

COMMONWEALTH OF KENTUCKY
LOUISVILLE/JEFFERSON COUNTY METRO COUNCIL COURT

IN RE: CHARGES AGAINST DISTRICT 19
COUNCILMAN ANTHONY PIAGENTINI

**EMERGENCY MOTION TO RESCIND AND ISSUE MODIFIED SUBPOENA
TO VERIZON WIRELESS**

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Comes the Respondent, Hon. Anthony Piagentini (“Councilman Piagentini”), through counsel, pursuant to Rule 7 of the Louisville Metro Council Removal Hearing Rules and Procedures (“Removal Hearing Rules”), moves the Louisville Metro Council Court to rescind the subpoena it issued to Verizon Wireless and issue a modified subpoena in its place. In support of said Motion, Councilman states as follows:

On December 13, 2023, the Charging Committee filed an Application seeking three (3) subpoenas. One of the requested subpoenas was to Verizon Wireless (“Verizon”). Except for the fact that the request was based on factual misrepresentations, Councilman Piagentini did not object to the requested subpoena because it was his understanding that the subpoena sought information from Verizon of telephone calls and text messages only *between* Councilman Piagentini and Tammy York Day from November 1, 2021 to December 2, 2022. Indeed, so much seemed to be apparent from the Application itself, which stated, “The subpoena to Verizon is necessary to establish the extent and timing of contacts *between day [sic] and Respondent over the time period in question,*” Application of the Charging Committee for the Issuance of Subpoenas at pg. 3 (emphasis added), and from the requested subpoena, as it referenced the specific cell phone numbers for Ms. York Day and Councilman Piagentini. As such, it appeared that the scope of the subpoena was limited to seeking production of records relating to text messages and phone calls only between these two (2) individuals.

On December 22, 2024, Council Court Chair Markus Winkler issued the subpoena to Verizon, directing it to “produce all records of calls and texts for numbers (502) 548-5094 and ((502) 909-4415, for the period November 1, 2021, to December 2, 2022.” In a handwritten correction, the Subpoena, as initially issued, required production of documents by Friday, January 5, 2024. However, on Friday January 5, 2024, counsel for the Charging Committee submitted a request to the Clerk of the Council Court for the Subpoena to be reissued because Verizon was concerned that there was handwriting on the Subpoena and the Subpoena did not state the title of the issuing officer, Chair Winkler. A revised Subpoena was reissued later that date, with the same scope as initially issued but this time with a compliance deadline of Wednesday, January 10, 2024.

Although it has been the understanding of Councilman Piagentini that the intended scope of the Subpoena is limited to seeking records of communications between himself and Ms. York Day, upon further review, the Subpoena as issued could be construed much more broadly to require production of any and all phone calls that Councilman Piagentini sent or received for the time period in question, even those which did not involve a communication with Ms. York Day. (And, similarly, the Subpoena could be construed to include production of any and all phone calls and text messages that Ms. York Day sent or received for the time period in question, even those which did not involve Councilman Piagentini.) For instance, broadly construed, the Subpoena would require production of calls between Councilman Piagentini and his wife, friends, other Metro Council Members, and so forth.

Councilman Piagentini objects to the subpoena as issued because such a broad scope would clearly be impermissible. As a general proposition, a subpoena may seek the production of documents only that are relevant. *See* CR 45.04 (“A subpoena that commands the person to whom it is directed to produce designated documents or tangible things ... may relate only to matters

within the scope of discovery permitted by Rule 26.02; CR 26.02 (“Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things.); *cf. Lane v. Maze*, 635 S.W.3d 840, 844 (Ky. App. 2021) (to be valid, a subpoena must, inter alia, (1) seek documents “that are evidentiary” and the application must be in good faith and not amount to a fishing expedition). In addition, under CR 45.02, a subpoenas may be quashed or modified if it is “unreasonable and oppressive.”

Communications between Councilman Piagentini and persons other than Ms. York Day, however, clearly are outside the scope of matters which are relevant to these proceedings. They would shed no information on the charges against Councilman Piagentini, as even the Charging Committee seems to have acknowledged in its Application for the Verizon Subpoena. Moreover, seeking records of phone calls and text messages with other persons would be so broad as to be unreasonable and oppressive. *Cf. Lane*, 635 S.W. 3d. 844 (holding that subpoenas issued seeking text messages sent by non-parties did not seek relevant information and amounted to a fishing expedition and were thus unreasonable”). Accordingly, Councilman Piagentini respectfully requests that the Chair of the Council Court (1) immediately rescind the subpoena that was issued on December 22, 2023 and reissued on January 5, 2024 and (2) reissue a modified subpoena that it is clearly limited to telephone calls and text messages between Councilman Piagentini and Ms. York Day as follows:

To produce all records of calls and texts between the numbers (502) [REDACTED] 94 and (502) [REDACTED] 15, for the period November 1, 2021, to December 2, 2022. To the extent the records are not capable of being produced without also producing records of calls and texts that are not between (502) [REDACTED] 94 and (502) [REDACTED] 15, records

of such calls shall be redacted from any production. The documents shall be delivered to the requesting attorney no later than _____, January __, 2024.

Furthermore, because the compliance deadline in the subpoena is January 10, 2024, Councilman Piagentini requests that the Council Court (1) expedite briefing on this matter by requiring the Charging Committee to file a response, if any, to this Motion by 11:00 a.m. on Tuesday, January 9, 2024 and (2) upon granting this Motion, direct the Clerk to notify Verizon (through the Verizon representative whom counsel for the Charging Committee has been communicating with concerning the subpoena) that the subpoena that was issued on December 22, 2023 and reissued on January 5, 2024 has been rescinded and a modified subpoena will be issued limiting its scope to text messages and telephone calls between the two (2) cell phone numbers referenced in the subpoena.

Respectfully submitted,

/s/ J. Brooken Smith

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CERTIFICATE OF SERVICE

I hereby certify that on **January 8, 2024**, I filed the foregoing Emergency Motion to Rescind and Issue Modified Subpoena with the Louisville/Jefferson County Metro Council Court and served it via e-mail upon the following:

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