

COLORADO INDEPENDENT ETHICS COMMISSION
Complaint No. 23-17

RESPONSE TO COMPLAINT

IN THE MATTER OF: MITCH LAKIND

Mayor Mitch LaKind of the Town of Monument, Colorado (“Mayor LaKind” or “Respondent”), by and through his attorney, Robert G. Cole, respectfully responds to Complaint No. 23-17 (“Complaint”) pursuant to the IEC’s Order Regarding Respondent’s Motion to Dismiss and Motion for Summary Judgment dated October 23, 2023 (“Order Regarding Dispositive Motions”), IEC Rule 5(H)(2), and the IEC’s Order of Partial Dismissal dated August 22, 2023 (“Order of Partial Dismissal”). To the best of Respondent’s knowledge, information and belief, all statements set forth in this Response are true.

INTRODUCTION

On August 7, 2023, Kelly Elliott, Darcy Schoening, and Amy Stephens (“Complainants”) filed the Complaint against Mayor LaKind with the Independent Ethics Commission (“IEC”). The IEC partially dismissed the Complaint and narrowed the remaining issues to which Respondent must respond, as alleged in the Complaint, as outlined in Complainant’s Response to Respondent’s Dispositive Motions (“Response to Dispositive Motions”), and as listed below:

1. The allegations that Respondent improperly attempted to influence members of the Town Council in February, March, and April, 2023, on a matter in which he had a personal or private interest; and

2. The allegations relating to Respondent's possible conflicts of interest at an April 11, 2023, meeting of the Monument Town Council.

Order Regarding Dispositive Motions, page2; Order of Partial Dismissal.

Complainant's Response to Dispositive Motions focuses the Complainant on two alleged ethical violations associated with the Town's payment of the Sherman & Howard invoice¹:

1. Whether Mayor LaKind's actions related to the payment of the Sherman & Howard invoice created a justifiable impression that the public trust has been violated pursuant to Article XXIX, Section 1(1) of the Colorado Constitution, *Response to Motions at 4*; and
2. Whether Mayor LaKind failed to carry out his duties for the benefit of the people of the state pursuant to Section 24-18-103(1), C.R.S., *Response to Motions at 4*.

Mayor LaKind responds that the record clearly shows that at all times his actions upheld the public trust, furthered the interests of the Town of Monument and thus the people of Colorado, and complied with all applicable standards of disclosure. In responding to the Complaint Mayor LaKind incorporates herein the statements contained in the Dispositive Motions in response to any other allegations contained in the Complaint and the issues framed by the IEC's Orders that are not specifically addressed herein.

BURDEN OF PROOF AND PRIVILEGE

Complainants suggest that it is up to Mayor LaKind to prove that payment of the Sherman & Howard invoice was not discussed in executive session. *Response to Dispositive Motions at 7* ("The affidavits filed in Respondent's Exhibits 2 – 8 fail to establish that improper communication regarding payment of the Sherman & Howard invoice did not take place.") It is not Mayor LaKind's burden to disprove Complainants' allegations but rather for Complainants

¹ The term "Sherman & Howard invoice" is defined in the Dispositive Motions.

to prove them by a preponderance of the evidence, unless the IEC determines an even higher standard is warranted. *Article XXIX, Sec. 5(3)(e).; IEC Rules of Procedure Rule 7(d)*. Complainants have failed to meet this burden.

The Complainants opaquely suggest that the IEC should disregard the privileges afforded the Town of Monument's attorney-client communications and executive sessions. *Response to Dispositive Motions at 9* ("The language of each affidavit is substantially similar, crafted in a manner designed to cut off further investigation of the matter by the IEC. For example, the affidavits describe activities that occurred in executive session, while purportedly not waiving the executive session privilege.") The Affidavits filed with the Dispositive Motions and the Second Affidavits filed with this response are not intended to cut off further investigation by the IEC. They do not describe activities or discussions that occurred in the executive sessions. In a very limited way and while preserving the Town's executive session and attorney-client privileges, they describe what was not discussed in the executive sessions, namely whether the Town Council should pay the Sherman & Howard invoice.

The attorney-client and executive session privileges belong to the Town of Monument acting through its Town Council. §31-4-301(1), C.R.S.; *Monument Home Rule Charter, § 1.4; see also, Rule 1.13(a) CRPC* ("A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents."). The Town Council can act only as a body during a properly called meeting. §24-6-402(2), C.R.S. The Town of Monument has not waived its privileges. Just as the IEC would expect a District Court to respect its privileges associated with its attorney-client communications and executive sessions, Mayor LaKind and the Monument Town Council respectfully expect the IEC to respect the Town Council's privilege.

RESPONSE

I. *Article XXIX, Section 1(1) of the Colorado Constitution*

Article XXIX, Section 1(1) of the Colorado Constitution (“Article XXIX”) declares that local government officials: (a) must hold the respect and confidence of the people, (b) carry out their duties for the benefit of the people of the state, (c) avoid conduct in violation of the public trust or that creates a justifiable impression that the public trust is being violated, (d) attempt to realize personal financial gain through public office, and (e) that to ensure propriety and preserve public confidence, local government officials must have specific standards to guide their conduct.

Complainants argue that the Town Council’s decision to pay the Sherman & Howard invoice is a de facto violation of Article XXIX because otherwise Mayor LaKind may have been required to pay the bill from his own funds. *Response to Dispositive Motions at 4*. They further allege that the services rendered by Sherman & Howard were for Mayor LaKind’s personal benefit. *Response to Dispositive Motions at 6*. The Complaint is an attack on the Town Council’s legislative determination that the Sherman & Howard services provided public benefit to the Town of Monument at a time the Town was without a Town Attorney, the Town Council was in a bitter battle between outgoing and incoming Town Council members, the Town was transitioning to a Home Rule Charter, and the Town Council had authorized the Town Manager, though not Mayor LaKind, to obtain such services.

Complainants mislead the IEC by suggesting that the contents of the Sherman & Howard invoice were improperly withheld from them and thus they are entitled to an inference that the services must have been for Mayor LaKind’s personal benefit. *Response to Dispositive Motions at 6*, (“While most of the details related to services rendered by Sherman & Howard **is now redacted as privileged**, ...” (*emphasis added*)). This misrepresentation began with the Complaint,

which included a redacted copy of the Sherman & Howard invoice the Town provided Complainants in response to a Colorado Open Records Act request, *Complaint Attachment V*, and which included the unfounded inuendo that the then Town Clerk was terminated for later providing a less redacted copy. *Complaint at 6 and 7 of 8*, (“*The TOM Clerk Kyle Anderson responded to the complaint on April 27th with a less redacted invoice, uncovering the personal nature of LaKind's \$20,737 invoice. The clerk was terminated, with apparently no explanation from the TOM, the next day.*”). Complainants failed to note in either the Complaint or the Response to Dispositive Motions that following the Town Council’s formal action to waive its attorney-client privilege the Town Attorney, not the Town Clerk, provided a copy of the Sherman & Howard invoice to Complainant’s attorney, with all redactions removed for services which the Town Council determined benefited the Town and which it paid. *Exhibit A*. No speculation is needed regarding the Sherman & Howard services paid for by the Town or the circumstances of the unredacted invoice being provided, and neither were improper.

In discussions at the April 3 meeting² leading up to the initial approval of payment of the Sherman & Howard invoice, Town Council member Laura Kronick noted:

I am in favor of the motion that is about to be made for the following reason – we all, everybody in here, sat through last year, the end of last year, and the debacle that ensued, and I think there is one person who really made a difference and stood up and did the right thing, and therefore I am in favor of the motion.

<https://www.youtube.com/watch?v=i-Mp0veI9Dc&t=4s> at 3:24:40.

Mayor Pro Tem Steve King, who took over chairing the meeting when Mayor LaKind recused himself, added:

Okay. I’ll add to that and just – and just say that we were a town without an attorney, and it was – there was no quick remedy to get an attorney at the time, and there were attorneys that saw what was going on in the town that wouldn’t come on board and represent us, and everything happened so quickly, and Mayor LaKind took it upon

² All references to April 3 and April 11 are for the year 2023.

himself to, to handle that situation and keep the town out of some legal problems that we most certainly would have been involved in, so. I also have no issue with that Section 11.a.

Id. at 3:26:00.

The Town Council determined in Resolution No. 28-2023, approved at the April 11 meeting and which confirmed payment of the Sherman & Howard invoice, that:

1. During the December 16, 2022, special meeting the Town Council directed the Town Manager to hire a contractual attorney to represent the Town staff during the Van Der Jagt investigation;
2. The prior Town Attorney resigned on December 20, 2022, and despite reasonable and diligent efforts the Town Manager was unable to hire a contract attorney until the current Town Attorney was engaged by the Town on January 17, 2022;
3. In the absence of legal counsel, in December 2022, Mayor LaKind engaged Sherman & Howard to provide advice on matters related to the Van Der Jagt investigation, Town Council meeting and executive session procedures and requirements, Town Council transition under the newly adopted Home Rule Charter, and matters addressed in the Van Der Jagt report; and
4. The Interim Town Attorney reviewed the services rendered and advised that with limited exceptions the services described in the Sherman & Howard invoice were related to providing for the interests of the Town of Monument and therefore it was both legal and appropriate to pay in the reduced amount of \$20,737.00, if Town Council chose to do so.

The Town Council, absent the involvement of Mayor LaKind, was the appropriate decision maker on this question. The Town Council determined that the services rendered by Sherman & Howard provided public benefit to the Town of Monument. That legislative determination is reasonable and supported by the record. The decision to pay Sherman & Howard, even though Mayor LaKind was not specifically authorized in advance to engage their services, served a public, not a private or personal interest. The intent of Article XXIX has been served, not violated.

II. *Article XXIX, Section 1(1)(e) and Section 24-18-103(1), C.R.S.*

Complainants, as does Article XXIX, recognize that specific standards guide Mayor LaKind in a potential conflict of interest situation, focusing on:

The holding of public office or employment is a public trust, created by the confidence which the electorate reposes in the integrity of public officers, members of the general assembly, local government officials, and employees. A public officer, member of the general assembly, local government official, or employee shall carry out his duties for the benefit of the people of the state.

Response to Dispositive Motions at 4; Section 24-18-103(1), C.R.S.

As set forth above, the Monument Town Council legislatively determined that Mayor LaKind's engagement of Sherman & Howard to protect the interests of the Town at a time it was without legal representation, and thus payment of the Sherman & Howard invoice by the Town, was reasonable and supported by the record. Mayor LaKind's action to secure the services of Sherman & Howard to protect the Town's interest and his handling of his potential conflict of interest, and the decision of the Town Council to pay the Sherman & Howard invoice showed the integrity of Mayor LaKind and the Town Council Members, and created confidence in government.

Complainants argue that Mayor LaKind's disclosures of potential conflicts of interest associated with the April 3 and April 11 Town Council meetings were legally deficient. The Dispositive Motions confirm that as to the April 11 meeting Mayor LaKind complied with the disclosure requirements of Section 24-18-109(3), C.R.S. For the first time the Response to the Dispositive Motions questions whether Mayor LaKind's conflicts disclosure procedure for the April 3 Town Council meeting complied; it did.

At the April 11 Town Council meeting only six members were in attendance. *Complaint at 7 of 8; Dispositive Motions Exh.1, Page 14, April 11 Minutes.* To have a quorum to conduct business four of the seven Council members were required to act. *Monument Home Rule Charter Secs. 2.1 and 3.8.* For the April 11 meeting's consideration of Resolution 28-2023 authorizing payment of the Sherman & Howard invoice Mayor LaKind filed a written Disclosure of Potential Conflict of Interest ("Disclosure") with the Secretary of State and the Town Council. *Dispositive*

Motions Exh.1, Pages 14-15, April 11 Minutes, Items 2 and 4. Had any other Council Member been absent, Mayor LaKind's participation would have been necessary to obtain a quorum to allow the Town Council to act on Resolution No. 28-2023. By contrast, at the April 3 Town Council meeting all seven Council Members were in attendance and it was unlikely that Mayor LaKind's participation was going to be necessary to constitute a quorum for consideration of Agenda Item 11.a.

Mayor LaKind recognized that he potentially had a personal interest in the Town Council's consideration of whether the Town should pay Sherman & Howard for services that benefited the Town, but which the Town Council had not expressly authorized in advance for him to procure. The specific standards guiding Mayor LaKind required him to (1) disclose his personal interest, (2) not vote on the matter, and (3) refrain from attempting to influence the Town Council Members voting on the matter. *Section 24-18-109(3)(a), C.R.S.* The record of the April 3 meeting clearly indicates that Mayor LaKind disclosed his personal interest, he did not vote, and in the public session he did not attempt to influence the Council Members. <https://www.youtube.com/watch?v=i-Mp0veI9Dc&t=4s> at 3:24:05. Mayor LaKind also did not attempt to influence the Council in the executive session that immediately preceded consideration of Agenda Item 11.a., which did not involve a discussion of payment of the Sherman & Howard invoice, or at any other time. *Exhibit B; see also, Dispositive Motions Exh.1, Page 13, April 3 Minutes, Item 8.*

Complainants argue that because Mayor LaKind filed his Disclosure related to the Town Council's April 11 consideration of payment of the Sherman & Howard invoice, his failure to file one for the April 3 meeting violated the ethical standards. Mayor LaKind was required to file a disclosure with the Secretary of State only if his participation and vote were necessary to obtain

a quorum to allow the Town Council to act on Agenda Item 11.a. *Section 24-18-109(3)(b), C.R.S.* Because his participation was not necessary to constitute a quorum and because he did not vote on the matter, he was not required to file a disclosure with the Secretary of State.

Because no absences were anticipated for the April 3 meeting, Mayor LaKind did not file a disclosure with the Secretary of State. Because he did not vote on the Sherman & Howard invoice at the April 3 meeting, he was not required to file a disclosure. Because his participation might have been needed at the April 11 meeting to allow the Town Council to act, Mayor LaKind acted prudently in filing his Disclosure with the Secretary of State. The Disclosure ended up being unnecessary because he was not needed to obtain a quorum at the April 11 meeting, and he recused himself from consideration of the Sherman & Howard invoice. Because Mayor LaKind was not required to file the Disclosure with the Secretary of State for the April 11 meeting, any alleged deficiency in the Disclosure is irrelevant.³ Mayor LaKind complied with the disclosure requirements for both the April 3 and April 11 meetings.

PRAYER FOR RELIEF

In accordance with IEC Rule 5(D)(1) C.R.C.P. 12(b)(5), and C.R.C.P. 56, the Respondent respectfully requests the IEC:

1. Grant Respondent's Motion for Summary Judgment previously filed in this matter; or in the alternative;
2. Determine that Respondent complied with Article XXIX and Sections 24-18-101, et. seq, C.R.S.; and
3. Award attorney fees pursuant to Section 13-17-101 et seq., C.R.S.

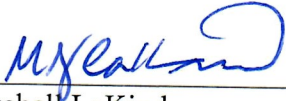
³ The amount of the personal interest, though not stated in the Disclosure, was stated in Resolution 28-2023 referenced in the Disclosure, which was a part of the Town Council meeting packet posted on the Town's website and available for public inspection prior to the meeting. *Complaint Attachment Z.*

Respectfully submitted this 22nd day of November 2023.

/s/ Robert G. Cole

Robert G. Cole, #15943

To the best of Respondent's knowledge, information and belief, all statements set forth in this Response are true.



Mitchell LaKind

Mayor, Town of Monument

**COLLINS | COLE
FLYNN | WINN | ULMER**

April 27, 2023

VIA EMAIL

**Suzanne Taheri
West Group
6501 E Belleview Ave, Suite 375
Denver, CO 80111**

**RE: Town of Monument;
Kelly W. Elliott Colorado Open Records Act Request**

Dear Ms. Taheri,

I am the interim Town Attorney for the Town of Monument. While I am not the Town's official custodian of records, I have been asked assist with Ms. Elliott's public records request dated April 7, 2023, and to respond to your letter dated April 14, 2023. Specifically, Ms. Elliott requested:

All invoices sent to the town and sent to Mitch LaKind for Mitch LaKind's attorney fees that the board voted to have Monument pay for.

On April 12, 2023, the Town provided the requested document to Ms. Elliott with redactions of attorney-client privileged communications, pursuant to section 24-72-204(1), C.R.S. In your April 14, 2023, letter you argue that the attorney-client privilege associated with the redacted information was waived when the invoice was submitted to the Town. You provided notice pursuant to section 24-72-204(5)(a), C.R.S., that if the Town did not provide the unredacted record, Ms. Elliott intended to apply to the district court for an order to show cause why the Town's records custodian should not permit the inspection.

The Town disagrees with your position that the attorney-client privilege associated with the redacted information was waived when the invoice was submitted to the Town. Nonetheless, at a special meeting on April 26, 2023, the Town Council voted to waive the

Town's attorney-client privilege associated with the portions of the invoice redacted by the Town.

Enclosed is a copy of the only version of the invoice that has been received by the Town. The limited number of narrative descriptions that are redacted are present in the version provided to the Town and are associated with time for which the Town did not pay Sherman and Howard, LLC. Thus the information that has been redacted is not a record of the Town, is not a public record, and also is outside the scope of the original request. While I have not seen the text that has been redacted, I understand that Mayor LaKind maintains that it is subject to attorney-client privilege personal to him and not the Town.

Sincerely,



Robert G. Cole
Interim Town Attorney
Town of Monument

cc: Laura Hogan,

Sherman & Howard_{LLC}
675 Fifteenth Street, Suite 2300, Denver, Colorado 80202-3622
Account Inquiries: 303-299-8026
AccountsReceivable@ShermanHoward.com
Federal Taxpayer ID No. 84-0420314

Mitchell LaKind
106 Night Blue Circle
Monument, CO 80132

INVOICE NO. 862015
FEBRUARY 10, 2023

RE: Investigation Response

FOR PROFESSIONAL SERVICES RENDERED
From 12/22/22 through 1/31/23 in
accordance with the itemized statement
attached:

OUR FEE:	21,501.00
DISBURSEMENTS:	<u>0.00</u>
INVOICE TOTAL:	21,501.00
BALANCE CARRIED FORWARD:	<u>0.00</u>
TOTAL OUTSTANDING BALANCE:	<u><u>21,501.00</u></u>

DATE	DESCRIPTION OF SERVICES BILLED
12/22/22 William Reed	HOURS: 0.80 RATE: 515 COST: 412.00 Spoke with Mr. Tegtmeier, ran conflicts, and prepared engagement letter (no charge); spoke with Mr. LaKind on case background (.7, reduced to .4); responded to investigator request for information with extension time line (.3); [REDACTED] (.1).
12/23/22 William Reed	HOURS: 3.50 RATE: 515 COST: 1,802.50 Call with Mr. LaKind (.2, no charge); met with Mr. LaKind on strategy (reduced to 1); drafted responses to Van Der Jagt (1.5); analyzed relevant issues and reviewed statutes and code for arguments to stop improper council actions (2.7, reduced to 1).
12/24/22 William Reed	HOURS: 3.00 RATE: 515 COST: 1,545.00 Continued to analyze strategies to stop improper council actions (3.7, reduced to 3).
12/26/22 William Reed	HOURS: 5.00 RATE: 515 COST: 2,575.00 Communications with Mr. LaKind on strategy and developments; continued to analyze strategy approaches; drafted memorandum on elected officials' terms and transition of power; revised responses to Van Der Jagt; drafted news release (7, reduced to 5).
12/27/22 William Reed	HOURS: 3.00 RATE: 515 COST: 1,545.00 Worked with Mr. LaKind on legal requirements to take oaths of office and logistics; prepared written oaths; drafted media FAQ on legal questions; analyzed governmental immunity for Town clerk; sent responses to Van Der Jagt; finalized legal memorandum on transition of power; reviewed Town agenda and analyzed arguments to stop improper actions; researched ability of private attorney to attend executive session (4.6, reduced to 3).
12/28/22 William Reed	HOURS: 3.00 RATE: 515 COST: 1,545.00 Spoke with Mr. LaKind on special meeting strategy; prepared outline of arguments and citations for meeting; participated at meeting until adjourned (6, reduced to 3).
12/29/22 William Reed	HOURS: 0.70 RATE: 515 COST: 360.50 Analyzed Van Der Jagt report (1.7, reduced to .7).
12/30/22 William Reed	HOURS: 0.50 RATE: 515 COST: 257.50 Met with Mr. LaKind on Van Der Jagt report and Town plan of action (1.2, reduced to .5).
01/02/23 William Reed	HOURS: 0.50 RATE: 540 COST: 270.00 Analyzed succession if Council member does not swear in, and provided analysis to Mr. LaKind.
01/04/23 William Reed	HOURS: 0.50 RATE: 540 COST: 270.00 Spoke with Mr. LaKind; reviewed press and public meeting

motions; began analyzing retaliation claim (reduced to .5); prepared points on Van Der Jagt ethics violations (no charge).

01/05/23 HOURS: 0.30 RATE: 540 COST: 162.00
William Reed [REDACTED] (.1); call with Mr. LaKind (.7, reduced to .2).

01/09/23 HOURS: 0.30 RATE: 395 COST: 118.50
Carissa Davis [REDACTED]

01/09/23 HOURS: 2.00 RATE: 540 COST: 1,080.00
William Reed Analyzed possible claims and other approaches regarding Mr. Van Der Jagt, and provided advice to Mr. LaKind (2, reduced to 1); [REDACTED] (.3); [REDACTED] (.7).

01/12/23 HOURS: 0.20 RATE: 540 COST: 108.00
William Reed Call with Mr. Lakind on ethics investigation (.8, reduced to .2).

01/16/23 HOURS: 0.00 RATE: 0 COST: 0.00
William Reed Reviewed new social media posts by Schoening (no charge).

01/16/23 HOURS: 1.50 RATE: 540 COST: 810.00
William Reed Reviewed evidence related to VDJ and outlined key points.

01/18/23 HOURS: 5.30 RATE: 540 COST: 2,862.00
William Reed Spoke with Mr. Lakind on VDJ complaint and other issues (1, reduced to .3); began drafting the VDJ request for investigation (5.4, reduced to 5).

01/19/23 HOURS: 1.00 RATE: 540 COST: 540.00
William Reed Continued drafting VDJ request for investigation (1.5, reduced to 1).

01/21/23 HOURS: 2.50 RATE: 540 COST: 1,350.00
William Reed Completed drafting VDJ request for investigation, prepared index of documents, and provided to Mr. LaKind for review.

01/23/23 HOURS: 1.30 RATE: 540 COST: 702.00
William Reed Revised VDJ request for investigation with Mr. LaKind's edits.

01/24/23 HOURS: 2.20 RATE: 540 COST: 1,188.00
William Reed Reviewed new article provided by Mr. LaKind for inclusion (VDJ releases report and makes criminal conduct accusations) and revised the request for investigation, citations, and index of documents (.7); worked on gathering and selecting exhibits for request for investigation, including review of VDJ social media materials (1.5).

01/25/23 HOURS: 3.00 RATE: 540 COST: 1,620.00

Completed selection of all exhibits for request for investigation, including collections of media articles and social media posts; communicated with Mr. LaKind; reviewed letter, index, and final binders; directed delivery to regulation counsel (3.3, reduced to 3).

HOURS: 0.00 RATE: 0 COST: 0.00
Communicated with Mr. Cole (no charge).

HOURS: 0.70 RATE: 540 COST: 378.00
Met with Mr. Cole on Town matters (.7); communicated with Mr.
LaKind (no charge).

21,501.00

EXHIBIT B

COLORADO INDEPENDENT ETHICS COMMISSION

Complaint No. 23-17

SECOND AFFIDAVIT OF JIM
ROMANELLO

IN THE MATTER OF: MITCH LAKIND

I, Jim Romanello, being of lawful age, sound mind and duly sworn, do hereby state as follows:

1. I, Jim Romanello, am a member of the Town Council ("Town Council") of the Town of Monument, Colorado ("Town"). I was elected to the Town Council on April 16, 2020, and took office April 20, 2020. Prior to that election, I was elected to the Town Council to fill a vacancy in November of 2018. Since that time, I have served continuously on the Town Council.

2. I have reviewed and am familiar with Complaint No. 23-17 filed with the Colorado Independent Ethics Commission ("IEC") on August 7, 2023, by Kelly Elliott, Darcy Schoening, and Amy Stephens ("Complainants"). I am also familiar with Complainants' Response to Motion to Dismiss and Motion for Summary Judgment filed October 12, 2023, and the IEC's Order Regarding Respondent's Motion to Dismiss and Motion for Summary Judgment dated October 24, 2023.

3. This Affidavit is supplemental to my Affidavit previously filed in this matter on or about September 21, 2023 ("Prior Affidavit"). The statements contained in my Prior Affidavit are specifically reaffirmed.

4. As noted in my Prior Affidavit, at the April 3, 2023, Town Council Meeting, an executive session was convened pursuant to Section 24-6-402(4)(b) C.R.S. for a Conference with the Interim Town Attorney for the Purpose of Receiving Legal Advice on Specific Legal Questions Relating to the Report of Investigation Findings Dated December 28, 2022. Also as noted in my Prior Affidavit, the executive session stayed within this topic and did not discuss the Sherman & Howard invoice¹. I participated in this executive session, as did Mayor LaKind. Had the executive session discussion included a discussion of the Sherman & Howard invoice I would have requested Mayor LaKind recuse himself from the executive session at that time. Because the executive session did not include a discussion of the Sherman & Howard invoice, there was no need for Mayor LaKind to

¹ The term "Sherman & Howard invoice" is defined in my Prior Affidavit.

recuse himself from the executive session.

5. Following the executive session referenced in the previous paragraph, the April 3, 2023, Town Council meeting agenda listed the next item of business as: "11. Discussion/Action Item(s): a. Sherman & Howard Invoice No. 862015 to Mitchell LaKind for Professional Services, 12/22/22 through 1/31/23." ("Agenda Item 11.a.").

6. In bringing Agenda Item 11.a. to the floor for discussion Mayor LaKind stated:

We have, uh, come out of executive session. We have one more matter to discuss, Item 11.a. Um, leave it up to the, uh, Council to see if there's anything that they wanted. This is an action that came out of the executive session. Uh, and I'm gonna recuse myself from this conversation completely due to the, uh, financial nature of the matter that it, it directly impacts me.

7. I interpreted Mayor LaKind's statement "This is an action that came out of the executive session" as meaning that the questions raised and answers and advice provided by the Interim Town Attorney in the executive session regarding the events described in the Report of Investigation Findings Dated December 28, 2022 lead to that comment, not that payment of the Sherman & Howard invoice had been discussed in the executive session, which it was not.

8. In making the motion to approve the payment of the Sherman & Howard invoice under Agenda Item 11.a. I stated:

Well then as a result of the information brought to light in the executive session, I'd like to make a motion to approve payment for legal services to Sherman & Howard, uh, for services associated done with the review of the, um, FC, I'm tired, the uh, uh, the, the, the FCPA, uh, issues.

9. In making the statement "as a result of information brought to light in the executive session" I intended to convey that because of answers and advice provided by the Interim Town Attorney to questions I raised in the executive session regarding events described in the Report of Investigation Findings Dated December 28, 2022, I believed that payment of the Sherman & Howard invoice was appropriate, not that payment of the Sherman & Howard invoice had been discussed in the executive session, which it was not.

10. As stated in my Prior Affidavit, at no time, including but not limited to the months of February, March, and April 2023, and the Town Council meeting of April 3, 2023, did Mayor LaKind request that I support the proposal to pay any portion of the Sherman & Howard invoice. Mayor LaKind did not attempt to influence me in any way

regarding such proposal or the actions taken by Town Council on April 3, 2023. My consideration and vote on these matters at the April 3, 2023 Town Council meeting were based solely on the merits of the proposal, my belief that the services rendered were of significant benefit to the Town at a time that the Town did not have a Town Attorney to advise the Town Council, and that the Town's payment of the Sherman & Howard invoice in the reduced amount of \$20,737 was appropriate even though the services were requested and provided without prior Town Council approval. I was not in attendance at the April 11, 2023, Town Council meeting.

Affiant says nothing further at this time.


Jim Romanello

COUNTY OF EL PASO)

STATE OF COLORADO)



The foregoing Affidavit was subscribed and sworn to before me this 22nd day of November, 2023.


Notary Public

My commission expires: May 19, 2027

COLORADO INDEPENDENT ETHICS COMMISSION
Complaint No. 23-17

SECOND AFFIDAVIT OF STEVE
KING

IN THE MATTER OF: MITCH LAKIND

I, Steve King, being of lawful age, sound mind and duly sworn, do hereby state as follows:

1. I, Steve King, am a member of the Town Council ("Town Council") of the Town of Monument, Colorado ("Town"). I was elected to the Town Council on November 8, 2022, and took office January 3, 2023. Since that time, I have served continuously on the Town Council.

2. I have reviewed and am familiar with Complaint No. 23-17 filed with the Colorado Independent Ethics Commission ("IEC") on August 7, 2023, by Kelly Elliott, Darcy Schoening, and Amy Stephens ("Complainants"). I am also familiar with Complainants' Response to Motion to Dismiss and Motion for Summary Judgment filed October 12, 2023, and the IEC's Order Regarding Respondent's Motion to Dismiss and Motion for Summary Judgment dated October 24, 2023.

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5. Following the executive session referenced in the previous paragraph, the April 3, 2023, Town Council meeting agenda listed the next item of business as: "11.

¹ The term "Sherman & Howard invoice" is defined in my Prior Affidavit.

Discussion/Action Item(s): a. Sherman & Howard Invoice No. 862015 to Mitchell LaKind for Professional Services, 12/22/22 through 1/31/23.” (“Agenda Item 11.a.”).

6. In bringing Agenda Item 11.a. to the floor for discussion Mayor LaKind stated:

We have, uh, come out of executive session. We have one more matter to discuss, Item 11.a. Um, leave it up to the, uh, Council to see if there’s anything that they wanted. This is an action that came out of the executive session. Uh, and I’m gonna recuse myself from this conversation completely due to the, uh, financial nature of the matter that it, it directly impacts me.

7. I interpreted Mayor LaKind’s statement “This is an action that came out of the executive session” as meaning that the Town Council had returned from executive session, not that payment of the Sherman & Howard invoice had been discussed with Mayor LaKind present in the executive session, which it was not.

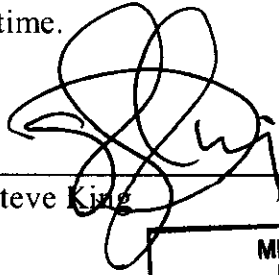
8. In making the motion to approve the payment of the Sherman & Howard invoice under Agenda Item 11.a. Council member Romanello stated:

Well then as a result of the information brought to light in the executive session, I’d like to make a motion to approve payment for legal services to Sherman & Howard, uh, for services associated done with the review of the, um, FC, I’m tired, the uh, uh, the, the, the FCPA, uh, issues.

9. I understood Council member Romanello’s statement “as a result of information brought to light in the executive session” as conveying the nature of the discussion on the Van Der Jagt report, not that payment of the Sherman & Howard invoice had been discussed in the executive session, which it was not with Mayor LaKind present.

10. As stated in my Prior Affidavit, at no time, including but not limited to the months of February, March, and April 2023, and the Town Council meetings of April 3, 2023, and April 11, 2023, did Mayor LaKind request that I support the proposal to pay any portion of the Sherman & Howard invoice. Mayor LaKind did not attempt to influence me in any way regarding such proposal or the actions taken by Town Council on April 3, 2023, or April 11, 2023. My consideration and vote on these matters at the April 3, 2023 and the April 11, 2023 Town Council meetings were based solely on the merits of the proposal, my belief that the services rendered were of significant benefit to the Town at a time that the Town did not have a Town Attorney to advise the Town Council, and that the Town’s payment of the Sherman & Howard invoice in the reduced amount of \$20,737 was appropriate even though the services were requested and provided without prior Town Council approval.

Affiant says nothing further at this time.



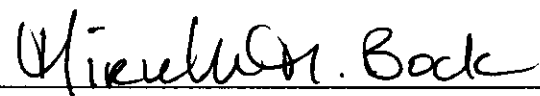
Steve King

COUNTY OF EL PASO)

STATE OF COLORADO)

MIRIELLE M BOCK
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20234018905
MY COMMISSION EXPIRES MAY 19, 2027

The foregoing Affidavit was subscribed and sworn to before me this 22nd day of
~~September~~ 2023.
NOVEMBER (52)



Notary Public

My commission expires: May 19, 2027

COLORADO INDEPENDENT ETHICS COMMISSION

Complaint No. 23-17

SECOND AFFIDAVIT OF LAURA
KRONICK

IN THE MATTER OF: MITCH LAKIND

I, Laura Kronick being of lawful age, sound mind and duly sworn, do hereby state as follows:

1. I, Laura Kronick, am a current member of the Town Council ("Town Council") of the Town of Monument, Colorado ("Town"). I was appointed to the Town Council on February 6, 2023, and took office February 21, 2023. Since that time, I have served continuously on the Town Council.

2. I have reviewed and am familiar with Complaint No. 23-17 filed with the Colorado Independent Ethics Commission on August 7, 2023, by Kelly Elliott, Darcy Schoening, and Amy Stephens ("Complainants"). I am also familiar with Complainants' Response to Motion to Dismiss and Motion for Summary Judgment filed October 12, 2023, and the IEC's Order Regarding Respondent's Motion to Dismiss and Motion for Summary Judgment dated October 24, 2023.

3. This Affidavit is supplemental to my Affidavit previously filed in this matter on or about September 21, 2023 ("Prior Affidavit"). The statements contained in my Prior Affidavit are specifically reaffirmed.

4. As noted in my Prior Affidavit, at the April 3, 2023, Town Council Meeting, an executive session was convened pursuant to Section 24-6-402(4)(b) C.R.S. for a Conference with the Interim Town Attorney for the Purpose of Receiving Legal Advice on Specific Legal Questions Relating to the Report of Investigation Findings Dated December 28, 2022. Also as noted in my Prior Affidavit, the executive session stayed within this topic and did not discuss the Sherman & Howard invoice.¹ I participated in this executive session, as did Mayor LaKind. Had the executive session discussion included a discussion of the Sherman & Howard invoice I would have requested Mayor LaKind recuse himself from the executive session at that time. Because the executive session did not include a discussion of the Sherman & Howard invoice, there was no need for Mayor LaKind to recuse himself from the executive session.

¹ The term "Sherman & Howard invoice" is defined in my Prior Affidavit.

5. Following the executive session referenced in the previous paragraph, the April 3, 2023, Town Council meeting agenda listed the next item of business as: "11. Discussion/Action Item(s): a. Sherman & Howard Invoice No. 862015 to Mitchell LaKind for Professional Services, 12/22/22 through 1/31/23." ("Agenda Item 11.a.").

6. In bringing Agenda Item 11.a. to the floor for discussion Mayor LaKind stated:

We have, uh, come out of executive session. We have one more matter to discuss, Item 11.a. Um, leave it up to the, uh, Council to see if there's anything that they wanted. This is an action that came out of the executive session. Uh, and I'm gonna recuse myself from this conversation completely due to the, uh, financial nature of the matter that it, it directly impacts me.

7. I interpreted Mayor LaKind's statement "This is an action that came out of the executive session" as meaning, that the questions asked and answered, clarifications and advice given by the Interim Town Attorney in the executive session regarding the events described in the Report of Investigation Findings Dated December 28, 2022 led to that comment, not that payment of the Sherman & Howard invoice had been discussed in the executive session, which it was not.

8. In making the motion to approve the payment of the Sherman & Howard invoice under Agenda Item 11.a. Council member Romanello stated:

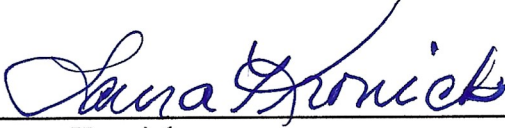
Well then as a result of the information brought to light in the executive session, I'd like to make a motion to approve payment for legal services to Sherman & Howard, uh, for services associated done with the review of the, um, FC, I'm tired, the uh, uh, the, the, the FCPA, uh, issues.

9. I understood Council member Romanello's statement "as a result of information brought to light in the executive session" as conveying that the advice given by the Interim Town Attorney in addressing the lengthy Council discussion and questions during the executive session regarding events described in the Report of Investigation Findings Dated December 28, 2022, allowed me to personally decide that payment of the Sherman & Howard invoice was justified, not that payment of the Sherman & Howard invoice had been discussed in the executive session, which it was not.

10. As stated in my Prior Affidavit, at no time, including but not limited to the months of February, March, and April 2023, and the Town Council meetings of April 3, 2023, and April 11, 2023, did Mayor LaKind request that I support the proposal to pay any portion of the Sherman & Howard invoice. Mayor LaKind did not attempt to influence me in any way regarding such proposal or the actions taken by Town Council on April 3, 2023, or April 11, 2023. My consideration and vote on these matters at the April 3, 2023 and the April 11, 2023 Town Council meetings were based solely on the merits of the proposal, my belief that the services rendered were of significant benefit to the Town at a time that the

Town did not have a Town Attorney to advise the Town Council, and that the Town's payment of the Sherman & Howard invoice in the reduced amount of \$20,737 was appropriate even though the services were requested and provided without prior Town Council approval.

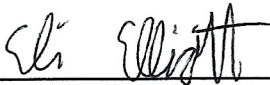
Affiant says nothing further at this time.



Laura Kronick

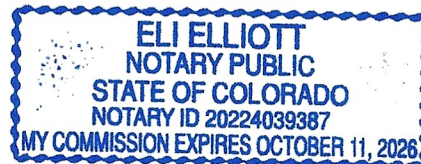
COUNTY OF EL PASO)
)
STATE OF COLORADO)

The foregoing Affidavit was subscribed and sworn to before me this 27 day of September 2023.



Notary Public

My commission expires: October 11, 2026



COLORADO INDEPENDENT ETHICS COMMISSION
Complaint No. 23-17

SECOND AFFIDAVIT OF MITCH
LAKIND

IN THE MATTER OF: MITCH LAKIND

I, Mitch LaKind, being of lawful age, sound mind and duly sworn, do hereby state as follows:

1. I, Mitch LaKind, am the Mayor and a member of the Town Council ("Town Council") of the Town of Monument, Colorado ("Town"). I was most recently elected Mayor and to the Town Council on November 8, 2022, and took office January 3, 2023. Prior to that election, I was elected to the Town Council in April of 2020. Since that time, I have served continuously on the Town Council.

2. I have reviewed and am familiar with Complaint No. 23-17 filed with the Colorado Independent Ethics Commission ("IEC") on August 7, 2023, by Kelly Elliott, Darcy Schoening, and Amy Stephens ("Complainants"). I am also familiar with Complainants' Response to Motion to Dismiss and Motion for Summary Judgment filed October 12, 2023, and the IEC's Order Regarding Respondent's Motion to Dismiss and Motion for Summary Judgment dated October 24, 2023.

3. This Affidavit is supplemental to my Affidavit previously filed in this matter on or about September 21, 2023 ("Prior Affidavit"). The statements contained in my Prior Affidavit are specifically reaffirmed.

4. As noted in my Prior Affidavit, at the April 3, 2023, Town Council Meeting, an executive session was convened pursuant to Section 24-6-402(4)(b) C.R.S. for a Conference with the Interim Town Attorney for the Purpose of Receiving Legal Advice on Specific Legal Questions Relating to the Report of Investigation Findings Dated December 28, 2022. Also as noted in my Prior Affidavit, the executive session stayed within this topic and did not discuss the Sherman & Howard invoice.¹ I participated in this executive session. Had the executive session discussion included a discussion of the Sherman & Howard invoice I would have left the executive session at that time. At no time during the executive session did the Town Council discuss the Sherman & Howard invoice and I did not discuss with or attempt to influence members of the Town Council on the matter.

¹ The term "Sherman & Howard invoice" is defined in my Prior Affidavit.

5. Following the executive session referenced in the previous paragraph, the April 3, 2023, Town Council meeting agenda listed the next item of business as: "11. Discussion/Action Item(s): a. Sherman & Howard Invoice No. 862015 to Mitchell LaKind for Professional Services, 12/22/22 through 1/31/23." ("Agenda Item 11.a.").

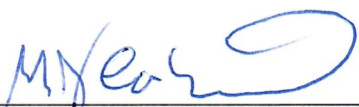
6. In bringing Agenda Item 11.a. to the floor for discussion I stated:

We have, uh, come out of executive session. We have one more matter to discuss, Item 11.a. Um, leave it up to the, uh, Council to see if there's anything that they wanted. This is an action that came out of the executive session. Uh, and I'm gonna recuse myself from this conversation completely due to the, uh, financial nature of the matter that it, it directly impacts me.

7. In making the statement "This is an action that came out of the executive session" I intended to convey that on the advice of the Interim Town Attorney Agenda Item 11.a. was not discussed during the executive session.

8. As stated in my Prior Affidavit, at no time, including but not limited to the months of February, March, and April 2023 and the Town Council meetings of April 3 and April 11, 2023, did I request that any Town Council member support the proposal to pay any portion of the Sherman & Howard invoice. At all times during which the Town Council considered or voted on the matter I recused myself.

Affiant says nothing further at this time.



Mitch LaKind

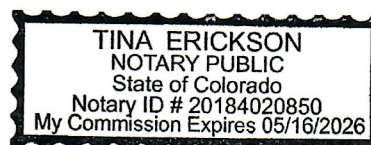
COUNTY OF EL PASO)
)
STATE OF COLORADO)

The foregoing Affidavit was subscribed and sworn to before me this 22 day of November, 2023.



Notary Public

My commission expires: 05/16/2026



COLORADO INDEPENDENT ETHICS COMMISSION
Complaint No. 23-17

SECOND AFFIDAVIT OF SANA
ABBOTT

IN THE MATTER OF: MITCH LAKIND

I, Sana Abbott, being of lawful age, sound mind and duly sworn, do hereby state as follows:

1. I, Sana Abbott, am a member of the Town Council (“Town Council”) of the Town of Monument, Colorado (“Town”). I was elected to the Town Council on November 8, 2022, and took office January 3, 2023. Since that time, I have served continuously on the Town Council.

2. I have reviewed and am familiar with Complaint No. 23-17 filed with the Colorado Independent Ethics Commission (“IEC”) on August 7, 2023, by Kelly Elliott, Darcy Schoening, and Amy Stephens (“Complainants”). I am also familiar with Complainants’ Response to Motion to Dismiss and Motion for Summary Judgment filed October 12, 2023, and the IEC’s Order Regarding Respondent’s Motion to Dismiss and Motion for Summary Judgment dated October 24, 2023.

3. This Affidavit is supplemental to my Affidavit previously filed in this matter on or about September 21, 2023 (“Prior Affidavit”). The statements contained in my Prior Affidavit are specifically reaffirmed.

4. As noted in my Prior Affidavit, at the April 3, 2023, Town Council Meeting, an executive session was convened pursuant to Section 24-6-402(4)(b) C.R.S. for a Conference with the Interim Town Attorney for the Purpose of Receiving Legal Advice on Specific Legal Questions Relating to the Report of Investigation Findings Dated December 28, 2022. Also as noted in my Prior Affidavit, the executive session stayed within this topic and did not discuss the Sherman & Howard invoice.¹ I participated in this executive session, as did Mayor LaKind. Had the executive session discussion included a discussion of the Sherman & Howard invoice I would have requested Mayor LaKind recuse himself from the executive session at that time. Because the executive session did not include a discussion of the Sherman & Howard invoice, there was no need for Mayor LaKind to recuse himself from the executive session.

¹ The term “Sherman & Howard invoice” is defined in my Prior Affidavit.

5. Following the executive session referenced in the previous paragraph, the April 3, 2023, Town Council meeting agenda listed the next item of business as: “11. Discussion/Action Item(s): a. Sherman & Howard Invoice No. 862015 to Mitchell LaKind for Professional Services, 12/22/22 through 1/31/23.” (“Agenda Item 11.a.”).

6. In bringing Agenda Item 11.a. to the floor for discussion Mayor LaKind stated:

We have, uh, come out of executive session. We have one more matter to discuss, Item 11.a. Um, leave it up to the, uh, Council to see if there’s anything that they wanted. This is an action that came out of the executive session. Uh, and I’m gonna recuse myself from this conversation completely due to the, uh, financial nature of the matter that it, it directly impacts me.

7. I interpreted Mayor LaKind’s statement “This is an action that came out of the executive session” as meaning that because of answers and advice provided by the Interim Town Attorney to questions I raised in the executive session regarding events described in the Report of Investigation Findings Dated December 28, 2022, consideration of the payment of the Sherman & Howard invoice was appropriate, not that payment of the Sherman & Howard invoice had been discussed in the executive session, which it was not.

8. In making the motion to approve the payment of the Sherman & Howard invoice under Agenda Item 11.a. Council member Romanello stated:

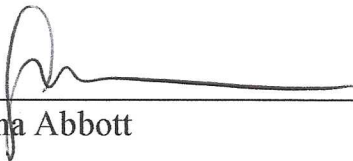
Well then as a result of the information brought to light in the executive session, I’d like to make a motion to approve payment for legal services to Sherman & Howard, uh, for services associated done with the review of the, um, FC, I’m tired, the uh, uh, the, the, the FCPA, uh, issues.

9. I understood Council member Romanello’s statement “as a result of information brought to light in the executive session” as conveying that after to speaking to our interim lawyer in the executive session of the meeting, and the answers he provided, Council member Romanello, and did I, believed that payment of the Sherman & Howard invoice was warranted, as they filled in for us when no one else would represent the Town during that critical time; it was exactly as described in the Report of Investigation Findings Dated December 28, 2022, and, not that payment of the Sherman & Howard invoice had been discussed in the executive session, which it was not.

10. As stated in my Prior Affidavit, at no time, including but not limited to the months of February, March, and April 2023, and the Town Council meetings of April 3, 2023, and April 11, 2023, did Mayor LaKind request that I support the proposal to pay any portion of the Sherman & Howard invoice. Mayor LaKind did not attempt to influence me

in any way regarding such proposal or the actions taken by Town Council on April 3, 2023, or April 11, 2023. My consideration and vote on these matters at the April 3, 2023 and the April 11, 2023 Town Council meetings were based solely on the merits of the proposal, my belief that the services rendered were of significant benefit to the Town at a time that the Town did not have a Town Attorney to advise the Town Council, and that the Town's payment of the Sherman & Howard invoice in the reduced amount of \$20,737 was appropriate even though the services were requested and provided without prior Town Council approval.

Affiant says nothing further at this time.

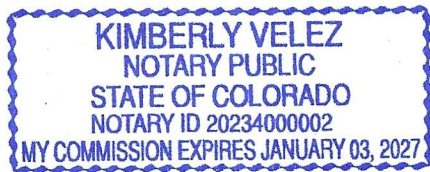

Sana Abbott

COUNTY OF EL PASO)
)
STATE OF COLORADO)

The foregoing Affidavit was subscribed and sworn to before me this 24 day of
~~September~~ 2023.
November


Notary Public

My commission expires: 1-3-2027



COLORADO INDEPENDENT ETHICS COMMISSION

Complaint No. 23-17

SECOND AFFIDAVIT OF MARCO
FIORITO

IN THE MATTER OF: MITCH LAKIND

I, Marco Fiorito being of lawful age, sound mind and duly sworn, do hereby state as follows:

1. I, Marco Fiorito, am a member of the Town Council ("Town Council") of the Town of Monument, Colorado ("Town"). I was appointed to the Town Council on February 6, 2023, and took office on February 21, 2023. Since that time, I have served continuously on the Town Council.

2. I have reviewed and am familiar with Complaint No. 23-17 filed with the Colorado Independent Ethics Commission ("IEC") on August 7, 2023, by Kelly Elliott, Darcy Schoening, and Amy Stephens ("Complainants"). I am also familiar with Complainants' Response to Motion to Dismiss and Motion for Summary Judgment filed October 12, 2023, and the IEC's Order Regarding Respondent's Motion to Dismiss and Motion for Summary Judgment dated October 24, 2023.

3. This Affidavit is supplemental to my Affidavit previously filed in this matter on or about September 21, 2023 ("Prior Affidavit"). The statements contained in my Prior Affidavit are specifically reaffirmed.

4. As noted in my Prior Affidavit, at the April 3, 2023, Town Council Meeting, an executive session was convened pursuant to Section 24-6-402(4)(b) C.R.S. for a Conference with the Interim Town Attorney for the Purpose of Receiving Legal Advice on Specific Legal Questions Relating to the Report of Investigation Findings Dated December 28, 2022. Also as noted in my Prior Affidavit, the executive session stayed within this topic and did not discuss the Sherman & Howard invoice.¹ I participated in this executive session, as did Mayor LaKind. Had the executive session discussion included a discussion of the Sherman & Howard invoice I would have requested Mayor LaKind recuse himself from the executive session at that time. Because the executive session did not include a discussion of the Sherman & Howard invoice, there was no need for Mayor LaKind to recuse himself from the executive session.

¹ The term "Sherman & Howard invoice" is defined in my Prior Affidavit.

5. Following the executive session referenced in the previous paragraph, the April 3, 2023, Town Council meeting agenda listed the next item of business as: "11. Discussion/Action Item(s): a. Sherman & Howard Invoice No. 862015 to Mitchell LaKind for Professional Services, 12/22/22 through 1/31/23." ("Agenda Item 11.a.").

6. In bringing Agenda Item 11.a. to the floor for discussion Mayor LaKind stated:

We have, uh, come out of executive session. We have one more matter to discuss, Item 11.a. Um, leave it up to the, uh, Council to see if there's anything that they wanted. This is an action that came out of the executive session. Uh, and I'm gonna recuse myself from this conversation completely due to the, uh, financial nature of the matter that it, it directly impacts me.

7. I interpreted Mayor LaKind's statement "This is an action that came out of the executive session" as meaning that the item was identified for discussion in public session that Mayor LaKind would need to recuse himself for, not that payment of the Sherman & Howard invoice had been discussed in the executive session, which it was not.

8. In making the motion to approve the payment of the Sherman & Howard invoice under Agenda Item 11.a. Council member Romanello stated:

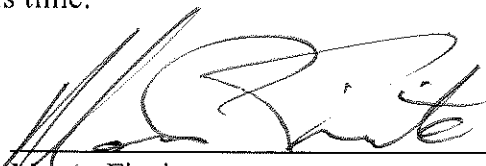
Well then as a result of the information brought to light in the executive session, I'd like to make a motion to approve payment for legal services to Sherman & Howard, uh, for services associated done with the review of the, um, FC, I'm tired, the uh, uh, the, the, the FCPA, uh, issues.

9. I understood Council member Romanello's statement "as a result of information brought to light in the executive session" as conveying the fact this item was identified as an open item needing resolution in open session after Mayor LaKind recused himself, not that payment of the Sherman & Howard invoice had been discussed in the executive session, which it was not.

10. As stated in my Prior Affidavit, at no time, including but not limited to the months of February, March, and April 2023, and the Town Council meetings of April 3, 2023, and April 11, 2023, did Mayor LaKind request that I support the proposal to pay any portion of the Sherman & Howard invoice. Mayor LaKind did not attempt to influence me in any way regarding such proposal or the actions taken by Town Council on April 3, 2023, or April 11, 2023. My consideration and vote on these matters at the April 3, 2023 and the April 11, 2023 Town Council meetings were based solely on the merits of the proposal, my belief that the services rendered were of significant benefit to the Town at a time that the Town did not have a Town Attorney to advise the Town Council, and that the Town's payment of the Sherman & Howard invoice in the reduced amount of \$20,737 was

appropriate even though the services were requested and provided without prior Town Council approval.


Affiant says nothing further at this time.



Marco Fiorito

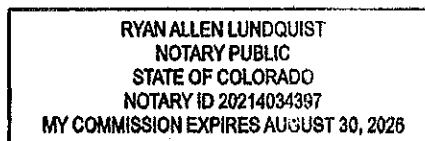
summit
COUNTY OF ~~EL PASO~~)
STATE OF COLORADO)

The foregoing Affidavit was subscribed and sworn to before me this 24th day of ~~September~~ 2023.
November



Notary Public

My commission expires: Aug. 30, 2025



COLORADO INDEPENDENT ETHICS COMMISSION
Complaint No. 23-17

SECOND AFFIDAVIT OF KENNETH
KIMPLE

IN THE MATTER OF: MITCH LAKIND

I, Kenneth Kimple, being of lawful age, sound mind and duly sworn, do hereby state as follows:

1. I, Kenneth Kimple, am a member of the Town Council ("Town Council") of the Town of Monument, Colorado ("Town"). I was elected to the Town Council on November 8, 2022, and took office January 3, 2023. Since that time, I have served continuously on the Town Council.

2. I have reviewed and am familiar with Complaint No. 23-17 filed with the Colorado Independent Ethics Commission ("IEC") on August 7, 2023, by Kelly Elliott, Darcy Schoening, and Amy Stephens ("Complainants"). I am also familiar with Complainants' Response to Motion to Dismiss and Motion for Summary Judgment filed October 12, 2023, and the IEC's Order Regarding Respondent's Motion to Dismiss and Motion for Summary Judgment dated October 24, 2023.

3. This Affidavit is supplemental to my Affidavit previously filed in this matter on or about September 21, 2023 ("Prior Affidavit"). The statements contained in my Prior Affidavit are specifically reaffirmed.

4. As noted in my Prior Affidavit, at the April 3, 2023, Town Council Meeting, an executive session was convened pursuant to Section 24-6-402(4)(b) C.R.S. for a Conference with the Interim Town Attorney for the Purpose of Receiving Legal Advice on Specific Legal Questions Relating to the Report of Investigation Findings Dated December 28, 2022. Also as noted in my Prior Affidavit, the executive session stayed within this topic and did not discuss the Sherman & Howard invoice.¹ I participated in this executive session, as did Mayor LaKind. Had the executive session discussion included a discussion of the Sherman & Howard invoice I would have requested Mayor LaKind recuse himself from the executive session at that time. Because the executive session did not include a discussion of the Sherman & Howard invoice, there was no need for Mayor LaKind to recuse himself from the executive session.

¹ The term "Sherman & Howard invoice" is defined in my Prior Affidavit.

5. Following the executive session referenced in the previous paragraph, the April 3, 2023, Town Council meeting agenda listed the next item of business as: "11. Discussion/Action Item(s): a. Sherman & Howard Invoice No. 862015 to Mitchell LaKind for Professional Services, 12/22/22 through 1/31/23." ("Agenda Item 11.a.").

6. In bringing Agenda Item 11.a. to the floor for discussion Mayor LaKind stated:

We have, uh, come out of executive session. We have one more matter to discuss, Item 11.a. Um, leave it up to the, uh, Council to see if there's anything that they wanted. This is an action that came out of the executive session. Uh, and I'm gonna recuse myself from this conversation completely due to the, uh, financial nature of the matter that it, it directly impacts me.

7. I interpreted Mayor LaKind's statement "This is an action that came out of the executive session" as meaning Mayor LaKind was providing a clarifying remark to staff and those residents still attending either in person or on-line of his personal decision and intention to recuse himself, after the counsel members had just returned to take their seats after coming out of executive session. Again, I took that as Mayor LaKind explaining to everyone his decision and intention, as he often does and likes to ensure everyone is provided a step-by-step explanation for all to understand. Having asked questions myself during the executive session and received advice provided by the then Interim Town Attorney specifically regarding the events as described in the Report of Investigation Findings Dated December 28, 2022, payment of the Sherman & Howard invoice was never discussed in the executive session.

8. In making the motion to approve the payment of the Sherman & Howard invoice under Agenda Item 11.a. Council member Romanello stated:

Well then as a result of the information brought to light in the executive session, I'd like to make a motion to approve payment for legal services to Sherman & Howard, uh, for services associated done with the review of the, um, FC, I'm tired, the uh, uh, the, the, the FCPA, uh, issues.

9. I understood Council member Romanello's statement "as a result of information brought to light in the executive session" as conveying that due to the specific questions asked during the executive session and having received advice provided by the then Interim Town Attorney specifically regarding the events as described in the Report of Investigation Findings Dated December 28, 2022, that counsel member Romanello believed that payment of the Sherman & Howard invoice was appropriate, as did the other Council members, including myself, that all voted in favor.

10. As stated in my Prior Affidavit, at no time, including but not limited to the

months of February, March, and April 2023, and the Town Council meetings of April 3, 2023, and April 11, 2023, did Mayor LaKind request that I support the proposal to pay any portion of the Sherman & Howard invoice. Mayor LaKind did not attempt to influence me in any way regarding such proposal or the actions taken by Town Council on April 3, 2023, or April 11, 2023. My consideration and vote on these matters at the April 3, 2023 and the April 11, 2023 Town Council meetings were based solely on the merits of the proposal, my belief that the services rendered were of significant benefit to the Town at a time that the Town did not have a Town Attorney to advise the Town Council, and that the Town's payment of the Sherman & Howard invoice in the reduced amount of \$20,737 was appropriate even though the services were requested and provided without prior Town Council approval.

Affiant says nothing further at this time.


Kenneth Kimple

COUNTY OF EL PASO)
)
STATE OF COLORADO)

The foregoing Affidavit was subscribed and sworn to before me this 24 day of ~~September~~ November 2023.


Notary Public

My commission expires: 1-28-2024

