

**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- :

LA'RON SINGLETARY, :
Respondent. :
----- X

**REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF PETITIONER'S
APPLICATION FOR AN ORDER TO COMPEL COMPLIANCE WITH LEGISLATIVE
SUBPOENA**

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Petitioner Council of the City of Rochester (the “City Council” or “Council”), by and through its attorneys, submits this memorandum of law in further support of its 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 Council on September 24, 2020, requiring his testimony under oath and his production of certain documents (“the Subpoena”).

PRELIMINARY STATEMENT

Respondent Singletary’s papers in opposition to this application present a cluster of key concessions. Respondent *concedes* that the City Council is fully empowered to issue and enforce a subpoena in furtherance of an investigation into the City of Rochester’s response to the death of Daniel Prude; that, as former Chief of Police, Respondent is uniquely in possession of evidence that is highly relevant to that investigation; that, far from being a “fishing expedition,” the Subpoena is limited in its scope to precisely the critical evidence Respondent has to offer; and that compliance with the Subpoena is not burdensome in any way.¹ This ends the matter – or at least it should. The Subpoena should be enforced forthwith.

But, unwilling to sit for a deposition or produce documents voluntarily because he fears that doing so might somehow undermine his anticipated civil lawsuit against the City of Rochester, Respondent Singletary seeks to avoid compliance by arguing that the Investigation is a rogue endeavor by a private law firm, rather than a legitimate exercise of the Council’s power. The facts are otherwise.

At its core, the City Council investigation, of which the Subpoena is a component, seeks to answer this cluster of questions: What did high-level officials in City government know about the Prude arrest? When? And why didn’t the circumstances of the arrest become public sooner? More pointedly,

¹ Compliance imposes no burden at all since, to his credit, Respondent has already gathered and preserved these records called for by the Subpoena. See Affirmation of La’Ron D. Singletary, dated Jan. 7, 2021 (Dkt. 21) (“Singletary Aff.”) ¶¶ 4, 5.

the investigation is designed to determine whether City officials, including the Mayor, members of City Council, the Corporation Counsel, and then-Chief of Police Singletary, suppressed information about the arrest for more than four months. In a city riven with recriminations and distrust in the wake of the Prude revelations, the answers to these questions are of great concern to the City Council itself and to the public at large.

Put plainly, this is an investigation *by* government, *of* government officials – and it is in *that* specific context that the Council wisely acted to ensure the independence and integrity of the investigation by retaining an outside law firm to make the day-to-day investigative decisions, and to gather pertinent facts outside the public eye. At the same time, however, the Council has exercised ongoing oversight of the Investigation – appointing a special committee to interact with the investigative law firm, and preserving for itself the right to approve, or disapprove, subpoenas to be issued, and to determine when court enforcement should be sought. Moreover, the City Council has committed itself to the public release and discussion of the Investigation’s outcomes, come what may – again, as part of its deliberative process. The Prude investigation is the critical first step in the Council’s effort to determine what, if anything, went wrong in the Prude matter, and how it may wish to address these circumstances going forward. The use of an outside law firm to conduct the investigation is the Council’s chosen *method* to ensure integrity and enhance the credibility of its work – even as the conduct of members of the Council, the Mayor, and others are all themselves under scrutiny,

The City Council’s determination about how best to conduct its affairs should not be stymied by a witness with a private agenda to sue the City of Rochester for money – especially one who has seen fit to file a 27-page sworn Notice of Claim asserting his version of events but is unwilling to be examined about its contents. “The public has a right to every man’s evidence.” *Trump v. Vance*, 140 S. Ct. 2412, 2420 (2020) (internal quotation marks omitted). Respondent Singletary’s refusal to comply with the

Subpoena is without legal basis; he should be compelled to provide the information in his possession to this important investigation.

STATEMENT OF FACTS

To supplement the record, Petitioner has submitted affirmations from Rochester City Council President Loretta Scott, Councilmember Malik Evans, Councilmember Michael Patterson, and Special Council Investigator Andrew G. Celli, Jr. These affirmations set forth the following facts:

On September 2, 2020, the family of Daniel Prude, a Black man who was arrested by the Rochester Police Department on March 23, 2020 and died days later, released RPD body-worn camera footage showing the arrest. Affirmation of Loretta C. Scott, dated Jan. 11, 2021 (“Scott Aff.”) ¶ 2. The circumstances of Mr. Prude’s arrest and death were not publicly known until that time. When they were made public, the reaction, among the public and members of the Rochester City Council, was one of deep concern, and even outrage. *Id.* ¶¶ 2-3. Among other issues of concern was the question of why an arrest and a death-in-custody that had occurred in March 2020 remained unknown to the public for over four months. Pointed questions were raised as to whether the Mayor or her administration, or members of the City Council itself, had suppressed information about the Prude arrest. *Id.* ¶ 2.

On September 16, by local ordinance, the City Council appointed Emery Celli Brinckerhoff Abady Ward & Maazel LLP (“ECBAWM” or the “Independent Investigator”) to investigate this matter, including but not limited to intra-governmental communications and processes, and public statements regarding the incident (the “Investigation”). City of Rochester Ordinance No. 2020-283 (Dkt. 5). On September 18, 2020, the City Council adopted Resolution No. 2020-29, which authorized the City Council President and 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).

The stated purpose of the Investigation is to collect information concerning “the communications, processes, and procedures that took place related to the death of Daniel Prude in police custody” for a report to be made public, 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. Scott Aff. ¶ 7. Because the conduct of high-ranking Rochester City officials, including members of City Council, is subject to review in the Investigation, the Council determined that it was critical for ECBAWM, the Independent Investigator, to conduct fact-finding on the Council’s behalf free from any influence or even perceived influence by any City official, including members of the Council itself. *Id.* ¶ 9. It was the City Council’s 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. *Id.* The Council has committed that, once the Investigation is complete, the Independent Investigator’s report will be made public and will be the subject of public meeting(s) or hearing(s) of the City Council at which further legislative action will be considered. *Id.* ¶ 7-8.

On September 17, 2020, City Council President Loretta Scott appointed the Rochester City Council Prude Independent Investigation Committee (the “Special Committee”) to oversee the work of the Independent Investigator. Scott Aff. ¶ 6. President Scott appointed Councilmembers Malik Evans and Michael Patterson to serve as the Special Committee. *Id.* The purpose of the Special Committee is to oversee ECBAWM’s work on behalf of the Council over the course of the Investigation, and to serve as an intermediary between the firm and the full Council. Affirmation of Malik Evans, dated Jan. 11, 2021 (“Evans Aff.”) ¶ 3; Affirmation of Michael Patterson, dated Jan. 11, 2021 (“Patterson Aff.”) ¶ 3.

The Special Committee was also listed on the subpoenas for witness testimony issued by the City Council in furtherance of the Investigation. Evans Aff. ¶ 4; Patterson Aff. ¶ 4.

In light of the City Council’s desire that the Investigation be independent, and given the concern that convening meetings of the Special Committee with councilmembers present for depositions of witnesses could create the appearance of a lack of independence, the Special Committee members determined in September that they should *not* be present for the examination of subpoenaed witnesses. Evans Aff. ¶ 5; Patterson Aff. ¶ 5.² On September 29, 2020, the Special Committee sent a letter to the Independent Investigator informing it that they did “not wish to be present at any of the depositions taken by virtue of subpoenas already issued or to be issued by the Council President” and authorizing it to conduct the depositions outside the public view. Evans Aff. ¶ 6; Patterson Aff. ¶ 6; Ex. A to the Affirmation of Andrew G. Celli, Jr., dated Jan. 11, 2021 (“Celli Aff. II”).

The Investigation is far along. In response to subpoenas issued by the City Council, the Independent Investigator has received over 350,000 records and files from the City and from individual respondents. Celli Aff. II ¶ 2. These records include documents, emails, and text messages maintained on City computer servers and City-issued cell phones, and documents from individual respondents’ personal computers and cell phones. *Id.* The Independent Investigator has taken dozens of hours of sworn testimony pursuant to City Council subpoenas – eleven depositions in all, including of Mayor Lovely Warren, Council President Loretta Scott, Corporation Counsel Tim Curtin, Deputy Mayor James Smith, Communications Director Justin Roj, and former Acting Chief of the RPD Mark Simmons. *Id.* ¶ 3. To date, no recipient other than Respondent has objected to a City Council subpoena. *Id.*

On September 24, 2020, the City Council issued a duly authorized “Subpoena to Produce Books,

² In addition, should both members of the Special Committee to be present at any deposition, the Open Meetings Law would require that the examination be open to the public – a circumstance inconsistent with best investigative practice. Evans Aff. ¶ 5; Patterson Aff. ¶ 5.

Papers Or Other Evidence And For Witness Testimony,” signed by President Scott, to former RPD Chief La’Ron Singletary. *See* Dkt. 7. Petitioner seeks former Chief Singletary’s testimony and the production of documents in his possession in connection with the Investigation.

As set forth in the Petition, former Chief Singletary was the highest-ranking officer of the RPD when Mr. Prude was restrained and then died in March 2020. Affirmation of Andrew G. Celli, Jr., dated Dec. 16, 2020 (Dkt. 4) (“Celli Aff. I”) ¶ 21. He was personally in charge of the RPD as it conducted internal and criminal investigations into Mr. Prude’s death. *Id.* ¶ 18. Evidence suggests that there were one or more occasions on which Mayor Lovely Warren and Chief Singletary spoke privately and alone about the Prude incident, both in person and on the telephone, and that their respective versions of those discussions may differ in material ways. *Id.* ¶ 17. Former Chief Singletary has filed a Notice of Claim, 27 pages in length, setting forth his version of events. *See* Dkt. 10. In order to develop the evidence relevant to the Investigation, a full under-oath examination of former Chief Singletary, and a review of records in his possession, is necessary. Celli Aff. I ¶ 17.

ARGUMENT

This Court should order Respondent Singletary to comply with the Subpoena. The Subpoena was a valid exercise of the Rochester City Council’s authority and any defect in service is curable.

I. THE SUBPOENA IS VALID

The Subpoena – which was signed by City Council President Loretta Scott and issued by the City Council in furtherance of an Investigation authorized by City Ordinance – is a valid exercise of the City Council’s subpoena powers and is fully consistent with local law. Section 5-21(G) of the Rochester City Charter provides the City Council with legislative subpoena power, Ordinance No. 2020-283, passed unanimously by the City Council, authorizes ECBAWM to conduct the Investigation on the City Council’s behalf, and Resolution No. 2020-29 authorizes the City Council President to issue subpoenas in furtherance of the Investigation at the request of the Independent Investigator and permits the

subpoenas to be made returnable to the Independent Investigator. City of Rochester Charter § 5-21(G); City of Rochester Ordinance No. 2020-283 § 2 (Dkt. 5); City of Rochester Resolution No. 2020-29 §§ 2, 3 (Dkt. 6).

Respondent concedes Petitioner City Council’s power to issue subpoenas, and that he is both within the reach of City Council’s subpoena power and in possession of information relevant to the Investigation. *See* Affirmation of Michael J. Tallon, dated Jan. 7, 2021 (Dkt. 18) (“Tallon Aff.”) ¶ 3 (“I state that were this an Application made by the Council of the City of Rochester seeking testimony and the production of records during a Council hearing, Respondent would have recognized this authority and would have complied by providing testimony and document production at a Council hearing and avoiding any need to resort to judicial enforcement.”); Affirmation of La’Ron D. Singletary, dated Jan. 6, 2021 (Dkt. 21) (“Singletary Aff.”) ¶¶ 4, 5 (confirming that Respondent Singletary is in possession of cell phone records responsive to the subpoena and that information in his possession, as set forth in his notice of claim, would be relevant to the Investigation). Nonetheless – plainly concerned that giving testimony and providing documents to the Council might undermine his anticipated private lawsuit against the City, *see* Singletary Aff. ¶¶ 4, 5 (he doesn’t say how) – Respondent argues that that the Subpoena is somehow unenforceable because the Investigation pursuant to which it was issued is being conducted by a law firm retained and supervised by the City Council, rather than by the City Council itself. This argument is meritless and should be rejected. It rests upon a gross mischaracterization of the Investigation as a rogue private endeavor, rather than a fair and truthful statement of what it is – an exercise of the Council’s legislative powers. It ignores the careful legislative structure Petitioner erected to ensure that the Investigation is independent, credible, and controlled – a structure that ensures independence in the fact-gathering and -finding process, but supervision of the law firm’s work by Rochester’s legislative body. And, most importantly, it ignores the fact that the Investigation and its

outcomes – which will be made public and serve as a basis for legislative discussion and action – are part and parcel of the Council’s legislative deliberative process. Respondent’s objection to the Subpoena is unsupported by law.

To begin, the Subpoena to Respondent Singletary was issued by Petitioner the Council of the City of Rochester – *not* by the Independent Investigator ECBAWM – pursuant to the Council’s powers under the Charter and City Council Resolution No. 2020-29. City of Rochester Charter § 5-21(G); City of Rochester Resolution No. 2020-29; Scott Aff. ¶ 11.³ Council President Scott signed the Subpoena – which Resolution 2020-29 permitted her to do without further action by the full Council – only after examining its contents and determining that it was a proper exercise of the 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. Scott Aff. ¶¶ 11-12. It is the City Council, not the Independent Investigator, who seeks documents and testimony from Respondent Singletary. The Independent Investigator is the *mechanism* through which this information is collected.

The City Council also exercised its power to determine the *manner* in which documents and testimony responsive to the Subpoena should be collected, in furtherance of the Investigation’s mandate of independence. To that end, and as authorized by Resolution No. 2020-29, the City Council made the documents sought by the Subpoena returnable to the Independent Investigator and commanded that

³ Contrary to Respondent’s suggestion, Resolution 2020-29 is a valid exercise of the City Council’s “power to adopt, amend and repeal ordinances, resolutions and rules and regulations in the exercise of its functions, powers and duties.” N.Y. Stat. Law § LOC GOVTS § 10. Resolution 2020-29 provides that the City Council’s subpoena power, already established by Rochester City Charter § 5-21(G), may be exercised without further Council action in the context of a specific investigation. This is precisely the type of resolution and subpoena that were found to be valid in *Hanna v. Common Council of City of Utica*, 46 A.D.2d 503, 506 (4th Dept. 1975), cited by Respondent. (“We find no merit in the contention that the common council should have proceeded by ordinance rather than by resolution.”). *Cf. In re Investigation of Conts. of City of Albany & its Offs.*, 113 Misc. 370, 379, 184 N.Y.S. 518, 524 (Sup. Ct. Albany Cnty. 1920) (“A resolution of the common council, authorizing and empowering the issuance of a subpoena under the hand of the president, is a necessary prerequisite to a valid subpoena under section 40 [of the Second Cities Law].”).

Responded Singletary “appear at a meeting of the City Council Prude Independent Investigation Committee . . . to testify under oath.” *See* Dkt. 7 at 1; City of Rochester Resolution No. 2020-29. Councilmembers Evans and Patterson, who make up this committee, determined that they would not appear at the Investigation’s depositions, in order to avoid even the appearance that Council members may be influencing the investigative work. Patterson Aff. ¶ 5; Evans Aff. ¶ 5; Scott Aff. ¶ 13. The Special Committee, which is tasked with overseeing the Investigation, also determined that gathering witness testimony at Special Committee meetings would be detrimental to the Investigation because such meetings would be open to the public, per the Open Meetings Law, thus creating a risk that a witness who was scheduled to be deposed later in the Investigation could access, and might be influenced by, earlier witness testimony. Evans Aff. ¶ 5; Patterson Aff. ¶ 5; *see also* N.Y. Pub. Off. Law § 103.

Contrary to Respondent’s arguments, the Subpoena does not represent an invalid “transplant [of] authority” to the Independent Investigator. Resp. Br. at 6. Rather, it reflects a careful exercise of the City Council’s powers designed to further the purposes of the Investigation. *See also Frank v. Balog*, 189 Misc. 1016, 1018 (Sup. Ct. Westchester Cnty.), *aff’d*, 272 A.D. 941 (2d Dept. 1947) (“The power to issue the subpoena here under consideration resides in the Council. It is not for the court to tell the Council how that power should be exercised.”).

The Subpoena’s legitimacy is in no way undermined by City Council’s determination that testimony sought by the Subpoena should first be gathered outside the public eye, and then examined by it later, along with the final report issued by the Independent Investigator based upon all of the testimony and documents gathered in the Investigation, at a public meeting or hearing of the City Council to be held after the Investigation is concluded. Scott Aff. ¶ 7; Evans Aff. ¶ 7; Patterson Aff. ¶ 7. The City Council determined that this approach was necessary to avoid any influence or even perceived influence

over the Investigation by any City official – even members of the City Council itself, during the investigative process – given that the conduct of high-ranking Rochester City officials is the subject of the Investigation. Scott Aff. ¶ 9. Nevertheless, should the Court so require, Councilmembers Evans and Patterson are prepared to convene and attend a meeting of the Special Committee for the purpose of gathering Respondent Singletary’s testimony. Evans Aff. ¶ 8; Patterson Aff. ¶ 8. Such a meeting would be open to the public, in accordance with the Open Meetings Law. *See* N.Y. Pub. Off. Law § 103.

II. THE SUBPOENA WAS PROPERLY SERVED AND ANY DEFECT IS CURABLE

Respondent admits that he received the Subpoena after it was affixed and mailed to his residence. *See* Resp. Br. at 3; Dkt. 8 (proof of service). This substituted “nail and mail” service followed three attempts between September 29, 2020 and October 1, 2020 to personally serve the Respondent at his home address. *See* Dkt 8. This is adequate service, under the circumstances – and Respondent does not seriously contend otherwise. *See* CPLR § 2303; CPLR 308(4); *Krodel v. Amalgamated Dwellings, Inc.*, 139 A.D.3d 572, 573 (2016) (finding substituted service warranted after three attempts).

Prior to this application, counsel for Respondent never raised concerns with the adequacy of service or the witness fee, despite exchanging significant correspondence concerning the Subpoena with counsel for Petitioner beginning on October 8, 2020. Celli Aff. II ¶ 7. Petitioner is prepared to promptly tender the required witness fee to Respondent Singletary and asks the Court to permit Petitioner to cure any alleged defect by five days prior to the date on which Respondent is ordered to provide testimony. Such a solution would be in keeping with the spirit of the requirement that witness fees “must be tendered when the subpoena is served or within a reasonable time before it is returnable.” *Jaggars v. Scholeno*, 6 A.D.3d 1130, 1131 (4th Dept. 2004). Moreover, the failure to tender a witness fee should be excused in light of the ongoing communications with counsel for Respondent concerning a possible “global deposition” to be scheduled in coordination with the City of Rochester Office of Public

Integrity and the City of Rochester Law Department. *See* Celli Aff. I ¶ 15. Respondent is represented by experienced and able counsel, who engaged in protracted communications with the Independent Investigator toward a resolution of the dispute over the Subpoena. The securing of testimony on a matter of critical public importance is not a game of “gotcha”; this Court should exercise its broad discretion to permit Petitioner to tender the required witness fee prior to Respondent’s provision of testimony.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the court issue an order under CPLR § 2308(b) compelling Respondent La’Ron Singletary’s compliance with the subpoena dated September 24, 2020.

Dated: January 11, 2021
New York, New York

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