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COUNCIL OF THE CITY OF ROCHESTER

SINGLETARY, LA'RON

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MONROE COUNTY CLERK'S OFFICE
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JAMIE ROMEO

MONROE COUNTY CLERK



**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 :
Petitioner, :

Index No. E2020009990

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

-against- :

**AFFIRMATION OF
LORETTA C. SCOTT**

LA'RON SINGLETARY, :
Respondent. :

----- X

LORETTA C. SCOTT, pursuant to CPLR § 2106 states the following under penalty of perjury:

1. I am the President of the Council of the City of Rochester, which is Petitioner in this matter. 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 issued to him by the City Council on September 24, 2020, requiring his testimony under oath and the production of certain documents in his possession, custody, or control.

2. As this Court is no doubt aware, on September 2, 2020, video footage from RPD bodyworn cameras was released showing the March 23, 2020 arrest and restraint of an unarmed, mentally ill Black man named Daniel Prude. Mr. Prude died in the hospital approximately a week after his arrest, and, in early April, the Monroe County Medical

Examiner declared his death a homicide caused by “asphyxia in the setting of physical restraint.” None of this was publicly known before September 2, 2020. The revelation of the circumstances of Mr. Prude’s arrest and death, and the delay in the matter becoming publicly known, caused deep concern, and even outrage, among many members of the Rochester community. Among other issues of concern was the question why an arrest and a death-in-custody that had occurred in March 2020 did not become public until September 2020 and, related to that, whether the Mayor or her administration, or members of the City Council itself, had suppressed information about the Prude arrest.

3. In response to this broad community concern, the City Council, by local ordinance, appointed Emery Celli Brinckerhoff Abady Ward & Maazel LLP (“ECBAWM”) to conduct an investigation into the City of Rochester’s response to the death of Mr. Prude, including but not limited to intra-governmental communications and processes, and public statements regarding the Prude incident (the “Investigation”). Petitioner City Council seeks former RPD Chief La’Ron Singletary’s testimony and the production of documents in his possession in connection with the Investigation, as set forth in the Petition. *See* Dkt. 1. Former Chief Singletary’s testimony is believed to be critical to the Investigation.

Legislative Steps Authorizing the Investigation

4. On September 15, 2020, the City Council unanimously passed Ordinance No. 2020-283, authorizing me, as City Council President, to retain the law firm ECBAWM “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”. City of Rochester Ordinance No. 2020-283 § 2 (Dkt. 5).

5. On September 18, 2020, the City Council adopted Resolution No. 2020-29, which authorized me, as Council President, and Willie Lightfoot, as Council Vice President to sign subpoenas for records and attendance of witnesses, pursuant to Rochester City Charter § 5-21(G) and Ordinance No. 2020-283, “without need of further action by the Council, and upon the request of legal counsel retained by the City Council to conduct the investigation.” City of Rochester Resolution No. 2020-29 § 2 (Dkt. 6). This resolution also permitted the subpoenas to be made returnable to ECBAWM and authorized ECBAWM to “adjust the time, location and manner of production of documents or testimony pursuant to subpoena as they deem necessary.” *Id.* §§ 3, 4.

6. On September 17, 2020, I appointed a special committee, the Rochester City Council Prude Independent Investigation Committee, to oversee the Investigation (the “Special Committee”). As Council President, I appointed Councilmembers Malik Evans and Michael Patterson to serve as the Special Committee. The precise scope of the Special Committee’s role is described below and in the accompanying affirmations of Councilmembers Evans and Patterson.

The Investigation Is Integral to the Council’s Legislative Work

7. The Investigation is a fact-finding exercise: its purpose is to collect information concerning “the communications, processes, and procedures that took place related to the death of Daniel Prude in police custody” so that the Council can determine : (i) whether any governmental or personnel failures or deficiencies occurred in connection with the Prude incident; and (ii) whether the Council should take legislative or other action to prevent any such failures from recurring. The City Council appointed ECBAWM – a New York City law firm with experience in the field – to conduct the Investigation and to report its findings to the full

Council. The report we receive from ECBAWM will be made public and will be the subject of public meeting(s) or hearing(s) of the City Council. Once the outcome of the Investigation is reported to us, the City Council will determine whether legislative, charter-reform, or other action is necessary to prevent future instances in which an RPD involved death-in-custody or serious physical injury to a civilian is not made public or widely known within City government.

8. The Investigation being conducted by ECBAWM is an integral part of our legislative work. It is the first step in the deliberative legislative process arising from the Prude incident.

9. Because the conduct of high-ranking Rochester City officials, including myself and other members of City Council, is subject to review in the Investigation, the Council determined that it was critical for ECBAWM to conduct its fact-finding effort on the Council's behalf free from any influence or even perceived influence by any City official, even members of the Council itself. It was and remains our intent that, so long as the law firm remains within the investigative frame the Council constructed by local legislation, ECBAWM should make all day-to-day decisions about the Investigation, including which documents to gather, whose testimony should be taken, and what questions to ask. These important principles were reflected in the introductory text to what would become Ordinance No. 2020-283, which the City Council passed unanimously; it specifically states that the Investigation is to be conducted independent of any influence by or guidance from any member of the City Council. *See* City of Rochester Introductory No. 349 (Dkt. 23) ("Mr. Celli and his team will act wholly independent of the City Council, the Council has not and will not instruct Mr. Celli as to what to find nor conclude, and

at the conclusion of this investigation, Mr. Celli will issue a report that the Council will make public”).¹

The City Council Oversees the Work of ECBAWM, Even as Investigative Independence Is Maintained

10. Although the City Council has elected, for good reasons of public policy, not to involve itself in the day-to-day investigative work being carried out by ECBAWM, the City Council does exercise general oversight of the Investigation in three ways: first, by controlling the issuance of Council subpoenas; second, by determining the setting in which testimony should be gathered by the law firm; and third, by having the final say on whether enforcement of a Council subpoena will be sought via court compulsion.

11. As noted above, City Council Resolution No. 2020-29 authorizes me, as Council President, and Council Vice President Willie Lightfoot to sign Council subpoenas in furtherance of the Investigation without further action by the full Council. Exercising that power, I have signed twenty-one (21) Council subpoenas in furtherance of the Investigation to date.² These subpoenas have been directed to current and former Rochester City officials and employees as well as to Rochester City governmental departments. In each case, prior to signing the subpoena, I have examined its contents and confirmed that the documents and testimony sought were within the scope of the Investigation as set forth in Ordinance 2020-283. In each case, I was satisfied that the subpoena was within the scope of the Investigation, was a proper exercise of the City Council's power, and would further the Council's original purposes in authorizing and directing ECBAWM to conduct the Investigation.

¹ To ensure the independence of the Investigation, the City Council determined that no City Council members should even be privy to facts gathered over the course of the Investigation prior to the conclusion of the Investigation and issuance of the report required by Ordinance No. 2020-283. This includes all documents and witness testimony provided in response to subpoenas issued by the City Council.

² City Council Vice President Lightfoot also signed one City Council subpoena—the subpoena that was issued to me for documents and testimony.

12. The subpoena directed to Respondent Singletary was no exception to this process. I signed that subpoena on September 24, 2020 after examining its contents and determining that it was a proper exercise of City Council's powers under Rochester City Charter § 5-21(G) and was within the scope of the Investigation authorized by Ordinance No. 2020-283.

13. Second, the City Council exercises general oversight of Investigation by determining, via the Special Committee, the precise setting in which sworn testimony taken in the Investigation is to be gathered. To the extent that the subpoenas issued by the City Council seek testimony, and consistent with the mandate that the Investigation be conducted independently and in a manner designed to avoid even the appearance that Council members may be influencing the investigative work, both members of the Special Committee, Councilmember Evans and Councilmember Patterson, have determined that they will not personally appear at depositions commanded by the Council subpoenas, and that such depositions will be held on a non-public basis. This decision is fully consistent with the City Council's vision of an independent investigation overseen by the Council itself. While ECBAWM will, in its discretion, determine the format of the report it will issue, it is my understanding that the firm's current intent is to publicly release the transcripts from all depositions taken in this matter at the conclusion of the Investigation.

14. Finally, the City Council, through me and the Special Committee, also controls whether and when to seek judicial intervention to enforce a Council subpoena. That issue has arisen just once – with the subpoena at issue in this application. Councilmembers Evans and Patterson and I all agreed that, in light of former Chief Singletary's refusal to voluntarily appear and comply with the subpoena issued to him, this application for court enforcement was

necessary and appropriate. ECBAWM is not authorized to seek court intervention to enforce Council subpoenas without our permission.

Dated: January 11, 2021
New York, New York


LORETTA C. SCOTT

Sworn to before me this
11 day of January 2021.


Notary Public

BIRTH A. MANIGAULT
Notary Public, State of New York
No. 01MA6291735
Qualified in Monroe County
Commission Expires Oct. 21, 2021