UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-22307

In the Matter of **EPIC CAPITAL WEALTH ADVISORS, LLC,** **Respondent.**	**DIVISION OF ENFORCEMENT'S PETITION FOR REVIEW OF THE INITIAL DECISION**

The Division of Enforcement ("Division"), pursuant to Rule 410 of the Commission's Rules of Practice, respectfully submits this Petition for Review of the August 8, 2025 Initial Decision ("Dec.") in this matter involving Respondent Epic Capital Wealth Advisors, LLC ("Epic"). After holding a four-day evidentiary hearing in June 2025 (the "Hearing") about whether to grant Epic's application to register as an investment adviser, the Initial Decision *sua sponte* dismissed this proceeding by finding that the OIP issued by the Commission did not adequately notify Respondent that the Division would establish the wide array of problematic and illegal conduct by Respondent's principal David Anthony ("Anthony") that occurred at the Hearing. In dismissing this proceeding, the Initial Decision thereby granted Epic's registration while simultaneously finding that Mr. Anthony engaged in actions that "raise serious issues regarding Anthony's fitness to serve in a fiduciary role," Dec. 8. The Initial Decision should be reversed, and the Commission should deny Epic's application for investment adviser registration.

First, the Division was never given the opportunity to demonstrate the adequacy of the Commission's OIP or the Division's subsequent notice to Epic about the subject-matter of the Hearing, which resulted in the Law Judge's erroneous conclusion that inadequate notice was given. Until the Initial Decision, the Law Judge never indicated that it was considering (much less basing its entire Initial Decision on) what notice Epic had received. No party raised the question of the sufficiency of the OIP or subsequent notice to Epic; Epic never objected that it did not have adequate notice; the Law Judge never mentioned this issue at the Hearing; and, until this filing, the Division has never addressed these notice and due-process issues. The Initial Decision thus decided a matter not presented by the litigants before the Law Judge. *See United States v. Sineneng-Smith*, 590 U.S. 371, 375–76 (2020) ("In our adversarial system of adjudication, we follow the principle of party presentation. . . 'in both civil and criminal cases, in the first instance

and on appeal ..., we rely on the parties to frame the issues for decision and assign to courts the role of neutral arbiter of matters the parties present.'") (citation omitted).

Second, the Initial Decision erred in its statement *and* application of the notice requirements required by the Commission's Rules. Rule 200(b) sets forth that an OIP (in a matter where an answer is directed) must contain the "factual and legal basis alleged therefor in such detail as will permit a specific response thereto." The Initial Decision makes no reference to this pleading standard, nor to Epic's right under Rule 220(d) to file a motion for more definite statement, which it also did not avail itself of. Here, Section II of the OIP plainly laid out eight paragraphs of allegations that set forth the basis on which Epic's registration with the Commission could be denied, and that recitation enabled Epic to answer (which it did). Specifically, the OIP alleged that Mr. Anthony is a "person associated with" Epic, OIP ¶ 3, that a Colorado state court entered a 10-year injunction against him, *id*. ¶ 7, and, thus, "[w]ere Epic Capital to be registered as an investment adviser, its registration would be subject to suspension or revocation under Section 203(e)[1] of the Advisers Act," *id.* ¶ 5. The Initial Decision misconstrues two sentences from the end of paragraph 8 of the OIP, which the Law Judge appeared to conclude were the only factual basis the Division could use to address the public-interest factors. But the OIP does not state that those allegations made three years ago by the Colorado State Securities Commissioner were the only basis on which Epic's application could or should be denied; rather, it was entry of a state-court final judgment that included a 10-year injunction against Anthony—which order resulted from a complaint containing those allegations—that triggers potential disqualification under Section 203(e). *Id.* ¶¶ 5, 7.

[1] The relevant language of Section 203(e) provides that the registration of an investment adviser shall be suspended or revoked if the Commission finds that (a) such suspension or revocation is in the public interest and (b) the investment adviser or any person associated therewith is "permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction, . . . from acting as an investment adviser, . . . broker, dealer, . . . or from engaging in or continuing any conduct or practice in connection with any such activity, or in connection with the purchase or sale of any security." 15 U.S.C. § 80b-3(e)(4).

With respect to its analysis of what notice was actually given, the Initial Decision failed to consider: (1) no party ever disputed or claimed lack of adequate notice; (2) during discovery the Division served Mr. Anthony with subpoenas about several of the issues it presented at the Hearing (which Mr. Anthony provided partial responses to); (3) the Division outlined in its Pre-Hearing Brief and Opening Statement its expected evidence; and (4) the Division's only witness was Mr. Anthony, who could never plausibly claim *he* did not have notice of his own statements.

Third, the Initial Decision's characterization of what was proven as being "matters not charged in the OIP," Dec. 8, was mistaken because the Division's evidence came heavily from records in the Colorado state case (*e.g.*, the receivership order Mr. Anthony violated was an order of the judge who presided in the Colorado case) or Epic's own filings to register. *See* OIP ¶ 4.

Fourth, the Initial Decision erred by converting what the Commission has repeatedly emphasized is a "flexible" inquiry[2] into a narrow one. For example, the Law Judge rejected undisputed policy arguments made by the Division (including that Epic's clients may have an adviser with *no* federal or state registration options within months) as "not part of the *Steadman* public-interest analysis predicated on the underlying violations alleged in the Colorado Action." Dec. 9. But these policy issues arose *after* and *because of* the Colorado case, when multiple states informed Mr. Anthony that he would not be permitted to register because of his injunction.

Finally, the Initial Decision erred by granting Epic's application given the evidentiary record that was developed, even if that record were now limited to matters proven at the Hearing that were *also* included in the Colorado state complaint referenced in paragraph 8 of the OIP.

For these reasons, the Division's Petition for Review should be granted and the Initial Decision reversed. A proposed briefing schedule for the Commission's consideration is attached.

[2] *See, e.g.*, *In re. Anton & Chia, LLP*, SEC Release No. 1407, 2021 WL 517421, at *88 (Feb. 8, 2021); *In the Matter of Gacy M. Kornman*, Exchange Act Rel. No. 59403, 2009 WL 367635, at *6 (February 13, 2009).

Respectfully submitted this 15th day of August, 2025.

/s/ James P. McDonald
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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was served on the following on August 15, 2025, in the manner indicated below:

Epic Capital Wealth Advisors, LLC (via email)
c/o Mr. David Anthony
dave@epiccapitalwealth.com

/s/ James P. McDonald
Division of Enforcement
Securities and Exchange Commission