

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

**THE CITY OF AKRON'S ANSWER TO ORIGINAL COMPLAINT  
FOR WRIT OF QUO WARRANTO**

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*Attorneys for Intervening Respondent  
City of Akron*

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Intervening Respondent the City of Akron, by and through counsel, hereby provides its Answer to the Relators' Complaint for Writ of Quo Warranto, as follows:

### **JURISDICTION**

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

### **FACTS**

9. The City admits it is a municipal corporation and has a Charter form of government. Further answering, the City admits that Exhibit A to Hlynsky's

affidavit is a true and accurate copy of Charter sections 67, 68 and 105. In response to Footnote 1 of Paragraph 9, the City 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; the City 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, the City 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, the City 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, the City states that, to the extent Paragraph 11 purports to characterize or restate portions of Ordinance 409-2012, the Ordinance is the best evidence of its terms. The City

denies all other allegations in Paragraph 12 and the allegations in Paragraph 4 of the cited Affidavits.

13. To the extent that Paragraph 13 purports to characterize or restate portions of the 1991 Manual of Rules and Regulations, the City states that the cited provisions are the best evidence of their terms. The City 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, the City states that the cited provisions are the best evidence of their terms. The City denies all other allegations in Paragraph 14 and denies that the Rules and Regulations have any relevancy in this case.

15. The City denies the allegations in Paragraph 15 of the Complaint.

16. The City admits the allegations in Paragraph 16 of the Complaint, but denies all other allegations in the affidavits cited in Paragraph 16.

17. The City admits that from on or about June 6, 2011, until on or about February 4, 2013, Chief Nice issued Chief's Directives designating one of the Police Captains as Acting Chief during his absence. The City denies that Chief Nice has issued a Chief's Directive designating one of the Police Captains as Acting Chief during his absence every time he is absent and denies all other

allegations in Paragraph 17 and all other allegations in the affidavits cited in Paragraph 17.

18. The City admits that Respondent Charles Brown 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 Respondent Charles Brown's resignation and pursuant to City Charter section 105, the Mayor of Akron appointed him to the unclassified position of Assistant to the Mayor and Charles Brown 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. The City denies all other allegations in Paragraph 18 and denies any allegations in the affidavits cited in Paragraph 18 that have not been specifically admitted herein.

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

20. The City states that the document attached as Exhibit E to Hlynsky's affidavit was prepared for the use of the Ohio Police & Fire Pension Fund. The City denies the characterization of Exhibit E as a "job description." The City also denies all other allegations in Paragraph 20 of the Complaint and in the cited portions of Hlynsky's Affidavit.

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

22. The City 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. The City denies all other allegations in Paragraph 22 and in the cited affidavits in Paragraph 22. Further answering, the City states that the S-List relates to seniority bidding and layoffs for classified service positions, and is completely inapplicable to Respondent Charles Brown as Assistant to the Mayor.

23. The City 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. The City denies any other allegations in Paragraph 23 and the cited affidavits.

24. The City admits that on or about January 18, 2013, the attorney for the Fraternal Order of Police, Akron Lodge #7, sent a letter to the City's Director of Labor Relations, with a copy to the City's Law Director. The City states that the January 18, 2013 letter is the best evidence of its terms. The City denies all other allegations in Paragraph 24 of the Complaint and in Hlynsky's affidavit.

25. The City admits that on or about January 22, 2013, it issued a revised S-List. Further answering, the City 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. The City denies the allegations in Paragraph 26 of the Complaint and in Paragraph 11 of the cited affidavits.

27. The City admits the allegations in Paragraph 27.

28. The City denies the allegations in Paragraph 28 of the Complaint and in Paragraph 12 of the cited affidavits.

### **COUNT I**

29. The City incorporates all admissions, defenses and denials set forth above.

30. The City admits the allegations in Paragraph 30.

31. The City admits the allegations in Paragraph 31.

32. The City denies the allegations in Paragraph 32.

33. The City admits the allegations in Paragraph 33.

34. The City denies the allegations in Paragraph 34.

35. The City admits the allegations in Paragraph 35.

36. The City denies the allegations in Paragraph 36.

37. The City denies the allegations in Paragraph 37.

38. The City 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, the City 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, the City states that, R.C. 2733.06 is the best evidence of its terms.

41. The City denies the allegations in Paragraph 41.

42. The City denies the allegations in Paragraph 42.

43. The City denies the allegations in Paragraph 43.

44. The City denies the allegations in Paragraph 44.

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

46. Relators are not entitled to the specified relief requested in their "Prayer for Relief", or any relief, 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. Relators' action against Respondent Charles Brown is moot.

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

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

53. 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.

54. 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.

55. "Acting Chief" is not a separate office within the Division of Police, but a temporary assignment of duties for administrative convenience. Such an

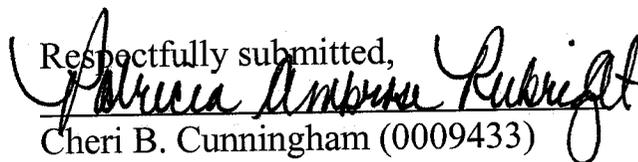
assignment is discretionary and is not limited to a person in the classified service within the civil service system.

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

57. 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, the City prays that this Court dismiss the Complaint with prejudice, and order such other relief as this Court may deem appropriate.

Respectfully submitted,



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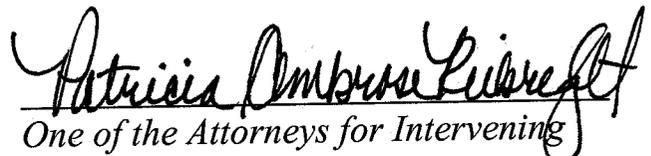
**PROOF OF SERVICE**

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:

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