



**FOX | O'NEILL | SHANNON s.c.**

622 North Water Street  
Suite 500  
Milwaukee, WI 53202  
Telephone: 414-273-3939  
Fax: 414-273-3947  
[www.foslaw.com](http://www.foslaw.com)

Jacob A. Manian  
414-831-4468 (Direct)  
414-303-2526 (Cell)  
[jamanian@foslaw.com](mailto:jamanian@foslaw.com)

July 20, 2020

**VIA EMAIL:** [ethics@milwaukee.gov](mailto:ethics@milwaukee.gov)

Ethics Board  
City Hall, Room 205  
200 E. Wells Street  
Milwaukee, WI 53202

Re: Steven M. DeVougas

Dear Members of the Ethics Board,

This letter is in response to the ethics complaint filed by the Milwaukee Police Association (“MPA”) and Dale Bormann against my client, Steven M. DeVougas, alleging violations of two sections of the City of Milwaukee Code of Ethics under Chapter 303. Based on the allegations in the complaint, this honorary body should find that it does not have jurisdiction to hear this complaint, as it fails to set forth a prima facie case against Mr. DeVougas. If this body decides to proceed to the merits, it should conclude that the allegations are unfounded and dismiss the complaint accordingly.

### **BACKGROUND**

The MPA’s complaint apparently stems from Mr. DeVougas’ attendance at the interview of Kalan R. Haywood conducted by the Milwaukee Police Department’s (MPD’s) Sensitive Crimes Division in August 2019. As is well-known by now, Mr. DeVougas recused himself following the interview, given that he served as corporate counsel for the Haywood Group and does not practice criminal law.

On December 20, 2019, MPD’s investigatory file was leaked to the MPA and the Milwaukee Journal Sentinel (“MJS”). The MPA published a Facebook post and the MJS used the social media post as a pretext to publish a story concerning the interview.

Subsequently, Alderman Robert Donovan filed a grievance against Mr. DeVougas with the City Attorney and the Office of Lawyer Regulation (“OLR”). On January 6, 2020, the City Attorney issued a memorandum advising that Mr. DeVougas did not violate any Fire and Police Commission (“FPC”) rule. The City Attorney did not raise any issue concerning any City of

Milwaukee Code of Ethics rule. Instead, the City Attorney referenced a Wisconsin State Bar ethics rule and left open the question as to whether an argument could be made that such rule was violated. However, on March 27, 2020, the Wisconsin State Bar Standing Committee on Professional Ethics resolved that issue in Mr. DeVougas' favor when it withdrew E-77-11, finding essentially that the rule was outdated and obsolete. The OLR reviewed Ald. Donovan's complaint, declined to open an investigation and closed out the complaint.

Mr. DeVougas sought an advisory opinion from this body and appeared for questioning on February 21, 2020. On February 26, 2020, the MPA filed its complaint.

## ANALYSIS

### I. The MPA has failed to state a prima facie case against Mr. DeVougas.

As summarized above, several bodies have already investigated ethics charges concerning Mr. DeVougas' limited involvement with the August 2019 MPD interview. Each body concluded that no rule was violated. The City Attorney's office concluded that Mr. DeVougas did not violate any FPC rules. The City Attorney did not see fit to raise any concern as to a City Code of Ethics rule. It certainly could have given that it did raise the issue concerning the State Bar rule, the one that the Committee on Professional Ethics then withdrew. Moreover, as an attorney licensed in the State of Wisconsin, Mr. DeVougas is subject to Supreme Court Rule Chapter 20, which sets forth ethics rules governing lawyers' conduct. The OLR reviewed Ald. Donovan's ethics complaint and declined to open an investigation. The Ethics Board should follow suit and dismiss the MPA's complaint as legally insufficient and moot given that Mr. DeVougas' conduct has already been thoroughly reviewed and scrutinized.

### II. Even if the MPA has stated a prima facie case, the facts establish that Mr. DeVougas did not violate the City Code of Ethics.

The MPA's complaint is 91 pages of what appears to be various articles and documents related to Mr. DeVougas. The MPA has lodged violation of two sections of the Milwaukee Code of Ethics. First, that Mr. DeVougas violated Section 303-5(5) - Misuse of Position. This provision states that "No official or other city employee may use or attempt to use his or her position to influence or gain unlawful benefits, advantages or privileges for himself or herself or others."

There is no evidence that Mr. DeVougas used or attempted to use his position as a commissioner to obtain unlawful benefits for himself or anyone else. As Mr. Johnson concluded in his report prepared for the Fire and Police Commission, MPD did not know before the day of the interview that Mr. DeVougas would be attending. As such, Mr. DeVougas could not have attempted to influence anyone before that day. During the interview, Mr. DeVougas did not obstruct or interfere with the detective's questioning of Mr. Haywood. Instead, he interjected a handful of times primarily to clarify certain points over the course of the two-hour long interview. Following the interview, Mr. DeVougas did nothing to attempt to influence or interfere with the investigation. To the contrary, he immediately withdrew from involvement in the matter and Mr. Haywood retained criminal defense counsel.

Mr. Johnson concluded in his report that MPD's decisions as to how the investigation would be conducted had nothing to do with Mr. DeVougas. The matter now rests solely with the District Attorney. Given these facts, there is no evidence that Mr. DeVougas misused his position when he attended the interview. Likewise, there is no evidence that he used or attempted to use his position as a commissioner to anyone's benefit. He did not attend the interview in his capacity as a commissioner.

The MPA has also complained that Mr. DeVougas violated Section 303-5(7) – Representation for Compensation. As an initial matter, Mr. DeVougas did not receive any compensation for his appearance with Mr. Haywood at the MPD interview in August 2019. He did not charge Mr. Haywood for this appearance and did not receive a fee.

Furthermore, the cited section does not apply in this circumstance. This was not a trial or hearing. It was not a custodial interview involving the reading of Miranda Warnings. It was a voluntary interview that occurred at the Sojourner Family Peace Center. As stated, Mr. DeVougas withdrew from involvement in the matter immediately following the interview. Based on these facts, MPA's second ethics charge is likewise unfounded.

### CONCLUSION

Unfortunately, one cannot help but wonder whether the MPA is abusing this governmental process for political gain and gamesmanship. This body should send a clear message that it will not be used for political point-scoring. For the reasons stated above, MPA has not stated a prima facie case against Mr. DeVougas. Therefore, the Ethics Board does not have jurisdiction and the complaint should be dismissed. Furthermore, for the reasons stated above, the facts do not support the specific ethics charges made in MPA's complaint and should be dismissed. Finally, Mr. DeVougas' limited involvement in the matter at hand has been investigated by several bodies, all of which have determined no ethics rule was violated.

Thank you for your time and attention to this matter.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Jacob A. Manian", written in a cursive style.

JACOB A. MANIAN

JAM/abs