UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

CHAVIES HOSKIN,

Plaintiff,

vs. Case No. 13-CV-0920-JPS

CITY OF MILWAUKEE, EDWARD FLYNN, EDITH HUDSON, JASON MUCHA, MICHAEL VAGNINI, and THOMAS MAGLIO

Defendants.

EDWARD EARL WRIGHT,

Plaintiff,

vs. Case No. 14-CV-1224-JPS

MICHAEL VAGNINI, JACOB KNIGHT, JEFFREY CLINE, GREGORY M. KUSPA, JASON MUCHA, EDWARD FLYNN, AND CITY OF MILWAUKEE,

Defendants.

JERMAIN CAINE,

Plaintiff,

vs. Case No. 14-CV-1548-JPS

CITY OF MILWAUKEE, EDWARD FLYNN, EDITH HUDSON, JASON MUCHA, MICHAEL VAGNINI, JACOB KNIGHT, and JEFFREY DOLLHOPF,

Defendants.

QUANTELL COLLIER,

Plaintiff,

vs. Case No. 15-CV-0311

CITY OF MILWAUKEE, EDWARD FLYNN,
EDITH HUDSON, JOSEPH SERIO,
JOSEPH SZCYUBIALKA and OTHER UNKNOWN
OFFICERS OF THE MILWAUKEE POLICE DEPARTMENT,

Defendants.

MOTION FOR A STAY OF PROCEEDINGS IN THE DISTRICT COURT PENDING ON THE CITY OF MILWAUKEE'S PETITION FOR A WRIT OF MANDAMUS TO THE SEVENTH CIRCUIT COURT OF APPEALS

Defendants, the City of Milwaukee and Milwaukee Police Chief Edward Flynn, by and through their attorney, Milwaukee City Attorney Grant F. Langley, by Deputy City Attorney Miriam R. Horwitz, respectfully request that this Court stay further proceedings in Case Nos. 13-CV-920 (E.D. Wis.); 14-CV-1224 (E.D. Wis.); 14-CV-1548 (E.D. Wis.) and 15-CV-311, pending the Seventh Circuit's disposition of the City of Milwaukee and Milwaukee Police Chief Edward Flynn's petition for a writ of mandamus.

BACKGROUND

On April 20, 2015, defendants filed a Petition in the Seventh Circuit Court of Appeals to issue a Writ of Mandamus to the United States District Court for the Eastern District of Wisconsin, the Honorable J.P. Stadtmueller, removing him from further participation in the following cases: *Wright v. Vagnini*, Case No. 14-CV-1224; *Caine v. Milwaukee*, Case No. 14-CV-1548, and *Collier v. City of Milwaukee*, Case No. 15-CV-311. These cases involve

alleged illegal stops, searches and seizures by current and former members of the Milwaukee Police Department as motivated by an unlawful municipal policy. They all remain active and are the subject of this Motion. They are part of a larger group of cases with similar claims. The City's mandamus petition is premised on multiple statements by Judge Stadtmueller involving these cases.

The first statement occurred on September 29, 2014 during the final pretrial conference in *Bohannon v. City of Milwaukee*. No findings were ever made in *Bohannon* as the case settled prior to trial. However, in the final pretrial conference, the court gave the following statement:

> If the facts are on your side, you're going to prevail; but, unfortunately, in these cases from what the Court has seen thus far, the City has got a very, very tall order to be an effective defender of what occurred particularly when you see what occurred in this and other cases if only what's come through the criminal justice system with the likes of Mr. Vagnini and others. That's not the way our system was designed.
>
> And, eventually, it comes at a very, very high cost whether it's morale in the police department, whether it's the citizens respect for the rule of the law in the community, that ***there are those in [sic] City that want to defend this sort of conduct. It's plainly unconscionable. That's the end of the discussion***.
>
> So it's time to roll up the sleeves and get real serious about [sic] we are going with this because on a long-term basis while Milwaukee is certainly no Ferguson, Missouri, but it's certainly becoming a bit of a tinder box, if you will, if you look at the public outcry whether it's why don't we have more cameras whether it's on individual officers or in police cars; and the same holds true in the jail. I mean, the technology, unfortunately, has not caught up with reality.

[*Bohannon*, Dkt. 142, pg 13 lines 24-25, pg 14, lines 1-11; emphasis added].

The second and third statements occurred in the court's February 27, 2015 post-trial order in *Hardy v. City of Milwaukee*, Case No. 13-CV-920 (E.D. Wis.). In his post-trial order Judge Stadtmueller stated the following: "There was no evidence produced at trial to show that the defendant officers had engaged in repeated acts of this sort." He then added the following in a footnote, including a quote from extrajudicial sources:

> However, with that said, **it is apparent that MPD has opted to continue the sort of illegal stops that Mr. Hardy was subject to. MDP Chief Edward Flynn has made clear that one of his prerogatives is encouraging large amounts of pedestrian stops, regardless of the reasons**. In criticizing *Floyde v. City of New York*, the Southern District of New York case finding the New York Police Department's stop-and-frisk tactics illegal, Chief Flynn stated, "That's what worries us about what's happening in New York. It would be a shame if some people decided to put us back in our cars just answering calls and ceding the streets to thugs." Heather MacDonald, "How To Increase the Crime Rate Nationwide," *The Wall Street Journal* (June 11, 2013)(quoting previous Flynn statements to *L.A. Times*).

[*Hardy* Dkt. 251, page 49 fn. 19; emphasis added].

The *Hardy* order went on to discuss Michael Vagnini, a former Milwaukee Police Officer who had previously pled no contest to several counts of misconduct in office related to allegedly illegal searches, but who was not a defendant in the *Hardy* case. In another footnote, the court stated the following:

> Officer Vagnini was MPD's primary strip-search offender. He is now serving a prison sentence as a result of his criminal actions in improperly searching individuals. He is also a defendant in many of the strip-search cases now pending in this district, although he is not a defendant in this case.

[*Hardy*, Dkt. 251, page 13, fn 8].

On March 20, 2015 during a scheduling conference in *Caine v. City of Milwaukee*, the Court gave the following statement:

> I'm glad you've averted to that because the comments that I want to impart this morning both in this case and now in Hoskin – and I appreciate that Mr. Nichols is not yet involved in the Hoskin case – but with the level of litigation that is swirling around the Milwaukee City Attorney's Office like bees around honey, I'm certain that Mr. Langley is going to have to engage outside counsel because just yesterday we received another strip search case that was filed.
>
> And my point in all of this is for your benefit, Mr. Nichols. The City filed a 50-page summary judgment motion in the Hoskin case; and they have the benefit of Judge Stadtmueller's view, not only on the law, but how to best proceed.
>
> **And if the City defendants are going to replicate some of the non-starter arguments that were raised in Hardy and Venable and Bohannon, they are going to find themselves on the short end of the stick with sanctions.**
>
> And so for the first order of business in a scheduling order that will issue in Hoskin is, before the plaintiffs respond to the summary judgment motion that was filed by the City, I'm going to redirect the City Attorney's Office or their outside counsel to review that submission against the backdrop of the Court's rulings in Hardy, in Venable, and Bohannon; and we will graciously accept new arguments. But matters that have been litigated and re-litigated and now to be re-litigated again simply are not effective representation of the interests of one's client, and they will not be tolerated in this branch of the court. And so, as they say, a word to the wise is more than sufficient.

[*Caine*, Dkt. 16, pg 4 lines 20-25; page 5, lines 1-24; emphasis added]

On March 24, 2015 the City of Milwaukee moved for disqualification stating that, in light of the above-mentioned comments, "disqualification is necessary and appropriate pursuant to 28 U.S.C. § 455(a)." *Hoskin*, Dkt.80; *Wright*, Dkt. 14; *Caine*, Dkt. 17 On April 10, 2015 Judge Stadtmueller issued an Order denying the motions.

In the Order denying the motions for disqualification, the court stated:

> My reference to the individuals "in [the] City" did not refer to the lawyers I the case, but instead to City leadership who has elected to oppose the strip-search lawsuits without any indication of efforts to combat the systemic problems that gave rise to the suits in the first place.

[Caine, Dkt. 22, page 21]

As mentioned above, the four cases that are the subject of this Motion remain active. A motion for summary judgment is currently pending in *Hoskin v. City of Milwaukee*. *Wright v. Vagnini and Caine v. Milwaukee* are scheduled to begin trial in October of 2015 and January of 2016, respectively. *Collier* was filed on March 19, 2015 and defendants were served on April 15 and 16, 2015 and no matters are currently scheduled.

ARGUMENT

Courts have "broad discretion" to stay proceedings. *Clinton v. Jones*, 520 U.S. 681, 706 (1997). "[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." *Landis v. North. Am. Co*., 299 U.S. 248, 254 (1936); *see also* Fed. R. Civ. P. 1.

A party seeking a stay of proceedings pending appeal must show that it has a significant probability of success on the merits; that it will face irreparable harm absent a stay; and that a stay will not injure the opposing party and will be in the public interest. *Hinrichs v. Bosma*, 440 F.3d 393, 396 (7th Cir. 2006). If an appeal has even some likelihood of success, a "sliding scale" approach is applied weighing the likelihood of success and the extent of irreparable harm against the harm likely suffered by appellees if a stay is entered. *Cavel Intern., Inc. v. Madigan*, 500 F.3d 544, 546-547 (7th Cir. 2007).

I. A stay of the proceedings is necessary to maintain the public's trust in the judicial system and to avoid irreparable injury to the City of Milwaukee.

Mandamus is the only means by which a party can seek review of a district court's refusal to recuse itself under 28 U.S.C. § 455(a). *In re United States*, 398 F.3d 615, 617 (7th Cir. 2005). Section 455(a) was designed to "avoid[] the appearance of judicial partiality and resulting distrust by the public of the judicial system." *Durhan v. Neopolitian*, 875 F.2d 91, 96 (7th Cir. 1989). Thus, to evade public mistrust of the system, when a judge denies a motion to disqualify himself, the denial may be immediately reviewed through a writ of mandamus. *Id*.

As discussed above and more fully set forth in the City's petition for a writ of mandamus, the facts surrounding this motion demonstrate a significant likelihood of success. *See In re United States*, 572 F.3d 301, 312 (7th Cir. 2009) [the question is whether "a reasonable, well-informed observer would question [the Judge's] partiality."] Although the district court judge denied the motions for disqualification, there is a significant likelihood that the court of appeals may disagree, based upon the objective standard. Further, the very purpose of the motion for disqualification is the question of maintaining the public's trust in the judicial system, and permitting the cases to continue before a judge that was later disqualified by this Court may undermine the public's trust in the judicial system.

Moreover, all of the parties in these proceedings will suffer irreparable injury if the proceedings are allowed to continue pending appeal. If the Court of Appeals ultimately disqualifies Judge Stadtmueller, all orders entered in the district court after the initial motion for recusal must be vacated. *In re United States,* 572 F.3d at 303. Thus, the City, as well as

plaintiffs, would suffer from lost time and from the additional expenses associated with re-litigating the issues in these cases.

CONCLUSION

The City of Milwaukee respectfully submits the district court stay further proceedings in Case Nos. 13-CV-920 (E.D. Wis.); 14-CV-1224 (E.D. Wis.); 14-CV-1548 (E.D. Wis.) and 15-CV-311 (E.D. Wis.) pending the Court of Appeal's disposition of the City of Milwaukee's petition for a writ of mandamus.

Respectfully submitted this 21st day of April, 2015.

GRANT F. LANGLEY
City Attorney

By: s/Miriam R. Horwitz
MIRIAM R. HORWITZ
Deputy City Attorney
State Bar No. 1016150
Attorney for Defendants-Petitioners

ADDRESS:

800 City Hall
200 East Wells Street
Milwaukee, WI 53202
Telephone: (414) 286-2607
Facsimile: (414) 286-8550
mhorwi@milwaukee.gov

1032-2013-2336/214640