

## THE WILMINGTON ETHICS COMMISSION

### IN THE MATTER OF THEOPALIS GREGORY

#### PUBLIC REPRIMAND

On April 11, 2019, Beth Moskow-Schnoll and William J. Burton, Special Counsel to the Wilmington Ethics Commission, and Respondent Theopalis K. Gregory, represented by E. Calvin Harmon, Jr., presented to the Wilmington Ethics Commission (the “Commission”) for its approval an Agreed Disposition to publicly reprimand Theopalis Gregory for his admitted violation of Section 2-340(f)(3) of the Wilmington City Code.

Whereby, on the same day, the Commission held a public meeting and by unanimous vote approved Respondent and Special Counsel’s Agreed Disposition.

WHEREFORE, the Wilmington Ethics Commission hereby issues the following Public Reprimand of Theopalis Gregory for his violation of Section 2-340(f)(3) of the Wilmington City Code:

#### **I. Background and Procedural History**

The reconstituted Commission<sup>1</sup> first met on November 14, 2017. During that meeting, the Commission acting on its own initiative<sup>2</sup> referred a confidential matter<sup>3</sup> for investigation

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<sup>1</sup> The Commission was dormant during the Williams Administration as of approximately 2015. In 2017, Mayor Michael S. Purzycki nominated new members of the Commission and City Council approved those nominations. The new members were necessary to establish a quorum, so the Commission could begin meeting again.

<sup>2</sup> W.C.C. § 2-345(a). The Commission had also received an *unsworn* email complaint regarding the same issue, but chose to act on its own initiative. It may only act upon *sworn* complaints submitted by a member of the public.

<sup>3</sup> Pursuant to the City Code, the investigation of this matter was confidential and discussions related to it took place in executive session. The hearing in this matter was publically noticed and held in the Council Work Room on the first floor of the Louis L. Redding City/County Building on April 11, 2019.

pursuant to Section 2-344(3) of the Wilmington City Code. The resolution referred the matter to the City Solicitor, Luke Mette, for investigation of the following:

[W]hether there has been one or more violations of the provisions of Section 2-340 and/or 2-341 of the Code of Conduct arising from the grant in the amount of \$40,000 to Student Disabilities Advocate Inc. (“SDA”), approved in January 2017, regarding (a) the authority for the manner in which the grant was awarded, (b) the appropriateness of the awarding of the grant on its merits, and (c) the ultimate specific use of the grant funds.

At the Commission’s meeting on December 5, 2017, the Commission received the City Solicitor, Luke Mette’s, recusal from investigation of the matter and determined it was appropriate to appoint a Special Counsel. At its next meeting on January 2, 2018, the Commission met with Beth Moskow-Schnoll and Evan W. Krick regarding their offer to serve as Special Counsel. Ms. Moskow-Schnoll is a partner at the Ballard Spahr law firm in Wilmington and a former Assistant United States Attorney for the District of Delaware. At the time, Mr. Krick was an associate with the Ballard Spahr firm in Wilmington. Later, Mr. Krick left Ballard Spahr and another of the firm’s associates, William J. Burton, assisted Ms. Moskow-Schnoll. The Commission retained Ms. Moskow-Schnoll and her firm as Special Counsel on a *pro bono* basis. As evident from the exhaustive investigation discussed herein that the Special Counsel performed, the Ballard Spahr firm at the direction of Ms. Moskow-Schnoll donated hundreds of hours of free legal work over many months. The Commission wishes to publically acknowledge and thank Ballard Spahr and its attorneys for their work on this matter. Their work and service was in keeping with the highest ideals and traditions of the Delaware Bar.

The Special Counsel’s investigation proceeded over the next eight months. As part of the investigation, the Special Counsel interviewed five witnesses and reviewed more than 15,000 pages of documents. After this extensive investigation, the Special Counsel, acting independently, filed a Complaint (the “Complaint”), alleging that Mr. Gregory violated Sections

2-340(f)(3) and 2-341(e) of the Wilmington City Code. The Special Counsel submitted the Complaint to the Commission on September 11, 2018.

Section 2-340(f)(3) of the City Code prohibits a city officer from utilizing the influence of his or her office for personal pecuniary gain or from unduly influencing the behavior of others. The Complaint alleged that Mr. Gregory, while President of City Council, used the influence of his office to direct a \$40,000 grant to Student Disabilities Advocates Inc. (“SDA”), an organization Mr. Gregory incorporated and for which he acted as program manager, and to pressure his successor, City Council President Hanifa Shabazz into approving the grant award to SDA—\$15,000 of which went to Mr. Gregory.

Section 2-341(e) of the City Code prohibits a city officer from using his or her public office to secure private advancement or gain. Again, the Complaint alleged that Mr. Gregory, while President of City Council, used the influence of his office to direct a \$40,000 grant to SDA, an organization Mr. Gregory incorporated and for which he acted as program manager, and to pressure his successor, City Council President Hanifa Shabazz into approving the grant award to SDA—\$15,000 of which went to Mr. Gregory.

The Commission met the same day the Special Counsel submitted the Complaint to it consider the Complaint. In public session at a public meeting on September 11, 2018, the Commission voted unanimously to “receive the Complaint from the Special Counsel and empower the Chair to proceed with service of the Complaint and the handling of procedural issues prior to a hearing on the Complaint.”

The Commission served the Complaint on Mr. Gregory’s then-counsel, Cleon L. Cauley, Sr. During the handling of prehearing matters, Respondent raised an issue as to whether the Commission’s vote to proceed to a hearing in this matter was sufficient. The argument stemmed

from an ambiguity in the Commission’s Rules after a special counsel submits a complaint as to whether the Commission needs to vote to accept the complaint and set the matter down for hearing or whether the Commission needs to vote as to whether there is reason to believe that a violation of the City Code has occurred as a predicate to setting the matter down for hearing.<sup>4</sup>

After receiving written briefs regarding this issue from Special Counsel and Respondent, the Commission held a Special Meeting on December 12, 2018. At that meeting during public session, the Commission unanimously approved the following motion: “to the extent any finding is necessary at this point in the investigation of the Special Counsel pursuant to Art. [III] R. 4 of the Rules of the Wilmington Ethics Commission, the Commission finds that there is reason to believe that a violation has occurred, specifically the two violations alleged in the complaint and further mov[ing] to empower the Commission Chair to handle prehearing procedural matters and to set the matter down for hearing.”

Despite the Commission being ready to proceed with a hearing in due course, the matter was further delayed. Mr. Cauley represented a defendant in a criminal matter that had a Superior Court trial in January and February 2019, which prevented a hearing from being scheduled in early 2019. Near the conclusion of the trial, Mr. Cauley informed the Commission that he was withdrawing as counsel to Mr. Gregory, because he was closing his law practice to pursue another opportunity. Mr. Gregory then retained E. Calvin Harman, Jr. as his counsel. With new counsel retained, a prehearing conference was held on April 4, 2019 and the hearing was set for April 11, 2019. Shortly before the hearing, the Special Counsel and Respondent began discussing resolution of the pending matter.

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<sup>4</sup> See Rules of the Wilmington Ethics Commission Art. III Rule 4. The Commission intends to address this ambiguity when it examines its rules for potential updates.

On the morning of the hearing, the parties presented an Agreed Disposition for the Commission's consideration. Mr. Gregory signed the Agreed Disposition and submitted it to the Commission. For the record, he stated that he entered into the agreement voluntarily after consultation with his attorney. He also acknowledged the accuracy of the facts to which he stipulated. Those facts are provided in the next section of this Public Reprimand.

## **II. Findings of Fact**

Special Counsel and Respondent agreed to and stipulated to the following facts as part of the Agreed Disposition. Those facts are reproduced below verbatim from the Agreed Disposition.

1. On September 13, 2016, the State of Delaware held its primary election. Among the individuals seeking to become the Democratic Party's candidate for mayor of Wilmington was Gregory, the then-president of Wilmington City Council. Gregory did not prevail in this primary election. In seeking the mayor's office in 2016, Gregory did not also run for City Council President or any other elected office. Thus, upon losing the primary election on September 13, 2016, Gregory knew that his last day in office would be January 3, 2017, the date of his successor's inauguration.

2. In the same 2016 primary election, Hanifa Shabazz ("Shabazz") – then the City Council District 4 representative – became the Democratic Party's candidate for City Council President. Shabazz had no opposition in the general election, and, on November 8, 2016, became the City Council President-elect, with an inauguration set for January 3, 2017.

3. As City Council President, Gregory, and then Shabazz (until the rules were changed) had control of a Discretionary Grant Fund (the "Fund"). The Fund consisted of \$250,000 each fiscal year. The City Council President could award that \$250,000, at his or her

sole discretion, within certain basic parameters (*e.g.*, the recipient must be a 501(c)(3) organization with a City business license that is current with all its obligations to the City).

4. Student Disabilities Advocate, Inc. (“SDA”) is a Delaware corporation with a Certificate of Incorporation dated January 20, 1996. Gregory is named in the Certificate of Incorporation as SDA’s registered agent and incorporator, and his law office address is provided as SDA’s registered office.

5. On October 13, 2016, approximately one month after losing the primary election but while he still held the office of City Council President, Gregory signed and submitted to the State of Delaware, Division of Corporations, a Certificate for Revival of Charter for SDA. This Certificate stated SDA carried on its business from January 24, 1996 until February 28, 1998, at which time its Charter became inoperative and void for failure to file an annual franchise tax report. Also dated October 13, 2016 is a SDA Annual Franchise Tax Report, in which Gregory is identified as SDA’s president.

6. On November 10, 2016, Marchelle Basnight (“Basnight”), then the Deputy Chief of Staff under Gregory, emailed Gregory and Shabazz stating that for Fiscal Year 2017 (July 1, 2016 - June 30, 2017), only \$43,400 remained from the \$250,000 “President Grant Funding” allocation. In his email response that same day (the “November 10, 2016 Email”), Gregory stated to Basnight and Shabazz that Basnight “did not make it clear that [\$]40,000 of the remaining [\$]250,000 is earmarked for SDA.”

7. After sending the November 10, 2016 Email, Gregory questioned Shabazz and Basnight on multiple occasions about the status of the SDA grant proposal. Shabazz felt “pressure” and a “constant push” from Gregory about granting the request. As a result, and utilizing documents Gregory provided to her, Basnight prepared and emailed Gregory and

Shabazz a “draft grant application” for the SDA program on December 29, 2016. Basnight’s December 29, 2016 email also provided a detailed list of steps SDA would need to take to obtain grant funding.

8. Knowing that he could not obtain money for SDA directly from the Fund because SDA lacked 501(c)(3) status, Gregory coordinated with the Police Athletic League of Wilmington (“PAL-W”). Thus, on or about January 4, 2017, Shabazz’s first full day as City Council President, PAL-W submitted a \$40,000 grant request for the SDA “pilot program.” Although the signatory of the document was PAL-W’s Executive Director, Wilbert “Bunny” Miller (“Miller”), Gregory provided Miller – and, ultimately, the City – the letter’s substance on behalf of SDA.

9. After January 3, 2017, when Shabazz was fully vested with the powers of the office of City Council President and Gregory was relieved of his duties, Shabazz evaluated the SDA application on its merits. Based on her review, Shabazz approved the grant to SDA.

10. On January 12, 2017, Basnight, now Shabazz’s Chief Financial Policy Advisor, emailed Miller, Gregory and Shabazz, directing Miller to the Wilmington City Council Grant Award (“the Grant Award”) she attached to the email. Basnight asked Miller to “sign the grant, and return [it] to [her] attention so that the funds can be disbursed next week.” Before Basnight sent this January 12, 2017 email, she had been informed by Shabazz that Shabazz would approve the Grant Award to SDA.

11. The Grant Award called for a \$40,000 grant to PAL-W for the SDA “pilot program” to be paid in two installments of \$20,000 each – the first on January 17, 2017 and the second on March 17, 2017. Although the Grant Award did not identify Gregory by name, it

included in its budget a \$20,000 payment to SDA's "Program Manager/Advocate." Throughout the relevant time period, Gregory was SDA's Program Manager.

12. Shabazz signed the Grant Award on or about January 17, 2017, thus finalizing its authorization. At the time she signed the Grant Award, Shabazz was aware that SDA was Gregory's "project," and in fact relied upon Gregory utilizing his abilities for SDA because of SDA's non-existent record of providing the services it claimed it would provide. Shabazz assumed Gregory would have a "hands-on" role in the operation, growth and development of SDA.

13. The first installment of \$20,000 was disbursed by the City to PAL-W on or about January 24, 2017. PAL-W, operating as a pass-through, paid the money over to SDA. On or about March 23, 2017, the City disbursed the Grant Award's second \$20,000 installment to PAL-W. Once again, PAL-W paid the money over to SDA.

14. Gregory personally receiv[ed] at least \$15,000 for his work as SDA's Program Manager from the \$40,000 SDA grant.

### **III. Nature of Misconduct**

Mr. Gregory admits the approved stipulated conduct by him constitutes a violation of Section 2-340(f)(3) of the Wilmington City Code.<sup>5</sup> That code subsection provides that "[n]o elected official, appointed official or city employee shall utilize the influence of his or her office or position for personal pecuniary gain, or to unduly influence the behavior of others, or to avoid the legal consequences of his or her personal conduct."

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<sup>5</sup> As part of the Agreed Disposition, Special Counsel moved to dismiss with prejudice the charge related to Section 2-341(e) of the Wilmington City Code. The Ethics Commission unanimously accepted the dismissal as part of the Agreed Disposition.



**IV. Public Reprimand**

Accordingly, having approved the Agreed Disposition, it is the decision of the Wilmington Ethics Commission to impose a Public Reprimand on Theopalis K. Gregory, and Theopalis K. Gregory is hereby publically reprimanded.

**IT IS SO ORDERED** this 25<sup>th</sup> day of April 2019.

/s/ William D. Johnston  
William D. Johnston  
Chair

/s/ Frank Hawkins  
Frank Hawkins  
Vice Chair

/s/ Denison H. Hatch Jr.  
Denison H. Hatch, Jr.  
Member

/s/ Katherine M. Klocko  
Katherine M. Klocko  
Member

/s/ Faith Meisinger-Peti  
Faith Meisinger-Petit  
Member

/s/ Melvin Phillips  
Melvin Phillips  
Member

/s/ Charles H. Toliver IV  
Hon. Charles H. Toliver, IV (Ret.)  
Member