  
12 going back to what --

13 CHAIRMAN YATES: I think your mike's still  
14 on.

15 COUNCIL MEMBER DENTON: Right. Thank you.

16 CHAIRMAN YATES: All right. Hearing no other  
17 discussion, the matter before this Council at this  
18 time is still the stipulation and agreed order  
19 that's been brought before us on a motion, second,  
20 approval, was the amended -- amended -- the amended  
21 stipulations, which has been -- do you have --  
22 Councilwoman --

23 MS. KENT: Yes, Mr. Chair.

24 CHAIRMAN YATES: -- I mean, Counsel. It's  
25 bad in this chamber.



1 MS. KENT: Don't promote me.

2 CHAIRMAN YATES: Depends on the day.

3 MS. KENT: I just want to be very clear about  
4 something, and I think you may need to get an  
5 amendment or edit the document, but this is not an  
6 agreed order that includes the Charging Committee,  
7 so I don't know that the word "agreed" should be in  
8 there. I think perhaps stipulation and order. And  
9 again, "Comes the Charging Committee," I cannot be  
10 in there.

11 CHAIRMAN YATES: Okay. And --

12 MS. KENT: This is -- the Charging Committee  
13 has not agreed, does not want this to be made out to  
14 look like they were part of this agreement. If the  
15 Council Court is going to conditionally dismiss the  
16 charges, then that's what Council Court should vote  
17 on, a conditioned dismissal --

18 CHAIRMAN YATES: Without a --

19 MS. KENT: -- a dismissal order with  
20 conditions, but --

21 CHAIRMAN YATES: I can --

22 MS. KENT: -- agreed order is misleading.

23 CHAIRMAN YATES: Okay. Without objection,  
24 just to clarify, because I know that is obviously --  
25 the Council could -- I guess the legal was that it's

1       within the Council and it's represented by this  
2       body, but I think the easiest way to do it is just  
3       to strike if --

4               MR. MCADAM:   We can --

5               CHAIRMAN YATES:  -- if there's an agreement  
6       without objection.

7               MR. MCADAM:  Without objection.

8               CHAIRMAN YATES:  Comes the Council Court and  
9       Respondent Dan Johnson, because it -- and today  
10      that's the only agreement that can be entered into.  
11      My understanding is that the -- that the Charging  
12      Committee no -- has no authority to enter into an  
13      agreement --

14              MS. KENT:   Right.

15              CHAIRMAN YATES:  -- that it would be to have  
16      the Council Court.

17              MS. KENT:   And I just want to make sure --

18              CHAIRMAN YATES:  So that's a misstatement,  
19      yes.

20              MS. KENT:   -- when you've -- I'm sorry to  
21      interrupt, but when you vote on it, that that is  
22      clear that the document that you're voting on is not  
23      agreed to.

24              CHAIRMAN YATES:  Without objection, it's  
25      been put into the record, Mr. Clerk, "Comes the

1 Council Court," strike "Charging Committee by  
2 counsel."

3 MR. OTT: So noted.

4 CHAIRMAN YATES: Second. Anybody?

5 MULTIPLE COUNCIL MEMBERS: Second.

6 CHAIRMAN YATES: All right. All those in  
7 favor, signify by saying aye.

8 (Vote.)

9 CHAIRMAN YATES: Those opposed?

10 That may have been complete overkill, but I  
11 decided to do it anyway.

12 It's before us. Mr. Clerk, would you please  
13 open the voting?

14 This is whether to accept the stipulation and  
15 agreed order. It does take 13 votes to be accepted.  
16 It takes 13 votes.

17 Without objection, the voting is closing.  
18 The voting is closed.

19 MR. OTT: There are 13 yes votes, six no  
20 votes, and one not voting. The no votes, Council  
21 Members James, Mulvihill, Kramer, Parker, Denton,  
22 and Ackerson.

23 CHAIRMAN YATES: And the amended order and  
24 stipulation passes and is accepted.

25 Seeing no other Council business before us,

1 Council Court, we are adjourned.

2 (Hearing concluded at 6:44 p.m.)

3 \*

\*

\*

1       STATE OF KENTUCKY       )  
2                                        )  
3       COUNTY OF JEFFERSON    )    SS.  
4

5               I, Laura J. Kogut, a Notary Public within and  
6       for the State at Large, my commission as such  
7       expiring 25 July 2019, do hereby certify that the  
8       foregoing hearing was taken before me at the time  
9       and place stated and for the purpose in the caption  
10      stated; that the hearing was reduced by me to  
11      shorthand writing; that the foregoing is a full,  
12      true, and correct transcript of said hearing; that  
13      the appearances were as stated in the caption.

14              WITNESS my hand this 7th day of November  
15      2017.

16  
17                                       \_\_\_\_\_  
18                                       Registered Merit Reporter  
19                                       Certified Realtime Reporter  
20                                       Notary Public, State at Large  
21  
22  
23  
24  
25