

## **HEARING OFFICER'S REPORT**

Date: March 25, 2022

To: City Council for the City of Monroe

From: Valecia McDowell, Hearing Officer

Re: *City of Monroe v. James* – Hearing Officer's Report

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The City of Monroe brought this motion proceeding against Councilmember Angelia James following events involving Ms. James that occurred on September 9 and 10, 2021. As the Hearing Officer appointed by the City Council for the City of Monroe, I have presided over the parties' presentations of evidence and arguments concerning whether Ms. James engaged in misconduct in office and whether just cause exists for her removal. I have prepared this report based on a thorough review and consideration of all the evidence. It contains five sections: (I) Background; (II) Proposed Findings of Fact; (III) Proposed Conclusions of Law; (IV) The Hearing Officer's Recommendation; and (V) Conclusion.

As demonstrated herein, I conclude that the evidence in the record indicates Ms. James engaged in misconduct in office and just cause exists for the City Council to remove her from office. If the City Council agrees with my assessment that she engaged in misconduct in office and that just cause exists after independently considering the evidence in the record, then the City Council—and the City Council alone—must decide how to vote on this critical issue.<sup>1</sup> Importantly, councilmembers do not have to vote to remove Ms. James even if they agree that she engaged in misconduct in office and that just cause exists. For the City Council's consideration, I

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<sup>1</sup> The City Council is “the only body having authority to consider removal.” *Berger v. New Hanover Cty. Bd. of Comm'rs*, 2013 NCBC LEXIS 42, at \*43 (N.C. Super. Ct. Sept. 5, 2013).

have set forth several factors and observations in Section IV, which are not meant to be exhaustive, in deciding whether to vote for removal.

## **I. BACKGROUND**

### **A. Ms. James' History of Public Service**

Ms. James has lived in the City of Monroe for approximately twenty years. ([Jan. 27 Tr.](#) 46:7-17; 339:1-17). She coaches youth basketball in the community (*id.* at 338:23-339:17), and she operates a nonprofit sports camp called James Residential Camps. (*Id.* at 339:25-340:10). In November of 2019, Ms. James was elected to the City Council for the City of Monroe after receiving more than 1,200 votes. (*Id.* at 342:11-13). During her tenure on the City Council, she has served on various committees, including ones pertaining to public safety, youth, and Centralina. (*Id.* at 346:3-8). Ms. James testified that she helped reform the Citizen's Committee to make it more "fair and transparent for all" and has helped increase transparency in the application selection process for nonprofit funding. (*Id.* at 348:2-12, 349:14-350:3).

During her term as a councilmember, Ms. James decided she would run for Mayor of the City of Monroe in the election scheduled for November 2, 2021. ([Jan. 28 Tr.](#) 18:19-21; Jan. 27 Tr. 350:9-16). The events at the center of this amotion proceeding occurred nearly eight weeks before Election Day.

### **B. Summary of the City's Allegations in its Amotion Petition**

In its Amotion Petition, the City of Monroe alleges that Ms. James engaged in misconduct in office with respect to the events of September 9 and 10, 2021. (Petition, [Record No. 1](#)). The City of Monroe makes certain factual allegations concerning Ms. James' alleged misconduct, which are not recited in this section.<sup>2</sup> (*Id.* ¶¶ 10-29). The City of Monroe argues that Ms. James

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<sup>2</sup> I refer the City Council to the Proposed Findings of Fact (Section II).

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“attempted to exceed her legal authority under the council-manager form of government as set forth in the City Charter for the City of Monroe, conduct which constitutes noncriminal misconduct in office.” (*Id.* ¶ 30). As the City of Monroe further alleges, Ms. James violated several provisions of the City Council’s Code of Ethics:

- “by failing to obey all laws applicable to her official actions, and by not ‘behaving consistently and with respect toward everyone with whom she interacts’”;
- “by declining to ‘recognize that individual Council Members are not generally allowed to act on behalf of the council but may only do so if the council specifically authorizes it, and that the council must take official action as a body’”;
- “by failing to ‘act as the especially responsible citizen[] whom others can trust and respect’”; and
- “by failing to set a good example for others in the community.”

(*Id.* ¶¶ 31-32).

C. Summary of Ms. James’ Position Concerning the Amotion Petition

With respect to the factual allegations in the Amotion Petition, Ms. James “disputes the Petition’s characterization of certain of these events, but largely acknowledges that these events took place.” (Jan. 21, 2022 Ms. James Letter and Filings, Statement of the Case at 2, [Record No. 7](#)). Ms. James also concedes that most of the events are “depicted . . . on officer-worn body camera footage” and “[t]he footage speaks for itself . . .” (*Id.*). She contends that she “was exhausted” from competing in the mayoral race, “had not eaten,” and “experienced a temporary mental and emotional breakdown that caused her to behave erratically.” (*Id.* at 5). She characterizes her actions on September 9 as “rude,” but not “misconduct.” (*Id.* at 2, 5-10). Finally, Ms. James points to her nearly two years of City Council service, “largely without incident,” to support her belief that the City Council should vote against removal. (*Id.* at 5).

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D. The City Council's Acts Following September 9 and 10, 2021

On September 28, 2021, City Council held a special meeting to discuss Ms. James' conduct on September 9 and 10, 2021, and voted on a resolution to censure Ms. James for her actions. (*Id.* at 4; [Jan. 27 Tr.](#) 371:18-25). The censure resolution, R-2021-76 (2021) (the "Censure") was approved by a vote of 5-2. (Jan. 21, 2022 Ms. James Letter and Filings, Statement of the Case at 4, [Record No. 7](#)). Mayor Holloway, Councilmember Gordon, and Councilmember Keziah voted in favor of the Censure and remain on the City Council today. (Feb. 3, 2022 Email from Mr. Hagemann at 6-7, [Record No. 43](#)). Not including Ms. James, the three other councilmembers currently on the City Council were elected in November 2021 and thus did not vote on the Censure (Councilmember and Mayor Pro Tem Gary Anderson, Councilmember James Kerr, and Councilmember Julie Thompson).<sup>3</sup>

On November 9, 2021, the City Council adopted Resolution R-2021-89, which recognized the City's authority to use the common-law doctrine of amotion to remove a councilmember from office for just cause. (Monroe Res. R-2021-89, [Record No. 1C](#); Petition ¶ 8, [Record No. 1](#)). On December 8, 2021, the City Attorney retained me to be the Hearing Officer. ([City of Monroe Staff Report](#) at 333-34 (Dec. 13, 2021)). On December 13, 2021, the City Council adopted the Rules of Procedure for Amotion Hearing ("Amotion Rules") to govern the process and procedures for the amotion hearing. (Petition ¶ 9, Record No. 1). The Amotion Rules require the City of Monroe to present its case to remove Ms. James to an independent Hearing Officer designated by the City Attorney and to afford Ms. James a complete opportunity to present her defense. (Monroe Amotion Rules I.B., III.A., III.G., and III.P., [Record No. 1D](#)). At the conclusion of the hearing, the Hearing Officer issues proposed findings of fact and conclusions of law and a recommendation

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<sup>3</sup> See <https://www.monroenc.org/City-Council>.

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as to whether Ms. James should be removed. (*Id.* at IV.A.). The City Council, however, retains the sole power to render a decision on removal. (*Id.* at IV). The City of Monroe served (i) the Amotion Petition on counsel for Ms. James on January 6, 2022, and (ii) the formal notice of the hearing on January 10, 2022, which her counsel agreed to accept.<sup>4</sup> (Jan. 10, 2022 Email from Mr. Shah-Khan, [Record No. 5](#)).

E. Evidentiary Hearing Before the Hearing Officer

On January 27 and 28, 2022, I presided over the evidentiary hearing in this amotion proceeding. The hearing was held as an open meeting pursuant to Article 33C of Chapter 143 of the North Carolina Statutes, with a video recording of the hearing made available to the public shortly thereafter. (Monroe Amotion Rule III.C., [Record No. 1D](#)). I made clear that I would not limit the parties in terms of time or number of witnesses in presenting their cases. ([Jan. 27 Tr.](#) 8:17-9:14, 11:1-9). Each party made an opening statement, presented their cases-in-chief, and made closing arguments.

The City of Monroe presented its case-in-chief first. The City of Monroe's witness list had ten witnesses, and it called nine of those witnesses to testify. (*Id.* at 3; Jan. 21, 2022 Monroe Letter and Filings, Witness List, [Record No. 6](#)). Ms. James, represented by counsel, then presented evidence in defense during her case-in-chief. Ms. James' witness list included ten witnesses, and she called two of those witnesses to testify—herself and Dr. Dan Cotoman. (Jan. 21, 2022 Ms. James Letter and Filings, Witness List, [Record No. 7](#); Jan. 27 Tr. 333:12-13; [Jan. 28 Tr.](#) 39:4-7). Although he was a witness to many of the relevant events and was on the witness list, Ms. James' husband, Tony James, did not testify about the events in question and instead produced a character affidavit. (Jan. 21, 2022 Ms. James Letter and Filings, Witness List, Record No. 7; Affidavit of

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<sup>4</sup> In the preceding weeks, the parties had discussed potential dates for the hearing and agreed to these two dates.

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Tony James, [Record No. 28](#)). Two others also produced character affidavits on Ms. James' behalf. (Affidavit of Selina Campbell, [Record No. 29](#); Affidavit of Lisa Louallen, [Record No. 30](#)). At the conclusion of the evidence, the City of Monroe and Ms. James presented closing arguments.

F. [Allegations that Certain Elected Officials Should Be Excused for Impermissible Bias](#)

Prior to the evidentiary hearing on January 27, 2022, Ms. James asserted in her statement of the case that the City Council was biased against her. (Jan. 21, 2022 Ms. James Letter and Filings, Statement of the Case at 6, [Record No. 7](#)). She further alleged the Amotion Rules infringe on her due process rights because the rules precluded her from subpoenaing the councilmembers and the Mayor to develop additional facts concerning such bias. (*Id.* at 7). On January 25, 2022, I invited Ms. James to present evidence and legal support for her position, so that any bias issue could be timely remedied. (Jan. 25, 2022 Email from Mr. Huseth, [Record No. 9](#)). Further, at the start of the hearing on January 27, 2022, Ms. James alleged that certain councilmembers and the Mayor have impermissible bias under North Carolina law because they voted for the Censure. ([Jan. 27 Tr.](#) 18:15-20:23). I then invited the parties to submit a brief within five days that reflected their positions and arguments. (*Id.* at 18:22-19:9).

The parties conferred following the hearing on January 27 and 28, 2022, and jointly proposed that I recommend to the City Council that Ms. James and those who voted for the Censure—Mayor Holloway, Councilmember Gordon, and Councilmember Keziah—be excused from participating in any vote on Ms. James' removal. (Feb. 1, 2022 Email from Hearing Officer, [Record No. 41](#); Feb. 15, 2022 Hearing Officer Order at 1, [Record No. 45](#)). I expressed concerns about recommending the excusal of three democratically elected councilmembers and the Mayor without additional evidence to support doing so. (Feb. 3, 2022 Email from Hearing Officer, [Record No. 42](#)). I requested that the parties provide the following before I decided whether to

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make such a recommendation: (a) additional evidence of bias, if any, that exists for each elected official, (b) a good-faith basis for seeking additional evidence of bias through a limited bias inquiry of those elected officials who voted for the censure, and (c) legal authority to support a substantive finding of bias based on the evidence presented or the evidence that could be established through a limited bias inquiry. (*Id.*). I also raised concerns about the City Council's ability to maintain quorum if three councilmembers and the Mayor were excused. (*Id.*) I scheduled a video conference for February 8, 2022, so that the parties could address my requests and concerns. (*Id.*) This video conference was recorded and is set forth in the record as part of the proceeding. (Conference on Bias and Quorum Video, [Record No. 44](#)). During the conference on February 8, 2022, Ms. James presented no additional evidence of bias to warrant recommending the excusal of the three councilmembers and the Mayor. (Feb. 15, 2022 Hearing Officer Order at 1-2, Record No. 45; Bias and Quorum Conference Video, Record No. 44).

On February 16, 2022, I issued an order with my conclusions concerning the parties' joint proposal. (Feb. 15, 2022 Hearing Officer Order, Record No. 45). There was insufficient evidence of bias presented to warrant recommending that three democratically elected councilmembers and the Mayor be excused from voting on Ms. James' removal. (*Id.* at 1). Proof of bias "requires much more than innuendo or inference," and there is a "heavy burden" required to "overcome a presumption of honesty and integrity in those serving as adjudicators." *Berger*, 2013 NCBC Lexis 42, at \*41 (citation omitted) (internal quotation marks omitted). Ms. James fell short of meeting the "heavy burden" of showing that councilmembers' opinions were "not susceptible to change." This is discussed further in Section III.A. The parties also did not present sufficient legal authority that quorum would exist under North Carolina law if the three councilmembers and the Mayor were excused. (*Id.* at 5). Although I did not take a position on whether quorum would exist, the

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order reflects important legal considerations on this issue. (*Id.*). To preserve any impact on Ms. James' due process rights, I offered her the opportunity to question councilmembers and the Mayor in a limited inquiry to assess their alleged bias. Ms. James, however, declined to exercise this right. (Feb. 16, 2022 Email from Mr. Caudill, [Record No. 46](#)).

Following the issuance of my order on bias, I concluded the evidentiary hearing on February 23, 2022. I have since prepared this report containing proposed findings of fact, proposed conclusions of law, and a recommendation with respect to whether Ms. James should be removed from office.

## **II. PROPOSED FINDINGS OF FACT**

I propose these findings of fact based on my thorough consideration of all evidence in the record.<sup>5</sup> The findings pertain to the events that occurred on September 9 and 10, 2021, because the City of Monroe's allegations pertain to those two dates. (Petition, [Record No. 1](#)). The City Council, as the ultimate factfinder, should not merely adopt the proposed findings below without independent evaluation. Prior to voting on this important issue, the City Council should carefully review the underlying evidence in the record, which includes the transcripts and video footage of the two-day hearing, and the exhibits introduced by the parties.

### **A. Ms. James' Behavior on the Morning of September 9, 2021**

These facts are being presented to contextualize the events on the morning of September 9 and 10, 2021. The City of Monroe did not allege that any of the details in this subsection demonstrate misconduct in office.

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<sup>5</sup> The record contains the amotion petition to remove Ms. James, pre-hearing items, hearing transcript and video, exhibits introduced during the amotion hearing, and post-hearing items (collectively, the "Record"). On February 22, 2022, the parties were emailed a list of proposed items to be included in the Record, and counsel were given the opportunity to provide feedback. The parties proposed no changes to the Record. An electronic copy of the Record accompanies this Report. For ease of reference, individual record items are hyperlinked when first cited within each subsection of this Report.

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On September 9, 2021, Ms. James woke up early at approximately 5:00 am. ([Jan. 27 Tr.](#) 352:4-6). Ms. James testified that “God woke [her] up” and told her to look at a house that had been for sale but was currently under contract. (*Id.* at 351:23-352:1, 352:20-353:5). That morning, Ms. James called the real estate agent who listed the house about seven times prior to 9:00 am. (*Id.* at 353:22-354:1). On the eighth attempt shortly after 9:00 am, the agent answered and told her that the house was under contract and not available for a showing. (*Id.* at 353:25-354:1, 354:18-355:8). After she persisted, the agent eventually told Ms. James that she could see the house in the afternoon. (*Id.* at 355:1-8, 15-24). In her testimony, Ms. James acknowledged that her behavior concerning the house was “strange.” (*Id.* at 359:22-25).

At approximately 10:00 am, Ms. James met a reporter from the Enquirer Journal at a local café to discuss the mayoral race. (Evaluation of Angelia James at 3, [Record No. 26](#); Jan. 27 Tr. at 356:2-11, 357:2-12). She had a smoothie during the hour-long interview but had not eaten anything else that morning. (Evaluation of Angelia James at 3-4, Record No. 26; Jan. 27 Tr. 355:9-14, 357:13-15; [Jan. 28 Tr.](#) 81:15-17). Afterward, Ms. James called Police Chief Brian Gilliard on his cell phone at roughly 11:15 am, but he was unavailable to speak. (Jan. 27 Tr. 47:12-47:19).

B. Initial Call with Police Chief Brian Gilliard Telling Him to Retire

At approximately noon on September 9, 2021, Chief Gilliard returned Ms. James’ telephone call. ([Jan. 27 Tr.](#) 47:12-24). On the call, Ms. James asked him when he planned to retire from the police department. (*Id.* at 48:12-13). He explained that he was eligible in May 2022 but had a personal goal of remaining as police chief until the completion of the new police building, which was projected for 2023. (*Id.* at 48:14-19; Petition ¶ 10, [Record No. 1](#)). According to Chief Gilliard, Ms. James then “said that [he] needed to leave” in May 2022 and to promote Mark Isley

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to assistant police chief in December 2021.<sup>6</sup> (Jan. 27 Tr. 49:10-11, 50:5-8). She further added that Mark Isley would become the police chief in May 2022. (*Id.* at 50:5-8). She further said that if elected mayor she had the votes to appoint a new city manager and remove Chief Gilliard. (*Id.* at 51:11-15).

Chief Gilliard testified that he experienced a “range of emotions” in response to this call because he had “worked [his] whole life to make this place the best police department [and] best community” he could. (*Id.* at 52:23-53:8).<sup>7</sup>

Afterward, Ms. James called or otherwise spoke to Chief Gilliard on his cell phone at least five more times that day. (*Id.* at 53:18-54:9, 55:6-17, 55:25-56:22, 57:6-58:10). Several of the calls are discussed further below.

C. Afternoon of September 9, 2021

This subsection, like with the first one, contextualizes the events that occurred on September 9 and 10, 2021. The City of Monroe did not allege that any of the details in this subsection show misconduct in office or that just cause exists to remove Ms. James from office.

Ms. James picked up her son from school at approximately 3:00 pm and took him to see the house that was under contract. ([Jan 27 Tr.](#) 358:2-13). At approximately 4:00 pm, Ms. James and her son returned home, and Ms. James told her husband that she found a new house and that they were “going to sell this house, and that was it.” (*Id.* at 358:14-18). She recalls that Mr. James

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<sup>6</sup> Chief Gilliard was aware of the City’s human resource policies 19 and 20. Policy 19 provides that “[a]ll separations of employees from positions in the service of the city shall be designated as . . . Resignation, disability, voluntary retirement, dismissal, or death.” (Jan. 27 Tr. 71:13-72:17; HR Policy 19 – Separation and Reinstatement at 1, [Record No. 16](#)). It further provides that dismissal must occur in “accordance with the provisions and procedures of the Unsatisfactory Job Performance Policy.” (Jan. 27 Tr. 72:18-25; HR Policy 19 – Separation and Reinstatement at 2, Record No. 16). Under Policy 20, dismissal for unsatisfactory performance requires “several steps,” including “verbal and written warnings[.]” (*Id.* at 74:2-7; *see also* HR Policy 20 – Unsatisfactory Job Performance at 1-2, [Record No. 17](#)).

<sup>7</sup> He also testified that his son called him on September 10, 2021, asking if had been fired, and he told his son that he had not been fired but was “having a tough time here.” (*Id.* at 60:13-17).

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was “puzzled.” (*Id.* at 358:21-24). According to Ms. James, to avoid an argument with her husband, Ms. James decided that she and her son would stay at the Fairfield Inn and Suites for the evening. (*Id.* at 359:5-7). In retrospect, Ms. James finds that her behavior concerning the house had been “strange” throughout the day. (*Id.* at 359:22-25).

D. Ms. James' Conduct at the Fairfield Inn and Suites

1. Ms. James' Arrival and Police Officers' Initial Response to the Hotel

Ms. James testified that, after arriving at the hotel, she perceived that there were “some felons” in the hotel lobby. ([Jan 27 Tr.](#) 360:17-24). She further testified that she believed the bystanders to be felons because “God was speaking to” her and told her. (*Id.* at 360:21-24, 361:11-18). Ms. James approached a Black man in a “yellow worker’s vest” and asked him to take his mask off.<sup>8</sup> (*Id.* at 360:24-361:5). The interaction with the man left Ms. James feeling unsafe, so she called Chief Gilliard directly to ask him to send an officer to “check out this hotel[.]” (*Id.* at 362:2-9). At the time, Ms. James was unaware that the hotel also contacted the police in response to her behavior. (*Id.* at 362:15-17).

Shortly before 7:00 pm, Officers Ragan Broome and Timothy Sykes responded to a call that a man in a yellow vest at the Fairfield Inn and Suites was potentially wanted for murder. (Incident Report at 3-4, [Record No. 18](#); Jan. 27 Tr. 98:9-21, 99:4-13, 120:6-11, 217:3-7). A hotel employee told the officers upon arriving that a woman (Ms. James) had been “harassing customers and she needs to leave.” (Incident Report at 3, Record No. 18). Shortly thereafter, Officer Brantley Birchmore responded to the hotel and spoke to a hotel employee who told him that Ms. James had approached a man in the lobby and accused him of being a felon. (*Id.* at 12). The officers then spoke to Ms. James, who directed them to locate and arrest the individual in the yellow vest. (*Id.*

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<sup>8</sup> These events occurred during the Covid-19 pandemic when the wearing of face masks was recommended (and, in many instances, required) to reduce the spread of the virus.

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at 15, 19; Jan. 27 Tr. 56:23-57:1, 130:13-131:3). The officers did not comply with Ms. James' instruction. (Incident Report at 15-16, 19, Record No. 18; Jan. 27 Tr. 100:15-19). Ms. James then called Chief Gilliard on his cell phone again and asked him "to have the officers arrest the felons at the hotel." (Jan. 27 Tr. 53:18-54:2). Chief Gilliard told her that the officers could not do that. (*Id.* 54:2-8).

2. Ms. James' Inappropriate Interaction with Officer Broome

Following the call with Chief Gilliard, Ms. James made several negative remarks to Officer Broome about her facial expressions and body language. ([Jan. 27 Tr.](#) 101:3-21; Video Clip 5.b, [Record No. 38](#)). Ms. James then stated that she was "a City Council member" and that Officer Broome needs to "show respect" and "change her body language." (Video Clip 5.b, Record No. 38; Jan. 27 Tr. 366:14-19). Ms. James called Chief Gilliard again on his cell phone and told him that Officer Broome "needed to change her character and her facial expressions." (Jan. 27 Tr. 55:6-17). Ms. James also asked Officer Broome which high school she had attended, and Officer Broome told her Weddington High School. (*Id.* 101:3-11; Video Clip 5.b, Record No. 38). According to Officer Broome, Ms. James commented that Officer Broome was being "uppity" because she went to Weddington High School and that having gone there "doesn't mean nothing." (Jan. 27 Tr. 102:6-10, 103:17-19, 128:3-16; Video Clip 5.b, Record No. 38). Officer Broome testified that she felt "very intimidated" by Ms. James, who she felt had "power over" her. (Jan. 27 Tr. 104:21-105:2). In her testimony at the hearing, Ms. James acknowledged that she "deride[d]" Officer Broome for going to Weddington High School and admitted that her conduct was "not appropriate at all." (*Id.* at 366:14-19, 367:11-13).

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3. Ms. James' Direction to Arrest Certain Innocent Men of Color

Several other police officers—Lieutenant Nick Brummer, Captain William Bolen, and Sergeant Adam Craig—also responded to the hotel. (Incident Report at 6, 12, 15, 18, [Record No. 18](#)). Ms. James told certain police officers that the Black male in the yellow vest, who was visible to the officers and Ms. James near the lobby, either was wanted for murder or was a wanted felon. ([Jan. 27 Tr.](#) 217:5-218:5; Incident Report at 15, Record No. 18). Sergeant Craig and Lieutenant Brummer spoke to the man in the yellow vest, obtained his identification card, and ran searches for any warrants against him. (Incident Report at 15, Record No. 18; [Jan. 27 Tr.](#) 217:20-218:5). No warrants were found. (*Id.*) Ms. James then accused other Black men in the hotel lobby of being felons and instructed the police to arrest them. (Incident Report at 13, 20, Record No. 18; [Jan. 27 Tr.](#) 282:14-17). The police officers did not comply with Ms. James' instruction. (Incident Report at 6, 13, Record No. 18). In her testimony, Ms. James acknowledged that “insist[ing] [police officers] go room by room check the hotel” was “strange.” ([Jan. 27 Tr.](#) 363:1-9).

4. Ms. James' Interaction with Captain Bolen and Other Officers Outside the Fairfield Inn

Outside the hotel, paramedics checked Ms. James' vitals and asked her some questions, which she permitted them to do. (Incident Report at 13, 16, [Record No. 18](#); [Jan. 27 Tr.](#) 133:6-12, 244:12-13). After the paramedics left, Ms. James had a discussion with Captain Bolen, Sergeant Craig, and Officer Birchmore. (Video Clip 1.a, [Record No. 31](#)). Ms. James said three times that Captain Bolen was a “captain for now.” (*Id.*). Captain Bolen asked three times if Ms. James wanted his captain badge. (*Id.*; [Jan. 27 Tr.](#) 186:4-7). Ms. James then reached for Captain Bolen's badge and attempted to remove it. (Video Clip 1.a, Record No. 31). Captain Bolen testified that her act was an assault on him. ([Jan. 27 Tr.](#) 178:16-18). In her testimony, Ms. James admitted that

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she “attempted to take Captain Bolen’s badge off his chest[.]” (*Id.* 364:9-11; *see also* [Jan 28 Tr.](#) 22:12-14).

Ms. James then called Chief Gilliard again and said that “after tonight, [Captain Bolen] is no longer a captain . . . after tonight Brantley Birchmore is going to be the captain.” (Video Clip 1.a, Record No. 31). Captain Bolen received the phone from Ms. James and told Chief Gilliard that he would give his badge to Ms. James, which he did to resolve the conflict. (Incident Report at 13, Record No. 18). A few minutes later (after Chief Gilliard was no longer on the phone), Ms. James said that Captain Bolen’s “job was done” and that she was going to “take his badge.” (*Id.* at 20). Throughout her interaction with Captain Bolen, Ms. James asserted several times that Captain Bolen “don’t like Black people.” (Video Clip 3.a, [Record No. 37](#); Video Clip 1.a, Record No. 31). Ms. James testified that she regrets having tried to take Captain Bolen’s badge and having stated that he does not like Black people. (Jan. 27 Tr. 368:4-5; 369:3-11).

#### 5.       Arrival of Lieutenant Holt and Ms. James’ Husband at the Fairfield Inn

At approximately 7:50 pm, Chief Gilliard called Lieutenant Monique Holt, who he described as “very versed in handling situations like this,” to ask her to respond to the Fairfield Inn. ([Jan. 27 Tr.](#) 57:10-14, 235:3-10; Incident Report at 22, [Record No. 18](#)). Lieutenant Holt was off duty at a football game coached by Ms. James’ husband, Tony James. (Jan. 27 Tr. 235:5-10, 236:2-6; Incident Report at 22, Record No. 18). As requested by Chief Gilliard, she informed Mr. James of the events occurring at the Fairfield Inn. (Jan 27 Tr. 236:7-9; Incident Report at 22, Record No. 18). Lieutenant Holt and Mr. James drove separately to the hotel, where they found Ms. James and police officers gathered outside. (Incident Report at 22, Record No. 18; Jan. 27 Tr. 236:15-25).

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Mr. James then told Officer Birchmore and Captain Bolen that a similar incident involving Ms. James occurred between ten and twelve years earlier. (Jan. 27 Tr. 142:9-17). According to Officer Birchmore, Mr. James said that they were at church when “something happened” in which Ms. James believed she had spoken to God, and after that, Mr. and Ms. James “had to remove themselves from the church[.]” (*Id.* at 142:18-23). She may have had “some arguments” at the church. ([Jan. 28 Tr.](#) 87:5-13). Mr. James also told Officer Birchmore that Ms. James never sought mental or medical treatment. (Jan. 27 Tr. 141:23-143:1, 209:5-12).

At some point while outside the Fairfield Inn, Ms. James began crying and saying she was tired. (*Id.* at 238:9-11). Lieutenant Holt and Sergeant Craig helped Ms. James into her husband’s truck, so that she and Mr. James could return to their home, which was approximately seven minutes driving from the hotel.<sup>9</sup> (*Id.* at 238:12-19). The police officers and Ms. James left the Fairfield Inn at approximately 8:50 pm. (*See* Incident Report at 13, 20, Record No. 18).

E. Events at Ms. James’ House Minutes Later

Between approximately 9:00 and 9:05 pm, Ms. James called Lieutenant Holt on her cell phone and said that her husband “was taking her son.” ([Jan. 27 Tr.](#) 239:9-12). Lieutenant Holt, who had been driving home from the Fairfield Inn, told Ms. James that she would drive to Ms. James’ house. (*Id.* at 239:13-14). Lieutenant Holt then called Chief Gilliard and Lieutenant Brummer to update them. (*Id.* at 239:16-17; Incident Report at 20, [Record No. 18](#)). She told Lieutenant Brummer that Mr. and Ms. James were “having an argument at their residence” and that officers should go there. (Incident Report at 20, Record No. 18; Jan. 27 Tr. 245:16-19). While

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<sup>9</sup> Based on information contained in the investigation reports, (Incident Report, Record No. 18), Ms. James lives slightly more than three miles, or about seven minutes driving, from the Fairfield Inn.

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driving there and when Ms. James was calling her back, Lieutenant Holt got into a car accident and was subsequently transported to Atrium Health Union Hospital. (Jan. 27 Tr. 239:17-240:12).

At approximately 9:05 pm, Lieutenant Brummer requested assistance responding to Mr. and Ms. James' house via police radio. (Jan 27 Tr. 144:2-144:6; Incident Report at 13, 17, Record No. 18). Lieutenant Brummer, along with Sergeant Craig, Officer Birchmore, and Captain Bolen,<sup>10</sup> then responded to their house. (Incident Report at 7, 13, 17, 20, Record No. 18; Jan. 27 Tr. 143:16-145:3). After they arrived, the police officers requested EMS assistance because Ms. James said she felt pressure in her chest and felt like she was going to throw up. (Incident Report at 13, 17; Jan. 27 Tr. 145:15-21). Paramedics determined that her blood pressure and heart appeared normal. (Incident Report at 13, 21, Record No. 18).

Shortly thereafter, Ms. James told the police officers that she had “fired [Chief] Brian [Gilliard] . . . so Mark Isley is the chief . . . so if y’all don’t like Mark Isley . . . as the Chief of Police for the City of Monroe, then you’re not going to be on the force.” (Video Clip 6.a, [Record No. 39](#)). She also told paramedics that certain officers, including Officer Birchmore, had been promoted to captain. (*Id.*; Incident Report at 13, 17, Record No. 18). Separately, Ms. James directed Sergeant Craig to hold her water cup and to escort her to the bathroom and other parts of her house. (Jan. 27 Tr. 269:6-270:1, 271:1-5). Sergeant Craig testified that he allowed Ms. James to direct him in that manner because she was a councilmember. (*Id.* at 283:23-284:6).

Ms. James eventually allowed EMS to transport her to Atrium Health Union Hospital. (Incident Report at 18, 21, Record No. 18). The officers left the scene before EMS departed. (*Id.*).

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<sup>10</sup> Captain Bolen left Ms. James' house shortly after arriving.

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F. Ms. James' Conduct at Atrium Health Union Hospital

Ms. James arrived at Atrium Health Union Hospital sometime before 11:00 pm on September 9, 2021. (Incident Report at 9, [Record No. 18](#)). Officer Aycoth was at the hospital after responding to the car accident involving Lieutenant Holt and then following the ambulance there. ([Jan. 27 Tr.](#) 290:12-19). He saw Ms. James in the waiting area around 11:00 pm and spoke to the paramedic who brought her in. (Incident Report at 9, Record No. 18; Jan. 27 Tr. 291:5-21). Officer Aycoth had heard “a little about the situation earlier, in that the officers had been dealing with her earlier that night.” (Jan. 27 Tr. 292:2-4). According to Officer Aycoth, Ms. James was “kind of really manic” and “fidgety” and “all over the place.” (*Id.* at 291:8-10). He knew Ms. James from the community and considered them “friends.” (*Id.* at 289:14). Ms. James also testified that she considered them to have been “friends” prior to these events. (*Id.* at 366:3).

Officer Aycoth tried to assist Ms. James with getting a private room because he “thought it best” “knowing her position” as a councilmember. (Incident Report at 9, Record No. 18; Jan. 27 Tr. 292:5-9). While inquiring at the nurses’ station about a private room, Ms. James “became irate and pushed away” from Officer Aycoth, “snatch[ing] the mask off [his] face.” (Incident Report at 9, Record No. 18; Jan 27 Tr. 294:1-13). North Carolina law required the wearing of face masks in hospital settings when this occurred.<sup>11</sup> Officer Aycoth testified that Ms. James’ conduct toward him was an assault but that he did not arrest her “because she is a councilmember.” (Jan. 27 Tr. at 294:11-18). He testified, however, that he had discretion to arrest her under the circumstances. (*Id.* at 301:16-21).

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<sup>11</sup> These events on September 9 and 10, 2021 occurred during the Covid-19 pandemic when North Carolina required the wearing of face masks in hospital settings to reduce the spread of the virus and protect public health. See *Latest Updates*, NCDHHS COVID-19 Response, <https://covid19.ncdhhs.gov/about-covid-19/latest-updates#may-2021> (mandating masks in hospital settings, still in place in September 2021).

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Officer Aycoth requested assistance via police radio, and shortly thereafter, other police officers arrived at the hospital. (Incident Report at 10, 18, 21, Record No. 18). Ms. James then refused a hospital worker's instruction to wear a face mask, which was required under North Carolina law. Video Clip 2.a, [Record No. 33](#); NCDHHS COVID-19 Response, *supra* n.11. (Ms. James did not testify at the hearing about her refusal to wear a mask.) Around the same time, hospital staff also complained that Ms. James was "going into other people's rooms." (Video Clip 2.a, Record No. 33). Ms. James subsequently told several officers present—including Officer Andreas Bosnakis, Captain Bolen, Lieutenant Brummer, and Officer Aycoth—that they "were fired" or were "gonna be fired." (Video Clip 2.e, [Record No. 36](#); Incident Report at 10, 21, Record No. 18). She further stated that Captain Bolen "got fired today because he doesn't like black people." (Incident Report at 14, Record No. 18).

Ms. James testified at the hearing that she regretted having stated that police officers were fired or were going to be fired. (Jan. 27 Tr. 369:12-17). She also regretted saying that Captain Bolen does not like Black people. (*Id.* at 369:7-11). She separately admitted to "pull[ing] Officer Aycoth's mask off his face." (*Id.* 364:12-14).

Shortly afterward, medical staff ran tests on Ms. James and administered two shots of medication to sedate her. (Incident Report at 10, 21, Record No. 18; [Jan 28 Tr.](#) 25:20-25). The physician's assistant wrote in Ms. James' medical chart that she had suffered from "acute psychosis." (Jan. 28 Tr. 76:12-18).

G. Ms. James' Characterization of Her Conduct throughout September 9th and 10th

In her testimony about her conduct throughout September 9 and 10, 2021, Ms. James confirmed her understanding that "God speaks to" her and at times tells her to do certain things. ([Jan. 27 Tr.](#) 341:8-14). She acknowledged that she "sometimes [does not] interpret what God says

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perfectly" and does not "always completely understand or appreciate what God is telling" her. (*Id.* at 352:13-19). Her conduct in retrospect "surprise[d]" her because it "wasn't the Angelia James that the community voted grew to love back in 2019," "the Angelia James who the community voted for," or "the Angelia James that they have grown to love and respect." (*Id.* at 365:11-17). She added that she "is a person who care[s] and respect[s] her community" and "works together with her community" and "build[s] relationships." (*Id.* at 365:20-23).

**H. Evidence in the Record Relating to Ms. James' Mental Health**

**1. Ms. James' Perception of Her Mental Health**

In her testimony, Ms. James stated her belief that she experienced "some sort of mental issue or mental illness" on the evening of September 9, 2021. ([Jan. 28 Tr.](#) 21:2-5; *see also* [Jan. 27 Tr.](#) 368:25-369:2). Although she testified that she was not in her "normal state of mind" that evening (Jan. 27 Tr. 368:15-21), Ms. James described what happened to her as an "isolated incident" that could "happen to any one of us." (*Id.* at 371:1-3). Ms. James introduced no evidence that she has received or plans to receive mental health treatment or is otherwise taking steps to determine whether such events may occur again or to mitigate that risk.

**2. Minimal Evidence in the Record from Her Treating Medical Professionals**

The record contains minimal evidence of medical treatment that Ms. James has received. As it relates to September 9 and 10, 2021, no party introduced medical records or testimony from any of the many medical professionals who attended to Ms. James at the Fairfield Inn, her house, or Atrium Health Union Hospital. Ms. James testified that she visited a therapist named Tia Coleman on October 1 or 2, 2021, and visited a psychiatrist named Kimberly Gordon on November 2, 2021 (Election Day), ([Jan. 28 Tr.](#) 26:20-27:10; Evaluation of Angelia James at 3, [Record No. 26](#)), but she offered little to no evidence about the treatment she had received from either of them.

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3. Ms. James' Expert Witness

Dr. Dan Cotoman,<sup>12</sup> a psychiatrist who Ms. James retained as her testifying expert witness, concluded that on September 9, 2021, Ms. James likely experienced an episode of “delirium”—a mental illness that occurs over a short period. (Jan. 28 Tr. 55:8-12, 64:8-13; Evaluation of Angelia James, [Record No. 26](#)). Dr. Cotoman testified that “hypoglycemia” was the likely “physical trigger” for the delirium onset. (Jan. 28 Tr. 59:8-17, 81:8-14). In his memorandum prepared in preparation for this hearing, he concluded that she experienced hypoglycemia, in part, because Ms. James “didn’t eat anything that day.” (Evaluation of Angelia James at 4-5, Record No. 26.)

Upon evaluating Dr. Cotoman’s testimony and memorandum as well as other evidence in the record, I concluded that Dr. Cotoman’s process in reaching his conclusion was not sufficiently thorough. In addition, his testimony and memorandum contained at least four inconsistencies. As a result of these defects, which are discussed directly below, I place little weight on the evidentiary value of his testimony and memorandum.

a. Dr. Cotoman’s Process Was Insufficiently Thorough

With respect to his process, Dr. Cotoman failed to communicate with any of the medical professionals who treated Ms. James during and after the events of September 9 and 10, 2021.<sup>13</sup> (Jan. 28 Tr. 77:20-78:4). Although he testified that he reviewed medical records from Ms. James’

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<sup>12</sup> Dr. Cotoman is board certified in general psychiatry, forensic psychiatry, and neurology. ([Jan. 28 Tr.](#) 44:24-45:1). He has been practicing general psychiatry since 2004 and forensic psychiatry since 2008. (*Id.* at 41:13-20). After graduating from a military medical program in Romania, Dr. Cotoman attended a residency program at Wake Forest Baptist Hospital in Winston-Salem, North Carolina and a forensic psychiatry fellowship at the State University of New York in Syracuse, New York. (*Id.* at 42:12-21, 43:8-12). He is also an active member of the American Academy of Psychiatry and Law. (*Id.* at 44:19-20). Although no *Daubert* hearing was conducted given the nature of this proceeding, I conclude that Cotoman had the education, background, and experience to testify in this proceeding.

<sup>13</sup> To evaluate Ms. James, Dr. Cotoman first met Ms. James in January 2022 via Zoom for approximately two hours and then later spoke with Ms. James by telephone for thirty minutes to an hour. ([Jan. 28 Tr.](#) 70:13-25, 86:6-9). In addition to his meetings with Ms. James, Dr. Cotoman reviewed (1) portions of video footage from September 9, 2021, (2) Ms. James’ medical records from the evening of September 9, 2021 and the morning of September 10, 2021, and (3) police incident reports and supplemental reports from September 9, 2021. (*Id.* at 49:2-20). He also spoke to Mr. James for approximately fifteen to thirty minutes. (*Id.* at 86:13-15).

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visit to Atrium Health Union Hospital on September 9 and 10, 2021, he reached conclusions about those records and the diagnoses therein without speaking to any of the treating physicians or other medical professionals. (*Id.* at 49:12-20, 69:24-70:5, 77:20-78:4). For instance, he observed that Ms. James received an “acute psychosis” diagnosis at Atrium Health Union Hospital the evening of September 9, 2021—a different diagnosis than delirium. (*Id.* at 76:15-18, 93:11-15; Evaluation of Angelia James, at 5, [Record No. 26](#)). He neither communicated with the doctor who gave the diagnosis or the physician’s assistant who wrote it down and instead concluded that he “*probably* . . . meant brief psychotic disorder.” (Jan 28 Tr. 76:15-77:8; *see also* Evaluation of Angelia James, at 5, Record No. 26) (emphasis added).

Dr. Cotoman also did not speak with or acquire medical records from Ms. Coleman, the therapist who Ms. James visited on October 1 or 2, 2021, or Kimberly Gordon, the psychiatrist who Ms. James visited on November 2, 2021 (Election Day). (Jan. 28 Tr. 26:23-27:10; 88:14-89:9). Dr. Cotoman understood that Dr. Gordon had performed a “formal evaluation” but never requested or reviewed it. (Evaluation of Angelia James at 3, Record No. 26).

Dr. Cotoman also did not thoroughly investigate Ms. James’ prior mental health incident from approximately ten to twelve years earlier. (Jan 28 Tr. 86:20-87:8, 87:14-18). According to his own testimony, all that he did was speak to Ms. James about it for “a few minutes.” (*Id.* at 87:2-4). He admitted that he did not “have enough data to . . . say an opinion about the prior . . . incident.” (*Id.* at 87:5-8). Despite being aware of the incident, Dr. Cotoman did not address it in his memorandum. (*Id.* 82:25-83:15).

b. Dr. Cotoman’s Testimony and Memorandum Contained At Least Four Inconsistencies

First, Dr. Cotoman concluded that Ms. James’ purported delirium episode on September 9, 2021 was an “isolated incident.” ([Jan 28 Tr.](#) 82:8-10). As already established, however, he lacked

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enough information to opine whether she suffered delirium ten to twelve years earlier and failed to address that in his memorandum. (*Id.* at 87:5-8). Ultimately, Dr. Cotoman conceded in his testimony that having suffered delirium in the past “can be” a risk factor for suffering delirium again in the future. (*Id.* at 83:21-84:14). And in further contradiction, he refused to acknowledge that Ms. James’ purported delirium episode on September 9, 2021, increased the chance that she would have another one in the future. (*Id.* at 83:17-84:14).

Second, Dr. Cotoman concluded in his memorandum that Ms. James experienced delirium from hypoglycemia because she “didn’t eat anything” on September 9, 2021. (Evaluation of Angelia James at 5, [Record No. 26](#)). When questioned on this point, Dr. Cotoman admitted in his testimony that Ms. James had a smoothie at approximately 10:00 am that day.<sup>14</sup> (Jan. 28 Tr. 81:15-17). He also wrote in his memorandum that Ms. James had a smoothie around 2:30 pm, (Evaluation of Angelia James at 4, Record No. 26), but the evidence does not indicate that she did. (Jan. 28 Tr. 81:15-17; Jan. 27 Tr. 357:2-12).

Third, Ms. James consumed the smoothie roughly two hours before her initial call with Chief Gilliard in which she directed him to retire. (Evaluation of Angelia James at 3-4, Record No. 26; Jan. 27 Tr. 355:9-14, 357:13-15; Jan. 28 Tr. 81:15-17). When asked whether Ms. James could have experienced hypoglycemia within those two hours, Dr. Cotoman did not offer an explanation. (Jan. 28 Tr. 81:8-81:23). Later, he sought to clarify that a person can experience hypoglycemia if the person has not eaten for approximately six hours or half a day, depending on the person and the circumstances. (*Id.* at 90:9-21, 91:6-11). In short, hypoglycemia-triggered

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<sup>14</sup> Dr. Cotoman’s position appeared to be that her behavior in the *late afternoon and evening* of September 9, 2021 can be explained by hypoglycemia having triggered delirium. (Evaluation of Angelia James at 4-5, Record No. 26; Jan. 28 Tr. 57:20-25, 61:19-62:3, 81:18-23). Dr. Cotoman, however, did not account for Ms. James’ admission that her behavior had been “strange” all morning and afternoon. (See [Jan. 27 Tr.](#) 359:22-25).

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delirium does not appear to be an available explanation for Ms. James' conduct directing Chief Gilliard to retire on their initial call that day.

Fourth, Dr. Cotoman testified that "exhaustion" was potentially another trigger of the delirium onset. (*Id.* at 82:3-7). He did not identify "exhaustion" in his memorandum though. (Evaluation of Angelia James, Record No. 26).

Furthermore, Dr. Cotoman had not even met Ms. James in person. (Jan. 28 Tr. 71:1-6). His assessment of Ms. James occurred via one videoconference on Zoom and one telephone call. (*Id.* at 27:18-28:2, 70:21-25). The videoconference lasted approximately two hours, and the phone call was between thirty minutes and one hour. (*Id.* at 86:3-9). During the videoconference, Dr. Cotoman spoke to Ms. James' husband for approximately fifteen to thirty minutes. (*Id.* at 13-15).

For these reasons, I place little weight on the evidentiary value of Dr. Cotoman's testimony and memorandum.

#### I. Effects From the September 9, 2021 Incidents

According to Chief Gilliard, Ms. James' interactions with the police on the evening of September 9, 2021 had a "tremendous impact" on the police department, including by "affect[ing] the morale." ([Jan. 27 Tr.](#) 53:14, 60:3-4). As noted earlier, Chief Gilliard experienced a "range of emotions" following his initial call with Ms. James on September 9, 2021. (*Id.* at 52:23). Several other police officers used the employee assistance program to seek counseling as a result. (*Id.* at 61:15-24).

With respect to the police officers who were the subject of Ms. James' statements about being fired or promoted, each one received the employee handbook explaining how personnel decisions are made within the police department. (*Id.* at 67:6-19, 96:1-4, 113:20-23, 163:3-11, 298:11-18). The handbook does not provide that a councilmember can hire, fire, promote, or

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discipline a police officer. (*Id.* at 78:20-79:7). The officers, however, had varying understanding of Ms. James' authority and influence.

- Chief Gilliard understood that neither the Mayor nor an individual councilmember had the authority to fire him or make other personnel decisions within the police department. (*Id.* at 51:1-10, 51:16-52:4, 92:5-9). He understood, however, that the city manager had that authority to fire him and that the City Council could replace the city manager. (*Id.* at 51:1-4).
- Officer Birchmore did not know whether a councilmember could hire a police officer. (*Id.* at 161:1-7, 162:20-163:2). He "had an idea" that he would not be promoted to captain, and he was "playing into" Ms. James' promoting and firing of officers that evening. (*Id.* at 137:16-18, 161:8-11).
- Captain Bolen knew that a councilmember could not hire, fire, promote, or discipline an officer. (*Id.* at 189:7-20). Even so, he received Ms. James' remarks toward him to be a "threat to his employment status." (*Id.* at 172:18-24).
- Lieutenant Brummer knew that a councilmember could not hire, fire, promote, or discipline an officer. (*Id.* at 223:15-224:4). He understood, however, that a councilmember has "influence" over personnel decisions. (*Id.* at 224:7-15).
- Officer Aycoth was unsure whether Ms. James, as a councilmember, had authority to fire a police officer, although he had never heard of a councilmember hiring, firing, demoting, or promoting a police officer in his eight-year career. (*Id.* at 298:3-10, 300:4-8).
- Sergeant Craig knew that a councilmember could not hire, fire, promote, or discipline an officer. (*Id.* at 250:9-23). He does not have any "direct involvement" in personnel decisions but knows the process "generally." (*Id.* at 249:16-21).
- Officer Bosnakis did not know Ms. James was a councilmember during his interaction with her. (*Id.* at 319:18-320:8). He did not testify to his understanding of a councilmember's authority or influence over personnel decisions.

J. City of Monroe

1. Independent Investigation concerning City of Monroe Practices in 2012-2013

On September 18, 2012, the City Council voted to conduct an independent analysis concerning the relationship between the Mayor, City Council, City Manager's office, and senior staff of the City of Monroe. (Parker Poe Memorandum at 1, [Record No. 20](#)). The City Council

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hired the law firm Parker Poe Adams & Bernstein LLP (“Parker Poe”) to conduct the independent analysis. (*Id.*) Parker Poe found, among other things, that “[s]everal Council members [we]re involved in trying to influence personnel decisions.” (*Id.* at 21-24). The City Council did not remove these councilmembers following Parker Poe’s findings. (See [Jan. 27 Tr.](#) 86:20-87:3).

2. General Principles and Code of Ethics

Effective as of December 7, 2010, the City adopted the General Principles and Code of Ethics (“City Council Code of Ethics”). (City Council Code of Ethics, Record No. 1B). Under the City Council Code of Ethics, Councilmembers: (1) “should obey all laws applicable to their official actions as members of the council”; (2) “are not generally allowed to act on behalf of the council but may only do so if the council specifically authorizes it, and that the council must take official action as a body”; (3) should “behav[e] consistently and with respect toward everyone with whom they interact”; (4) should “act as the especially responsible citizens whom others can trust and respect”; and (5) should “set a good example for others in the community.” (See City Council Code of Ethics, [Record No. 1B](#)).

**III. PROPOSED CONCLUSIONS OF LAW**

After careful consideration of the evidence presented and arguments by the parties, I conclude that Ms. James engaged in misconduct related to the duties of her office, and just cause exists to remove Ms. James from office. The record also indicates that Ms. James received notice and an opportunity to be heard, and the evidence is insufficient to show that the City Council is impermissibly biased under North Carolina law.

A. Ms. James Received Notice and the Opportunity to Be Heard, and Ms. James Has Not Shown This Amotion Proceeding Will Be Decided by Unbiased, Impartial Decision-Makers

The right of amotion to remove an elected official is recognized under common law.

*Ellison v Raleigh*, 89 N.C. 125 (1883); *Burke v Jenkins*, 148 N.C. 25, 61 S.E. 608 (1908). The

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“use of the amotion procedure has been and should be limited to extraordinary circumstances, for setting aside a decision of the electorate is not a light manner.” *Berger v. New Hanover County Bd. of Comm’rs*, 2013 NCBC LEXIS 42, at \*29 (N.C. Super. Ct. Sept. 5, 2013). To remove an elected official in an amotion proceeding, a local government must (a) satisfy procedural due process and (b) show that “just cause” exists. *See infra* Sections III.A., III.B.

To satisfy due process, an elected municipal official must receive “notice and an opportunity to be heard.” *Burke*, 148 N.C. at 28, 61 S.E. at 609. The “hearing must be a fair one.” *Berger*, 2013 NCBC LEXIS 42, at \*37. Further, “[a]n unbiased, impartial decision-maker is essential to due process.” *Id.* at \*38 (citing *Crump v. Board of Education of Hickory Administrative School Unit*, 326 N.C. 603, 615, 392 S.E.2d 579, 585 (1990)). The impartial decision-maker must base its determination solely on the evidence presented. *Id.* at \*37 (holding “[t]he single fact that the decision was not on its face limited to the evidence presented but extended to personal experiences of the fact finders requires that the court remand the matter for such further proceedings as the Board may choose to implement.”).

First, Ms. James received sufficient notice. As of December 14, 2021, the City Attorney began communicating with counsel for Ms. James and the City of Monroe concerning availability to schedule an amotion hearing. The City of Monroe then served the Amotion Petition on counsel for Ms. James on January 6, 2022. (Jan. 21, 2022 Monroe Letter and Filings, Statement of the Case at 2, [Record No. 6](#)). Formal notice of hearing was served on January 10, 2022, for a hearing to take place on January 27 and 28, 2022. (Jan. 10, 2022 Email from Mr. Shah-Khan, [Record No. 5](#); Notice of Hearing in Amotion, [Record No. 5A](#)). In short, Ms. James was on notice of the pending amotion proceeding, at minimum, for six weeks, and Ms. James received notice of the specific charges alleged against her more than twenty days before the scheduled hearing, as

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required under the motion rules. *See* Monroe Motion Rule II.D, [Record No. 1D](#); *but see* *Stephens v. Dowell*, 208 N.C. 555, 557-561, 181 S.E. 629, 630-32 (1935) (holding due process was not satisfied in a similar writ of quo warranto action involving removal of a clerk of court where removal was “to take effect immediately”). Further, the parties agreed to the hearing date, and Ms. James voluntarily appeared at the hearing without requesting additional time. Ms. James therefore waived any objection as to insufficient notice. *See B-W Acceptance Corp. v. Spencer*, 268 N.C. 1, 10, 149 S.E.2d 570, 577 (1966) (“Due process of law’ requires that a defendant shall be properly notified of the proceeding against him . . . ‘When the defendant . . . has voluntarily appeared in court, jurisdiction over the person exists and the court may proceed to render a personal judgment against the defendant.’”); *cf. Raintree Corp. v. Rowe*, 38 N.C. App. 664, 667-68, 248 S.E.2d 904, 907 (1978) (“By attending the hearing of the motion . . . and participating in it and failing to request a continuance or additional time to produce evidence, plaintiff waived any procedural notice required.”).

Second, Ms. James received an opportunity to be heard. Throughout the two-day hearing on January 27 and 28, 2022, Ms. James defended herself. Ms. James’ witness list included ten witnesses, and she ultimately called two witnesses to testify. (Jan. 21, 2022 Ms. James Letter and Filings, Witness List, [Record No. 7](#); [Jan. 27 Tr.](#) 333:12-13; [Jan. 28 Tr.](#) 39:4-7) (calling only Ms. James and Dr. Cotoman to the stand). No time limits or witness limits were imposed on Ms. James’ presentation of evidence or cross examination of the City of Monroe’s witnesses. *See Berger*, 2013 NCBC LEXIS 42, at \*33 (hinting issues with due process could arise if time limitations on plaintiff’s defense were imposed at the hearing, but that was not the case because plaintiff’s time to present evidence was not constrained); *Stephens*, 208 N.C. at 558, 181 S.E. at 630-32 (holding due process was not satisfied where “Stephens was not given . . . any opportunity

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to defend himself before said commissioners, either then or thereafter"). The full record of the two-day proceeding, including video and exhibits, is available to the City Council, which must base its decision solely on the evidence presented. *See* Monroe Amotion Rule VI.B, Record No. 1D. ("Council's decision must be based solely on the evidence presented as part of the Hearing Officer's recommendation, and any other information provided at the hearing. Members of council shall not consider information obtained through independent research or undisclosed *ex parte* communications."). Further, Ms. James did not object to the Amotion Rules more than ten days before the hearing occurred, nor the format of the presentation of evidence, despite being invited by the Hearing Officer to make any objections known.<sup>15</sup> (*See* Jan. 7, 2022 Letter from Hearing Officer at 3, [Record No. 4](#)) ("Objections to the established procedures should be made ten calendar days in advance of the hearing (if not sooner), so that the Hearing Officer can assess the objection and seek a resolution (whether through modifying the procedure or otherwise).").

Third, Ms. James has not shown that this amotion proceeding will be decided by biased decision-makers. A councilmember's "*fixed opinion that is not susceptible to change* may well constitute impermissible bias" requiring non-participation. *Cnty. of Lancaster v. Mecklenburg Cnty.*, 334 N.C. 496, 511, 434 S.E.2d 604, 614 (1993) (emphasis added) (citations omitted); *see also* Monroe Amotion Rule I.F.1, Record No. 1D (using nearly identical language). Like the

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<sup>15</sup> Ms. James' Statement of the Case, submitted less than a week before the hearing, argued that the amotion proceedings lack a neutral decisionmaker because City Council will ultimately decide whether to remove Ms. James, and Ms. James was not permitted the opportunity to question councilmembers as to their potential bias. (Jan. 21, 2022 Ms. James Letter and Filings, Statement of the Case at 5, 7, Record No. 7). As discussed in this Section, Ms. James has not shown that this amotion proceeding will be decided by biased decision-makers, despite being given ample opportunity to do so and the ability to question councilmembers for a limited inquiry to assess alleged bias. Ms. James also argued that the Amotion Rules presume that the conduct in the Petition alleged is "misconduct." (*Id.* at 6) (citing Monroe Amotion Rules VI.B. [sic] and III.P). However, the rules identified by Ms. James instead contemplate and codify a councilmember's ability to challenge whether the conduct is misconduct in the first place. (Monroe Amotion Rule III.P.1, Record No. 1D) ("The Councilmember . . . may present . . . evidence tending to show that the alleged misconduct did not occur or that an act alleged to be misconduct in office *was not [misconduct].*") (emphasis added); *id.* at VI.C ("The City has the burden of proving that misconduct related to the duties of the Councilmember's office occurred . . . .").

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commissioners in *Berger*, City Councilmembers “are entitled to a presumption that as fact finders they acted with honesty and integrity . . . .” *Berger*, 2013 NCBC LEXIS 42, at \*38 (citing *Crump*, 326 N.C. at 616-17, 392 S.E.2d at 586). The burden is on Ms. James to demonstrate bias. *State v. Kennedy*, 110 N.C. App. 302, 305, 429 S.E.2d 449, 451 (1993).

Ms. James raised concerns that certain councilmembers and the Mayor were biased because they voted for the Censure on September 28, 2021. The parties proposed that I recommend to the City Council that Ms. James, Mayor Holloway, Councilmember Gordon, and Councilmember Keziah be excused from participating in any vote on Ms. James’ removal. (Feb. 15, 2022 Hearing Officer Order at 1, [Record No. 45](#)). After soliciting more legal and factual support from the parties concerning their proposal, I rejected the parties’ proposal. (*Id.*). Ms. James conceded that the sole evidence of potential bias was the Censure. (*Id.* at 1-2). However, a vote for Censure, alone, does not establish impermissible bias requiring councilmembers’ excusal from voting on Ms. James’ removal. (*Id.*) (citing *Cnty. of Lancaster*, 334 N.C. at 511, 434 S.E.2d at 614). Instead, to preserve Ms. James’ due process rights, I offered her the opportunity to question councilmembers and the Mayor for a limited inquiry to assess alleged bias.<sup>16</sup> (See Feb. 15, 2022 Hearing Officer Order at 4-5, Record No. 45); *Berger*, 2013 NCBC LEXIS 42, at \*40 (“Crump also does not mandate that Plaintiff was necessarily entitled to call any Commissioner as a fact witness beyond a limited inquiry necessary to assess bias”). Ms. James, however, declined to exercise this right. (Feb. 16, 2022 Email from Mr. Caudill, [Record No. 46](#)). Thus, there is insufficient evidence that this motion proceeding will be decided by biased decision-makers. The final inquiry concerning procedural due process is whether City Council bases its determination solely on the evidence

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<sup>16</sup> I do not find that councilmembers who voted in favor of or against the Censure, without more, have impermissible bias that should preclude them from voting in this motion proceeding.

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presented. *Berger*, 2013 NCBC LEXIS 42, at \*37. As City Council has yet to make its determination, I cannot opine as to whether this requirement of procedural due process has been satisfied. Consequently, I instead conclude Ms. James received notice and the opportunity to be heard, and at this time, the record does not establish that this amotion proceeding will be decided by an impermissibly biased City Council.

B. The City of Monroe Must Prove Both (1) Misconduct Related to the Duties of Office, and (2) Just Cause Exists to Remove Ms. James from Office

To remove Ms. James from office, “[t]he City has the burden of proving [1] that misconduct related to the duties of the Councilmember’s office occurred and [2] just cause exists to remove the Councilmember from office.”<sup>17</sup> Monroe Amotion Rule VI.C, Record No. 1D. To the extent demonstrating misconduct in office and just cause are different standards that require different proof, the City of Monroe must satisfy both. These two requirements reflect the common law amotion standard in North Carolina.

Under North Carolina law, removal through amotion requires that there be “sufficient cause shown.” *Burke*, 148 N.C. at 27-28, 61 S.E. at 609. This common-law power has its roots in the “power to remove a corporate officer from his office for reasonable and just cause” which is “one of the common-law incidents of all corporations.” *Id.* In *Berger*, the court accepted the “just cause” removal standard utilized by the Board, which the court held was “consistent with the language of the North Carolina Supreme Court decisions.” 2013 NCBC LEXIS 42, \*45 (citing *Burke*, 148 N.C. at 25, 61 S.E. at 609). As held in *Berger*, the evidence should be measured on “a

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<sup>17</sup> Rule VI.D. separately provides that “[c]ause for removal exists if the City Council finds that the Councilmember has committed one or more of the following: 1. Offenses not related to the office but so infamous as to render him or her unfit for any public office; 2. Offenses amounting to noncriminal misconduct in office; or 3. Offenses that are both criminal and constitute misconduct in office.” *Rex. v. Richardson*, 97 Eng. Rep. 426, 438 (K.B. 1758) (emphasis added). The North Carolina Supreme Court has twice recognized *Rex v. Richardson* as authority. *See Burke v. Jenkins*, 148 N.C. 25, 61 S.E. 608, 609 (1908); *Ellison v. Raleigh*, 89 N.C. 125, 127 (1883). The City of Monroe alleges only that Ms. James engaged in “non-criminal misconduct in office.” (Petition ¶¶ 30-32, Record No. 1).

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case by case basis on something less than a single comprehensively defined objective standard.”

*Id.* at \*46. Moreover, the standard “should not flex solely on the whims of political winds” but must be “flexible.” *Id.* In conducting this analysis, a court examines the “cumulative evidence” and the “context,” as opposed to “parsing individual acts into separate pockets.” *Id.* at \*47-48.

Further, *Berger* clarified that “in all cases, a finding of cause to remove an elected official from office will depend upon conduct that is sufficiently *tied to the duties of the elected office...*” *Id.* at \*46 (emphasis added). This connection to duties of office “should be more express than implied,” and should not be “subjective.” *Id.* at \*48. For example, “perception as to loss of voter confidence are necessarily more subjective than events or expressions which actually document such erosion of confidence.” *Id.* at \*48-49. Yet, “some occurrences are so ‘infamous’ that no further support [of connection to the duties of elected office] is required.” *Id.* at \*49. Thus, in this case, the City of Monroe must prove both (1) misconduct related to the duties of office, and (2) just cause exists to remove Ms. James from office.

Other jurisdictions, while not binding on City Council, provide some guidance on “misconduct in office” that warrants removal of an elected official. For example, in 1967, the elected mayor of the city of Concord, New Hampshire, was removed from office by the board of alderman under the provisions of the City Charter based on the events of one day. *Quinn v. Concord*, 108 N.H. 242, 243, 233 A.2d 106, 107 (1967). One evening, the mayor arrived at a motel and saw the editor of a local paper who he knew had been “highly critical” of him. *Id.* at 245-46, 108-09. The mayor called the police and asked the captain to send someone to the motel because of an incident that “involves a DWI.” *Id.* at 245, 109. When an officer arrived, the mayor instructed the officer to arrest the individual leaving the motel and test his blood-alcohol level. *Id.* at 246, 109. The officer did not arrest the individual, who was no longer at the motel. *Id.* The

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mayor instructed the officer not to tell the police captain about the incident. *Id.* The board of alderman found the mayor engaged in “misconduct in office” and removed him from office. *Id.* at 243, 107. The New Hampshire Supreme Court upheld the board’s decision. *Id.* at 247-48, 110. In doing so, the court in *Quinn* concluded that the aldermen “were justified in finding from the evidence that [1] the mayor undertook to use the police force . . . to execute a personal vendetta against the editor” and then “[2] directed the officer to file a false report with his superior.” *Id.* at 247. The court further concluded that the first “may be considered . . . a petty abuse of power, the second was misconduct in office.” *Id.*

C. Ms. James Has Engaged in Misconduct Related to the Duties of Her Office, and Just Cause Exists for Removal of Ms. James from City Council

Based on the evidence presented and arguments by the parties, I conclude that Ms. James engaged in misconduct related to the duties of her office, and just cause exists to remove Ms. James from office. I reach this conclusion for three primary reasons. First, even though she was not charged with a crime due to her status as a councilmember, the evidence indicates that Ms. James committed a criminal assault and battery against Officer Aycoth when grabbing his face mask at the Atrium Health Hospital. Second, Ms. James violated the City Charter and the City Council’s Code of Ethics when she purported to fire and promote police officers and tried to physically remove Captain Bolen’s police badge off his chest. Third, Ms. James engaged in misconduct when she made multiple false reports to the police that put individuals’ safety at risk. Viewing these three events cumulatively, they constitute misconduct in office and just cause to remove Ms. James from office.

Importantly, councilmembers are not required to vote to remove Ms. James even if they agree with my assessment that she engaged in misconduct in office and that just cause exists.

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1. Assault and Battery on Officer Aycoth

Although she was not charged, the evidence supports a finding that Ms. James committed assault and battery on Officer Aycoth. “A ‘battery’ is the actual unlawful infliction of violence on the person of another, and may be proved by evidence of any unlawful touching of plaintiff’s person, whether by defendant himself or by any substance put in motion by him.” *In re K.C.*, 226 N.C. App. 452, 459, 742 S.E.2d 239, 244 (2013). The force applied can be “however slight . . .” *I.P. v. Pierce*, No. 5:19-CV-228, 2020 U.S. Dist. LEXIS 72844, at \*24 (E.D.N.C. Apr. 24, 2020) (quoting *State v. Sudderth*, 184 N.C. 753, 114 S.E. 828, 829 (1922)). For a touching to be unlawful, the contact must “actually offend a reasonable sense of [the person’s] dignity” and the contact must have “occurred without the alleged victim’s consent.” *State v. West*, 146 N.C. App. 741, 742, 554 S.E.2d 837, 839 (2001).

Officer Aycoth was at Atrium Health Union Hospital responding to a car accident involving Lieutenant Holt when he saw Ms. James in the waiting room. ([Jan. 27 Tr.](#) 290:5-19). Officer Aycoth tried to assist Ms. James with getting a private room because he “thought it best” “knowing her position” as a councilmember. (Incident Report at 9, [Record No. 18](#); [Jan. 27 Tr.](#) 292:5-9). While doing so, Ms. James “became irate and pushed away” from Officer Aycoth and “grabbed the front of [his] mask, ripping the straps off . . .” (Incident Report at 9, Record No. 18; [Jan. 27 Tr.](#) 293:7-18)). He testified that he was “shocked”; he did not consent to Ms. James’ actions. ([Jan. 27 Tr.](#) 193:10-18, 294:5-10). Officer Aycoth also testified that he believed her action to be assault, but he did not arrest her or charge her “because she is a councilmember.” (*Id.* at 294:11-23). Ms. James admits that she “pull[ed] Officer Aycoth’s face mask off his face.” (*Id.* 364:4-14; [Jan. 28 Tr.](#) 22:15-17). The evidence indicates that Ms. James’ actions were unconsented and forceful, thus supporting a finding that she committed a battery.

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In addition to battery, the evidence also shows that Ms. James' actions constituted assault on an officer. In North Carolina, “[a] battery always includes an assault.” *State v. Britt*, 270 N.C. 416, 418, 154 S.E.2d 519, 521 (1967); *see also United States v. Vinson*, 805 F.3d 120, 124-25 (4th Cir. 2015) (“[U]nder the ‘completed battery’ formulation, an assault conviction may be premised on proof of a battery.”). If a person assaults an officer who is discharging or attempting to discharge their official duties, then the person has committed a class A1 misdemeanor. *See* N.C. Gen. Stat. § 14-33(c)(4); *I.P. v. Pierce*, 2020 U.S. Dist. LEXIS 72844, at \*26 (explaining that N.C. Gen. Stat. § 14-33(c)(4) requires “two elements”). Ms. James’ actions were therefore assault on a police officer.

Her actions were inherently linked to the duties of her office in at least two ways. Officer Aycoth is a City of Monroe employee, and Ms. James holds a senior position within the City of Monroe. (Jan. 27 Tr. 297:4-7, 342:11-18). Even though Ms. James does not supervise Officer Aycoth, the City Council collectively appoints the City Manager, who is “responsible for the administration of all departments”—including the police department. (Monroe Charter at 4.2, [Record No. 1A](#)). In the corporate setting, by analogy, a senior officer’s inappropriate conduct toward an employee who does not report to the officer could still be a terminable offense, even when the conduct occurs outside the office. In addition, Officer Aycoth testified that he did not charge her because she was a councilwoman, (Jan. 27 Tr. at 294:15-23), which further underscores that her action was tied to the duties of her office.

The testimony and other evidence offered by Ms. James concerning her state of mind do not negate a finding that she committed assault and battery. Ms. James testified that she was not in her “normal state of mind” the evening of September 9, 2021. (*Id.* at 368:15-24). She recognized that she was experiencing “some sort of mental health issue or mental illness” that

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evening. (Jan. 28 Tr. 20:24-21:5; *see also* Jan. 27 Tr. 368:25-369:2). The only medical evidence that Ms. James offered, however, is unreliable, as discussed in Section II.H.3. The evidence does not show that any health issue or illness so impaired her mental capacity that she did not know the nature and quality of her actions or that she did not know that her actions were wrong.

Because “non-criminal misconduct in office” is a basis for removal under common law, *supra* n.17, evidence indicating that Ms. James committed a misdemeanor crime related to the duties of her office creates stronger grounds for removal. At the same time, it is important to recognize that Ms. James was not charged and convicted, and therefore, this evidence is not as forceful as it otherwise could have been. *See Berger*, 2013 NCBC LEXIS 42, at \*48.

2. Ms. James Violated the City Charter and the City Council's Code of Ethics When She Purported to Fire and Promote Police Officers

Ms. James took repeated actions that exceeded her authority as councilmember when she purported to fire or promote at least eight police officers.<sup>18</sup> The City Charter provides that no councilmember “shall direct the conduct or activities of any City employee, directly or indirectly, except through the City Manager.”<sup>19</sup> (Monroe Charter, at 4.8, Record No. 1A). The City Council Code of Ethics provides that “individual Council Members are not generally allowed to act on behalf of the council but may only do so if the council specifically authorizes it, and that the council must take official action as a body.” (City Council Code of Ethics at Section 2, Record No. 1B). Ms. James testified that she was aware of the City Charter and City Council Code of Ethics and knew that she needed to abide by them. (Jan. 28 Tr. 18:22-19:11). Ms. James therefore violated

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<sup>18</sup> Chief Gilliard, Captain Bolen, Lieutenant Brummer, Sergeant Mark Isley, Sargent Craig, Officer Birchmore, Officer Bosnakis, and Officer Aycooth.

<sup>19</sup> The City Council appoints the City Manager, who supervises the Chief of Police and is responsible for administering all City departments, including the police department. (Monroe Charter at 4.2, 4.8, Record No. 1A).

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the City Charter and City Council Code of Ethics when she held herself out as a councilmember and unilaterally purported to fire and promote the officers.

Ms. James' attempt to remove Captain Bolen's police badge off his chest outside the Fairfield Inn—a physical exercise of authority over him—is an especially egregious violation of the City Charter. ([Jan. 27 Tr.](#) 174:21-175:13; Video Clip 1.a, [Record No. 31](#); Monroe Charter at 4.8, Record No. 1A). She tried to take Captain Bolen's badge after asserting twice that he was “a captain for now” and after Captain Bolen asked Ms. James three times if she wanted his badge.<sup>20</sup> ([Jan. 27 Tr.](#) 172:4-24, 186:4-7; Video Clip 1.a, Record No. 31). Ms. James’ “direct[ed] the conduct or activities of” Captain Bolen, a violation of the City Charter. (Monroe Charter at 4.8, Record No. 1A).

The acts of purportedly firing, demoting, and physically exercising authority over the police officers were related to Ms. James’ duties of office. As shown, Ms. James held herself out as a councilmember several times when performing those acts. (Video Clip 5.b, [Record No. 38](#); [Jan. 27 Tr.](#) 366:14-19). In the presence of the officers, she also called Chief Gilliard multiple times on his cell phone—a privilege that ordinary citizens typically do not hold. ([Jan. 27 Tr.](#) 55:6-17). Shortly after grabbing Captain Bolen’s badge, she even instructed Chief Gilliard by telephone to fire Captain Bolen. (Video Clip 1.a, Record No. 31; [Jan. 27 Tr.](#) 134:7-135:17).

Whether the police officers *believed* Ms. James had the power to make personnel changes has little relevance as to whether *her actions* amounted to misconduct related to her duties of office. Nevertheless, one officer, Officer Aycoth, testified he was unsure whether Ms. James, as a

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<sup>20</sup> Unlike in the physical interaction with Officer Aycoth, the evidence does not clearly show that Ms. James’ actions were nonconsensual and thus amounted to assault and battery. Captain Bolen testified that he could have arrested her for assault but did not do so. ([Jan. 27 Tr.](#) 174:21-175:13). The fact that he asked three times if she wanted to take his badge casts doubt on whether he consented, inadvertently or otherwise, and thus whether Ms. James committed assault and battery. (*Id.* at 186:4-7; Video Clip 1.a, Record No. 31); *State v. Clay*, 2005 N.C. App. LEXIS 2453, at \*7 (Nov. 15, 2005) (citing *Redding v. Shelton's Harley Davidson, Inc.*, 139 N.C. App. 816, 821, 534 S.E.2d 656, 659 (2000)).

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councilmember, had the authority to fire a police officer. (Jan. 27 Tr. 298:3-10). Chief Gilliard also testified it was “reasonable” for a police officer to think that a city councilmember could potentially fire them. (*Id.* 91:14-18). When the initial call between Chief Gilliard and Ms. James occurred at approximately noon on September 9, 2021, Chief Gilliard credibly believed that Ms. James would use her influence to get him fired. (*Id.* at 48:12-13, 52:23). He had no reason to know in the moment whether Ms. James meant what she said and would follow through. Ms. James was running to be Mayor of the City of Monroe, and according to Chief Gilliard, if successful she could have had “direct influence over the hiring of the city manager, which would have directly had an impact on the police department.” (*Id.* at 91:25-92:9).

Further, Ms. James introduced evidence of an independent investigation concerning the City of Monroe’s practices from 2012-2013, which concluded that “individual Council members . . . have influenced personnel decisions with respect to staff hiring and discipline.” (Parker Poe Memorandum at 26, [Record No. 20](#)). Those investigative findings add support to Chief Gilliard’s assertion that it would have been “reasonable” if a police officer feared a councilmember’s purported firing of her.

3. Ms. James Violated the City Council’s Code of Ethics By Making Multiple False Reports to the Police

It is undisputed that Ms. James made multiple false reports to the police. On September 9, 2021, Ms. James accused several individuals in the hotel of being felons and demanding the police arrest them. After an interaction with a Black man wearing “yellow worker’s vest” near the Fairfield Inn lobby, Ms. James called Chief Gilliard directly to ask him to send an officer to “check out this hotel[.]” ([Jan. 27 Tr.](#) at 360:24-361:5, 362:2-9). The police officer video and other evidence at the hearing reveal that Ms. James told police officers who arrived that the Black male in the yellow vest down the hallway was wanted for murder or was a wanted felon. (Incident

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Report at 15, [Record No. 18](#); Jan. 27 Tr. 217:5-218:5). Sergeant Craig and Lieutenant Brummer approached the man, obtained his identification card, and ran searches for any warrants against him. (Incident Report at 15, Record No. 18; Jan. 27 Tr. 217:20–218:5). Ms. James accused other Black men in the hotel lobby of being felons and instructed the police to arrest them. (Incident Report at 13, 20, Record No. 18; Jan. 27 Tr. 282:14-17). No grounds existed for their arrest. (Incident Report at 15, Record No. 18; Jan. 27 Tr. 217:20– 218:5).

Ms. James' demands that police arrest patrons at the hotel violated the City Charter by “direct[ing] the conduct or activities” of those police officers. (Monroe Charter at 4.8, [Record No. 1A](#)). Ms. James' notably violated this provision when she called Chief Gilliard directly and told him to have officers search for and arrest the “felons” at the hotel. (Jan. 27 Tr. 53:24-54:9, 55:6-11). Ms. James' actions also violated the City Council's Code of Ethics by not “[b]ehaving consistently and with respect toward everyone with whom [she] interacts.” (City Council Code of Ethics at Section 2, [Record No. 1B](#)). By accusing several patrons of being felons, Ms. James ran afoul of this ethics provision. Ms. James conceded at the hearing that she “did not act with respect for everyone” on September 9, she was aware of the City Council's Code of Ethics, and she knew she needed to abide by them. ([Jan. 28 Tr.](#) 19:2-11, 29:13-17). I am, however, mindful that failing to treat others with respect, alone, is insufficient to satisfy the just cause standard. Indeed, Ms. James' behavior went beyond disrespect.

Although Ms. James' conduct in this respect does not appear to have been criminal,<sup>21</sup> Ms. James' conduct could have resulted in harm to those individuals she accused. Notably, the record

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<sup>21</sup> [M]aking a false statement to the police, standing alone, is not . . . a crime.” *State v. Hughes*, 353 N.C. 200, 204-05, 539 S.E.2d 625, 629 (2000). The crime of false reports to a law enforcement agency or officer criminalizes where “any person who shall willfully make or cause to be made to a law enforcement agency or officer any false, deliberately misleading or unfounded report, for the purpose of interfering with the operation of a law enforcement agency, or to hinder or obstruct any law enforcement officer in the performance of his duty.” N.C. Gen. Stat. § 14-225. I have not seen evidence that Ms. James made false reports for the purpose of interfering with the operation of the police force or otherwise obstructing the police. *See State v. Dietze*, 190 N.C. App. 198, 660 S.E.2d 197 (2008) (reversing a

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indicates all the men Ms. James demanded to be arrested were Black. (Incident Report at 13, Record No. 18; Jan. 27 Tr. 124:19-125-6, 282:14-17). It is an unfortunate reality that encounters between police and Black men are more likely to result in injuries or death. Indeed, courts and studies across the country recognize that Black men are between 2 and 3 times more likely than white men to suffer violence by police.<sup>22</sup> Ms. James therefore engaged in misconduct that jeopardized the safety of others. Likewise, other jurisdictions have upheld removal of elected officials based on a finding of “misconduct in office” where the elected official instructed a police officer to arrest an individual, without cause, and to submit a false report. *Quinn v. Concord*, 108 N.H. 242, 246, 233 A.2d 106, 109 (1967).

Further, this misconduct was tied to her duties in office. Ms. James’ calls for arrest occurred alongside Ms. James’ repeated statements that she was on City Council and that certain officers needed to show her respect. (Video Clip 5.b, [Record No. 38](#); Jan. 27 Tr. 103:2-11, 366:14-

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conviction where there was no evidence that defendant made a false report with any malicious purpose or intent to interfere with a law enforcement agency or obstructing the officer in the performance of his duties.

<sup>22</sup> See *United States v. Knights*, 989 F.3d 1281, 1290 n.2 (11th Cir. 2021) (citing Frank Edwards et al., *Risk of Being Killed by Police Use of Force in the United States by Age, Race-ethnicity, and Sex*, 116 Proc. Nat'l Acad. Sci. U.S.A., 16793, 16794 (2019) (“According to a scientific study published by the National Academy of Sciences, ‘Black men are about 2.5 times more likely to be killed by police over the life course than are white men . . . .’”); and Sarah DeGue et al., *Deaths Due to Use of Lethal Force by Law Enforcement: Findings from the National Violent Death Reporting System*, 17 U.S. States, 2009-2012, 51 American J. of Preventive Med. S173, S173 (2016) (“a study printed in the American Journal of Preventive Medicine found that Black people were disproportionately victims of lethal force by law enforcement, ‘with a fatality rate 2.8 times higher among blacks than whites.’”)); *State v. Spears*, 429 S.C. 422, 448, 839 S.E.2d 450, 463 (2020) (Beatty, J., dissenting) (citing Emily Ekins, The Cato Inst., *Policing in America: Understanding Public Attitudes Toward the Police. Results from a National Survey* at 30 (2016) (“African Americans are about twice as likely as whites to report profanity or knowing someone physically mistreated by the police.”); Scottie Andrew, *Police Are Three Times More Likely to Kill Black Men, Study Finds: 'Not a Problem Confined to a Single Region'*, Newsweek (July 23, 2018, 1:41 PM), <https://www.newsweek.com/black-men-three-times-likely-be-killed-police-1037922> (“Across the country, black men are over three times more likely to be killed by police than white men, according to a study . . . .”); Maggie Fox, *Police Killings Hit People of Color Hardest, Study Finds*, NBC News (May 8, 2018, 8:00 AM), <https://www.nbcnews.com/health/health-news/police-killings-hit-people-color-hardest-study-finds-n872086> (“While just over half of people killed by police are white, Hispanics and African-Americans are on average younger, the researchers found. And people of black, Hispanic and Native American background are disproportionately killed by police, they reported.”)).

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19). Ms. James even called Chief Gilliard directly to demand that officers search for and arrest the “felons” at the hotel. (Jan. 27 Tr. 53:24-54:9, 55:6-11).

In addition, Ms. James also violated North Carolina law requiring individuals to wear face masks inside hospital settings. (Video Clip 2.a, [Record No. 33](#)); *see Latest Updates*, NCDHHS COVID-19 Response, <https://covid19.ncdhhs.gov/about-covid-19/latest-updates#may-2021> (requiring masks in hospital settings, still in place in September 2021). The events at Atrium Health Union Hospital occurred during the Covid-19 pandemic, and the requirement specific to hospitals protected against the spread of the virus to medical staff and immunocompromised patients. Her conduct appears to have violated the City Council Code of Ethics, including the requirement that councilmembers “obey all laws.” (*See* City Council Code of Ethics, [Record No. 1B](#)). Whether Ms. James’ misconduct in this respect was tied to the duties of her office is less clear, and therefore, this misconduct was not considered as a basis for my finding of just cause.

The evidence of Ms. James’ misconduct tied to the duties of her office satisfies the just cause standard for removal from office. Consequently, the City Council is within its rights under North Carolina law to remove Ms. James from City Council should it so choose to do so.

#### **IV. HEARING OFFICER'S RECOMMENDATION**

At the outset, I want to make clear that an amotion proceeding is not a mechanism to “punish” an elected official for their misconduct. It is a common-law doctrine that may be used to safeguard “good order and government.” *Burke v. Jenkins*, 148 N.C. 25, 27, 61 S.E. 608, 609 (1908) (citing *Richards v. Town of Clarksburg*, 30 W. Va. 491, 504, 4 S.E. 774, 782 (1887)); *see also Berger v. New Hanover Cty. Bd. of Comm'rs*, 2013 NCBC LEXIS 42, at \*24-26 (N.C. Super. Ct. Sept. 5, 2013). In an appeal of a similar type of proceeding, an Illinois court concluded that “[r]emoval from office . . . is not a punishment” but is a “consequence of the officer’s failure to

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meet a condition imposed on [the officer] in furtherance of the public interest in good government."

*People ex rel. City of Kankakee v. Morris*, 126 Ill. App. 3d 722, 726, 467 N.E.2d 589, 592 (1984).

Certain rhetoric regarding this proceeding has bordered on punitive in nature.<sup>23</sup> However, a vote to remove Ms. James as a punitive measure would be improper.

Whether just cause exists and whether Ms. James engaged in misconduct in office is a legal issue, and therefore, a consideration of the Hearing Officer's legal analysis is permissible. If the City Council agrees with my finding that just cause exists and that Ms. James engaged in misconduct in office, then the City Council alone must decide the discretionary issue of whether Ms. James should be removed from office.<sup>24</sup> The City Council would have the discretion to decide against voting to remove Ms. James, even if councilmembers agree that Ms. James engaged in misconduct and that just cause exists.

As the Hearing Officer, I do not recommend how the City Council should vote in such a circumstance because I would exceed my authority in doing so. The court in *Berger* knew of no authority for the County Board of Commissioners to "delegate its decision making by appointing a special committee" concerning whether to remove a commissioner. *Berger*, 2013 NCBC LEXIS 42, at \*43. "As such, other than a recall election," the County Board of Commissioners was "the *only body* having authority to consider removal." *Id.* (emphasis added). I find the rationale in *Berger* persuasive. Instead, if the City Council agrees with my finding that just cause exists, I recommend that the councilmembers consider the factors and observations discussed below, which are not meant to be exhaustive, in casting their votes on removal.

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<sup>23</sup> Counsel for the City of Monroe argued at the hearing: "[w]hat are we supposed to do. Right? Do we just let her off the hook because she's a council member? Do we just let her treat City employees not only rudely, but do we let her assault them and not have any consequences?" (*Jan. 28 Tr.* 122:11-17).

<sup>24</sup> Put another way, if just cause were determined not to exist, the City Council would have no discretion as to Ms. James' removal. Removal would not be a legally appropriate option.

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A. Factors for the City Council's Consideration If Agreed That Misconduct in Office Occurred and Just Cause Exists

First, Ms. James has contributed to the community for the nearly twenty years she has lived in the City of Monroe. She coaches youth basketball, operates a non-profit sports camp called James Residential Camps, and according to her testimony, has had positive impacts on City Council. ([Jan. 27 Tr.](#) 338:23-339:17, 339:25-340:10, 348:2-12, 349:14-350:3). The City Council should consider the events of the two days this amotion proceeding concerns in the context of her nearly two-year tenure on the City Council and as a longstanding member of the community.

Second, amotion proceedings are an unusual but valid part of the sacrosanct democratic process. As the court in *Berger* reasoned, “the amotion procedure has been and should be limited to extraordinary circumstances, for setting aside a decision of the electorate is not a light manner.” *Berger*, 2013 NCBC LEXIS 42, at \*29. Ms. James received more than 1,200 votes in November 2019, ([Jan. 27 Tr.](#) 342:11-13), and those same voters could decide whether Ms. James’ conduct warrants removal from the City Council. But that decision cannot be made by the electorate for more than a year and a half. At the same time, voters elect councilmembers to perform all their duties, and voting in an amotion proceeding is one such duty to perform if the circumstances call for it. From this perspective, an amotion proceeding itself is an intrinsic part of the democratic process.

Third, a vote to remove Ms. James from office would not prevent her from running for re-election in November 2023. The North Carolina Constitution spells out the circumstances in which a local elected official is “disqualified” from holding office. N.C. Const. art. VI, §§ 6, 8. There is a statutory mechanism to remove a local elected official who “ceases to meet all the qualifications for holding office pursuant to the Constitution . . .” N.C. Gen. Stat. § 160A-59. The office of

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that elected official becomes “*ipso facto* vacant.” *Id.* That statutory mechanism has not been invoked here, and no grounds for disqualification appear to exist in this case.

Fourth, Ms. James presented no evidence indicating that (a) she received or plans to receive mental health treatment or (b) is taking steps to determine whether such events may occur again or to mitigate that risk. Dr. Cotoman’s testimony and report are the only evidence that Ms. James introduced concerning her mental health, but I found both to have little evidentiary value (as explained in detail in Section II.H.). From Ms. James’ own perspective, she believes she experienced “some sort of mental health issue or mental illness” on September 9, 2021, and she describes what happened to her as an “isolated incident” that could “happen to any of us.” ([Jan. 28 Tr.](#) 21:2-5; *see also* Jan. 27 Tr. 368:25-369:2, 371:1-3). However, she did not introduce medical evidence, such as medical records or testimony, concerning her visits to (i) Atrium Health Hospital on September 9, 2021, (ii) a therapist in early October 2021, or (iii) a psychiatrist in November 2021. (*See* Jan. 28 Tr. 25:7-27:17). And she did not introduce any evidence concerning the mental health incident that occurred approximately twelve years earlier. (*See* Jan. 27 Tr. 141:23-143:1). Nor did Ms. James testify as to whether that incident even occurred. Ms. James also believes that her conduct occurred because she was stressed and exhausted and had not eaten (even though she had eaten at around 10:00 am). (Jan. 21, 2022 Ms. James Letter and Filings, Statement of the Case at 5, [Record No. 7](#); Jan. 28 Tr. 21:6-9; Jan. 27 Tr. 355:9-14, 356:20-23). However, she introduced no evidence showing that she has changed her nutrition or sleep habits or has taken steps to reduce stress.<sup>25</sup> The issues pertaining to Ms. James’ health are important and may require follow up, both for this proceeding and for her personally. The record, however, offers little guidance with respect

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<sup>25</sup> Because Ms. James is no longer running for mayor, she may be sleeping more and experiencing less stress now than she did on September 9 and 10, 2021. Dr. Cotoman referred to her “lack of sleep and exhaustion and stress because [of] the election.” But there is no evidence indicating that Ms. James has addressed those problems and plans to continue doing so on a going-forward basis.

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to these issues. Without such evidence, it remains unknown whether Ms. James' conduct on September 9 and 10, 2021 is likely to reoccur.

Fifth and finally, not removing Ms. James could negatively impact public confidence in the City Council. As discussed in Sections II and III, Ms. James accused various patrons at a hotel of being "felons," demanded a police officer "show respect" and "change . . . [her] facial expressions," purported to fire multiple police officers, and assaulted a police officer. These actions may undermine Ms. James' and the City Councils' ability to conduct the official business of the City of Monroe. Without public trust, the ability to govern is limited. Councilmembers are expected to follow certain standards of conduct, just like employees must follow for any employer. Voters may expect that the City Council specifically holds itself to those standards of conduct, including the City Charter and the City Council Code of Ethics. However, I caution against placing too much weight on any breaches of the City Council Code of Ethics, which proscribe conduct in very general terms. The City Charter, by contrast, sets forth a clear requirement that no councilmember "shall direct the conduct or activities of any City employee, directly or indirectly, except through the City Manager." (Monroe Charter at 4.8, [Record No. 1A](#)).

As explained, the City Council should consider any other appropriate factors that exist. Councilmembers, however, should not consider their personal opinions, observations, or evidence outside the record. In *Berger*, the court remanded the County Board of Commissioners' vote to remove a commissioner because their "decision was not on its face limited to the evidence presented but extended to personal experiences of the fact finders . . ." *Berger*, 2013 NCBC LEXIS 42, at \*37. That error implicated important due process considerations. *Id.* The City Council should avoid making the same error.

B. Final Observations for the City Council's Consideration

The City Council did not remove the mayor or any councilmembers through a motion following Parker Poe's investigation findings in 2012 and 2013. Parker Poe found (among other things) that certain elected officials improperly influenced personnel decisions within the City of Monroe, and employees believed they had such influence.<sup>26</sup> Factual differences exist between Ms. James' conduct and the conduct at issue in Parker Poe's investigation, but they share one similar theme: exceeding authority in interactions with City of Monroe employees. Ms. James is Black, and the elected officials at the center of Parker Poe's investigation are white. Notably, removal of Ms. James in this circumstance could raise a question as to whether race is a factor. The City Council should consider and, if appropriate, address this dynamic in its public deliberations process to vote on removal.

Relatedly, Parker Poe's investigation report also showed that councilmembers were, in fact, influencing personnel decisions and that City of Monroe employees believed they could do so. (Parker Poe Memorandum at 21-27, Record No. 20). In this respect, Parker Poe's report adds credibility to Chief Gilliard's testimony that he feared for his job following his phone call with Ms. James at approximately noon on September 9, 2021. ([Jan. 27 Tr.](#) 325:7-11). If Ms. James were elected mayor, Chief Gilliard believed she would have had "direct influence over the hiring

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<sup>26</sup> More specifically, Parker Poe found, among other things, the following:

- One councilmember was known for "go[ing] directly to staff with specific requests" and "us[ing] intimidation tactics to achieve her goals";
- "Several City Managers were afraid to say 'no' to Council requests";
- "Staff feel that certain Council members would make their employment and their lives miserable if they were perceived as disloyal";
- "There is a strong belief that if a staff member does something that a Council member does not like, the staff member would potentially lose their job"; and
- "Some Council members have influenced personnel decisions with respect to staff."

([Parker Poe Memorandum](#) at 21-24, Record No. 20).

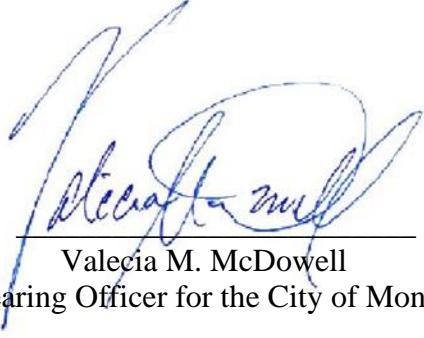
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of the city manager, which would have had a direct impact on the police department.” (Jan. 27 Tr. 92:5-9).

**V. CONCLUSION**

As set forth and analyzed in the proposed findings of fact and conclusions of law, the evidence indicates that Ms. James engaged in misconduct in office and that just cause exists for her removal from office. If the councilmembers agree based on their review of the evidence in the Record, then they—and only they—can answer the question as to whether Ms. James should be removed. And although my analysis indicates that the City Council would be within its rights to remove Ms. James based on the evidence in the Record, the City Council certainly does not have to remove Ms. James. I have provided several important factors and observations for the City Council to consider as it answers that important question. Those factors and observations are not meant to be exhaustive, so the City Council should consider any others that are relevant and appropriate.

This the 25<sup>th</sup> day of March, 2022



Valecia M. McDowell  
Hearing Officer for the City of Monroe