

County Council of Cuyahoga County, Ohio

Public Safety and Justice Affairs Committee

Resolution No. CR2013-0001

Sponsored by: Chairman Gallagher and Councilmember Germana	A Resolution issuing subpoenas, pursuant to Section 3.12 of the Cuyahoga County Charter, to compel Judge Nancy Fuerst and Mr. Gregory Popovich to produce documents and to testify before the Committee under oath, and declaring the necessity that this Resolution become immediately effective.
---	---

WHEREAS, the Public Safety and Justice Affairs Committee has been investigating the financial transactions of the Clerk of Courts and the County relating to a contract with Sadler-NeCamp Financial Services, Inc., d.b.a. PROWARE, (“PROWARE”); and

WHEREAS, the Committee has sought information and documents from Judge Nancy Fuerst and Administrator Gregory Popovich of the Cuyahoga County Court of Common Pleas to assist the Committee in its investigation; and

WHEREAS, Judge Fuerst and Mr. Popovich have failed to cooperate with the Committee by failing to produce a list of documents to which Ms. Fuerst does not want to have the Clerk of Courts to have access through the PROWARE System (hereinafter the “requested list”); and

WHEREAS, Judge Fuerst and Mr. Popovich have led the Committee to believe that the requested list either exists or that drafts of it are in existence, but they have failed to produce the documents as requested; and

WHEREAS, Section 3.12 of the Cuyahoga County Charter provides:

The Council or any committee may investigate the financial transactions of any office, department or agency of County government and the official acts and conduct of any County official relating to any matter upon which Council is authorized to act. In conducting such investigations, the Council or any such committee may administer oaths and may, by resolution adopted by vote of at least eight members of Council or of the committee of Council, compel the attendance of witnesses and the production of books, papers and other evidence through the issuance of subpoenas.

Subpoenas shall be signed by either the President of Council or the chair of the Council committee seeking a witness's testimony or the production of evidence and shall be served and executed by an officer authorized by law to serve subpoenas and other legal process. In the matter of compelling the attendance of witnesses and the production of evidence, the majority vote of Council, if any, shall take precedence over the vote of a Council committee. If any duly-subpoenaed witness refuses to testify to any facts within the witness's knowledge, or to produce any paper, books, or other evidence in the witness's possession or in the witness's control relating to the matter under inquiry before the Council or any such committee, the Council may refer the matter to the Prosecuting Attorney for the Prosecuting Attorney to cause the witness to be punished as for contempt.

WHEREAS, the Committee has determined that it is necessary for it to exercise its subpoena powers under Section 3.12 of the County Charter to subpoena Judge Fuerst and Mr. Popovich to produce the requested list and to appear and testify before the Committee under oath; and

WHEREAS, it is necessary that this Resolution become immediately effective in order that critical services provided by Cuyahoga County can continue and to provide for the usual, daily operation of a County entity.

NOW, THEREFORE, BE IT RESOLVED BY THE PUBLIC SAFETY AND JUSTICE AFFAIRS COMMITTEE OF THE COUNTY COUNCIL OF CUYAHOGA COUNTY, OHIO:

SECTION 1. Pursuant to Section 3.12 of the Cuyahoga County Charter, Judge Nancy Fuerst and Mr. Gregory Popovich are hereby compelled to produce the requested list, including any and all drafts of the requested list, and to appear before the Public Safety and Justice Affairs Committee to testify under oath regarding the requested list and the PROWARE contract on Tuesday, June 4, 2013, at 1:00 p.m., or at a later date and time to be determined by the Committee Chair, but no later than July 2, 2013.

SECTION 2. The Department of Law is hereby instructed to prepare subpoenas in accordance with this Resolution, and the Committee Chair is hereby authorized to sign the subpoenas.

SECTION 3. If the Committee Chair issues any of the subpoenas authorized by this Resolution, the Clerk of Council shall promptly deliver certified copies of this Resolution and the original subpoena(s) signed by the Committee Chair to the County Sheriff.

SECTION 4. The County Sheriff is hereby instructed to have the subpoenas authorized herein to be served by one or more deputy sheriffs in accordance with

Rule 45 of the Rules of Civil Procedure and Section 3.12 of the Cuyahoga County Charter.

SECTION 5. It is necessary that this Resolution become immediately effective for the usual daily operation of the County and the reasons set forth in the preamble, and it shall take effect and be in full force upon the signature of the Clerk of Council and the Committee Chair.

SECTION 6. It is found and determined that all formal actions of this Council relating to the adoption of this Resolution were adopted in an open meeting of the Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

On a motion by Mr. Germana, seconded by Ms. Conwell, the foregoing Resolution was duly adopted.

Yeas: Gallagher, Greenspan, Germana and Conwell

Nays: None

Chair, Public Safety and Justice
Affairs Committee

Date

Clerk of Council

Date

Journal CC010
May 28, 2013