

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF MONROE**

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In the matter of the Application of :
COUNCIL OF THE CITY OF ROCHESTER : Index No. E2020009990
Petitioner, :

For an Order, Pursuant to Article 23 of the CPLR, :
to Compel Compliance with Legislative :
Subpoena, :

-against- :

**AFFIRMATION OF
ANDREW G. CELLI, JR.**

LA'RON SINGLETARY, :
Respondent. :

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ANDREW G. CELLI, JR., an attorney admitted to practice before the courts of the State of New York, affirms under penalty of perjury:

1. I am a partner in the law firm of Emery Celli Brinckerhoff Abady Ward & Maazel LLP ("ECBAWM"), attorneys for the Petitioner, Council of the City of Rochester ("City Council"). I submit this affirmation in further support of Petitioner's application for an order, pursuant to CPLR § 2308(b), compelling Respondent La'Ron Singletary, former Chief of the Rochester Police Department ("RPD") to comply with a legislative subpoena duly issued to him by the City Council on September 24, 2020, requiring his testimony under oath and his production of certain documents.

2. On September 15, 2020, the City Council unanimously passed Ordinance No. 2020-283, authorizing City Council President Loretta C. Scott to retain this law firm "to conduct an investigation into the City's communications, processes, and procedures that took place

related to the death of Daniel Prude in police custody” (the “Investigation”). City of Rochester Ordinance No. 2020-283 § 2 (Dkt. 5). Since that time, my law firm has taken significant steps towards the completion of the Investigation. To date—in response to subpoenas issued by the City Council, pursuant to Rochester City Charter § 5-21(G) and Resolution No. 2020-29—we have received over 350,000 records and files from the City and individual respondents. These records include documents, emails, and text messages maintained on City computer servers and City--issued cell phones, and documents, emails, and text messages from individual respondents’ personal computers and cell phones reflecting communications concerning City business.

3. In addition, we conducted eleven (11) depositions pursuant to City Council subpoenas. The following individuals have provided sworn testimony in the Investigation:

- Mayor Lovely Warren;
- Council President Loretta Scott;
- Corporation Counsel Tim Curtin;
- Deputy Mayor James Smith;
- Communications Director Justin Roj
- Former Acting Chief of the RPD Mark Simmons;
- Former Chief of Staff to the Mayor Alex Yudelson;
- Councilmember Mary Lupien;
- RPD Lieutenant Steven Swetman;
- Deputy Corporation Counsel Patrick Beath; and
- Municipal Attorney Stephanie Prince.

None of these depositions was completed in under four hours; many lasted much longer. For example, Mayor Warren's deposition lasted approximately nine hours. No recipient of a City Council subpoena has objected to it other than Respondent Singletary.

4. On September 29, 2020, I received a letter from the Rochester City Council Prude Independent Investigation Committee, a special committee comprised of Councilmembers Malik D. Evans and Michael A. Patterson. This letter authorized me and my law firm to take the witness testimony sought by the City Council subpoenas issued in the Investigation, each of which were returnable to the Prude Independent Investigation Special Committee, outside the public view and without the presence of Councilmembers Evans and Patterson. The letter indicated that Councilmembers Evans and Patterson did "not wish to be present at any of the depositions" in order to further the "desire of Council that [my firm's] work be done independently and that even the special committee not be privy to the information that [the firm was] collecting until [the] investigation is complete." **A true and correct copy of this letter is attached as Exhibit A.**

5. In accordance with the wishes of City Council and the Prude Independent Investigation Special Committee, as expressed in the September 29, 2020 letter, each deposition has been conducted outside the presence of any City Councilmembers. I believe that this practice is an important part of ensuring both the reality of investigative independence and, equally as important, the appearance that the Investigation is being conducted independently. I also believe that it is best investigative practice, where possible, to collect information and testimony on a non-public basis, so that witnesses who appear in subsequent depositions are unaware of the content of the testimony that has already occurred.

6. That all said, should the City Council agree, and the Court so require, my firm is prepared to conduct the deposition of Respondent at a public hearing or meeting of the Prude Independent Investigation Special Committee or of the Council as a whole.

7. Finally, from October 8, 2020 through the present, I exchanged emails and letters with Michael Tallon Esq., counsel for former Chief Singletary, in an effort to secure former Chief Singletary's compliance with the Subpoena. In none of this correspondence did Mr. Tallon raise concerns regarding the adequacy of service, the scope of the Subpoena, or the witness fee. The only argument concerning the validity of the Subpoena that Mr. Tallon presented in this correspondence was the argument that the Council's subpoena power could not reach Respondent Singletary because he is no longer employed by the City of Rochester. In response to that assertion, I explained, in writing, that that argument was belied by the express language of Charter Section 5-21(G). Notably, the argument is not made by Respondent in his submissions to this Court.

Dated: January 11, 2021
New York, New York



ANDREW G. CELLI, JR.