

MEMORANDUM

To: Members of the Metropolitan Governance Task Force

From: Myron Orfield
Earl R. Larson Professor of Civil Rights and Civil Liberties
University of Minnesota Law School

Re: Addendum to the Task Force Report regarding Gross Ethical Violations
by Metropolitan Council Staff and Improper Interference with the Task Force
Deliberations

Date: February 2, 2024

I write to memorialize the gross ethical violations by Met Council staff in conjunction with members of this committee. These violations, orchestrated by Met Council staff, derailed the committee's ability to receive information necessary to undertake its charge, and the committee's ability to fully deliberate. In short, the Council, in concert with members of the committee, made malicious and knowingly false defamatory statements designed to impair my reputation and prevent me asking legitimate questions vital to the committees' deliberations. They did so both to avoid answering legitimate questions, and to punish and illegally intimidate me for work aiding black religious organizations in the exercise of their state and federal civil rights claims, including claims against the Council.

Weeks before October 25, 2023, several questions were submitted to the Met Council asking to explain whether it considered itself an executive agency, a local government, or a special district. Given the council's unusual configuration, the answer to these questions was vitally important to understand whether it was functioning properly. Given the Council spends at least \$2.5 million per year on its general counsel's office and in retaining outside legal counsel, it did not seem unreasonable for the council to provide answers to questions about its basic legal nature under Minnesota law. Knowing what the Council is, legally speaking, is an important starting point for discussions on how it ought to be governed.

On October 25, the Council's general counsel appeared before the committee, and I intended to seek a firm answer to this important legal question. However, as I was beginning questioning of the Met Council's attorney, Representative Klevorn and Koznick interrupted by repeatedly accusing me of an illegal conflict of interest – effectively an accusation of unethical behavior, when made at an attorney. Their constant interruptions prevented me from effectively asking my questions about the Metropolitan Council's legal status and allowed the Met Council to totally avoid responding to serious and vital questions necessary for the committee to complete its deliberations. I had to spend most of my time defending myself from these attacks.

I later learned Klevorn and Koznick had been supplied with emails and memoranda from the Council itself. For weeks before the hearing, Met Council lobbyist Judd Schetnan had been providing this false and defamatory information about me and my assistance to black religious organization's civil rights proceeding. This sequence is documented in a MinnPost

story authored by Peter Callahan, which I include as an addendum to this memorandum. The knowingly false and malicious defamatory information was used by Schetnan to encourage members of the committee – most particularly Representative Koznick, Klevorn, and to a lesser degree Mayor Hovland – to attack my character and legal ethics in order to disrupt my questioning of Council staff. Council staff and general counsel were all involved in this effort to maliciously defame my character. The Chair of the Met Council defended Schetnan's conduct in the MinnPost story.

However, the records unearthed by Callahan indicate that all involved had in their possession a memorandum from Patrick McCormick, an ethics expert in the Minnesota House research office. That memo declared unequivocally that I had no conflict of interest. Nevertheless, with this memo in hand, and therefore knowing the falsity of the defamatory attacks on my character, Schetnan actively encouraged members of the committee to proceed with their interruptions and accusations.

This process of false and malicious defamation in a public hearing, aided and encouraged by the Met Council, as well as the governor's appointed member on the committee, persisted for at least twenty minutes and was live streamed to the entire state and any other internet viewer. A description of the accusations was published in the Star Tribune. In consequence, I was made the subject of attacks on social media and other sources. For the rest of the hearing Representative Koznick, Klevorn and others treated me as unethical; the cloud of doubt hanging over my character frustrated efforts to serve appropriately and fairly on the committee.

Under Minnesota law, the requirements for defamation are that person make a false and defamatory statement to a third party knowing that it was false, that the statement was disseminated through publication or communication, and the plaintiff's reputation suffered harm. In the case of a public figure, one must show that the defamatory statement was made with malice, knowledge that it was false or with reckless disregard for the truth. As a matter of law, knowingly and falsely accusing an attorney of a conflict of interest is defamation per se, which means that damages are presumed by law.

Given that all parties involved appeared to have in their possession a memo refuting any conflict of interest, and proceeded to mount a bad-faith attack despite this, for no other reason than to malign my character and disrupt my ability to work as a duly-appointed member of the committee, in a proceeding that was publicly broadcast and reported on, all elements above appear to be met.

There are other concerns, as well. In particular, this episode raises the possibility of a retaliatory action against a civil rights claim, which would itself violate federal civil rights law. One putative conflict cited by Klevorn, Koznick, and Schetnan was my work aiding, without any compensation, an ongoing federal fair housing claim against the Met Council, brought by several metro suburbs and a local civil rights organization. Such effort to "intimidate and interfere" with my "efforts to aid or encourage" the complaints in the "aid or enjoyment of the civil rights" are federal and state civil right violations of 42 USC § 3617. Unlawful conduct under this section includes, but is not limited to

Intimidating or threatening any person because that person is engaging in activities designed to make other persons aware of, or encouraging such other persons to exercise, rights granted or protected by [the Fair Housing Act]...

Retaliating against any person because that person has made a complaint, testified, assisted, or participated in any manner in a proceeding under the Fair Housing Act.”

In addition, Judd Schetnan’s conduct violates Article II section 242 (b) of the permanent Rules of the House of Representatives 2023-24 session, which provides:

A lobbyist shall not knowingly, either directly or through a third party, furnish false or misleading information or make a false or misleading statement that is relevant and material to a matter before the House or any of its committees, subcommittees, or divisions when the lobbyist knows or should know it will influence the judgment or action of the House or any of its committees, subcommittees, or divisions.

Schetnan’s conduct also violates section 57.2 of the Temporary rules of the Minnesota Senate which provide:

A lobbyist shall not knowingly, either directly or through a third party, furnish false or misleading information or make a false or misleading statement that is relevant and material to a matter before the Senate or any of its committees or subcommittees when the lobbyist knows or should know it will influence the judgment or action of the Senate or any of its committees or subcommittees.

Finally, Schetnan’s conduct violates the Code of Ethics of the Minnesota Council on Government Relations, Section 5 of which requires that its members “must not knowingly make any false and misleading statements to clients, employers or other advocates, employees of the legislative or administrative staff, or anyone involved in the governmental process.” Section 7 of the code demands that “member should represent their clients and use only legal or ethical means to accomplish their clients’ objectives.” Clearly, the knowing propagation of false statements is neither a “legal nor ethical practice.”

As a longtime public servant and law school professor, my integrity is central to my career and reputation. I never expected to be attacked with calumnious statements implying I was engaging in some sort of subterfuge while serving on a public committee related to my professional expertise. I have always advocated for what I thought was right. I have always respected and often been friends with those I disagreed with. I am frustrated that disagreements on this committee could not be resolved with civilized debate instead of unfounded and damaging accusations. I believe this profoundly unethical conduct – masterminded by the very Met Council the committee was formed to regulate – undermines the effectiveness of the committee, showing a body willing to transgress across legal and ethical boundaries to avoid any sort of democratic accountability.

News **State Government**

The backstory on 20 minutes of awkwardness at Met Council governance task force shows why consensus will be hard to reach

The Metropolitan Governance Task Force has until Feb. 1 to send a proposal to the Legislature about how — or whether — to change how the Met Council is run.

By [Peter Callaghan](#) | Staff Writer



State Rep. Frank Hornstein and state Sen. Eric Pratt shown leading a meeting of the Metropolitan Governance Task Force.

MinnPost photo by Peter Callaghan

Jan. 17, 2024

A law professor was asking the Metropolitan Council’s attorney some tough questions about the agency’s structure when he was suddenly interrupted.

“Just this morning it has come to my attention, forgive me I didn’t have an opportunity to speak to you privately about this,” Rep. Ginny Klevorn, DFL-Plymouth, told

University of Minnesota professor Myron Orfield during an Oct. 25 meeting of the governance task force on which they both serve.



State Rep. Ginny Klevorn

Klevorn went on to mention that “litigation involving the Met Council” over federal fair housing laws involved Orfield and therefore raised questions about his line of questioning. That’s despite the fact that scrutinizing the Met Council was the reason for the task force’s existence.

Orfield said he wasn’t a party to the lawsuits and attempted to continue his questioning of the Met Council’s staff attorney. But he was cut off again, this time by Rep. Jon Koznick, R-Lakeville, who said, “It looks like a conflict of interest to me when you’re grilling the Met Council.”

It was an awkward exchange that piqued meeting attendees’ interest: two task force members’ apparent attempt to discredit one of their colleagues. What was behind that?

As it turns out, a lot. According to messages analyzed by MinnPost following a Data Practices Act (DPA) request, Met Council staffers provided information about Orfield to Koznick. Both Klevorn and Koznick oppose changing the agency’s structure from an appointed council to an elected one (Orfield supports an elected council). Meanwhile, Koznick disregarded a House of Representatives attorney’s conclusion that Orfield did not have a conflict of interest.

The governance task force is supposed to send the Legislature recommendations for how to reform the Met Council. But the exchange at that October meeting, along with communications behind the scenes, help demonstrate why it will be difficult for the task force to reach a consensus. For Met Council critics, it might also provide evidence to further argue the appointed nature of the governing body and the frequent turnover of council members creates a power vacuum that is filled by the regional agency’s staff.



State Rep. Jon Koznick

“The agency obviously is trying to undermine any progress,” Senate Transportation Committee Chair Scott Dibble said in an interview with MinnPost. Dibble favors significant restructuring of the council. “They’re trying to protect their power and their prerogatives and keep things status quo. They’re not neutral, but they shouldn’t be interfering in the deliberations, trying to game the outcome.”

Dibble called the questioning of Orfield by Klevorn and Koznick in such a way as to disrupt his questioning “a dirty trick” and “a political hit.”

In his own written response to what he termed “Representative Klevorn’s Allegations of a Conflict of Interest,” Orfield detailed his public and voluntary involvement in the actions over fair housing, denied any conflicts of interest and ended with this lament: “... while Rep. Klevorn was questioning my character and integrity, the Met Council was able to avoid any of the commission’s questions about its constitutional status.”



Charlie Zelle

Metropolitan Council

But Met Council Chair Charlie Zelle said in an interview that his staff didn’t do anything improper. “We provide information and we respond to legislators’ requests, whether it

is over time or in the moment,” Zelle said. “The intent isn’t to have private information. Anything that was shared was certainly open to the chairs. It isn’t a way around them.

“It is what we do in a normal course. We’re constantly giving information,” Zelle said. “I don’t think there was anything inappropriate in answering questions or providing information.”

The paper trail

Documents released in response to the MinnPost DPA request show that Koznick had been working with Met Council government affairs director Judd Schetnan before the meeting to get information about a pair of legal actions that Orfield has been supportive of as director of the Institute of Metropolitan Opportunity at the university’s law school. Other documents also show further correspondence over whether Orfield had a conflict of interest.

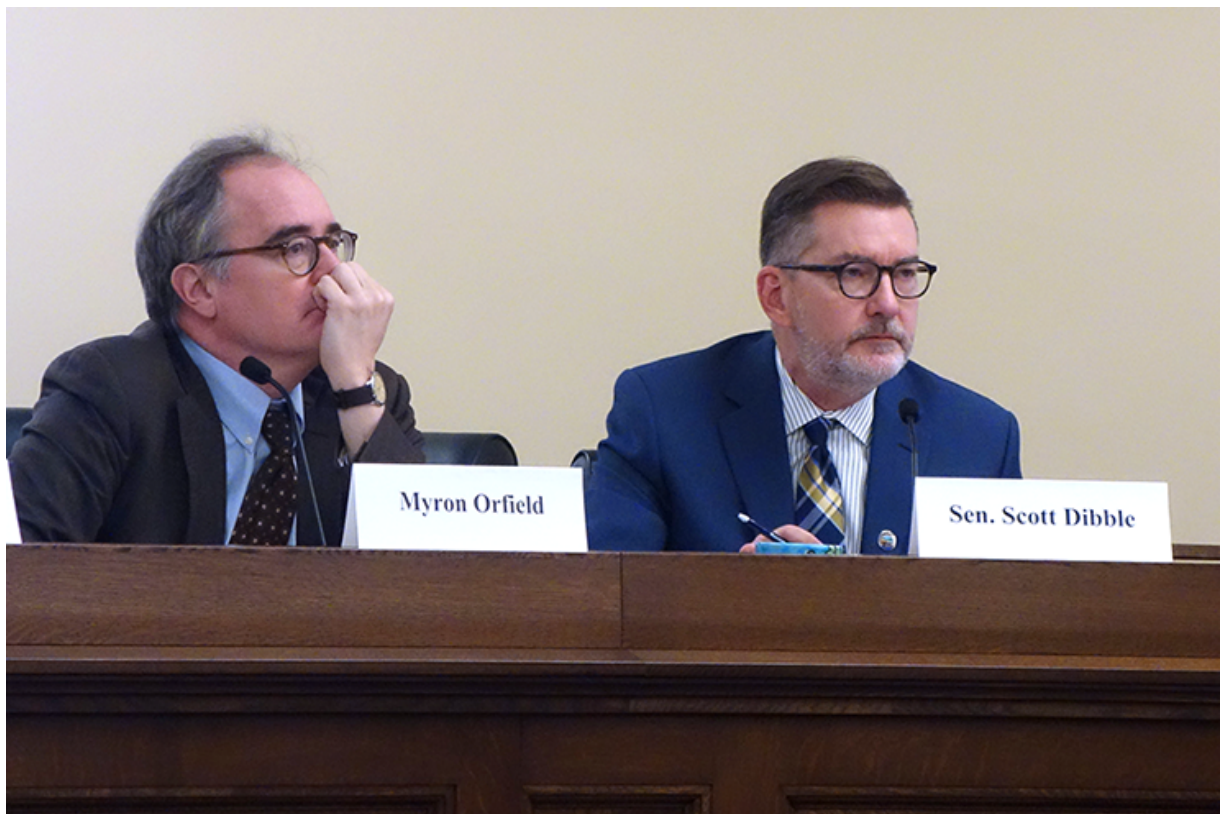
One of the lawsuits Koznick asked about is a current one filed by the Stairstep Foundation that alleges the Met Council improperly concentrates affordable housing in segregated neighborhoods. Orfield is to be a witness to describe the history of affordable housing in the region and its impact on racial segregation — one of the areas of his research at the U of M institute.

The other is a 2014 Fair Housing complaint with the federal government by the Metropolitan Interfaith Council on Affordable Housing (MICAHA). While Orfield was local counsel when the complaint was filed, he withdrew as counsel in 2015 shortly after a Washington, D.C., fair housing lawyer took over the case. MinnPost [reported on that lawsuit](#) and Orfield’s involvement at the time.

Koznick said in an interview with MinnPost that he had been told of the legal actions involving Orfield by a House partisan staff member and asked Schetnan for details. He said he shared the information with Klevorn and said he raised it during the Oct. 25 meeting because he thought Orfield’s questioning of Met Council staff was “rude” and that the legal issues were “obscure.”

“I didn’t understand his persistent line of questioning to practically every testifier,” Koznick said. “Why is it important to the task force? When it was disclosed that he was involved in the lawsuits, I thought it was important to the task force for him to explain why it’s important.

“As a member of the task force I tried to find out more information and this is what I found,” he said. “I thought, ‘What is going on here?’”



Myron Orfield and state Sen. Scott Dibble shown during the Jan. 10 meeting of the Metropolitan Governance Task Force.

MinnPost photo by Peter Callaghan

The DPA response displays a [sequence of emails](#) that shows that Koznick was told by a lawyer for the House of Representatives that Orfield's action did not pose a conflict of interest, and that he was told before he raised the issue at the Oct. 25 meeting. Koznick asked House attorney Patrick McCormack shortly after the meeting started whether he thought there was a conflict. McCormack responded in the negative at 10:21 a.m., adding that Met Council attorneys can refuse to answer questions they feel involve the lawsuits. Koznick shared McCormack's memo with Schetnan at 10:50, and Schetnan replied at 10:57.

"Seems like good counsel," Schetnan wrote.

It was 11:15 a.m. when Klevorn first interrupted Orfield's line of questions to Met Council staff attorney Ann Bloodhart:



The memo from McCormack from House counsel said that while the lawsuits create an “interest” but not a conflict of interest before noting that most task force members have “an interest or pre-existing policy position.

“A conflict of interest is defined (in statute) and shorthand, means the two roles conflict and one confounds or prevents the good faith performance of the duties of the other,” McCormack wrote.

“The perception issue clearly exists. But one goal of a task force like this is to get multiple points of view, and suing the Met Council does not ipso facto disqualify a member of the task force,” McCormack said.

Despite that advice, Koznick said at the meeting that the lawsuit “looks like a conflict of interest to me” and later said he’d talked to “a few people in House nonpartisan.” He said this week that while there might not have been a legally defined conflict, there was still an appearance of a conflict that he thought explained Orfield’s questioning of the council attorney.

“I’m not suggesting anything illegal was done,” Koznick said.

Minneapolis DFL Rep. Frank Hornstein, who is serving as chair of the task force and also chairs the House Transportation Committee, tried to move past the issue during the Oct. 25 meeting — with marginal success. He noted that Orfield’s questions of Bloodhart flowed from [a letter Hornstein had sent on behalf of the task force](#) to the Met Council earlier. The letter had been shared with some task force members ahead of time, and [Bloodhart had provided a written response](#) ahead of the meeting.

“I don’t see a conflict of interest. I don’t see anything untowards happening here,” Hornstein said during that meeting. “We’re ready to move on.”



Myron Orfield

Yet Hornstein followed up with McCormack after the Oct. 25 meeting and wrote a memo to task force members to further defend Orfield's role on the committee.

"Nonpartisan leadership at House Research has been consulted, and there are no ethical concerns or conflicts of interests regarding Professor Myron Orfield's inclusion in the task force as a member," Hornstein wrote on Oct. 27. "I now consider this matter closed, and I look forward to continuing the important work of the task force."

Koznick denied that his questioning of Orfield was an ambush or dirty trick, as Dibble said. While Koznick does not agree with Dibble's view that the Met Council should be elected, he has been critical of the council.

"People elected me and I was appointed by my caucus to do the work of the task force," Koznick said in the MinnPost interview. "It's no hit job. We should just be transparent about it."

From governor's staff to governor's appointee

The DPA response also shows that a task force member appointed by Walz shared information and strategized with Met Council staff over Orfield's questioning of Met Council's attorney. Orfield's questions centered on the Met Council's legal underpinning. Was the agency a local government, a state agency, a special purpose district, public authority or something else?

The questions came up earlier in [Hornstein's letter to the council](#) that he shared with some task force members. When a draft was being circulated, Orfield reached out to task force member Kristin Beckmann, former deputy chief of staff for Gov. Tim Walz, and asked her to sign on. Beckmann then sent the draft to Met Council staffer Schetnan and also to Sasha Bergman, Walz's chief of staff for policy.

“I am not inclined to sign on to any letter, but want to double check with you before I say no,” Beckmann wrote Schetnan and Bergman. “Also just want to let you know what Orfield is brewing up. If you have a recommendation for a response to him, I’d appreciate it.”

Schetnan wrote that he agreed that Beckmann should not sign.

“I agree with you that on its surface it seem (sic) pretty straightforward but it definitely gives me the feeling of preparing for a particular perspective to be argued,” he wrote.



State Sen. Scott Dibble

Dibble said that while Beckmann is the governor’s appointee and might think she should be consulting with the Met Council — an agency that reports to the governor — her consultation calls into question whether Walz is open to change as he has said he is.

“Both the governor and his senior staff and Kristin Beckmann herself have assured me that the governor is open to reform and are approaching this whole question with an open mind,” Dibble said. “If her working behind the scenes in collaboration with the Met Council indicates that is not the case, I would be disappointed.”

He termed Beckmann sharing the contents of Hornstein’s draft letter with the Met Council staff before it was sent to the Met Council as “inappropriate.”

Zelle said Met Council staff’s communications with Beckman were “in the normal course of government relations.” The Met Council is considered part of Walz’s administration and there are frequent conversations between that office and the Met Council.

“We don’t want to be non-aligned with what the governor’s staff are thinking,” Zelle said. “More importantly, we’re a resource for facts and points of view and advice for the governor’s staff because we’re part of the administration.” Zelle said he thinks

Beckmann did not need Met Council advice to reach her own conclusions about the letter. Schetnan's advice that she not sign the letter was "more where the administration should be."



State Rep. Frank Hornstein

Beckmann, however, said this week that she regrets sharing Hornstein's letter with the Met Council staff before he'd sent it. She said she called the Minneapolis DFLer to express her regret. At the time, she said, she sought advice from both the governor's office and Met Council staff because the subject matter was unfamiliar to her.

"As a personal practice before I sign anything, I try to get information from all sides," she said. Beckmann said she now realizes that her role on the task force is different from her previous role in the Walz administration. While she was appointed by Walz, she said she will decide for herself what recommendations to make about Met Council governance. And she said she will do so without seeking the counsel of Met Council staff.

"I saw the Met Council as a content expert, and I was seeking advice on that," she said of the early days of the task force. "And in my role on the staff we had a rule of no surprises. We tried to communicate everything."

"Maybe the mistake I made here was not having completed that shift from governor's office staff to governor's office appointee," Beckman said. That said, Beckmann said she is undecided and that Walz remains open to considering whatever the task force, and in turn the Legislature, recommends.

Lots of conflicts, little consensus

The 20 minutes of awkwardness during a meeting that is normally filled with pretty dry subject matter led to [a Star Tribune article](#) amplifying the allegations against Orfield. And the ordeal can be seen as exposing some of the tensions among task force members — Klevorn and Edina Mayor James Hovland have been defenders of the

current Met Council makeup, Koznick is a critic yet opposed to an elected council, and Orfield, Hornsein and Dibble all support an elected council.

Orfield is not the only task force member with a history of raising concerns about the council makeup and staff. Mary Pattock was party to a lawsuit that sought unsuccessfully to slow approvals for the Southwest Light Rail Transit project, several of the legislators on the task force have authored bills to restructure the Met Council, Hennepin County Commissioner Marion Greene has recently done battle with the council over management and funding of the SWLRT project.

Orfield's involvement in council issues of fair housing and land use is well known and lengthy. He was also the prime sponsor of the bill that created the current iteration of the Met Council when he served in the state Senate.

Asked if he thought being involved in legal actions against the Met Council presents a conflict of interest for Orfield, Zelle said he doesn't have an opinion.

"Clearly it was a sensitive issue for Myron Orfield; I witnessed his reaction," Zelle said. "But that's an issue the task force members and the chairs and Myron Orfield can work out."

That's exactly what Dibble says didn't happen in this case. Rather than bringing up any concerns about a conflict to Hornstein, the task force's chair, the lawmakers — assisted by council staff — "did something sneaky and behind the scenes" and tried to "create a moment."

Hornstein said he has asked the Met Council staff to be a resource for the task force but expected information to be shared out in the open.

"That role is wholly appropriate, but if they're advocating for a particular position they should communicate that to the task force," Hornstein said. "It's surprising and disappointing that there should be this type of communication behind the scenes."

Whether the task force can agree to any substantive reform suggestions for the 2024 Legislature is an open question. At last week's meeting, the group debated for more than an hour whether a final recommendation could result from a simple majority of the 17 members or should reflect a larger majority.

"I think there is agreement around the table that we are a fairly evenly split group," said task force vice chair Eric Pratt, a Republican senator from Prior Lake who has advocated for the Met Council to be a council of governments made up of local elected officials from the region. His bill to do that was vetoed by then-Gov. Mark Dayton.

Pratt said he thought a supermajority requirement might force compromise, but that motion failed. The task force has two more meetings and must provide recommendations to the Legislature by Feb. 1.



Peter Callaghan

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