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LOUISVILLE/METRO COUNCIL COURT DATE 8/29/11 TIME: 4:45pm COMMONWEALTH OF KENTUCKY
LOUISVILLE/METRO GOVERNMENT
JEFFERSON COUNTY

**IN THE MATTER OF THE REMOVAL CHARGES
AGAINST DISTRICT ONE COUNCILWOMAN JUDITH GREEN**

**MOTION FOR RELIEF RESPECTING DOCUMENT SUBPOENAS ISSUED TO
RESPONDENT GREEN AND TO ANDREA JACKSON**

INTRODUCTION

Respondent, Judy Green, has failed to comply with the July 21, 2011 document subpoena issued by the Council Court. Respondent Green was served with the subpoena on July 25, 2011. The subpoena orders her to produce documents that relate to the facts underlying the charges that have been alleged in support of her removal from office. Despite having been ordered to produce these documents, Respondent Green has refused to comply, communicating through her counsel that she has no intention of making any response to the subpoena. Her decision to defy the authority of the Council Court by refusing to participate in the hearing process warrants the entry of an order that finds her in default. In the alternative, and at minimum, her refusal to cooperate and comply with the subpoena warrants the entry of an order that bars her from introducing any documentary or other tangible evidence that would have come within the scope of the subpoena.

The Charging Committee also seeks the entry of order that directs Andrea Jackson to produce objective evidence that she has no documents that are responsive to the subpoena issued to her on July 21, 2011. Ms. Jackson served, and continues to serve, as the administrative assistant to Respondent, Judith "Judy" Green. The document subpoena issued to Jackson asked

her to produce documents to which she certainly must have access given her job. Specifically, she has been asked to produce emails and other documents that relate to the Green Clean Team and 100 Black Men – categories of documents that are also fundamental to the charges at issue. In response, Jackson contends that she has no documents that responsive to the subpoena. Given her job as assistant to Respondent Green and her on-going access to her work computer and files, it is simply incredible for Jackson to contend that she has no ability to access the documents that she has been ordered to produce. Her assertion, in the absence of some sort of objective proof, can be interpreted as nothing other than an effort to minimize, if not to thwart, her obligation as a witness and to refuse to cooperate in the proceedings that are before the Council Court. Given these circumstances, the Charging Committee also seeks the entry of an order that directs Jackson to cooperate in these proceedings and to substantiate her assertion with objective evidence of her alleged lack of access to any responsive documents.

BACKGROUND

On July 21, 2011, having reviewed the Charging Committee's subpoena application, and in accordance with Rule 15 of Removal Hearing Rules and Procedures, the Council Court issued a subpoena to Respondent Green. The subpoena required Green to produce all of the following documents that are in her possession, custody or control:

1. All tax returns for 2009 and 2010;
2. All documents evidencing any alleged loan and repayment of loan in connection with the Green Clean Team and any payments, timesheets or receipts regarding the workers;
3. All emails concerning the Green Clean Team or 100 Black Men;
4. All photos or awards relating to the Green Clean Team or monies granted to 100 Black men;

5. All bills and receipts associated with the credit card issued in Andrea Jackson's name; and
6. All documents evidencing the use of Kroger gift cards purchased with taxpayer funds;

See Exhibit A to document subpoena. A true and accurate copy of the subpoena and Exhibit A is attached here at Tab 1. The subpoena ordered Respondent Green to produce these documents on or before August 24, 2011. *Id.* Respondent Green was served with the subpoena on July 25, 2011. *Id.* She has refused to respond. That refusal warrants the entry of an order that finds her in default.

Similarly, on July 21, 2011, the Council Court issued a document subpoena to Andrea Jackson. That subpoena ordered Jackson to produce the following documents that were within her possession, custody or control:

1. All documents evidencing any alleged loan and repayment of loan in connection with the Green Clean Team and any payments, timesheets or receipts regarding the workers;
2. All emails concerning the Green Clean Team or 100 Black Men;
3. All documents evidencing the use of Kroger gift cards purchased with taxpayer funds.

A true and accurate copy of the subpoena and Exhibit A is attached here at Tab 2. The subpoena ordered Jackson to produce these documents on or before August 24, 2011. *Id.* Jackson was served with the subpoena on July 27, 2011. *Id.* In response to the subpoena, on August 22, 2011, Ms. Jackson provided a brief typewritten statement that she has no documents that are responsive to the subpoena. See Statement (attached at Tab 3). Given her position as administrative assistant to Respondent Green, Jackson's assertion is incredible. For this reason, the Charging Committee seeks the entry of an order that directs Jackson to cooperate in these

proceedings and to substantiate her self-serving statement with objective evidence to prove that no responsive documents are within her possession, custody or control.

ARGUMENT

Rule 15 of the Louisville Metro Council Removal Hearing Rules and Procedures provides the Council Court with the power to issue subpoenas after review and approval of an application by either the Charging Committee or the Respondent:

Upon a showing or proper need at the request of the Charging Committee or the Respondent, the Council Court shall issue subpoenas over the signature of the Chair to compel the attendance of witnesses or the production of documents or other documentary evidence in conjunction with the Council Court's hearing on the removal charges.

Louisville Metro Council Removal Hearing Rules and Procedures 15 (hereafter "Rem. R & P."). Rule 16 sets out the evidentiary standards governing the removal process. It states that the "[p]rocedural and evidentiary rules will be those generally accepted in Kentucky for administrative proceedings." Rem. R & P. 16.

Kentucky Revised Statute 13B.080 sets out the powers and authority of an administrative hearing officer with respect to the conduct of an administrative hearing process, i.e. "the rules generally accepted in Kentucky for administrative proceedings." Subsection 6 of KRS 13B.080 states that if a party fails to attend or participate in any

stage of the administrative hearing process, or fails to comply with the orders of a hearing officer, the hearing officer may adjourn the proceedings and issue a default order granting or denying relief as appropriate . . . having due regard for the interests of justice and the orderly and prompt conduct of proceedings.

KRS 13B.080(6). Here, the Council Court's function is that of a hearing officer in that it will render the ultimate decision at the end of the removal proceedings. Thus, in accordance with the Removal Rules and Procedures, coupled by KRS 13B.080, the Council Court is invested with

broad authority to grant appropriate relief for Respondent Green's failure to comply with the subpoena issued to her, which constitutes both a failure to comply with an order as well as a refusal to participate in these proceedings.

The broad authority given to the Council Court in conducting this removal hearing is similar to the power and authority of the Kentucky Courts to make decisions and render appropriate relief, including the imposition of sanctions and orders of contempt, that are contained in Kentucky Civil Rule of Procedure 37.02 and 45.06. Rule 45.06 governs a person's failure to comply with a subpoena and gives the Court the power to punish as contempt of the court the disobedience of a subpoena: "Disobedience of a subpoena or a refusal to be sworn or to answer as a witness may be punished as a contempt the court in which the action is pending." Rule 45.06. "The power of the courts to punish for contempt is one of the powers inherently belonging to the judiciary." *Breidenbach v. Grimm*, No. 2006-CA-000695-MR, 2007 WL 2332718 at *3 (citing *Arnett v. Meade*, 462 S.W.2d 940, 947 (Ky. 1971)). "The purpose of civil contempt authority is to provide the courts with a means of enforcing their judgments and orders, and trial courts have almost unlimited discretion in applying this power." *Smith v. City of Loyall*, 702 S.W.2d 838, 838-39 (Ky. Ct. App. 1986).

Similarly, Rule 37.02 of the Kentucky Rules of Civil Procedures invests Kentucky's courts with the power to order relief and issue sanctions, including summary relief for the moving party, based on a party's refusal to obey a court order or to permit discovery. Specifically, the rule provides that the court may "render[] a judgment by default against the disobedient party." Rule 37.02(c). Rule 37.02 also provides that the court may enter an order that refuses "to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters into evidence." Rule 37.02(b). Like

these rules, the Removal Rules coupled with KRS 13B.080 provide the Council Court with the authority to enter orders that afford for the orderly cooperation by the parties and witnesses in the administrative hearing for the removal of Respondent Green.

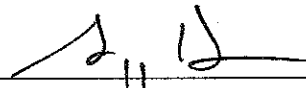
Here, Respondent Green has flatly refused to respond to the document subpoena issued by the Council Court. That willful defiance of, and disrespect for, the Rules, the authority of the Council Court and the public whom she serves warrants the entry of an order that holds her in default. The Charging Committee respectfully requests the entry of such an order. In the alternative, should the Council Court be disinclined to enter a default, the Charging Committee seeks the entry of an order that bars Respondent Green from introducing any documents or tangible evidence that would have fallen within the scope of the July 21, 2011 document subpoena.

Andrea Jackson has also apparently refused to comply with the document subpoena issued to her on July 21, 2011. There is no dispute that Jackson was served, and there is no dispute that she was Respondent Green's administrative assistant during the time period of events concerning the Green Clean Team and 100 Black Men that have given rise to the removal charges. Accordingly, the subpoena issued to Jackson ordered her to produce documents over which she has control and which relate to the Green Clean Team and 100 Black Men, including but not limited to any email correspondence. *See* Subpoena at Tab 2. Jackson claims to have no such responsive documents. *See* Statement at Tab 3. Her assertion utterly lacks credibility. Jackson continues to work in her same capacity at the Louisville Metro Council. Metro Council members, including Green, frequently communicate through electronic mail as well as other written documents. Jackson has failed to offer any objective proof that she no longer has access to any such documents. Instead, given her position as assistant to Green, it appears that her

statement is no more than a thinly-veiled attempt to minimize, if not to thwart, her role as a witness in these proceedings and other otherwise refuse her cooperation in these proceedings. Accordingly, the Charging Committee seeks the entry of an order that directs Jackson to proffer some objective evidence to establish her self-serving (or is it a Judy Green serving?) contention that she has no responsive documents.

A proposed order is attached.

Respectfully submitted,

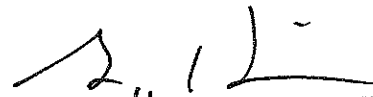


R. Gregg Hovious
Fultz Maddox Hovious & Dickens, PLC
101 S. Fifth Street, 27th Floor
Louisville, Kentucky 40202
(502) 588-2000
(502) 588-2020 (facsimile)
Counsel for the Charging Committee

CERTIFICATE OF SERVICE

I hereby certify that on August 29, 2011, I served a copy of the forgoing by facsimile and by first class, United States Mail, postage pre-paid, upon the following:

Derwin L. Webb
WEBB LAW OFFICES
455 South 4th Street, Suite 382
Louisville, Kentucky 40202
(502) 583-6978
(502) 583-6977 (facsimile)
Counsel for Councilwoman Judith "Judy" Green



Counsel for the Charging Committee

Louisville Metro Council Court



Commonwealth of Kentucky
Louisville/Metro Government
Jefferson County

SUBPOENA

In the Matter of the Removal Charges Against Councilwoman Judith Green

1. The Louisville Metro Council Court to: Dr. Judith "Judy" Green

whose address is: 749 S. 43rd Street
Louisville, KY 40211

*3050 W. BROADWAY
778 2031
742-4999*

2. You are commanded to appear before/produce documents/or other tangible evidence for use at:

Louisville Metro Council Court
Louisville Metro Council Chambers
601 West Jefferson, 3rd Floor
Louisville, Kentucky 40202

Date: September 12, 2011

Time: 12:30 a.m./(p.m.)

3. To appear /testify/ produce on behalf of: The Charging Committee The Respondent, Councilwoman Judith Green.

4. You are required to: testify
 produce documents/and/or other tangible items

Please produce, ~~on or before August 10, 2011~~, the documents listed on Exhibit A to this subpoena by delivering legible copies of those documents to R. Gregg Hovious, Fultz Maddox Hovious and Dickens PLC, 101 S. Fifth Street, 27th Floor, Louisville, KY 40202. *Please produce the documents on or before August 24, 2011 at 9:00 a.m.*

5. *Billy D. Chan*
Signature & Title of Issuing Officer

Date 7-26-11

R. Gregg Hovious
Name of Requesting Party

Telephone No. (502) 588-2000

PROOF OF SERVICE

6. Served by delivery of a true copy to: x Judith Green

or reason not served: @ 3050 W. Broadway

This 7-25-11 day of July, 2011

By Officer: T. Condit

Title KY PI #0118

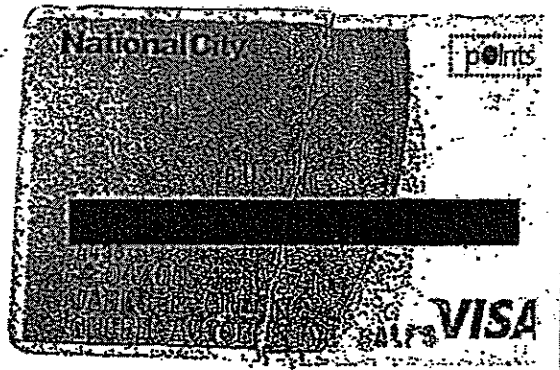
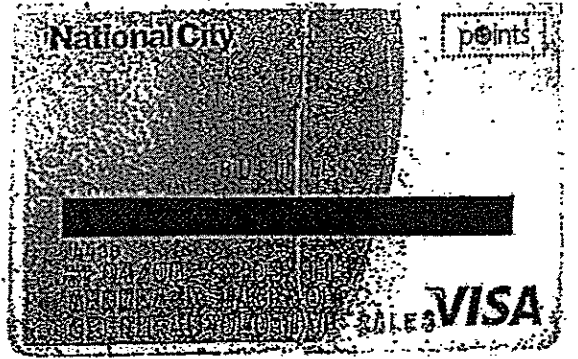
EXHIBIT A TO SUBPOENA OF DR. JUDITH "JUDY" GREEN

Please produce, on or before August 24, 2011 at 9:00 a.m., the following documents:

- 1) All tax returns for 2009 and 2010 (see definition of "Family Member" in Standards of Conduct);
- 2) All documents evidencing any alleged loan and repayment of loan in connection with the Green Clean Team and any payments, timesheets or receipts regarding the workers;
- 3) All emails concerning the Green Clean Team or 100 Black Men;
- 4) All photos or awards relating to the Green Clean Team or monies granted to 100 Black Men;
- 5) All bills and receipts associated with the credit card issued in Andrea Jackson's name (copy of card attached here); and
- 6) All documents evidencing the use of Kroger gift cards purchased with taxpayer funds.

Please produce these documents by delivering legible copies to the following:

R. Gregg Hovious
Fultz Maddox Hovious and Dickens PLC
101 S. Fifth Street, 27th Floor
Louisville, KY 40202



Louisville Metro Council Court



Commonwealth of Kentucky
Louisville/Metro Government
Jefferson County

SUBPOENA

In the Matter of the Removal Charges Against Councilwoman Judith Green

1. The Louisville Metro Council Court to: Andrea Jackson

whose address is: 8505 Old Boundary Rd.

Louisville, KY 40291

2. You are commanded to appear before/produce documents/or other tangible evidence for use at:

Louisville Metro Council Court
Louisville Metro Council Chambers
601 West Jefferson, 3rd Floor
Louisville, Kentucky 40202

Date: September 12, 2011

Time: 12:30 a.m./p.m.

3. To appear /testify/ produce on behalf of: The Charging Committee The Respondent, Councilwoman Judith Green.

4. You are required to: testify
 produce documents/and/or other tangible items

Please produce, ~~the documents listed on Exhibit A~~, the documents listed on Exhibit A to this subpoena by delivering legible copies of those documents to R. Gregg Hovious, Fultz Maddox Hovious and Dickens PLC, 101 S. Fifth Street, 27th Floor, Louisville, KY 40202. Please produce

the documents on or before August 24, 2011 at 11:00 a.m.

5. [Signature]
Signature & Title of Issuing Officer

Date 7-21-11

R. Gregg Hovious

Name of Requesting Party

Telephone No. (502) 588-2000

PROOF OF SERVICE

6. Served by delivery of a true copy to: Andrea Jackson

or reason not served: _____

This 27th day of July, 2011

By Officer: [Signature] Title Deputy Clerk

EXHIBIT A TO SUBPOENA OF ANDREA JACKSON

Please produce, on or before August 24, 2011 at 11:00 a.m., the following documents:

- 1) All documents evidencing any alleged loan and repayment of loan in connection with the Green Clean Team and any payments, timesheets or receipts regarding the workers;
- 2) All emails concerning the Green Clean Team or 100 Black Men;
- 3) All documents evidencing the use of Kroger gift cards purchased with taxpayer funds.

Please produce these documents by delivering legible copies to the following:

R. Gregg Hovious
Fultz Maddox Hovious and Dickens PLC
101 S. Fifth Street, 27th Floor
Louisville, KY 40202

Response to the request of R. Gregg Hovious

1. I have no documents evidencing the alleged loan or repayment of loan in connection with the Green Clean Team nor do I have any documents evidencing any payments, timesheets, or receipts regarding the workers.
2. I have no emails concerning the Green Clean Team or 100 Black Men.
3. I have no documents evidencing the use of Kroger gift cards

Submitted by: Andrea E. Jackson 8/22/11