

BEFORE THE LOUISVILLE METRO ETHICS COMMISSION

IN RE: COMPLAINT OF KEVIN FIELDS

V.

ANTHONY PIAGENTINI

FINDINGS AND CONCLUSIONS

The Commission convened publicly in person, beginning on August 21, 2023, to conduct a final hearing in this matter, pursuant to the Louisville Metro Ethics Code, Louisville Metro Ordinances 21.06. All commissioners were present in person, for all proceedings, which were conducted on the record. Proceedings occurred on August 21st, August 22nd, August 23rd, 2023 and August 24th, 2023. An additional proceeding on final motions was held October 19th, 2023.

Present were: Complainant Kevin Fields, Hon. Kent Wicker, counsel for Mr. Fields; Hon. Robert Boyd and Jim Griffin, appointed Investigating Officers for the Commission; Respondent Councilman Anthony Piagentini, Hon. Brooken Smith and Hon. Michael Swansburg, counsel for Respondent. Attorney F. Todd Lewis attended as counsel to the Ethics Commission.

Preliminary Matters

1. This matter began as a formal matter before this Commission based on a written and sworn complaint filed by Kevin Fields on March 2, 2022, with the Ethics Commission. Fields' Complaint was properly completed and filed

pursuant to the Ethics Code, LMO¹ Chapter 21 . The Respondent was served with this Complaint, and timely filed a written Answer.

2. Prior to Fields' Complaint, however, this matter came to public attention by way of a media article dated February 15, 2023². Following the publication of this article, Louisville Metro Council passed an emergency resolution on February 16, 2023³, wherein it stated in relevant part that the Council had "approved a Sixth Round of American Rescue Plan funding on December 1, 2022; that the largest project approved for funding in that legislation was a \$40,000,000 appropriation to Economic Development to fund an industry-led and health care focused workforce strategy," and "in recent days, Metro Council has learned that the potential conflict of interest was a possible consulting arrangement between Council Member Piagentini and the Louisville Healthcare CEO Council." The resolution went on to request "that the Louisville Metro Ethics Commission review the actions of Council Member Piagentini in connection with the debate on and enactment of Ord. 182, Series 2022 as thoroughly and expeditiously as possible to determine whether any violations of the Louisville Metro Ethics Code have occurred."

¹ Louisville Metro Ordinances (LMO). The Louisville Metro Ethics Code is found at Louisville Metro Ordinances, §§21.01 to 21.99. It will be referred to here as "the Ethics Code" or "the Code."

² "Council member pushed \$40 million COVID-19 relief grant for prospective employer (lpm.org)," <https://www.lpm.org/investigate/2023-02-15/piagentini-louisville-conflict-of-interest-ceo-council>. This article was appended to Fields' complaint and is part of the record of this case.

³ "AN EMERGENCY RESOLUTION REQUESTING THE LOUISVILLE METRO ETHICS COMMISSION TO PROVIDE METRO COUNCIL WITH A FORMAL OPINION REGARDING WHETHER ANY ACTIONS OF COUNCIL MEMBER PIAGENTINI IN CONNECTION WITH THE SIXTH ROUND OF AMERICAN RESCUE PLAN FUNDING APPROVED BY METRO COUNCIL CONSTITUTED A VIOLATION OF THE LOUISVILLE METRO ETHICS CODE."

3. Unfortunately, under the present version of the Ethics Code, an unsworn resolution of Metro Council does not constitute a complaint sufficient to invoke the jurisdiction of the Ethics Commission. Accordingly, the Ethics Commission convened on February 22, 2023, considered the matter set forth in the Metro Council Resolution, and issued a letter to Metro Council President informing the Council of its lack of jurisdiction.
4. Metro Council then took up the issue of how to proceed regarding this issue but failed to reach a conclusion or final action⁴. Then, on March 2, 2023, Fields filed his sworn complaint which essentially made any further action by Metro Council moot, and the Commission then proceeded with this case.
5. Multiple proceedings then occurred before the Commission, beginning in March 2023, through the final hearing of August 21 – August 24, 2023. These proceedings were conducted in person before the Commission, resulted in numerous procedural orders, and will not all be set out here.
6. In brief summary: the Commission appointed private investigator and retired Kentucky State Police Detective Jim Griffin as Investigator for the Commission, who began his investigation in March 2023. Complainant Fields' counsel entered an appearance and filed a Reply to Respondent's Answer. Fields' counsel also sought the appointment of an attorney Investigating Officer (including requesting Fields' counsel as one alternative for such role). Fields also formally moved to "intervene" in the proceedings. Piagentini

⁴ There was testimony at the August, 2023 hearing from both Council Member Cindy Fowler and Council Member Kevin Kramer about a heated exchange between the two of them on this topic on that same day. This appeared to be rooted in political conflict and is largely irrelevant to the Ethics Commission's consideration in this case.

objected to all of Fields' requests. The Commission denied Fields' request to intervene and denied his request to appoint his counsel as Investigating Officer. The Commission appointed Commission Member Robert Boyd as additional Investigating Officer, and recused Boyd from further involvement in decision-making or deliberations. The Commission entered a Scheduling Order setting this matter for final trial/hearing.

7. The Respondent next filed a motion for summary dismissal, and refused to serve the Complainant or counsel, Mr. Fields⁵. The Commission denied the summary dismissal request by written order, and entered an Amended Scheduling Order setting this matter for final trial/hearing, which was conducted the week of August 21, 2023.

Summary of Case and Findings of Fact

8. The Commission begins by noting, for the benefit of the parties and the public, what this case is not about. The purpose of these proceedings is to adjudicate whether there is a reason to conclude, by clear and convincing evidence, that Councilman Piagentini committed one or more of seven (7) possible violations of the Louisville Metro Ethics Code, a Louisville Metro Government Ordinance found in its entirety in LMO § 21. While evidence of the following may bear some relevance to these proceedings, (and in other instances has no relevance at all), these proceedings are not intended to adjudicate any of the following, one way or the other:

⁵ Piagentini refused to serve Mr. Fields or his counsel with most of his pleadings, claiming this was part of his overall objection to Fields' participation in this case.

- Whether Piagentini is guilty of any crime arising under any law, federal, state or otherwise;
- Whether Piagentini subsequently violated, or is currently in violation of, the Louisville Metro Ethics Codes for any actions arising after the events set out in the Amended Complaint herein;
- Whether any other actor or witness other than Piagentini violated any law, civil or criminal, or administrative in nature;
- Whether the events surrounding the grant proposal authorized by Metro Council to the Louisville Healthcare CEO Council (a Kentucky 501(c)(4) nonprofit) complied at any stage with rules or directives of the U.S. Department of Treasury or U.S. Congress governing the award and administration of funds under the American Rescue Plan and related regulations;
- Whether the grant proposal of Louisville Healthcare CEO Council was the best, or even a good, proposal in terms of public policy;
- Whether Piagentini was qualified for the consulting job ultimately awarded to him by the grant-seeker CEOc; whether Piagentini was the best-qualified candidate for this position; or whether the position even constitutes needed work on behalf of CEOc; other than how these issues may bear upon alleged violations of the Ethics Code.
- Whether any exchange of items of value between Piagentini and agents of the Louisville Healthcare CEO Council constituted a direct “quid pro quo,”

other than how that issue may bear upon alleged violations of the Ethics Code.

9. Respondent is a member of Louisville Metro Council and was at all times relevant to this action. As such, he is a “Metro Officer” as defined in the Ethics Code, and subject to all the requirements of the Code, including the jurisdiction of this Commission.
10. Respondent has also been privately employed, either as an employee or independent contractor, in the business side of the health care field, as well as commercial real estate, dating back several years prior to his election to Metro Council, and continuing to today.
11. Tammy York Day is the CEO of a 501(c)(4) entity called Louisville Healthcare CEOc (“CEOc”), which is composed of the CEOs of the 15 largest healthcare entities in Louisville.
12. At some time in November 2021, Respondent Piagentini met York Day in her capacity with CEOc. Piagentini and York Day both testified that this meeting was part of Piagentini’s efforts to “network,” as he was considering leaving his employment at the time. Both of these witnesses agree that at that time, York Day informed Piagentini that CEOc did not have a position available. This leads to the logical conclusion that the seeking of employment by Piagentini was a central purpose of this meeting. York Day characterized Piagentini’s interest as stemming from him ‘looking for what he will do next.’

13. Later, in January 2022, Piagentini's resumé was sent to York Day by way of a mutual acquaintance. Piagentini admits this was done with his approval. Again, York Day communicated to Piagentini that there was not a position available at CEOc. Also, again, one can conclude that Piagentini's seeking of possible employment was a central purpose of these interactions.
14. At around the same time, in January 2022, the CEOc was part of a coalition of entities who had applied, together, for grant funding through Metro Council. This funding was available as a result of funds initially awarded to the city from the federal government through the American Rescue Plan, originally announced in March 2021. This particular grant application was assigned to the Workforce Development workgroup, whose composition will be discussed below, but included Respondent Piagentini.
15. Piagentini denies being aware (at least initially), in January 2022 when he sent his resumé to the CEOc and interacted with York Day, that the latter was a grant applicant to Louisville Metro. When asked if York Day had told him, during their interactions regarding employment networking, that CEOc had a pending grant application (with others) to Louisville Metro, however, Piagentini actually testified that he does not remember. When asked whether a purpose of these interactions was also to discuss CEOc's grant application to Louisville Metro, York Day did not deny this, but testified that she "didn't know" whether the meeting would assist her efforts toward the grant. She testified that she was urged to have this meeting with Piagentini by the

Rotunda Group, a lobbying firm based in Frankfort, Kentucky. Tim Corrigan with that group coordinated the meeting.

16. Going back a few months to August 2021, the Metro Council had taken the initiative in deciding the disposition of the \$388 million which had been awarded to Louisville Metro from the federal government under the American Rescue Plan (that is, as opposed to the executive mayoral administration taking the initiative). To do this, the Council formed separate work groups in August 2021, on various topics. The task of each work group was to decide the disposition of funds with regard to the topic of the work group. One group was the Workforce Development Group. The only two council members to join this work group were Markus Winkler and Anthony Piagentini. Councilman Bill Hollander was also an ex officio member of this group by virtue of being the Budget Committee chair, but did not take an active role. Non-elected personnel of this work group included Grace Simrall, Chief of Civic Innovation and Technology for Louisville Metro government; and Margaret Handmaker, a contractor hired by the mayor with a lengthy background in the finance and budget functions of both the private sector and government, including a term as the Kentucky Secretary of Revenue.
17. Both Simrall and Handmaker testified regarding the functioning of the Workforce Development work group, and its process of receiving and reviewing grant applications or requests. Simrall and Handmaker designed a process of assigning scores to each of over 30 grant applicants (around 10

additional applicants were deemed wholly ineligible and disregarded). While the precise criteria of assigning scores was left unclear from the testimony, it was clear that the CEOc grant proposal scored 29th out of 30 applicants—second from the bottom. This scoring was provided to members of the Workforce Development group (including Piagentini and Winkler) in April 2022.

18. Winkler testified, on the other hand, that he believed the scoring system implemented by Handmaker and others did not properly reflect the overall vision or goals of him and Piagentini, for a project that was “transformational.” While no specifics were provided by Winkler regarding his opinion of the weaknesses of this scoring system, it was abundantly clear that he and Piagentini chose not only to disregard the scoring, but in fact had come to champion one, and only one, grant application—the CEOc-led proposal.

19. It will not be the function of this proceeding to determine whether the Winkler/Piagentini approach was the appropriate one, as opposed to the more traditional “scoring” approach of the administration personnel, Simrall and Handmaker . Rather, the relevance of this information for these proceedings is that Piagentini became a champion of the CEOc grant proposal, to the exclusion of other applicants, at least as early as April 2022. Piagentini testified that this was because he legitimately shared the vision of Councilman Winkler that the CEOc proposal was properly “transformative,”

and appropriate for the City; and the Complainant Fields argued that this was because Piagentini held a private motive to aggrandize himself to the CEOc as part of an ongoing effort to seek employment with the latter.

20. Also, in April 2022, as part of their efforts to champion the CEOc-led proposal, Piagentini and Winkler decided to hold up the award of ARPA funds through their workgroup, pending a decision from the federal government on a separate federal grant being sought by a coalition led by CEOc, on a similar proposal. The decision of the Workforce Workgroup was that, if the federal grant was not awarded, the ARPA funds allocated to the Workforce Development Group would be awarded instead (by Metro Council), to the CEOc, upon a similar proposal. This decision came on the same day (or, at least, was evidenced by an email on the same day) that the scoring results were provided by the administration personnel, showing that the CEOc proposal scored 29th out of the 30 applicants.

21. There has been some argument and discussion about the similarities and differences between the earlier CEOc-connected grant proposal (seeking direct federal funds) and the later CEOc grant proposal which was ultimately funded by Metro Council. Some of these technical differences in the proposals may or may not have been critical to whether one or another interest group (i.e., the Mayor, the Metro Council Committee members, the non-elected workgroup personnel, etc.) would support or object to one or the other proposal. The Commission regards this issue as mostly irrelevant because,

as set out above, it is not a function of these proceedings to ultimately determine whether the successful grant application reflected sound public policy. The Commission does find, however, that the proposals were similar enough that one was regarded as essentially the substitute for the other, by the decision-makers themselves, because there would otherwise be no reason to condition the award of Council-approved ARPA funds upon the failure to receive funding of the earlier proposal.

22. In August or early September 2022, according to Ms. Simrall it was learned that the CEOc-led group would not be receiving the direct federal grant, thus placing the Metro Council-controlled ARPA funds front and center as a method of funding some version of this initiative.

23. On September 14, 2022, a representative of CEOc invited Piagentini (as well as Winkler and Council President David James), via email, to a conference on aging held in Louisville, with a ticket price of between \$199 and \$499. This email invitation was sent by an employee of CEOc at the direction of Tammy York Day. The email indicated that the invitation was comp'd (i.e., that these three invitees would be permitted to attend free of charge). Of the three Metro Councilman invited, only Piagentini attended the conference. He was provided admission for free and did not pay the ticket price.

24. Piagentini registered for this conference describing his company as “ABP consulting” which “specializes in strategic support in the healthcare and managed care space.”⁶

25. At the conference, held September 21 – 22, 2022 at Churchill Downs, Piagentini and York Day met in person. York Day testified that she told Piagentini that, if the CEOc completed a then-pending internal proposal to go into “government affairs,”⁷ she would “want to talk to him.” York Day testified that Piagentini’s response was “well, OK.” Piagentini did not dispute York Day’s testimony about the substance or purpose of this conversation, but rather testified that, much like Piagentini’s claim about his January 2022 interaction with York Day, he does not remember this conversation. This was (yet another) interaction between Piagentini and York Day about the possibility of Piagentini becoming employed by CEOc. This time, the employment prospect was significantly more concrete.

26. The CEOc grant proposal was placed before the Budget Committee during the time frame between September 2022 and the final committee hearing on November 17, 2023. The proposal was mentioned, if not formally placed on the Committee agenda, more than once during this time frame during Council proceedings. At a Budget Committee hearing on October 20, 2022, the CEOc proposal was discussed and championed by Piagentini on the Metro Council floor at length, largely in response to a competing initiative proposed

⁶ Complainant Exhibit 13.

⁷ That is, to create a contract or employment position with CEOc centering on this topic.

by another council person. The video of this Committee Hearing was entered as Exhibit 6⁸.

27. The next day, on October 21, 2022, there were three (3) phone calls between Piagentini and York Day. Piagentini testified that he only “very vaguely” remembers these calls, but also claimed that the calls were “absolutely not” about any possible employment or consulting position at CEOc (as had been previously discussed between these two in prior meetings and communications).

28. Four days later, on October 25, 2022, Councilman Winkler and Piagentini issued a joint press release regarding their support of the CEOc grant proposal in the amount of \$40 million, and stating that they had formally sponsored and filed an ordinance for that purpose, set for the Council meeting on October 27, 2022. According to witness Councilperson Hollander, this press release was “unusual,” particularly as part of the ARP funding process, and not particularly helpful, because it constituted “putting down a marker” of “This is my proposal,” when there were still several applicants to consider.

29. Seven days later, on November 1, 2022, Piagentini and York Day had an eleven (11) minute phone conversation. Like all of her phone calls with

⁸The video is publicly available at: [Budget Committee - THIS MEETING IS BEING HELD VIA VIDEO TELECONFERENCE \(granicus.com\);https://louisville.granicus.com/player/clip/7767?view_id=2&meta_id=1574157&redirect=true&h=44feb562cc4bfc4bd2329801ec817b16](https://louisville.granicus.com/player/clip/7767?view_id=2&meta_id=1574157&redirect=true&h=44feb562cc4bfc4bd2329801ec817b16). Piagentini’s remarks begin at 40:40 in the video.

Piagentini between September and November 1, 2022, York Day denies that this conversation touched on any possible employment by Piagentini.

30. On November 3, 2022, the Budget Committee met in open session at Metro Council Chambers and specifically discussed the CEOc grant proposal. Tammy York Day was present with other members of CEOc and made a presentation in support of the grant proposal. CEOc was the only grant applicant permitted to give a presentation that evening, which was unusual since other applicants were not given this opportunity, although this arrangement was approved by Budget Committee Chair Bill Hollander. The Committee ultimately tabled the CEOc proposal for further action at a future Budget Committee hearing set for November 17, 2022. York Day had originally expected her proposal to be approved at this November 3d meeting. The video of the November 3d Committee hearing was entered as Exhibit 9⁹.
31. Four days after the Budget Committee hearing, on November 7, 2022, the board of the Louisville Healthcare CEOc met and gave final approval to an initiative to hire a contractor for “government affairs,” a position which York Day testified had been in the works since at least May of 2022, and a position for which Piagentini had always been “in the back of her mind” as the ideal candidate. It is also the position (or contemplated position) discussed by Piagentini and York Day at the September, 2022 conference at Churchill Downs to which Piagentini was invited free of charge by York Day.

⁹ Budget Committee - THIS MEETING IS BEING HELD VIA VIDEO TELECONFERENCE ([granicus.com](https://louisville.granicus.com/player/clip/7790?view_id=2&redirect=true&h=d8348232347803114384e34796ca4459)); https://louisville.granicus.com/player/clip/7790?view_id=2&redirect=true&h=d8348232347803114384e34796ca4459

32. On November 17, 2022, the day set for the final Budget Committee hearing on the CEOc grant proposal, York Day emailed a blank non-disclosure agreement to Piagentini's personal email account at 11:52 AM, with no explanation. The entirety of the email message York Day sent to Piagentini (besides the attached NDA) stated "Hi Anthony. Please see our mutual NDA, and let me know if you have any questions or requested changes."
33. The NDA was entered as an exhibit. It states in relevant part that "the Parties wish to exchange and receive information in order to provide for mutual review of business information in connection with a possible venture or business transaction between them." The terms of the NDA speak for themselves, but in summary purport to commit both parties to secrecy regarding the subject of this interaction. The email and attached non-disclosure agreement were entered as Exhibit 14.
34. Piagentini returned this NDA to York Day the next day, November 18, 2022, via email, with his signature affixed. This was the next day following the previous evening's Budget Committee hearing. When asked whether he had read the email when it was sent the previous day-- about 5 or 6 hours prior to the Budget Committee hearing and vote-- Piagentini stated that he does not remember, but that he may have. He admitted that he regularly checks his email on his mobile phone, and had even done so throughout this trial. Piagentini denied that he knew in advance why York Day was sending an NDA for his signature. York Day, on the other hand, initially testified that

she “couldn’t comment” on whether Piagentini would have been surprised to receive this email, but conceded on impeachment that that she had no reason to believe this email would have surprised Piagentini, given the course of previous interactions between the two. The NDA form bearing Piagentini’s signature was entered as Exhibit 15.

35. Piagentini’s signature on the NDA which he returned to York Day on November 18, 2022, also denotes him by the title “Principle [sic] Consultant.”

36. At the Budget Committee hearing on the evening of November 17, 2022, Piagentini again championed the CEOc grant proposal, and it passed the committee vote and was therefore sent to the Metro Council as a whole for approval at its December 1st, 2022 meeting. The video of this 11/17/22 hearing was entered as Exhibit 10¹⁰.

37. Between November 18th and December 1, 2022, Piagentini remained as a named sponsor of the Ordinance to approve \$40 million in ARP funding for the CEOc grant proposal. During this time period, Piagentini and York Day also spoke numerous times, finalizing the terms of what would become a finalized consulting contract between Piagentini and CEOc. This included phone calls on November 18, 2022 and November 29, 2022. This also included, by necessity, enough interaction between the two to complete the terms of a work agreement between Piagentini and CEOc., entitled a “Statement of Work.”

¹⁰ Budget Committee - THIS MEETING IS BEING HELD VIA VIDEO TELECONFERENCE (granicus.com);
https://louisville.granicus.com/player/clip/7829?view_id=2&redirect=true&h=fd4a1edc55bfd7938f0e3735144409a1

38. The “Statement of Work” was entered as Complainant Exhibit 17. It bears the signature of Tammy York Day, and the signature of Anthony Piagentini. The latter’s signature is now denoted with the title “Principle,” [sic] which title is now typed into the form (i.e., Piagentini did not hand-write the title himself). Both signatures are dated December 1, 2022. York Day and Piagentini offered testimony that the signatures were not actually affixed until shortly after 12/1/22 (i.e., they were backdated), but Piagentini stated on cross that “The understanding was, you know, we were trying to shoot for a December 1st start date . . .” Accordingly, regardless of when the signatures were actually affixed, it is clear that, at some time *prior to* December 1, 2022, both parties formed an agreement that the start date for Piagentini’s employment would be December 1st, 2022.

39. The December 1st, 2022, Statement of Work between Piagentini and York Day recites that Piagentini will be provided compensation of \$20,000 per month for a 12-month period, beginning 12/1/22 through 11/30/23. Among the scope and objectives (“deliverables”) stated as expected from Piagentini is “creating and lobbying for legislation with the state assembly . . .”

40. Piagentini concedes that he told no one connected to Metro Council, during this time period, about any of the interactions he had been having with York Day about his pending, and ultimately consummated, employment with CEOc. Clearly, he did not take action to remove his name as sponsor of the ordinance funding the grant proposal nor to abstain from further action

connected to it on any official record, during this time. Former Metro Council President David James testified that removing oneself as an ordinance sponsor could be completed by a single email to the Metro Council clerk, at any time.

41. Piagentini testified in his defense that he also did nothing further to *champion* the CEOc grant proposal during the time period of November 17, 2022, to December 1, 2022, except remaining as named sponsor of the legislation (as will be discussed below, remaining as sponsor until the literal last second before Metro Council voting on the proposal).

42. Also, as discussed previously, between November 17th and December 2, 2022, Piagentini and CEOc conducted the internal process of finalizing his job. This process culminated in an “onboarding” email chain on December 1, 2022, beginning at 1:06 PM and continuing through 5:41 PM that same day.¹¹ These emails include a statement from Tammy York Day at 1:06 PM that day stating: “Welcome aboard Anthony, excited to have you as a part of the team!” Piagentini’s response eight (8) minutes later stated: “Thank you for your help and I look forward to working with you.” This all occurred before the Metro Council vote on the CEOc grant that same evening. This internal process of discussions also included a Statement of Work dated December 1, 2022¹².

43. At the December 1, 2022, evening meeting of Metro Council, at which the CEOc grant proposal was formally on the agenda for a final vote of the full

¹¹ Complainant Exhibit 16

¹² Complainant Exhibit 17.

Metro Council, President James calls the matter on the record at hour 1:35:35 as Item 54¹³. Councilman Winkler speaks to the overall bill at some length, and there is no further discussion. President James, acknowledging no further discussion, then states “madame clerk, hearing no further discussion will you please open the role for voting?” It is at this point that Piagentini interrupts, and states the following: “Mr. President, sorry, as a point of order related to this particular, I’m gonna be abstaining. The reason for my abstention is a potential conflict of interest. I have to actually remove my name as a sponsor.” President James orders the clerk to reflect this, then calls the matter for vote a few seconds later, and it passes.

44. Piagentini acknowledges (as he must, per the recorded record) that he stated no basis for his abstention or removal of his name as sponsor of the bill.

There was testimony from Councilman Hollander, Winkler, James, and Kramer about their view of whether this abstention from Piagentini satisfied the terms of Metro Council Rules and/or the Ethics Ordinance, since it stated no basis. The relatively low relevance of this opinion testimony, in light of the express requirements of the rules in question, will be discussed below.

45. In the days and weeks following Piagentini’s 11th-hour abstention from this funding proposal on December 1, 2022, there was no evidence that he provided information in any form to Metro Council or the public about the reason for his abstention. The next indication of any public acknowledgement that he had obtained a \$240,000 per year consulting contract with the grant

¹³ The video of the 12/1/22 meeting of Metro Council was entered as Exhibit 11.

awardee CEOc is in a statement Piagentini placed in a Christmas card sent to some Metro Council members (along with various other statements about his family)¹⁴. Piagentini argues that the Christmas Card shows that that he was not trying to hide his new employment with CEOc, at least after whenever the card was sent.

46. Between December 1, 2022, and through February 15, 2023, Piagentini did not update his Financial Disclosures (required of all Metro Council persons to be publicly filed under oath and timely updated) to reflect any employment relationship he then had with Louisville Healthcare CEOc.

47. On February 13, a member of the media spoke to Piagentini about a story the reporter was working on with regard to these events. Following this interaction, on February 15, 2023, Piagentini filed an updated Financial Disclosure, stating that he was a “Healthcare Consultant” with “Healthcare CEO Council.” Piagentini testified that he filed the update as a result of the media interview, because it “jogged my memory.”

48. The relevant events following the publication of the media story on February 15, 2023, to date, are recited above in Paragraphs 1 through 7.

FINDINGS AND CONCLUSIONS

49. The Commission’s conclusions with regard to each of the seven counts of the Amended Complaint will be discussed, each in order and in turn. First, some preliminaries are in order.

¹⁴ Entered as Respondent Exhibit 22

50. The Louisville Metro Ethics Code is part of Louisville Metro Ordinances, found in Chapter 21 of the Ordinances. It will be referred to as the “Ethics Code,” and citations to individual subsections set out as “LMO” (Louisville Metro Ordinance). The Ethics Code covers the conduct of persons defined as “Metro Officers,” which undisputedly includes members of Metro Council. It is important to note that the Ethics Code does not deal with the conduct of private persons or private entities in any provision relevant to this case, and the Commission has no jurisdiction over such persons¹⁵.

51. Broadly speaking, there are three (3) major standards of conduct, or prohibitions, for persons covered by the Code, together with some more specific prohibitions and standards. These standards were enacted “In furtherance of the public trust assumed by Metro Officers upon their election or appointment to public officer or employment,” LMO 21.02. These standards, stated in summary forms are:

- a. First, that no Metro Officer use or attempt to use their official position to secure “unwarranted privileges or advantages” for himself, family members, or other persons. LMO 21.02(A).
- b. Secondly, the Code prohibits any Metro Officer from acting in his or her official capacity in any matter in which the officer or member of his or her family or his or her business organization “might reasonably be

¹⁵ The Ethics Code does now govern persons or entities operating as lobbyists of Metro Government, but none of these provisions are at issue in this case.

expected to impair his or her objectivity or independence of judgment,”
LMO 21.02(B).

- c. Third, the Code prohibits the solicitation or acceptance of things of value based on an actual understanding, “or under circumstances which could reasonably be inferred,” that the thing of value was offered to influence the officer in his or her official duties or to “gain access” to the Metro Officer, LMO 21.02(C).

COUNT I

52. Count I of the Amended Complaint alleges that Piagentini may have violated LMO 21.02(C) by improperly soliciting or accepting a thing of value offered for improper purposes, or under circumstances which could reasonably be inferred was for improper purposes, by seeking employment with Healthcare CEOc during a time in which Healthcare CEOc was actively seeking public funds through the Louisville Metro Council, a request over which Piagentini had authority to act in his official capacity.

53. The record developed at trial was abundant with clear and convincing instances of the Respondent seeking employment of Healthcare CEOc as early as November 2021. This was confirmed by the testimony of Tammy York Day, and to some extent by Piagentini himself. It included at least three (3) known instances of Piagentini interacting with York Day for that purpose: in November of 2021; in January 2022; in September 2022; and ultimately of course between November, 2022 and December 1, 2022.

54. Both the Respondent and York Day pointed out that, during several of these interactions, there was no job available for Piagentini at CEOc, despite his seeking such work. The Commission finds this to be largely irrelevant because the Code seeks to prevent even the solicitation by a Metro Officer of a thing of value or promise of future employment under improper conditions or purposes. The fact that the target from whom the thing is solicited does not have the thing to give, at the time of the solicitation, is no defense.

55. Piagentini also argues that he did not have a “thing of value” until at least after December 1, 2023, because (he says) that was the effective date of the employment he began with CEOc. The Commission finds that this is a misunderstanding of the express provisions of the Code, as well as its purpose. The Code prevents even the solicitation (and certainly also the acceptance) of any economic opportunity, promise of future employment, or other thing of value “under circumstances from which it could reasonably be inferred” that the thing of value was given or offered for improper purposes (i.e., influencing the Metro Officer or gaining access to the Metro Officer). There is no requirement that the “thing of value” sought by the Metro Officer come to full fruition while the Metro Officer is still acting on the matter in his official capacity. That is why soliciting alone is banned by the Code, and this provision would make no sense under the Respondent’s interpretation. As Piagentini himself testified, in response to the question “if you’re discussing a job with someone, then you have to disqualify from any matters related to

that person you're discussing the job with, right? Yes.”¹⁶ It would be clear to any reasonable person that the CEOc securing the grant would appear to enhance Piagentini's ability to obtain employment with this organization.

56. Moreover, there is abundant evidence that Piagentini actually did receive a thing of value from Healthcare CEOc while he was still actively working on the latter's behalf in his official capacity, by championing their grant proposal. First, this came in the form of a mutual nondisclosure agreement agreed to on November 17th or 18th by both Piagentini and Healthcare CEOc. Such agreements are considered to be supported by consideration and enforceable¹⁷ by both parties, and therefore are of value to both of the parties. See, e.g., Alph Kaufman v. Cornerstone Indus. Corp., 540 S.W.3d 803, 813-14 (Ky. App. 2017) (Consideration for a contract can be any “benefit to the party promising, or a loss or detriment the party to whom the promise is made”). York Day testified that such an NDA was typical and valuable for her organization because “we don't want things getting out prematurely.”

57. Second, this came in the form of a finally consummated employment agreement which was finalized between November 18, 2022 and December 1, 2022.

¹⁶ Hearing Day 2, at 174.

¹⁷ There was unclear testimony about whether York Day intended by the NDA to prevent Piagentini from even revealing to other officials of Metro Council or Metro Government his employment discussions with CEOc. Such a use of an NDA would almost certainly be stricken by Kentucky courts as void against public policy, given that the government officer has an independent legal obligation to reveal such conflicts, in this case arising under both the Ethics Code and Rules of Metro Council. Of course, if the parties *believe* that the NDA may prevent such a disclosure, however legally erroneous that belief may be, they may act accordingly, and this alone presents a significant problem for public officer ethics.

58. The Commission will comment here briefly on the contention of the Complainant that the NDA was actually being used, at least in part, to silence Piagentini from revealing his employment negotiations from officials of Metro Council. This contention was not truly rebutted by testimony of the parties to the agreement, nor was it resolved¹⁸. The Commission finds that this issue need not be resolved entirely in the context of this case, however, because the real issue is whether Piagentini properly and timely disclosed his conflict of interest at all, and the existence of the NDA is relevant, at best, as an inference about the motive of Piagentini (that is, whether he was purposely evading his disclosure requirements under the Code and Metro Council Rules). The Commission notes as follows, however, for the consideration of any private parties or Metro Officers contemplating treating a mutual NDA as an instrument to avoid the obligation of officers to reveal conflicts of interest: such a use of an NDA would almost certainly be stricken by Kentucky courts as void against public policy, given that the government officer has an independent legal obligation to reveal such conflicts, in this case arising under both the Ethics Code and Rules of Metro Council. See, e.g., State Farm Mut. Auto Ins. Co. v. Fletcher, 578 S.W.2d 41 (Ky. 1979) (contract was “void because public policy will not permit the contract to take away that which the statute requires to be given”).

¹⁸ York Day essentially talked around the question (which was repeated several times) without answering it. Hearing Day 2, at 37-38.

59. The Commission finds, by clear and convincing evidence, that Piagentini solicited or accepted (and, likely, both) a thing of value during the time set out in the Amended Complaint.

60. The next element of this claim is whether the thing of value obtained or solicited was being extended for the purpose of influencing Piagentini or gaining access to him, with regard to his official duties; or whether the event occurred “under circumstances which could reasonably be inferred” were for those purposes. By this latter language, the Code incorporates what could be called an “objective test:” That is, while this provision of the Code would be violated by an officer acting with an actual, subjective purpose to act corruptly, it is also violated when the act occurs under circumstances which would appear to a reasonable observer to have been undertaken for corrupt purposes. The law has long recognized that such provisions, preventing even the “appearance of impropriety,” are proper and promote a legitimate government interest. Nixon v. Shrink Mo. Govt. PAC, 528 U.S. 377 (2000)(calling the danger of “the appearance of improper influence” as “of almost equal concern as the danger of actual *quid pro quo* arrangements”)¹⁹.

61. In essence, then, the Ethics Code places the onus on a Metro Officer to know when his or her actions, in soliciting or accepting a thing of value under

¹⁹ This provision also serves to significantly distinguish the Ethics Code from various criminal statutes which require proof of actual illicit intent or “quid pro quo” arrangements, such as bribery of a public servant, Crace v. Commonwealth, 1998 WL 306791, 97-CA-0114 (Ky. App. 1998) (affirming conviction for bribery of a public servant, noting a payment to the prosecutor in exchange for dismissal of an indictment was intended as a “quid pro quo exchange.”); or vote buying, Hardin v. Montgomery, 495 S.W.3d 686 (Ky. 2016); or similar federal criminal statutes. See 18 U.S.C. 201; McDonnell v. United States, 579 U.S. 550 (2016) (“honest services” fraud prohibits “quid pro quo” corruption.

certain circumstances, will reasonably be perceived as improper, and therefore to refrain from the activity, or to recuse from involvement in the matter in their official capacity.

62. Piagentini had twice interacted with York Day about the issue of available employment with CEOc, in November of 2021 and January of 2022, by the time some version of the CEOc grant proposal first came before the Metro Council (along with other grant seekers), and by the time Piagentini became a champion of at least a version of this particular proposal, in his official capacity, in 2022. By early September 2022, it was learned that the CEOc grant proposal to the federal government would not be funded, and this then fulfilled the condition set by Piagentini himself (together with fellow Councilman Winkler) under which Metro Council funds (via the ARP grant) would be used for that purpose. Accordingly, by this time, there was no question whatsoever that the working group headed by Piagentini and Winkler was going to support the CEOc grant as its primary focus.

63. Then, on September 14, 2022, York Day invited Piagentini to a conference he attended, and the two again engaged in conversations, on September 21 and 22, 2022, about Piagentini becoming employed at CEOc. Between these September conversations and the ultimate Metro Council vote approving this grant, Piagentini engaged in several official actions promoting the CEOc grant proposal. This included being one of two named sponsors of the legislation, and statements on the floor of Metro Council at least three (3)

times, championing the proposal, all while knowing, at least since September, that CEOc was working on creating an employment position for which he was the considered candidate. As has been set out in the timeline and findings above, Piagentini did absolutely nothing to recuse himself or to reveal this valuable personal connection to CEOc until the last second of voting by the full Metro Council, on December 1, 2022. Even then, Piagentini revealed nothing about the nature of his reason for his last-second recusal on the floor vote.

64. Accordingly, there were numerous instances before December 1, 2022, at which Piagentini could have recused himself from further official involvement in the CEOc grant proposal. At any one of these points in time, between at least September 21, 2022, and December 1, 2022, any reasonable observer would easily infer that the expected job or business opportunity from CEOc was being either solicited, or offered, or both, for the purpose of obtaining influence over Piagentini or gaining access to him.

65. The Commission notes the defense claim that Piagentini, as a member of the minority party, was not indispensable or even necessary to the passage of this funding ordinance (and therefore, the argument goes, his job offer can not have been extended for the purpose of influencing him). First, the record does not so support this contention factually as to rebut it. Winkler did not testify that Piagentini's support of the bill was superfluous, nor did any other council member. Further, Piagentini was an influential leader of his caucus

and so there is no indication anyone regarded him as hyper-partisan or without influence over members of the majority party. Most importantly, however, the Ethics Code does not premise violations (or the lack thereof) on the degree to which a Metro Officer can actually influence or carry out the desires of a party seeking to influence him or her. It requires only proof of “official action” under improper circumstances, without regard to the ultimate efficacy of that influence.

66. There was also a defense claim that this conduct fell outside the Ethics Code’s 1-year statute of limitations, because it alleges a time window beginning before March 2022 (i.e., one year before the filing of the March 2023 complaint). The Code requires that complaints relate to events “within one year of the time of the occurrence, which is the subject of the complaint, or within one year of the date the occurrence was discovered or should have been discovered in the exercise of reasonable care.” LMO § 21.06(A). Under this standard, an “occurrence” is one in which all the essential elements have occurred, not just some of them. It is clear that, despite the fact that Piagentini may have been acting to seek employment with CEOc before March of 2022, any wrong he committed was only complete at a point after March of 2022. Moreover, Piagentini’s conduct was not discovered until at least February of 2023 when the first media stories were published, and there is no reason to think they were acts which could have reasonably been discovered before that. By Piagentini’s own admission, none of the acts were

revealed prior to December 2022 at the earliest. None of the claims in this Amended Complaint are brought in violation of the statute of limitations in the Ethics Code.

67. The Commission therefore finds, by clear and convincing evidence, that Piagentini violated LMO 21.02(C) as set out in Count I of the Amended Complaint, either by soliciting or accepting a thing of value which was actually offered for the purpose of influencing his official duties; or under circumstances from which it could reasonably be inferred this was the purpose.

Count II

68. Count II of the Amended Complaint alleges that Piagentini violated Section 21.02(A) of the Code, by using his official position as a member of Metro Council to obtain employment with Healthcare CEOc, by using that official position to promote the grant funding request of the latter.

69. This section of the Ethics Code states as follows, in full:

(A) No Metro Officer shall use or attempt to use his or her official position to secure unwarranted privileges or advantages, for himself or herself, members of his or her family or other persons.

70. This section of the Code may be violated by the actual obtaining of unwarranted privileges or advantages by use of an official position, or by the attempt to do so. Unlike the other two sections of the Code at issue, it does not expressly contain an “objective test” standard. Piagentini argues, therefore, that a violation of this particular subsection only occurs upon proof

that the officer acted with the actual, specific intent to obtain the unwarranted privilege or advantage (by use of his official position). The Commission agrees with Piagentini's interpretation on that issue, as this is the natural interpretation of the precise wording of the Code, particularly read in light of the other provisions.

71. Accordingly, the question of this Count is: did Piagentini purposely or intentionally act to use his official position to (i.e., for the purpose of) obtain or attempt to obtain his employment with CEOc, and was that employment ultimately an "unwarranted privilege or advantage?"

72. Piagentini centers his defense to this allegation on the argument that his employment (and the steps leading up to it), while constituting a "privilege or advantage," was not "unwarranted," because, he argues, he was actually qualified for the position he took with CEOc. This requires an analysis of the meaning of all the words used in this phrase.

73. The Code contains no further definition of any portion of the phrase "unwarranted privileges or advantages." First, the Commission concludes that "privileges or advantages" is a much wider concept than simply "thing of value," as set out in Subsection (C) of the Code. In Subsection (C), there is an entire list of possible "things of value" a Metro Officer may improperly obtain, together with the catch-all "or other thing of value." "Privilege" on the other hand is defined in Black's Law Dictionary as:

A particular and peculiar benefit or advantage enjoyed by a person, company, or class, beyond the common advantages of other citizens. An

exceptional or extraordinary power or exemption. A peculiar right, advantage, exemption, power, franchise or immunity held by a person or class, not generally possessed by others²⁰.

74. Under this definition, a “privilege” obtained by a Metro Officer could be as simple as the waiving of a parking ticket which would not be extended to the officer but for his or her governmental position, a much wider notion than “thing of value.” Therefore, the obtaining of employment, or even the obtaining of access to negotiations by way of a valuable non-disclosure agreement, certainly constitutes a “privilege or advantage.” Complainant Kevin Fields—certainly no stranger to ‘networking’—, in his testimony, discussed the use of “networks” to obtain various advantages, the way he saw it in this case²¹. In this sense, a privilege or advantage could be any valuable connection not available to the regular “man in the street.”

75. Piagentini certainly obtained the advantage of the employment or business opportunity very close in time to a long series of acts he carried out in his official position to favor the giver of that privilege or advantage. Most of those events have already been set out in this order.

76. The final question, then, is whether the privilege or advantage obtained by Piagentini was “unwarranted.” Piagentini’s argument that he was otherwise

²⁰ BLACK’S LAW DICTIONARY, Abr. 6th Ed.

²¹ Hearing Day 3, at 58. “he [Piagentini] confirmed that he had established a network with his colleagues, specifically, the CEO of the CEO Council. That became a part of his network as he was considering his career. And -- but I - I wondered if he considered that, one, he was an elected official. He was the member of the Metro Council. She was a professional lobbyist. Maybe if he would've considered that from her vantage point, she -- he was a part of her network and that she was advancing a project that he could help her with because he was in a power broker role. And it was demonstrated that, yeah, it worked because he got a job at the end of it. She got the grant. So that network was successful in prevailing based on their respective interests.”

fully qualified for his access to, and ultimate obtaining of, the employment/business opportunity in question, is simply too narrow. First, there are reasons to doubt that Piagentini had an extraordinary qualification as a matter of fact which was unrelated to the benefit his employer would obtain by virtue of his being in an official governmental position. Piagentini's contract recites that he was hired for lobbying purposes, but he was only registered for such lobbying with the executive branch of state government—controlled by the opposition party—and not for the legislative branch, which was controlled by Piagentini's own party. There was no proof offered that Piagentini's employment contract is even being renewed following its initial 12-month period. Moreover, per the testimony of York Day, Healthcare CEOc already employs professional lobbyists, including the professional lobbying firm The Rotunda Group. Accordingly, there is substantial evidence to support a finding that Piagentini may not have been the best-qualified candidate for the position he was offered at CEOc, to the extent one can even figure out what the qualifications are in the first place.

77. Putting that aside, however, the Commission concludes that, considered in its purpose as a whole, the Code does not permit the illicit use of one's official government position to obtain private employment, no matter how highly qualified the government officer is for that employment. Piagentini's argument is overly narrow and would lead to the allowance of absurd and corrupt results obviously not intended by the Code. Although a Metro Officer

may be the very best qualified candidate for a given job, he or she cannot use the government position to obtain that job. Complainant Kevin Fields' apparent view, on the other hand, is likely too wide, as it would be impossible to police the mere making of generalized associations ("networks," in a vacuum) by government officers, which may or may not be of value at some point in the future.

78. The defense further argues that there was no consummated job until after December 1, 2022, and therefore no privilege or advantage accrued to Piagentini until after he had finally recused (however defectively) from involvement in the CEOc grant proposal. This provision of the Code, however, makes unlawful even the attempt to obtain an unwarranted privilege or advantage. Here, the evidence is abundantly clear that such an attempt was made before Piagentini's recusal on 12/1/22. Certainly, by the time Piagentini signed the CEOc's nondisclosure agreement and commenced to finalizing the details of his job with them, if not earlier, a fully completed attempt to secure this privilege or advantage had occurred.

79. The Commission finds, by clear and convincing evidence that, considered in the totality of the individual circumstances, Piagentini did use or attempt to use his official position to secure unwarranted privileges and advantages from Healthcare CEOc. He did a great deal more than merely passive "networking" in his interactions with York Day, and obviously consummated those efforts with a very valuable consulting contract that came as the result

of CEOc creating the very position in question during the exact same time period Piagentini championed their grant proposal, and doing so in a way that was tailored to, and intended for, occupancy by Piagentini alone. This is certainly a privilege or advantage; it is one that resulted, at least in part, from actions taken in Piagentini's official government capacity, and is one which was clearly not available to any other "man in the street." It was, therefore, "unwarranted."

Count III

80. The next allegation, found in Count III, alleges that Piagentini may have violated LMO § 21.02(B) by acting in his official capacity in a matter in which he held a "financial or private interest" that might reasonably be expected to impair his objectivity or independence of judgment on behalf of the public.

81. This section of the Ethics Code states, in its entirety:

(B) No Metro Officer shall act in his or her official capacity in any matter where such officer, a member of his or her family, or a business organization in which such officer has a financial interest or private interest that might reasonably be expected to impair his or her objectivity or independence of judgement.

82. The first thing to note about this provision is that it, like the provision discussed in Count I of the Complaint, contains an "objective test" with regard to the intent of the alleged violator. That is, this provision can be violated by a Metro Officer acting with the specific mind-state of impaired objectivity or independence, *or* in circumstances that "might reasonably be expected to impair his objectivity or independence of judgment." Such requirements are discussed at greater length above under Count I, but in

sum demand that a government officer is expected to know when their official actions would be seen by a reasonable observer as improperly compromised, and to therefore avoid involvement in such situations, no matter how much the officer may privately believe they are not actually compromised in their judgment.

83. As discussed previously, there can be little doubt that Piagentini's official actions on behalf of CEOc, considered in their totality, would reasonably appear to be compromised in objectivity and independence as a result of the personally beneficial relationship he was consummating with the latter. The entire course of Piagentini's interactions with CEOc regarding employment, while championing the latter's grant proposal, would lead few, if any, observers to conclude that his official actions were not being compromised. Moreover, not a single witness in this case went on record to indicate otherwise, and at least two elected officials overtly stated that the overall appearance was quite negative. Curiously, not even the Respondent testified otherwise regarding the overall appearance of this situation.

84. Indeed, although perhaps unnecessary to its conclusion regarding violations, the Commission finds in this case by clear and convincing evidence that Piagentini's official actions were *actually* compromised by lack of objectivity or independent judgment due to this relationship. This is supported by evidence of his own secretive approach to the course of employment discussions with CEOc, including keeping this information confidential from

all other personnel of the Metro Council, including his co-sponsor of the funding initiative.

85. The Respondent centers his defense to this particular count, instead, upon the argument that he had no “financial or private interest” in CEOc at any time that he took any relevant official action, because such “financial or private interest” did not come into being until he finally signed the completed contract (i.e., Statement of Work), on or about December 1st, 2022.

86. The Ethics Code defines each of the terms “financial interest” and “private interest,” as follows:

FINANCIAL INTEREST. A right, title, legal or equitable share in an asset or transaction which will result in an increase or decrease in the income or net worth of a Metro Officer or family member of a Metro Officer, which does not arise from a primary or proximate action by a Metro Officer or a family member of a Metro Officer or where either no or only a *de minimis* benefit accrues to a Metro Officer or a family member of a Metro Officer.

PRIVATE INTEREST. Employment, board membership, or participant in the management and/or operations of an entity by a Metro Officer or a family member of a Metro Officer.

87. This provision of the Ethics Code is, admittedly, less than clear. By using the term “financial or private interest,” it is unclear whether this term was meant to modify only the phrase “business organization” (a term which immediately precedes it without a comma), or was intended to be an element of every claimed violation (that is, any such violation must be premised upon the existence of a “financial or private interest” of some kind, not just a business organization). This specific issue need not be decided here, however,

because the Respondent did in fact have a “financial or private interest” in his own business proprietorship, ABP Consulting which, among other things, was the entity through which he engaged in healthcare consulting in his private capacity, including registering for the September conference to which he was invited free of charge by CEOc’s York Day, and so presumably was the entity or business through which he discussed and sought becoming a consultant paid by CEOc; and ultimately did become so engaged.

88. Piagentini’s financial interest in his consulting business ultimately impaired his objectivity or independence as a public official, or had a reasonable appearance of having done so, during several of the actions taken on behalf of Healthcare CEOc, all significantly predating his recusal (and signing of the Statement of Work) dated December 1, 2023. This included Piagentini’s many actions championing CEOc’s grant proposal between January 2022 and December 2022, all of which are detailed in the findings above.

89. As a result, the Commission finds by clear and convincing evidence that Piagentini violated the Ethics Code, LMO 21.02(B), as set out in Count III.

COUNTS IV AND V

90. The next two counts of the Complaint are closely related to one another, arising under the same provision of the Ethics Code, LMO § 21.03(F), related to the proper disclosure of conflicts of interest. Count IV alleges that Piagentini violated this provision by failing to properly disqualify from a matter in which he held a financial or private interest; and Count V alleges

that Piagentini failed to properly *disclose* the existence of that “financial or private interest” (namely, the agreement to begin working for CEOc) when he ultimately did disqualify from the matter.

91. As to Count V, the Code requires that a member of Metro Council with a financial or private interest in any matter pending before Metro Council “shall disclose such financial or private interest on the records of the Metro Council . . .” (and shall disqualify himself from participation in the matter).

92. The Commission will here confine itself to consideration of that act alone—i.e., the disqualification which Piagentini stated at the meeting of Council on 12/1/23. It is clear beyond dispute that this disqualification did not remotely state “such financial or private interest” as was at issue for Piagentini. The entire statement was “Mr. President, sorry, as a point of order related to this particular, I’m gonna be abstaining. The reason for my abstention is a potential conflict of interest. I have to actually remove my name as a sponsor.” There is no mention of the fact that Piagentini has any private connection to the CEOc (the subject of the pending vote).

93. A few more observations from the evidence in this case are needed in order to understand the entirety of this failure to “disclose such financial or private interest on the records.” The Commission concludes that the failure to disclose⁷⁷ itself a complete violation of the Code separate from the failure to disqualify⁷⁸ also occurred without accident or mistake on Piagentini’s part and was intentional. The disqualification act, of course, follows months of

activity by Piagentini in his official capacity on behalf of this entity, and months of his interaction with them over the prospect of his employment with them. The statement comes after the final series of events which culminated in approval of the \$40 million CEOc grant on 12/1/22: a series of Budget Committee hearings through October and November 2022, for which Piagentini was one of two primary champions, and highly important, if not indispensable, to ensuring that the initiative moved on favorably to Council as a whole. The statement comes following the execution of a secrecy agreement (NDA) between CEOc and Piagentini about the very subject of their discussions and resulting contract. The recusal was made in the literal last second, after commencement of voting had already been called by the Council President.

94. The Commission concludes, by clear and convincing evidence, that not only was the disclosure faulty in that it did not disclose any portion of Piagentini's financial interest in the matter, but the information was also further withheld from this disclosure purposely by Piagentini. The overwhelming weight of evidence supports the conclusion that Piagentini's purpose was to ensure that the CEOc grant was a "done deal" before anyone found out about his conflict of interest. That was his motive, in turn, because the revelation of the conflict of interest would almost certainly have derailed the funding initiative, at least for a time, if not altogether, as confirmed by more than one Metro Councilperson witness.

95. While there is not a requirement that a failure to disclose be done intentionally in order to constitute a violation of the Code, this is a relevant matter for purposes of weighing a possible penalty, which is discussed elsewhere below.

96. As to Count IV and V, the defense argues that, because Piagentini's job contract was not finalized as of the evening of his 12/1/22 disqualification, he held no "financial interest or private interest" which to disclose or disqualify from. As discussed elsewhere above, however, the Commission concludes that the signed nondisclosure agreement, executed on or about 11/18/22, constitutes a "financial interest," because it gave a right to both parties (Piagentini and CEOc) against each other that bore some value, and was therefore a financial interest (see above, Count I). Further, and separately, the consummated employment contract bears a date of December 1, 2022. While Piagentini and York Day made a claim that the contract was merely backdated to 12/1/22 after having been signed later, this extremely self-serving claim made at trial, months later, is dubious at best and indicates an intent to begin the contract on 12/1/22 in the first place—that is, to recognize that Piagentini became an employee on that date (as expressly recited in the contract), and planned to collect valuable compensation from CEOc beginning on that date. For all these reasons, Piagentini held a "financial or private interest" with CEOc on the evening of 12/1/22 and failed to disclose such

interest on that evening (or at any time thereafter for over two months, until his updated financial disclosure of February 15, 2023).

COUNT VI

97. This count alleges that Piagentini may have violated his obligation to make timely public financial disclosures to Metro Government under LMO § 21.03, for failing to disclose his employment contract with CEOc between November 17, 2022 and February 15, 2023 (when he ultimately updated his written disclosures).
98. Metro Officers are required to disclose annually, under oath and in writing, sources of income over \$5000 during the previous calendar year. This disclosure must be updated during the year when a material change occurs, within thirty (30) days of the material change.
99. Piagentini concedes that his amended financial disclosure of 2/15/23 was late, and concedes that he filed it as a result of a reporter calling him about his employment with the CEOc, but testified that that was because he had forgotten, and the reporter's call jogged him memory.
100. The Commission concludes that there is not clear and convincing evidence that this particular violation was committed other than unintentionally as of February 15, 2023, and therefore hereby issues a finding of mootness with regard to any possible penalty.

COUNT VII

101. This count of the Amended Complaint alleges that Piagentini violated LMO § 21.02(A) by accepting admission to the private conference from Healthcare CEOc in September 2022, which was paid for by the latter, and bore a value of \$199 to \$499. It is alleged that these actions constituted obtaining or attempting to obtain an unwarranted privilege or advantage for himself by Piagentini's use of his official position.

102. This subsection of the Code is discussed in detail above with regard to Count II, which discussion will not be repeated here. This provision is violated when a Metro Officer uses his or her official government position with the specific intent to obtain such unwarranted privileges or advantages.

103. Piagentini's argument in defense of this allegation, rather than addressing the factual merits per se, is that it is charged under the "wrong" subsection of the Ethics Code. He points out that a 15-year old advisory memo of the Commission²², intended to provide guidance to Metro Officers with regard to "comped" attendance at conferences, discusses such issue as a potential violation of what is now *Subsection (C)*²³ of the Ethics Code (soliciting or accepting a thing of value under circumstances that could reasonably be inferred were for an improper purpose (i.e., for gaining access

²² It is not clear that this item was entered as an Exhibit. It is a document dated June 19, 2008, and appears on the Commission website.

²³ Counsel for the Respondent actually mis-cited Subsection (E) during his closing argument, which now relates to Metro Officers' performance of marriage ceremonies, following amendments and reorganization of the Code over the intervening 15 years. We will assume he meant to cite Subsection (C).

or influencing the officer). Therefore, he argues, he cannot be charged or adjudicated under *Subsection A* of the Code for such conduct.

104. The Respondent's argument, while somewhat novel, is simply misplaced. The fact that an advisory memo discussed the acceptance of free admissions as a possible violation of one section of the Ethics Code does not mean that, in a given specific instance, such an act cannot also violate another section of the Code—potentially at the same time. Such charging is an everyday occurrence in criminal law, for example. Therefore, the Commission turns to the specific evidence and elements of a violation of 21.02(A), which is the only real question here²⁴.

105. Respondent is liable for a violation of 21.02(A), in accepting admission to the OPTIMIZE Conference, if he did so in order to obtain or attempt to obtain an unwarranted privilege or advantage for himself. The Commission notes that, in a given instance, one Metro Officer could be guilty of violating 21.02(A) in accepting such a benefit, while another Metro Officer attending the very same conference may not be guilty, because the provision turns on individual intent.²⁵ Here, it is unlikely that the Respondent attended the OPTIMIZE conference for any purpose other than to benefit himself individually. Of the three Metro Officers offered free admission to this

²⁴ One could argue that Respondent should have been charged under 21.02(C) for this conduct as well, or perhaps as an alternative to 21.02(A). If this is an oversight, the Respondent has only benefited from it, because a violation of subsection (A) requires proof of specific intent—a higher standard than subsection (C).

²⁵ Respondent also argued in his defense that he only accepted the invitation to the conference rather than soliciting it, and therefore can not be guilty. It is clear enough from the express terms of the rule (to “secure” the unwarranted benefit) that the act of acceptance of an unwarranted benefit is enough to constitute a violation thereof, one need not have solicited the benefit in the first place.

healthcare conference, only Respondent attended. (The other two invited officers included Council President James, and Councilperson Winkler—the other sponsor of the CEOc grant request with Piagentini). Only Respondent was employed in the healthcare industry. Only Respondent was seeking further employment in the healthcare industry. Only Respondent had sought employment with this specific corporation, the CEOc. Respondent had already interacted with the principal host of the conference with regard to becoming employed by them, and the CEO of that entity testified that her organization was working on passing a proposal to create a consulting or lobbying position for which Respondent was the primary candidate.

Respondent even registered for the conference in the name of his privately held business, ABP Consulting²⁶. On the other hand, it is difficult to conclude what official business of Metro Government Respondent could advance by attending the conference, other than to further the Metro grant request of the host corporation—an activity the Commission has already determined was being pursued by Respondent in significant part for his own personal benefit (and a goal which Respondent already shared with the host corporation before the conference).

²⁶ This count may have been a closer call had the Respondent registered for this conference expressly in his capacity as a member of Metro Council. Instead, his registration shows that his primary goals at the OPTIMIZE conference included “Raise awareness about my company | Find customers | Learn about trends | new models of care | Learn about in-market solutions | Meet potential clients | Network and meet like-minded peers | Find a job or volunteer opportunity.” COMPLAINT EXHIBIT 13

106. As a result, under the totality of the evidence, the Commission finds by clear and convincing evidence that the Respondent violated Ethics Code 21.02(A), as alleged in Count VII of the Amended Complaint.

PENALTY

107. The Commission's determination that violations of the Ethics Code have occurred is not the end of this matter, as the confirmed violations must be reviewed for a penalty.

108. The penalty scheme of the Ethics Ordinance is set out in § 21.99 of the Code. The Ethics Code, in Section 21.99 of Louisville Metro Ordinances, states that upon a determination of a violation of any of the provisions 21.02, 21.03, 21.04, 21.08 or 21.09 by a Metro Officer, the Ethics Commission "shall impose one of the following penalties," and the lists possible penalties, based on the intent (or lack thereof) of the violator, and whether the violation was timely rectified.

109. The scheme of possible penalties turns largely on whether a violator is determined to have committed the offense intentionally or unintentionally, and whether the Officer took steps to rectify the matter. Beyond that, there are choices of different levels of penalty which must, by their nature, turn on the totality of the circumstances in the individual case, because the Code does not otherwise provide guidelines distinguishing them. Most pertinent to this case, for example, is that an intentional violation with no rectification could be grounds for a letter of censure; and/or for a written recommendation of

“removal, training or remediation.” In addition to the scheme of possible penalties ranging from findings of mootness, to written reprimands, to letters of censure, the Code also expressly states that for an intentional violation of LMO § 21.02 or 21.03,²⁷ such may:

(a) In the case of a non-elected Metro Officer, be grounds for other sanctions or actions by his or her appointing authority; or

(b) In the case of an elected Metro Officer, be grounds for removal under KRS 67C.143; or

(c) In the case of a Metro Council member, be grounds for other sanctions or actions by the Metro Council under its rules, or otherwise.

110. Accordingly, the Commission considers several factors bearing upon the choice of these highest penalties, in the following non-exclusive list. These include, but are not necessarily limited to:

- when involving wrongs touching upon public finances, the amount of money involved;
- the overall financial cost to the public for the infraction;
- the gain to the violator from the offenses;
- individual harm to the individual complainant;
- the extent to which the Officer did anything to rectify the problem, particularly before the initiation of Ethics Commission proceedings;
- the extent to which the Officer shows remorse or does not;
- damage to trust in government institutions.

111. The Commission has reviewed all the evidence in this matter, together with arguments of counsel, and has carefully weighed factors touching upon the appropriate penalty level. The amount of public funds involved in these

²⁷ As well as violations of other provisions, not at issue in this case

violations is around \$40 million, and the Commission is unaware of any previous Ethics Commission proceeding which remotely approaches this amount. The funds in question were extended in a grant to Metro Louisville by the federal government as part of an overall package funded by Congress, under two different presidents of separate political parties, intended to assist Metro Government and its regional economy to recover from the COVID-19 pandemic shutdown. In sum, the need was seen as drastic and immediate by all levels of government, and required much quicker action by federal and local governments than is normally attendant upon such enormous sums. The allocation of the grant, in turn, was spearheaded by Metro Council, rather than the outgoing term-limited mayoral administration. All of these factors together created opportunities, not only for mistakes or less-than-ideal funding decisions, but also for purposefully unethical activity by public servants so motivated. The Commission finds that the Respondent took advantage of a perilous moment in government finance and did so with the intent to personally enrich himself. The amount of funds involved is truly extraordinary and, as a result, required the utmost conscientiousness with regard to its handling. Instead, the opposite occurred. To the extent the issuance and receipt of these funds is in question as a result of Respondent's actions, the amount of harm is even more significant.

112. The findings with regard to certain counts of the Amended Complaint, asking whether these events simply present the "appearance of impropriety,"

or actual, intentional impropriety, lean heavily toward the latter. At each of various steps in the timeline of events occurring over the bulk of 2022, the Respondent either sought out, or was offered (and ultimately accepted), a personal benefit under circumstances that certainly has a very strong appearance was intended, at least in part, to ensure that his actions in his official capacity inured to the financial benefit of the other party. There were numerous instances at which the Respondent could have removed himself from the situation, either by recusing from further official action, or refraining from seeking the business opportunity in question, and yet he plowed forward in complete secrecy, at least until he had the desired benefit in hand, if not until he was “caught” by members of the media.

113. It further goes that the Respondent certainly did nothing to rectify any of the situation he created, with the possible sole exception of updating his Metro Office financial disclosures, months after obtaining the benefit in question, and even then, in apparent response to the realization that his scheme was about to become public knowledge.

114. The individual gain to the Respondent from this scheme was, of course, a \$240,000 per year consulting contract. The Respondent claims that this was less than the contract he had left with his previous employer (but offered no proof of that claim), and that this was less than a market analysis indicated the position would be worth. The Respondent also claims that he was entirely qualified for the position, even uniquely so. The Commission finds, from the

totality of the evidence, it is highly unlikely that the Respondent would have ever been offered this position but for his position in government; and specifically, his position with regard to the grant funds being sought. This is true regardless of his qualifications in the particular area concerned. As noted, the Respondent was in a position to know that this was the overall appearance presented, if not the actual intent, of the employer/grant seeker, and did nothing to rectify the situation. On the other hand, Respondent was not simply accepting money supported by no consideration—he appears to have some form of work requirements under the resulting consulting contract, however vague those requirements may be at this point from the evidence.

115. The individual complainant, Kevin Fields of the Louisville Central Community Center, did suffer an inchoate harm, in the sense that his testimony revealed a great deal of reasonably placed resulting mistrust in the fairness of Metro Council's handling of grant awards, at least in this instance. The Commission does recognize that Fields and his organization did not suffer an immediate financial harm, because there is no showing that his organization would have been awarded the funds in question, and he has disclaimed an intent to seek the funds, anyway. The Commission does here recognize the extraordinary act of good citizenry undertaken by Complainant Fields in filing and pursuing this complaint to its end and urges that any

interested member of government or the public pay close heed to the testimony he offered during these proceedings.

116. The Respondent shows little or no remorse for the situation he created, and certainly has done nothing to rectify the harm he has caused. The Commission does note that he had every right to contest the allegations against him and demand a trial and does not hold that against him in any way. Ultimately, however, the most recognition that he has offered that he has done anything wrong is the pat understatement to the effect that it ‘didn’t look good.’ The Commission would note that, in the realm of the Ethics Code, situations that “don’t look good” are exactly those from which a Metro Officer is expected to extricate himself or herself.

117. Finally, there is the matter of damage to trust in government institutions. Respondent’s actions and the resulting investigation and trial have occupied Metro Government and the public attention now for over ten (10) months. The findings this Commission has been forced by the evidence to make are bound to erode trust in government institutions in multiple spheres. Locally, Respondent has created a situation in which all of his fellow Council members (from all political parties)—all of whom by most accounts act above reproach in their duties to government— will now be forced to live under a cloud of distrust, in which the citizenry is left to wonder whether they are concocting equally self-aggrandizing schemes at the public’s expense. Indeed, the Respondent seems to not recognize the individual harm he

potentially has inflicted upon even his fellow sponsor of this grant initiative, who appears to have pursued this grant initiative for wholly acceptable purposes, and certainly without an expectation of individual largesse as a result.


118. Further, the executive administration of the city will now potentially be forced to reckon with the administrative nightmare of answering to the ultimate funder here (the federal government) for the handling of these funds, if not the handling (or even receipt in the first place) of future federal grants sought on behalf of the city. As for the federal government, these events have likewise stained public trust in the ability of the U.S. Government—under *either major political party*—to distribute funds in response to a national emergency without suspicion that they will potentially be misused²⁸.

119. The public deserves to know that their elected public servants are not involving themselves in schemes to individually enrich themselves, and to know that, when such an actor is caught, they will be dealt with appropriately. For all the reasons cited herein, under the totality of the evidence in this case, the Ethics Commission hereby **STRONGLY RECOMMENDS**, pursuant to Louisville Metro Ordinance 21.99(A)(1)(d) and 21.99(3)(b), that the Louisville Metro Council take the swiftest action

²⁸ Again, the Commission emphasizes that it will make no determination of whether the grant funds in question were ultimately distributed properly to an appropriately-deserving recipient, which is a determination which will be made by others. The point here is that the Respondent's actions have contributed to a public mistrust that such funds were not, or will not be in the future, handled properly.

consistent with its existing procedures and KRS 67C.143, to REMOVE Respondent Anthony Piagentini from the office of Metro Councilperson.

120. The Code recites that the Commission “shall” impose a fine for each violation, in an amount no less than \$25, and no more than \$500. LMO 21.99(A)(2). The Commission HEREBY IMPOSES FINES UPON THE RESPONDENT, pursuant to Louisville Metro Ordinance 21.99(2), in the amount of \$500 for each intentional violation, for a total of \$3000.



DEE PREGLIASCO

Chair, Louisville Metro Ethics Commission

Date: October 19, 2023

