

ORIGINAL

No. 2013-0280

In the Supreme Court of Ohio

STATE, ex rel. PAUL CALVARUSO, et al.,

Relators,

v.

CHARLES BROWN,

Respondent.

FILED
MAR 12 2013
CLERK OF COURT
SUPREME COURT OF OHIO

ORIGINAL ACTION FOR A WRIT OF QUO WARRANTO

**RESPONDENT CHARLES BROWN'S
ANSWER TO ORIGINAL COMPLAINT
FOR WRIT OF QUO WARRANTO**

Susannah Muskovitz (0011457)
(COUNSEL OF RECORD)
William E. Froehlich (0087857)
MUSKOVITZ&LEMMERBROCK,
LLC
The BF Keith Building
1621 Euclid Avenue, Suite 1750
Cleveland, OH 44115
Tel: (216) 621-2020
Fax: (216) 621-3200
E-mail: muskovitz@mllabor.com
froehlich@mllabor.com

Attorneys for Relators

Cheri B. Cunningham (0009433)
Director of Law
Patricia Ambrose-Rubright (0009435)
(COUNSEL OF RECORD)
Tammy L. Kalail (0072295)
Assistant Directors of Law
City of Akron
161 S. High Street, Suite 202
Akron, Ohio 44308
Tel: (330) 375-2030
Fax: (330) 375-2041
E-mail: ccunningham@akronohio.gov
pambrose@akronohio.gov
tkalail@akronohio.gov

Attorneys for Respondent

RECEIVED
MAR 12 2013
CLERK OF COURT
SUPREME COURT OF OHIO

Respondent Charles Brown, by and through counsel, hereby provides his Answer to the Relators' Complaint for Writ of Quo Warranto, as follows:

JURISDICTION

1. Respondent Charles Brown admits that pursuant to Article IV, Section 2(B)(1)(a) of the Ohio Constitution and Ohio Revised Code Chapter 2733, the Ohio Supreme Court has original jurisdiction to issue writs of quo warranto.

PARTIES

2. Respondent Charles Brown admits the allegation in Paragraph 2.
3. Respondent Charles Brown admits the allegation in Paragraph 3.
4. Respondent Charles Brown admits the allegation in Paragraph 4.
5. Respondent Charles Brown admits the allegation in Paragraph 5.
6. Respondent Charles Brown admits the allegation in Paragraph 6.
7. Respondent Charles Brown admits the allegation in Paragraph 7.
8. Respondent Charles Brown admits that he is an unclassified employee of the City of Akron who was appointed as an Assistant to the Mayor. Respondent denies the remaining allegations in Paragraph 8.

FACTS

9. Respondent Charles Brown states he is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 9, and therefore denies the same. In response to Footnote 1 of Paragraph 9, Respondent Charles Brown admits that Relators separately filed "Exhibits for

Relators' Original Complaint for Writ of Quo Warranto and Relators' Memorandum in Support of Writ of Quo Warranto," and purport to incorporate by reference the documents contained in that filing; Respondent Brown denies, however, that those documents support the Relators' Complaint and denies the allegations contained in the Affidavits, except as otherwise stated in this Answer.

10. The allegations contained in Paragraph 10 constitute conclusions of law to which no response is required. If, however, a response is required, Respondent Charles Brown states that, to the extent Paragraph 10 purports to characterize or restate portions of Sections 67 and 68 of the Akron City Charter, Charter Sections 67 and 68 are the best evidence of their terms.

11. The allegations contained in Paragraph 11 constitute conclusions of law to which no response is required. If, however, a response is required, Respondent Charles Brown states that, to the extent Paragraph 11 purports to characterize or restate Section 105 of the Akron City Charter, Section 105 is the best evidence of its terms.

12. The allegations contained in Paragraph 12 constitute conclusions of law to which no response is required. If, however, a response is required, Respondent Charles Brown states he is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 12, and therefore denies the same.

13. To the extent that Paragraph 13 purports to characterize or restate portions of the 1991 Manual of Rules and Regulations, Respondent Charles Brown states that the cited provisions are the best evidence of their terms. Respondent Charles Brown denies all other allegations in Paragraph 13 and denies that the Rules and Regulations have any relevancy in this case.

14. To the extent that Paragraph 14 purports to characterize or restate portions of the 1991 Manual of Rules and Regulations, Respondent Charles Brown states that the cited provisions are the best evidence of their terms. Respondent Charles Brown denies all other allegations in Paragraph 14 and denies that the Rules and Regulations have any relevancy in this case.

15. Respondent Charles Brown denies the allegations in Paragraph 15 of the Complaint.

16. Respondent Charles Brown admits the allegations in Paragraph 16 of the Complaint, but denies all other allegations in the affidavits cited in Paragraph 16.

17. Respondent Charles Brown admits that from on or about June 6, 2011, until on or about February 4, 2013, Chief of Police James Nice issued Chief's Directives designating one of the Police Captains as Acting Chief during his absence. Respondent Charles Brown states he is without knowledge or information sufficient to form a belief as to the truth of the allegations that Chief

Nice issued a Chief's Directive designating one of the Police Captains as Acting Chief during his absence every time he is absent and therefore denies the same; and denies all other allegations in Paragraph 17 and all other allegations in the affidavits cited in Paragraph 17.

18. Respondent Charles Brown admits that he resigned from his position as a Police Lieutenant; that Police Lieutenant is a sworn civil service position within the Akron Police Division and is within the chain of command between the ranks of Police Captain and Police Sergeant; and that immediately after his resignation and pursuant to City Charter section 105, the Mayor of Akron appointed him to the unclassified position of Assistant to the Mayor and he became a sworn reserve police officer for the City of Akron and continues to be a member of the Ohio Police and Fire Pension Fund. Respondent Charles Brown denies all other allegations in Paragraph 18 of the Complaint and denies any allegations in the affidavits cited in Paragraph 18 that have not been specifically admitted herein.

19. Respondent Charles Brown admits that he has been referred to as Assistant Chief of Police. Respondent Charles Brown denies all other allegations in Paragraph 19 of the Complaint and in the affidavits cited in Paragraph 19.

20. Respondent Charles Brown denies for want of knowledge, information, and otherwise each and every allegation of Paragraph 20.

21. To the extent that Paragraph 21 purports to summarize portions of Exhibit E to Hlynsky's affidavit, Respondent Charles Brown states that Exhibit E is the best evidence of its terms. Respondent Charles Brown denies the characterization of Exhibit E as a "job description" and denies all remaining allegations in Paragraph 21.

22. Respondent Charles Brown admits that the Division of Police has a seniority list of sworn officers in the classified service; and that the list is known as the S-List and is modified as needed. Respondent Charles Brown denies all other allegations in Paragraph 22 and in the cited affidavits in Paragraph 22.

23. Respondent Charles Brown admits that on or about January 17, 2013, the Division of Police issued a revised S-list; to the extent that Paragraph 23 purports to characterize or summarize this revised S-List, the list is the best evidence of its terms. Respondent denies any other allegations in Paragraph 23 of the Complaint and the cited affidavits.

24. Respondent Charles Brown denies for want of knowledge, information, and otherwise each and every allegation of Paragraph 24.

25. Respondent Charles Brown admits that on or about January 22, 2013, the City issued a revised S-List. Further answering, Respondent Charles Brown admits that Exhibit H to Hlynsky's affidavit is a true and accurate copy of the S-List issued on or about January 22, 2013. To the extent that Paragraph 25 purports

to characterize or summarize this revised S-List, the list is the best evidence of its terms.

26. Respondent Charles Brown denies the allegations in Paragraph 26 of the Complaint and in Paragraph 11 of the cited affidavits.

27. Respondent Charles Brown admits the allegations in Paragraph 27.

28. Respondent Charles Brown denies the allegation in Paragraph 28 that he is not qualified to be designated Acting Chief of Police. Further answering, Respondent denies for want of knowledge, information, and otherwise the remaining allegations in Paragraph 28 and in Paragraph 12 of the cited affidavits.

COUNT I

29. Respondent Charles Brown incorporates all affirmations, denials, and defenses set forth above.

30. Respondent Charles Brown admits the allegations in Paragraph 30.

31. Respondent Charles Brown admits the allegations in Paragraph 31.

32. Respondent Charles Brown denies the allegations in Paragraph 32.

33. Respondent Charles Brown admits the allegations in Paragraph 33.

34. Respondent Charles Brown denies the allegations in Paragraph 34.

35. Respondent Charles Brown admits the allegations in Paragraph 35.

36. Respondent Charles Brown denies the allegations in Paragraph 36.

37. Respondent Charles Brown denies the allegations in Paragraph 37.

38. Respondent Charles Brown denies the allegations in Paragraph 38.

39. The allegations contained in Paragraph 39 constitute a statement of law to which no response is required. If, however, a response is required, Respondent Charles Brown states that R.C. 2733.01 is the best evidence of its terms.

40. The allegations contained in Paragraph 40 constitute a statement of law to which no response is required. If, however, a response is required, Respondent Charles Brown states that R.C. 2733.06 is the best evidence of its terms.

41. Respondent Charles Brown denies the allegations in Paragraph 41.

42. Respondent Charles Brown denies the allegations in Paragraph 42.

43. Respondent Charles Brown denies the allegations in Paragraph 43.

44. Respondent Charles Brown denies the allegations in Paragraph 44 of the Complaint.

45. In response to paragraph 45, Respondent Charles Brown denies for want of knowledge, information and otherwise that Relators are able to fulfill the duties of the Deputy Chief of Police.

46. Relators are not entitled to the specified relief requested in their "Prayer for Relief," or any other relief, whether legal or equitable in nature.

SEPARATE DEFENSES

47. Relators have failed to state a claim upon which relief can be granted.

48. Relators failed to give Respondent security for costs as required by R.C. 2733.06.

49. The declaratory relief prayed for in Relators' Complaint is not available in an action in quo warranto.

50. Neither Relators nor any other person have a "right" and/or are "entitled to" be Deputy Chief and/or Acting Chief of Police.

51. Relators' action against Respondent Charles Brown is moot.

52. Respondent Charles Brown was legally appointed to the position of Assistant to the Mayor.

53. Respondent Charles Brown is not a "de facto" Deputy Chief and, therefore, cannot be ousted from that position.

54. Relators' alleged injuries and claims, which are denied, may have been caused in whole or in part by Relators' own conduct and/or failure to act, including their previous waiver of competitive testing for the position of Deputy Chief.

55. Precedent exists for, and the City Charter provides for, the Mayor of Akron to appoint a person to serve as an Assistant to the Mayor and supervise officers of rank and/or classified employees.

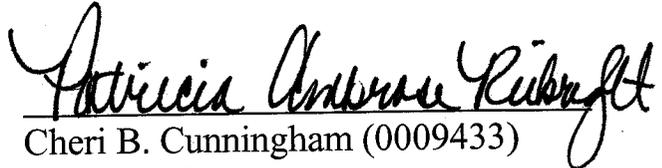
56. "Acting Chief" is not a separate office within the Division of Police, but a temporary assignment of duties for administrative convenience. Such an assignment is discretionary and is not limited to a person in the classified service within the civil service system.

57. Precedent exists, and the City Charter does not prohibit, an unclassified employee supervising classified safety personnel.

58. The Mayor has broad and exclusive authority to supervise and control the Department of Public Safety, including the Division of Police, and may assign to an Assistant to the Mayor such tasks within that Department and Division as he may lawfully delegate.

WHEREFORE, having fully answered, Respondent Charles Brown prays that this Court dismiss the Complaint with prejudice, and order such other relief as this Court may deem appropriate.

Respectfully submitted,



Cheri B. Cunningham (0009433)

Director of Law

Patricia Ambrose-Rubright (0009435)

(COUNSEL OF RECORD)

Tammy L. Kalail (0072295)

Assistant Directors of Law

City of Akron

161 S. High Street, Suite 202

Akron, Ohio 44308

Tel: (330) 375-2030

Fax: (330) 375-2041

E-mail: ccunningham@akronohio.gov

ambropa@ci.akron.oh.us

tkalail@akronohio.gov

Attorneys for Respondent

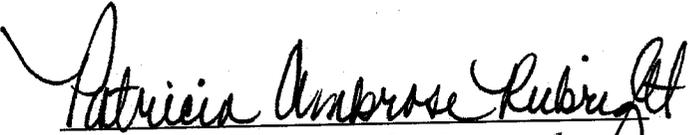
PROOF OF SERVICE

A copy of the foregoing was served on March 11, 2013 pursuant to Civ.R.

5(B)(2)(c) by mailing it by United States mail to:

Susannah Muskovitz
William E. Froehlich
MUSKOVITZ&LEMMERBROCK, LLC
The BF Keith Building
1621 Euclid Avenue, Suite 1750
Cleveland, OH 44115

Attorneys for Relators


Patricia Ambrose Rubright
One of the Attorneys for Respondent