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Memorandum

To: Elise Tan

From: Examinee

Date: February 25, 2025

Re: Peter Larkin - Defense of housing discrimination claim

I have been tasked with drafting a memorandum setting out the applicable tests and how they relate to Mr. Larkin's defense against this discrimination claim. Below I will go through each of the tests covered by the relevant authority and apply them to the facts of Mr. Larkin's case. There are two different tests recognized in the circuit that could be applied to Mr. Larkin's case, each will be discussed in turn.

The Fair Housing Act (FHA) provides protections for certain purposes trying to obtain housing. Certain statuses will be granted extra protections. Here, **Familial status** (FS) is the asserted status. FS means the presence of one or more minor children in the domicile with a parent or custodial designee, the FHA definition also applies to persons who are pregnant or are attempting to secure legal custody. (FHA). Relevant here, the FHA specifically makes it unlawful to refuse to negotiate or otherwise make unavailable or deny a dwelling because of a protected status, such as FS. There are two tests applied in an FHA discrimination claim which are applied to Mr. Larkin's facts below.

<u>The McDonnel Douglas test</u>

This burden-shifting test is used in discrimination claims when specific actions may be ambiguous. (Karns v. US HUD) The test has three steps:

Step 1: Plaintiff (P) bears the burden of proving a prima facie housing discrimination claim by a preponderance of the evidence. This is shown by 1) that P is a member of a protected class, 2) P applied for and was qualified to rent the dwelling, 3) Defendant (D)

denied housing or the landlord (LL) refused to negotiate with the P and 4) the dwelling remained available after P's inquiry.

Step 2: If P meets their burden by a preponderance of the evidence, a **presumption of illegality arises;** the burden then shifts to D to **articulate legitimate nondiscriminatory reasons** for the challenged policies.

Step 3: If D satisfies their burden, P has the opportunity to prove by a preponderance of the evidence that the nondiscriminatory reasons asserted by the Defendant are **merely pretext for discrimination.**

Step 1 analysis

For our analysis we will start with step 1, P's burden. Here, Turner must make out a prima facie housing discrimination claim, Turner will likely be able to show that they are a member of a protected class. Turner is a single parent of three minor children (Same as Karns in Karns v. US HUD, where Karns was a single parent of two children). Recall that FS means the presence of one or more minor children in the domicile with a parent or custodial designee, Turner is thus a member of a protected class. Next Turner inquired about the dwelling (which in Karns inquiring and talking to LL about the advertisement constituted applying, such as we have here) and was qualified to rent the dwelling. When determining whether someone is qualified to rent, the Karns court looked at a list of factors about financial background, history, present income, references and criminal background. Turner will argue he was qualified to rent the dwelling, in the HUD Complaint Turner explained that they are employed as a data analyst, meaning they can easily afford the rent, they have a good rental history as well as good credit. Larkin could argue that one inquiry without a follow up does not meet the level of applying for the apartment, but this argument would likely fail. Next, P must show that D denied housing or refused to negotiate with the P, here we see a request for the apartment, a conversation where Turner explains they are not married and have children, and that Larkin never responds. Finally under step 1 the dwelling must have remained available afterwards - Larkin admits it took a couple of months to find a couple to rent to, a married couple.

Step 2 analysis

It is likely that Turner has met their initial burden by a preponderance of the evidence and the burden now shifts to Larkin. There is now a presumption of illegality, Larking must **articulate legitimate nondiscriminatory reasons** for the challenged policies. The nondiscriminatory reasons here include preferring married couples because of their financial stability inn having two incomes and the limit on the number of people in the apartment because of the 20 year olds in the area who attempt to crowd the apartments to keep rents down. How do we tell if the reasons are legitimate? Larkin should argue that marital status is not a protected classification under the FHA and that the number of residents was the concern, not that the residents were children (which is a protected class). Larkin should point to the municipal code that recommends no more than four people for a 500 square foot apartment (like the one in this case). Turner will argue that only after hearing there were kids involved did Larkin not get back to Turner. It is likely that

Larkin has met their burden.

Step 3 analysis

Finally, Turner has the final burden to prove by a preponderance of the evidence that the nondiscriminatory reasons asserted by the Defendant are **merely a pretext for discrimination.** In discerning whether there was a mere pretext, we can look to the amount of information available to Larkin at the time he decided not to rent to Turner. Here, Turner saw the listing for the apartment, Larkin asked whether Turner was married and who else would be living there. Turner responded by saying they were widowed and had three minor children - Larkin never got back to Turner.

Larkin will argue that those questions and the information provided were consistent with their preferences of married and no more than three people in the apartments. Turner will argue that once it was explained that children would live there, Larkin did not respond and in effect rejected Turner's application. Overall, this case is similair to Karns where the court found that the stated reasons were pretextual. If Larkin really cared about married couples because they have more financial stability then he would likely have asked some questions about financials - he will argue that a good job can be lost and that he cares about two incomes for the stability. Larkin can also show that a similiar incident occured in the past where he did not rent to jake and three others for the very same apartment because Jake was not married and there would be four people in that apartment. In the end a court is likely to find that these facts represent a similair case as in Karns and find that the stated reasons were pretextual and that there was discrimination under the McDonnel Douglas test.

Disparate Impact analysis

This test set out in Baker v. Garcia looks at whether 1) P first makes a prima facie showing that the challenged practice **caused or will predictably cause a discriminatory effect**, 2) if P makes that showing, the burden then shifts to D LL to prove the challenged practice is **necessary to achieve one or more substantial, legitimate, nondiscriminatory interests**, and finally 3) if D LL meets burden the burden then shifts to P to show that substantial, legitimate, nondiscriminatory interests supporting challenged practice could be served by **another practice that has a less discriminatory effect.** (Baker v. Garcia).

Here, Turner makes a prima facie showing that LLs policy of not renting to unmarried persons and no more than three people in that apartment caused or will predictably cause a discriminatory effect - as explained in Baker, a restrictive policy based on bedrooms will disproportionately effect families with minor children more than the general population because minor children frequently share bedrooms and families with minor children generally have larger households. (Baker). This analysis can be applied to square feet rather than just a bedroom count - Turner will succesfully set out a prima facie case.

Next, Turner will then have the burden to show that the challenged practice is **necessary to achieve one or more substantial, legitimate, nondiscriminatory interests.** As was successfully done in Baker, Larkin will successfully argue that his policy had the legitimate nondiscriminatory purpose of limiting the number of people to avoid large groups of young adults in the area from overcrowding the apartments in an effort to reduce rental payments.

Finally, the burden then shifts back to Turner to show that the **substantial, legitimate, nondiscriminatory interests**, could be served by another practice that has a less discriminatory effect. In Baker, the court broke that analysis down into two more specific questions: 1) is the policy overbroad and 2) is there a less restrictive means to achieve the desired result. An overbroad analysis will look at whether there is a significant mismatch between municipal code and landlord's policy. The relevant municipal code in Centralia is Maximum occupancy of dwellings, for 451-700 square feet, no more than four people. The apartment involved in this case is 500 sq ft. Here, Larkin will argue that the policy about the number of people is not overbroad because compared to Baker, where the policy allowed for a number of persons that was only half as much as allowed by municpal code (and was found overbroad), the restriction Larkin has for that apartment is only one person less than the municipal code states (three rather than four person), which Larkin can argue is not overbroad.

As for whether there is a less restrictive means of obtaining the same result, we can look at the amount of info requested by the LL. Larkin only really asked whether Turner was married and who would be living with him. Turner will argue that Larkin did not attempt to learn more about his financials or rental history, if he did he could perhaps see that he had enough money in the bank that even a loss of job would not effect his ability to pay on time. Additionally, he could have a number of occupants policy that takes into account, and perhaps matches the municpal code rather than undercutting it, whether there are minor children involved rather than all young adults. Larkin will have trouble arguing that there is no less restrictive means of obtaining his desired, non-discriminatory effect and will likely not prevail in his defense under the disparate impact test.

Conclusion

Overall, Larkin will be able to make sound arguments under both of the tests recognized under these FHA claims, however the nature of the protections provided likely tips the scales toward finding Larkin in violation of the FHA.

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Mrs. Rodriguez,

As §14-6 Procedure for Inspection lays out, any public record containing information that is exempt and nonexempt from disclosure shall be separated by the custodian prior to the inspection and the nonexempt information shall be made available for inspection. Included below are the four documents to requested for disclosure and an analysis as to which documents are able to be disclosed in full, part or fully exempt per the statute.

Requested Items:

1. Professor Hagen's annual performance reviews completed by the Dean of the UF School of Law from 2019 to the present.

Professor Hagen's annual performance reviews completed by the Dean of the UF School of Law would be exempted in part from disclosure. Under §14-2(a)(3) requires that when an exemption applies to a document as a whole, the entire document is exempt from disclosure and matters of fact in that document do not have to be separated from matters of opinion and disclosed. Here, the annual performance reviews would be characterized as personnel evaluations and other matters of opinion based on the language provided by *Newton v. Centralia School District*. In *Newton* the Franklin Supreme Court described the "matters of opinion" IPRA exemption to include documents concerning infractions, personnel evaluations, and other matters of opinion. It is likely that the annual performance review could be distinguished into matters of fact and matters of opinion but would not because the document was written and performed by Dean Cheryl Williams as a personnel evaluation. The Dean confirmed that the annual review had notes of concern made by the Dean which would be matter of opinion, however, there were also matters of fact stated within the review such as general information including what classes Hagen taught, the quality of his teaching, the committees he served on, and publications he completed along with their quality. The statute intended to exempt the document as a whole when the document is "letters or memoranda that are matters of opinion in personnel files" therefore the exemption would most likely apply to the document as a whole and matters of fact would not have to be separated from matters of opinion. Concluding that Professor Hagen's annual performance reviews would be exempted from disclosure under IPRA to Paul Chen.

2. Any complaints about Professor Hagen submitted by members of the public to UF School of Law.

To analyze whether the complaints about Professor Hagen should be produced to Paul Chen the case of *Fox v. City of Brixton* best explains whether these documents should be produced. *Fox* argued that citizen complaints are not personnel information within the meaning of the exemption under § 14-2(a)(3) matters of opinion because the complaints arise of the role as a public servant rather than a city employee. Further, the complaint

made against Professor Hagen was submitted by a member of the public rather than by the institution of UF School of Law or the City. The conclusion in *Fox* would support the production of these documents because the complaints may lead to the School investigating Hagen's job performance the complaint itself does not equal a record of "matters of opinion in personnel files". Further, although the complaint against Hagen may bring negative attention to Hagen, it is not a basis under §14-2(a)(3) for exemption from public disclosure. Therefore, the complaint/s about professor Hagen is not opinion material the legislature intended to protect from disclosure and should be granted for production to Paul Chen.

3. A chart containing the names of anyone (faculty, staff, students, or members of the public) who has made a complaint about Professor Hagen.

A chart containing the names of anyone who has made a complain about Professor Hagen would does not have to be created for production to Paul Chen. §14-1 provides the definition of a "Public Record" meaning all "documents . . . created, received, maintained, or held by or on behalf of any public body and relate to public business, whether or not the records are required by law to be created or maintained." Further, §14-5(b) writes "Nothing in this Act shall be construed to require a public body to create a public record." Here, there is no record currently held or made containing a chart with the names of persons who made a complain about Professor Hagen. Although it would be possible to make a chart, it has not previously been done so as a business record and the Dean is not required by the act to do so in order to produce the document under IPRA. Paul Chen will likely be provided with all the names of persons who made a complaint and then is free to make his own chart but the statute does not require that a chart be made a produced to him as a business record. Therefore, because this chart does not already exist as a business record created or maintained it does not have to be produced to Paul Chen under IPRA.

4. Any records involving Professor Hagen in the possession of the UF Campus Police Department.

The record involving Professor Hagen in the possession of the UF Campus Police Department is the incident report from February 11, 2025. This record will be subject to production with redactions of exempted material. The letter from Chief of UF Campus Police Chip Craft states the incident of marijuana use and possession on campus from February 11 is still undergoing investigation. However, *Torres v. Elm City* provided judgement that even though an ongoing investigation exists, they are not able to withhold the law enforcement record in its entirety. Specifically §14-2(a)(4) does not exempt all law enforcement records relating to an ongoing criminal investigation but rather exempts "law enforcement records that reveal confidential sources or methods or that are related to individuals not charged with a crime." Here, the Campus Police Department will be able to redact information regarding the confidential informant and Hope Sykes involvement per the exemption under the statute. Further, the two photographs in the departments records are also exempt from disclosure as they disclose Hope Sykes involvement as a party not

charged with a crime that is exempt under the statute. Therefore, the information contained in the records involving Professor Hagen, the crime charged, the date and time are all available martial for disclosure to Paul Chen as public record.

END OF EXAM