

**COMMONWEALTH OF KENTUCKY
KENTUCKY GENERAL ASSEMBLY
House of Representatives
Impeachment Committee**

IN RE: IMPEACHMENT OF STATE REPRESENTATIVE ROBERT GOFORTH

**REPRESENTATIVE GOFORTH PETITIONERS' OBJECTION TO
DEMAND FOR PAYMENT**

Come the Petitioners, by counsel, and in respond to the demand for payment sent by the LRC, object as follows:

False claim of “no choice” in assessing costs against the Petitioners: Both the IC Chair in various public comments and the LRC letter claim that assessing the Committee’s costs for the lawyers it hired and the time it spent on the matter are “mandatory” and must be enforced. This claim is false and incorrect. The IC chose to assess such costs against some Petitioners and not others. The IC misinterprets the applicable law (KRS 63.070), which clearly does not provide for the LRC to be reimbursed for its own costs and should be interpreted only to allow an accused to claim costs. The IC chose to hire five outside counsel, at a rate that far exceeds the permissible government maximum to do the job that only House members can do – that being deciding whether to act on an impeachment petition. Delegating that determination in violation of law, and then fining petitioners for the costs the IC voluntarily incurred, is inappropriate and unlawful.

No basis in law for the financial penalty: The legislature is not entitled to financially penalize citizens who advance matters before it. The IC fails to cite any law or Constitutional provision that permits it to fine those who ask it to consider matters of public interest. It is the

duty of the legislature to speak with and for the public. The public cannot be fined for asking that the legislature do its duty. Citizens cannot be penalized for their freedom of speech on such an important issue. The entirety of the demand for dollars is rejected for that reason.

No privilege attaches to the IC's demand for financial penalties against citizens: The substance of the financial penalties the IC is attempting to impose on private citizens who raised significant matters of public concern is a matter of public interest. Petitioners do not agree with the IC's demand that its unlawful behavior be kept secret. Petitioners reject the IC's false notion that the invoices, fees, bills, fines and costs claimed by this IC are "privileged" and hereby publicly append those demands for financial penalties hereto.

Failure to identify Petitioners: KRS 63.070 limits the individuals who can be financially penalized for bringing claims before the legislature. Even if the statute were Constitutional and enforceable, which it is not, such penalties cannot be imposed on persons who are not petitioners bringing an impeachment. The Verified Petitioners are not named in the demand for payment of costs. The persons identified in the LRC letter imposing fees were not Petitioners before the General Assembly. The persons listed in the LRC letter are a few individuals selected from the long list of those who signed in support of the demand that a person charged with felonious domestic violence and assault not be allowed to continue to serve as a representative of his district and should be censured or removed but were expressly not Petitioners as required by the Kentucky Constitution Section 32. For this reason, the claim for costs is not properly assessed against persons who are not verified petitioners before the body and must be dismissed for that reason. The IC's demand that these citizens have costs and fines assessed against them is violative of law.

Claim not authorized by statute: KRS 63.070 does not authorize the demand for fines or costs against the Petitioner. Even if applicable to this matter, which it is not, the statute authorizes only the costs of investigation borne by “the accused” and witness costs of the “accused” before the Committee. As Representative Goforth, the “accused” in this matter, never appeared before the Committee and failed to provide a response or any other document to the Committee, no fines or costs or penalty can be imposed against Petitioners.

The LRC letter specifically notes that the financial penalty is for a “complete list of costs accrued by the **committee**.” (Emphasis supplied). No costs were accrued by the accused. No costs were imposed on behalf of the accused’s witness or investigation costs. A review of the entirety of the record in this matter shows that there are no costs, investigation or otherwise, incurred by the accused, who took the matter so lightly that he never even filed a response. Rather, the I.C. (Investigating Committee) itself, which included three licensed Kentucky attorneys and had access to and support of dozens of other attorneys who work for the LRC, decided that it needed five MORE attorneys to advise it on the matter. The IC cannot charge Petitioners for its own incompetence or inability to understand the basics of Kentucky law, which was, Petitioners note, actually written by the legislature.

The law does not provide for “proportional division of fees”: Without statutory authority, the IC letter notes that it is dividing the costs it claims the IC incurred in this matter between three groups of Petitioners (one of the multiple groups that filed Impeachment Petitions against the Governor, the Petitioners who filed against Attorney General Cameron, and a group of people who didn’t file a Petition against Goforth). There were more than 100 Petitions filed against Governor Beshear. Every Petition against any party, the Governor or otherwise, was

dismissed by the IC. The financial penalty for filing which was assessed by the Committee should be divided more than 100 ways, if the IC is proposing a “proportional division.”

In fact, the division is not proportional. The record reflects that the time which is alleged billed in Goforth, which argued that a simple, straightforward and highly publicized criminal charge disqualified the Representative from office or at a minimum required the legislature to censure him or require that he receive mandatory anger management counseling (Goforth Petition, p. 2), is greatly in excess of that billed in the AG Cameron matter, which was a complex claim involving not only the Taylor grand jury matter but several additional issues involving national security and abuse of office by an executive officer.

The Committee cannot exclude objections to the entirety of the financial penalty: The LRC letter claims that “a blanket objection to all costs will not be considered.” The IC has no jurisdiction to financially penalize citizens outside the narrow exceptions specifically outlined in Kentucky statute. As there is no statute applicable to the financial penalty imposed by the IC herein, Petitioners file an objection to **any** imposition of costs or fines or other financial penalty by the IC. The IC has no jurisdiction to impose such costs and the law does not permit such action. A legislative committee has no legal authority to demand thousands of dollars from citizens. That action is arbitrary, capricious, and far outside the scope allowed by law. The entire demand is an unlawful denial of fundamental rights and must be dismissed.

The Petition was dismissed, so no financial penalty may be imposed: The record shows that the IC dismissed the Petition. The statute does not contemplate the imposition of a financial penalty on a Petitioner whose matter is not heard by the House. The IC spent thousands of dollars to assess the “form” of the request and not one penny to investigate the substance of the serious concerns raised.

Imposition of costs for incomplete and incorrect legal advice: The IC requested “legal advice” of some sort from two professors, one is counsel for the Speaker of the House (who was available to the Committee already, free of charge, but allegedly took a few hour “leave of absence” as per his testimony, to charge thousands of dollars for incomplete and incorrect advice to the IC) and the other ***who does not even practice law in this Commonwealth.*** The professors billed the IC (not, we note, the accused) for giving the IC an incomplete opinion on general matters of law. The record shows that each professor spoke for a few minutes before the Committee and that both gave markedly incomplete statements of the law, as shown by the Reply documents filed in this matter by Petitioners.

Kentucky Rule of Professional Conduct (KRPC) 3.130(3.3) “Candor before the Tribunal provides in pertinent part that “a lawyer must not allow the tribunal to misled by false statements or law or fact or evidence that the lawyer knows to be false. Id, Section (2). A lawyer is also required to be competent. “Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.” KRPC 3.130(1.1). The lawyer must also act with diligence. KRPC 3.130(1.3). KRPC 3.130(4.1) forbids a lawyer from making a false statement and requires correction of any false statements made, holding in relevant part that a lawyer:

- (a) shall not knowingly make a false statement of material fact or law to a third person; and
- (b) if a false statement of material fact or law has been made, shall take reasonable remedial measures

The fact that neither professor corrected the false statement that the IC had no alternative but to dismiss the Petition by notifying the IC that it or any member of the General Assembly could move for sanction, censure, removal or remediation of Representative Goforth creates the

appearance of unethical conduct by the professors. That renders the opinions not worthy of value and no costs should be imposed for the opinions as rendered.

Kentucky Rules of Professional Conduct hold that fees charged must be reasonable. KRPC 3.130 (1.5). The fees imposed by the professors are not reasonable. Paul Salamanca, the Speaker's lawyer, billed a total of 5.7 hours at \$420 an hour. His bill does not identify what those hours were for but the bulk of the hours are on the day he briefly spoke to the Committee so it appears that he billed at least \$1000 for just sitting and waiting to speak. The non-practicing lawyer, Josh Douglas, billed with more specificity, but charged far in excess of the rate permitted by attorneys working on behalf of the legislature, without any contract reviewed by the Contract Review Committee or approved by the state as required by law. Such legal bills would be rejected by any House Committee and should be rejected by the IC as well.

Every year many attorneys testify before House and Senate Committees at the request or mandate of the legislature. Many of those attorneys give significant expert opinions on matters of Kentucky law and practice. None of those attorneys ever submit a bill to the legislative committee before whom they testify or opine for their hours. Even attorneys specifically contracted by the General Assembly or other state actors cannot exceed the statutory maximum rate on bills for their services.

In the present case, recognizing the partisan bias of the Speaker's lawyer Salamanca and the Republican operative Douglas, as well as their well-known lack of expertise on the particular subject on which they were giving an opinion, counsel for Petitioners requested the opportunity to present an actual expert in the field or to at a minimum, question the professors regarding the substance of their testimony. The IC denied that opportunity. Indeed, the identity of the professors was hidden and they were referred to as "surprise witnesses" until the very moment

their faces appeared on screen before the IC. Petitioners submitted questions to be asked of the witnesses in a separate discovery request, but that request was also denied by the IC.

No law permits the IC to fine citizens for its own internal decision-making: The IC decided to hire a highly partisan white collar criminal defense attorney to advise it on clear issues of Constitutional law and statutory interpretation. No law or statute permits a legislative committee to charge the public for legal fees it incurred for its own benefit. None of the legal opinions or research allegedly provided by Attorney Westberry and friends was shared with the public or benefitted the public. This was solely a vanity project by the IC for its own benefit and the Petitioners should not be forced to pay for the IC's own frivolity.

Attorney Westberry was not prepared or able to provide advice on this simple issue in this matter. Nothing in that counsel's background reflects any expertise in such matters. That is reflected in Westberry's bills, which show that he had to reach out to two additional lawyers to help him understand the basic issues in this case. Even with multiple attorneys focusing on the simple question – should someone who strangles his wife in front of his children serve in the legislature without censure or removal – the bill shows that Westberry and friends spent more than 11.7 hours researching that matter. Westberry then spent another 1.6 hours discussing that simple question with the law professors. And, in a shocking show of grubbing for dollars, Westberry and friends billed 11.9 hours for travel to and from Frankfort. The IC should note that in this time of COVID-19 pandemic, most courts including the Kentucky Supreme Court and most legislative committees have attendance by zoom/remotely. Minimal prudence would have been for the IC to have its own personal lawyers appear remotely, to save the LRC taxpayer dollars on unwarranted travel expenses. Billing private citizens for a lawyer's travel time, at hundreds of dollars an hour, is egregious and inappropriate.

Further, the actual client for Attorney Westberry is the public, which elects and pays for the legislative service of the members of the General Assembly. Where, as here, an organization is the client, the lawyer represents the organization acting through its authorized representatives, and not any specific individuals to the detriment of the whole. Kentucky Rule of Professional Conduct 3.130 (1.13). KRPC 3.130(2.1) requires that “in representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation.” Westberry failed to uphold this duty to the citizens of this Commonwealth, instead acting in a partisan fashion to support inappropriate dismissals by the IC.

Kentucky Courts have addressed whether attorney fees can be assessed against citizens for matters brought before the General Assembly. In *Mercer v. Coleman*, 227 Ky. 797 (1929), the high court addressed whether the costs of the proceeding before the House of Representative could include attorney fees in an election challenge pending before the House. The language in the statute applicable in that case was very similar to the language of KRS 63.070: “**The costs of the proceeding** shall be adjudged against the unsuccessful party, and a certificate thereof given by the board, or by the clerk of either branch of the general assembly, as the case may require. A judgment for the same may be obtained after five days' notice in a circuit or county court.” *Id.* at 799-800 (emphasis added). Kentucky’s highest court was clear in rejecting imposition of a bill for attorney fees in that case, holding that: “The statute, if controlling, would only apply to the legal costs. **Attorneys' fees are not a part of the legal cost, and so would not be within the statute.**” *Id.* at 801. (emphasis added).

Invoice for staff time: Petitioners recognize the hard work and expertise of legislative staff. Nothing in this objection should be taken as disputing the value of such staff.

Legislative staff are employed by the state to serve legislative needs as the legislative committees address matters before the House and Senate. The IC has attempted to bill taxpayers, who are already footing the bill for the staff salaries and benefits, for time spent working for the legislators on the IC. There is nothing in the law that permits such a claim. Legislative staff work hard and with great expertise on matters before every single legislative committee, both during session and outside session. That is their contracted job. Petitioners may not be financially penalized by a demand that they pay a portion of staff salary. No law permits this fine and the IC's demand for same is rejected.

KSP invoice: Kentucky State Police serve this Commonwealth in a noble and sincere fashion. Nothing in this objection should be taken as impugning the KSP in any manner.

The IC met in the closed, locked and secured Capitol Annex building that has a police presence at the entrance. KSP are paid with taxpayer funds to protect the building in which the legislators meet. Nobody other than legislative staff and legislators and the press are allowed in the building. Petitioners' request to appear was denied by the IC. Apparently, the IC demanded an additional KSP presence at its closed meetings in a closed and locked building protected by police. Such illogical wasting of KSP time and effort should not be billed to citizens whose public interest matters are being reviewed by a group of the legislators the public elected to perform that duty. The statute relied upon by the IC does not provide for financial penalties to be assessed against citizens because the IC wanted additional police at its beck and call, in a closed room in a locked and secure building. That demand for financial penalties is rejected.

Improper delegation of authority by the IC: The IC made no findings on the Goforth petition, which requested immediate action including “intervention and counseling” for Representative Goforth for the protection of his spouse and family. The IC ignored that request and the suggestion that members of the House had a duty to act to ensure that Goforth harmed nobody else, given the citation by Petitioners to scientific studies showing that actions like those Goforth is charged with increase the risk of spousal homicide 7x, and that the House be seen as standing strongly against domestic violence. Instead, the IC accepted the incomplete and inaccurate claim by the professors it hired to the effect of there being “no other action” the House could take against Rep. Goforth.

In fact, the IC or any House member could bring censure against Goforth or demand that he receive counseling or that he be removed from office. The professors hired by the IC knew or should have known that. By refusing the permit the Petitioners to provide questions for the professors or cross-examine the professors, the IC denied Petitioners the ability to correct the significant errors in Salamanca and Douglas’ testimony. This caused immediate and ongoing harm and risk to Goforth’s family, Goforth himself, and the reputation of the legislature. The legislature should stand firmly against domestic violence and firmly in favor of counseling for members with mental health or anger management issues. Billing Petitioners for false and inaccurate information provided by the professors hired by the IC is inappropriate and unlawful.

Conclusion: The legislators on the IC should be ashamed of their attempt to violate Kentucky law by billing private citizens in a clear attempt to shut down access to a basic freedom. If upheld, the IC’s price-gouging financial penalty for raising matters of public interest before the legislature will deny this right to anyone but the wealthy.

The statute cited and relied upon by the IC does **not** permit a legislative committee to impose a financial penalty for its time reviewing and dismissing matters of significant public interest. The demand for fines should be retracted by the IC and the offices of House Speaker and House Minority Leader should strongly speak out to censure this unlawful and inappropriate behavior. The House must strongly advocate for freedom of speech and for the rights of citizens to hold elected officials accountable. To do otherwise is a blatant statement that only those who can pay exorbitant costs are allowed to question illegal actions by elected officials.

Respectfully Submitted,

/s/ Anna Stewart Whites

Anna Stewart Whites
327 Logan Street
P.O. Box 4023
Frankfort KY 40601
(502) 352-2373 (office)
Annawhites@aol.com

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing was this day served on the IC via the House Clerk and on Elishea Schweickart, and on House Speaker David Osborne and House Minority Leader Joni Jenkins, this the 16th day of March, 2021.

/s/ Anna Stewart Whites
