

## THE WILMINGTON ETHICS COMMISSION

### *IN THE MATTER OF*

### *COUNCIL MEMBER VA'SHUN "VASH" TURNER*

### *COMPLAINT 2019-03*

#### PUBLIC REPRIMAND AND ADMONITION

On November 10, 2020, the Wilmington Ethics Commission (the "Commission") held a public hearing through Zoom on Complaint 2019-03, *In the matter of Council Member Va'Shun "Vash" Turner* to determine whether Council Member Turner violated § 2-339(e)(3) of the Wilmington City Code. Stephen P. Wood, Esq. served as Special Counsel<sup>1</sup> to the Wilmington Ethics Commission and prosecuted the matter. Despite receiving and acknowledging notice of the hearing, Council Member Turner did not appear at the hearing. The hearing proceeded *in absentia* without Council Member Turner. At the conclusion of the hearing, the Commission deliberated publicly and by unanimous vote (7-0) found that Council Member Turner violated § 2-339(e)(3) of the Wilmington City Code. Again, by unanimous vote, the Commission determined to issue a Public Reprimand and Admonition to address the violation.

WHEREFORE, the Wilmington Ethics Commission hereby issues the following Public Reprimand and Admonition of Council Member Turner for his violation of § 2-339(e)(3) of the Wilmington City Code:

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

On November 26, 2019, City Auditor Terence Williams filed a sworn and proper Complaint with the Commission, designated by the Commission as Complaint 2019-03 ("the Complaint") that alleged that City Council Member Va'Shun Turner, and possibly other

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<sup>1</sup> Special Counsel Wood served in this role on a *pro bono* basis. He and his firm, McCarter & English, LLP, are commended for his service to the City of Wilmington in this matter.

members of the City Council, violated one or more enumerated provisions of §§ 2-339, 2-340 and 2-341 of the City Ethics Requirements. The Complaint alleged, in part, that Council Member Turner violated City Code § 239(e)(3), which provides that “[n]o city employee shall be penalized, disciplined or dismissed by any other city employee or appointed or elected officer for performing his or her duties in accordance with the city charter, the city Code or established city policy.” On December 10, 2019, the Commission adopted a confidential resolution pursuant to City Code § 2-344. This resolution, as subsequently amended, referred the following matter to Special Counsel for investigation: “whether there has been one or more violations of the provisions of Wilmington City Code Sections 2-339(e)(3), 2-340(f), and 2-241(i) arising from the conduct alleged in Complaint 2019-03.” Pursuant to the City Code and the Rules of the Wilmington Ethics Commission (the “Commission Rules”), the Commission appointed Steven P. Wood., Esq. as its Special Counsel to investigate the matter.<sup>2</sup>

Special Counsel Wood proceeded with an investigation into the matter. The investigation was delayed by the COVID-19 pandemic. At the conclusion of the investigation, Special Counsel Wood provided the Commission with a report and Statement of Alleged Violation for Council Member Turner. The Commission met on August 26, 2020 to consider the Statement of Alleged Violation. “Assuming all well-pleaded facts as true,” the Commission determined that there was reason to believe a violation of City Code § 239(e)(3) had occurred, and the Commission voted to proceed to a hearing in the matter in accordance with the Commission Rules.<sup>3</sup>

On August 27, 2020, the Commission emailed and served via registered mail the Statement of Alleged Violation on Council Member Turner. The delivery receipt confirmed the

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<sup>2</sup> This procedural information is drawn from the Statement of Alleged Violation.

<sup>3</sup> Commission Rule Art. III(5).

delivery by registered mail on August 31, 2020. Accordingly, Council Member Turner's response to the Statement of Alleged Violation was due on September 17, 2020.<sup>4</sup> The Commission made Council Member Turner aware of this deadline by email on September 3, 2020, and reminded him of the deadline on September 16, 2020. Council Member Turner did not respond to the Statement of Alleged Violation. Commission Chair William D. Johnston sent a letter by U.S. Mail and email to Council Member Turner stating that he had not timely submitted a response to the Statement of Alleged Violation and extending the deadline to respond to October 2, 2020. Chair Johnston further stated that a hearing date would be set after October 2, 2020 in accordance with the Commission Rules.<sup>5</sup> Again, Council Member Turner did not respond to the Statement of Alleged Violation. Indeed, Council Member Turner had not responded to *any* of the communications from the Ethics Commission. On October 16, 2020, Chair Johnston set a prehearing conference for November 2, 2020 and he set the hearing in this matter for November 10, 2020 at 2:00 p.m. The Commission provided notice of both dates to Council Member Turner by email and registered mail.

Chair Johnston held a prehearing conference on November 2, 2020. Special Counsel Wood and Council Member Turner appeared<sup>6</sup> at the conference by Zoom. This was the first time Council Member Turner responded in any way to the many communications the Commission sent him in this matter. At the conference, the Chair discussed with the parties the procedure for the hearing on November 10, 2020, including anticipated witnesses and exhibits. In addition, he addressed the parties' questions. The parties agreed to exchange exhibits and objections in advance of the hearing. Subsequently, Special Counsel Wood provided his exhibits

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<sup>4</sup> Commission Rule Art. IV(6).

<sup>5</sup> Commission Rule Art. IV(7).

<sup>6</sup> Council Member Turner appeared without legal counsel, as is his right.

to Council Member Turner in advance of the hearing. He did not receive any objections to that which he submitted from Council Member Turner. Nor did Council Member Turner submit any documents or evidence of any kind relative to the charges being pursued against him.

## **II. Continuance Request**

On November 9, 2020 at 2:31 p.m., less than 24 hours before the publicly-noticed hearing was scheduled to proceed, Council Member Turner requested a continuance. He sent an email, which reads in full as follows:

Good afternoon Ethics commission and Bill  
I am not sure if your [sic] aware that Council has a hearing scheduled for 2pm on the 10th. I ask that [sic] will reschedule your Ethics hearing. If you can't reschedule I am informing you I will not be in attendance. Thank you Councilman Vash Turner<sup>7</sup>

The Ethics Commission Counsel reviewed City Council's publicly-available calendar. The only City Council meeting scheduled for November 10, 2020 was a 5:00 p.m. Finance and Economic Development Committee Meeting. Council Member Turner is not a member of the Committee. Counsel provided this information to the parties and requested that Council Member Turner clarify his request.<sup>8</sup> Council Member Turner responded as follows:

Samuel L. Guy v. City of Wilmington, Case No. N20C-10-058.  
This is at 2pm tomorrow. I will be on this zoom tomorrow.<sup>9</sup>

Through research, Ethics Commission Counsel learned that the matter was before Resident Judge Witham of the Superior Court, and that there would be a motion hearing at 2 p.m. on November 10, 2020. Ethics Commission Counsel contacted Resident Judge Witham's Chambers and was advised that Council Member Turner was not required to be at the hearing. Chair

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<sup>7</sup> Email from Council Member Turner to [Ethics@wilmingtonde.gov](mailto:Ethics@wilmingtonde.gov).

<sup>8</sup> Email from Ethics Commission Counsel to Council Member Turner dated November 9, 2020.

<sup>9</sup> Email from Council Member Turner to [Ethics@wilmingtonde.gov](mailto:Ethics@wilmingtonde.gov).

Johnston advised the parties that the Commission's hearing would not be continued<sup>10</sup> and stated that he would provide a more detailed ruling on the record during the hearing, which he did.

In short, Chair Johnston found that Council Member Turner did not provide good cause for the hearing to be continued. Council Member Turner's purported reason for the request was that he wanted to attend a Superior Court motion hearing in the matter *Guy v. City of Wilmington*. Council Member Turner was not a party to the lawsuit. He did not provide any reason that he needed to attend the hearing, and Resident Judge Witham's Chambers advised that he was not required to attend. In essence, Council Member Turner created his own conflict and chose not to attend the Ethics Hearing into his own conduct that had been publicly-noticed and for which he had had notice for nearly a month. The hearing in connection with this matter proceeded as scheduled without Council Member Turner in attendance.

### **III. Findings of Fact**

During the November 10, 2020 hearing, Special Counsel Wood presented eight exhibits and one witness in support of the allegations against Council Member Turner. The first seven exhibits were documents, emails and letters, related to legislation regarding the auditing of accounts of Wilmington Housing Partnership Corporation ("WHP"). Special Counsel Wood summarized those documents for the Commission during the hearing. The eighth exhibit was the video recording of the November 14, 2019 City Council Community Development and Urban Planning Committee Meeting. Special Counsel Wood played the pertinent portions of the recording for the Commission during the hearing. All of the exhibits were admitted into evidence without objection. Additionally, Auditor Williams testified before the Commission.

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<sup>10</sup> Email from Ethics Commission Counsel to Council Member Turner dated November 10, 2020.

These findings of fact are based on the documentary evidence, the video, and the Auditor's testimony.

WHP is a nonprofit entity that focuses on affordable housing in Wilmington. In 2018 and 2019, WHP ran into substantial financial problems. The City's efforts to address those issues resulted in political controversy among Mayor Michael S. Purzycki, City Treasurer Velda Jones-Potter, and City Council.

In September 2019, the City Treasurer and Council Member Ernest "Trippi" Congo II worked on a draft resolution to encourage the City Treasurer to conduct a forensic audit of WHP. That resolution was submitted by City Council staff to the Law Department for review. On October 2, 2019, the Law Department advised that the City Charter did not empower the City Treasurer to conduct such an audit. The next day, Treasurer Jones-Potter sent Council Member Congo and Council Member Samuel L. Guy a new draft resolution. That resolution directed the City Auditor to conduct a forensic audit of WHP. Again, Council staff submitted the draft resolution to the Law Department for review. On October 7, 2019, the Law Department again advised that Council did not have authority to direct the City Auditor to conduct such an audit and suggested that the resolution be revised to recommend that the Auditor conduct the audit. That advice was provided to Council staff and to Council Member Congo. There was no evidence presented as to whether the advice was more widely disseminated to Council Members. Despite the Law Department's advice, on October 17, 2019, Council Member Congo introduced the unrevised Resolution 19-053 directing the Auditor to conduct the forensic audit. City Council passed the Resolution the same day.

On November 6, 2019, Auditor Williams wrote to City Council President Hanifa Shabazz, copying all other members of City Council, regarding the Resolution. He stated, in pertinent part, the following:

Work performed by the Auditing Department provides independent and objective analysis and information so that municipal functions and services are provided to the public effectively, efficiently, economically, and ethically. In furtherance of that charge, and as required by Ch. 2, Art. VII of the City Code, the Auditing Department, with the input of the Audit Review Committee, creates an annual audit plan and schedule for the auditing activities of the departments, offices, boards, and commissions of the City of Wilmington consistent with the priorities and resources of the department. While the Auditing Department is empowered to perform special or spontaneous audits and other engagements outside of its annual audit plan and scheduled (*see* City Charter § 6-300(c) and City Code §§ 2-673-2-2-674), its resources are finite and, as a result, independent judgment and discretion consistent with applicable professional standards are required in the exercise of the Auditing Department’s authority to perform such engagements.

Council has purported to direct the Auditing Department to engage an external auditor without providing additional funds as required by City Code § 2-675 and without regard for or otherwise considering the “budget limitations” on the Auditing Department as required by City Code § 2-683(a). Furthermore, the Resolution purports to impose terms of an engagement which are inconsistent with Generally Accepted Government Auditing Standards by impairing the independence of the Auditing Department by placing unreasonable time-based and financial restrictions on its work.

In addition, former-City Auditor and Certified Public Accountant (CPA), Earl Jeter, is performing a reconstruction of the financial records of WHP. Upon completion of Mr. Jeter’s work, another independent CPA Firm will complete the annual financial audits for WHP covering their last two fiscal years. Thereafter, the Auditing Department will review the same and, exercise its independent judgment and discretion consistent with applicable professional standards, in order to determine whether a forensic audit is warranted. Until that time, however, a forensic audit is not deemed necessary.

Therefore, under the authority granted in Art. VI, Ch. 3 of the City Charter and Ch. 2 Art. VII of the City Code, and based on the exercise of my own independent judgment and discretion, the Auditing Department is declining Council’s request for an engagement related to the subject matter of, and on the terms set forth in, the Resolution. The Auditing Department, of course, retains its authority to audit, examine, or otherwise review the matter in the future.<sup>11</sup>

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<sup>11</sup> Ex. 4 at 1-2.

The City Solicitor later informed Council that the Auditor's letter was "entirely consistent with the legal advice of the Law Department."<sup>12</sup>

On November 14, 2019, the City Council's Community Development and Urban Planning Committee held a televised committee meeting. Auditor Williams appeared at the meeting to provide an update on his recently released report related to WHP. At the conclusion of his remarks, questioning by Council Members turned to Resolution 19-053. Council Member Turner stated:

So just like we approved you, you need to sit down and do what you need to do in the best interest what we already voted on. Or what I'm gonna say, what I'm going to do is put a resolution up until you do what we say, to reduce your salary to a dollar. So, if you don't want to do what the majority say, then we'll reduce your salary to a dollar and see if that motivates you to do what we said.

Auditor Williams reiterated the points from his November 6, 2019 letter. He tried to explain that Council could request that he perform certain audits, and that, in responding to that request, he had to exercise his independent judgment to determine "the City's best interests" from an auditing perspective. He also opined that they were discussing a resolution from Council, not something legally binding on him. Council Member Turner did not relent. Rather, he stated:

Until we get it resolved I'm gonna tell staff to write me up a resolution for a dollar of your salary until we get it resolved and we go ahead and move forward. So, we all need to get to the table, while you're making a dollar, until we get it resolved, and then we'll put you back to the salary that need to be done.<sup>13</sup>

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<sup>12</sup> Ex. 6 at 3 (November 25, 2019 letter from Robert M. Goff, Esq. to Marchelle Basnight, Chief of Staff, Wilmington City Council, copying all members of Council and the City Auditor).

<sup>13</sup> Other Council Members also made comments critical of the Auditor. Council Member Guy told him, "we've given you an assignment and we expect you to perform it." Council Member Gray stated, "your opinion is overriding someone who has the authority to give you a suggestion that I think you should take. It may have consequences. I don't know what they are yet." Council Member Congo continued, "we are going to have to decide what we are going to do about Mr. Williams's insubordination." Special Counsel Wood did not provide the Commission with a Statement of Alleged Violation regarding any of these Council Members. Presumably, he determined that their comments did not rise to the level to constitute a penalty or discipline under



Council Member Turner followed through on his threat by requesting the resolution. Later that evening, he emailed Council staff requesting, “Can you have staff work on a resolution or ordinance to reduce the Auditor salary for insubordination of council legislation.”<sup>14</sup>

Understanding the practical impact of these threats on Auditor Williams requires some background on the Auditor, which he provided through his sworn testimony at the hearing. Auditor Williams started his employment with the City of Wilmington in November 2017. Previously, he had been working in the private sector and living in Pennsylvania. He moved to Wilmington with his wife and children to take the job as City Auditor.

Auditor Williams explained the impact of Council Member Turner’s statements. He told the Commission that he was very upset after Council Member Turner threatened to reduce his salary to one dollar. He explained that he had just purchased a new house and had one child in college and another in an independent school. Given the threat, he was worried about his bills and his family. In addition, his wife and children had watched the Committee Meeting on local cable channel WITN and were upset at the way he was treated. Co-workers and other members of the community had also viewed the meeting and continued to bring it up with him in the coming weeks. Co-workers made jokes about it. Even members of his church brought it up to him. He was embarrassed and humiliated. Further, he was devastated and found it hard to concentrate for a time. Mostly, he was worried about Council following through on the threat, when he was just doing his job as a public servant to the best of his professional abilities. “I

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the City Code. Nonetheless, the Commission finds these statements troubling, to put it mildly. As discussed below, Auditor Williams acted within the scope of his authority and in accordance with the Law Department’s advice. Publicly criticizing him for those actions at a minimum demonstrates a lack of civility and professionalism expected of our elected representatives and erodes public trust and confidence in those representatives.

<sup>14</sup> Ex. 5 at 2.

have to maintain my professional judgment to keep with professional standards,” he testified to the Commission.

#### **IV. Positions of the Parties**

Special Counsel Wood argued that Council Member Turner violated City Code Section 239(e)(3) in two ways. First, he argued that Council Member Turner violated the Ethics Code by attempting to penalize the Auditor by reducing his salary to one dollar even though he was prevented from effectuating the penalty. Second, he argued that Council Member Turner violated the Ethics Code by disciplining the Auditor for exercising his appropriate authority in compliance with legal advice through threatening him during a televised public hearing. The action of threatening the Auditor was a form of discipline. Council Member Turner did not offer an argument in defense, having chosen not to attend the hearing.

#### **V. Analysis**

The issue before the Commission is whether Council Member Turner violated the provisions of City Code § 239(e)(3), which provides that “[n]o city employee shall be penalized,<sup>[15]</sup> disciplined<sup>[16]</sup> or dismissed by any other city employee or appointed or elected officer for performing his or her duties in accordance with the city charter, the city Code or established city policy.” In considering the arguments presented, the Commission observes that the City Charter § 6-300(c) provides, “Special audits of the affairs of any officer, department, board, commission or agency may be made whenever in the judgment of the city auditor they appear necessary, and shall be made whenever the mayor shall call upon the city auditor to make them.” Thus, the power to call upon the auditor to perform specific audits is a power granted

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<sup>15</sup> “To inflict a penalty on.” Merriam-Webster Definition of Penalize, <https://www.merriam-webster.com/dictionary/penalize> (accessed Nov. 18, 2020).

<sup>16</sup> “To punish or penalize for the sake of enforcing obedience.” Merriam-Webster Definition of Discipline, <https://www.merriam-webster.com/dictionary/discipline> (accessed Nov. 18, 2020).

only to the Mayor, not to Council. Further, City Charter § 8-410(2) provides that, when an officer requests legal advice regarding his official duty and follows it, “he shall not be liable in any way for so doing.”

The Commission finds that Council Member Turner violated City Code § 239(e)(3) in both ways described by Special Counsel Wood, which each independently suffices to prove a violation of the Ethics Code by a preponderance of the evidence. Each ground is discussed in turn.

As to the first ground, the Commission finds Delaware criminal statutes related to attempted crimes instructive by analogy. An “[a]ttempt to commit a crime is an offense of the same grade and degree as the most serious offense which the accused is found guilty of attempting.”<sup>17</sup> Accordingly, the Commission finds that an attempt to violate City Code § 239(e)(3) constitutes a violation of the Section. A person is guilty of such an attempt when he or she “[i]ntentionally does . . . anything which, under the circumstances as the person believes them to be, is a substantial step in a course of conduct planned to culminate in the commission of the crime by the person.”<sup>18</sup> A substantial step “is an act . . . which leave no reasonable doubt as to the defendant’s intention to commit the crime which the defendant is charged with attempting.”<sup>19</sup>

There can be no reasonable doubt that Council Member Turner intended to penalize Auditor Williams by reducing his salary to one dollar for performing his duties in accordance with the City Charter, the City Code or established city policy. As discussed above, the Auditor and later the City Solicitor made clear in letters to Council that the Auditor was acting within the

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<sup>17</sup> 11 *Del. C.* § 531.

<sup>18</sup> *Id.*

<sup>19</sup> 11 *Del. C.* § 532.

scope of his duties under the City Charter to decline to perform a forensic audit of WHP in Fall 2019. There is incontrovertible evidence that Council Member Turner threatened on live television to reduce Auditor Williams' salary to one dollar. Further, he took a substantial step in effectuating that action by requesting that a resolution or ordinance be drafted to effectuate the salary reduction. Accordingly, Council Member Turner violated City Code § 239(e)(3).

As to the second ground, the Commission finds that Council Member Turner disciplined Auditor Williams through his comments at the November 14, 2019 Committee Meeting. Again, as the Auditor and later the City Solicitor made clear in letters to Council, the Auditor was acting within the scope of his duties under the City Charter to decline to perform a forensic audit of WHP in Fall 2019. Nonetheless, Council Member Turner incorrectly claimed that the City Auditor was acting outside the scope of his duties and that the Auditor had to do what a majority of City Council told him to do. Council Member Turner further threatened that City Council would reduce the Auditor's salary to one dollar until he agreed to conduct a forensic audit, which went against his independent judgment as the City's Auditor. The threat was "for the sake of enforcing obedience" to Council's improper resolution. That dressing down and threat constituted discipline under the City Code. Accordingly, Council Member Turner violated City Code § 239(e)(3) on this basis as well.

#### **IV. Public Reprimand and Admonition**

Having found that Council Member Turner violated City Code § 239(e)(3), it is the unanimous decision of the Wilmington Ethics Commission to impose a Public Reprimand on Va'Shun Turner, and Va'Shun Turner is hereby publicly reprimanded.

In addition, the Ethics Commission admonishes Council Member Turner for his actions in this matter and directs that the admonition serve as guidance for all city employees and all

elected and appointed officers in the future. City employees must not be threatened for doing their jobs, by any other city employees; or any elected or appointed officer attempting to pursue a political or personal agenda. Indeed, city employees are immune from liability when they have consulted with and followed the City Law Department’s advice on the scope of their authority.<sup>20</sup> The Ethics Commission applauds and encourages such consultations. Furthermore, if the Law Department has advised that proposed legislation is improper, Council Members and staff should share that advice with all members of City Council prior to a vote on such legislation.

**IT IS SO ORDERED** this 24<sup>th</sup> day of November 2020.

/s/ William D. Johnson  
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-Petit  
Faith Meisinger-Petit  
Member

/s/ Melvin Phillips  
Melvin Phillips  
Member

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

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<sup>20</sup> See City Charter § 8-410(2).