

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

MARCON GREEN and
HAROLD McKINNEY,

Plaintiffs,

Case No. 09-11589

v.

HON. LAWRENCE ZATKOFF

CITY OF DETROIT, a municipal corpora-
tion, MICHAEL OSMAN, and MICHAEL
PARISH, jointly and severally,

Defendants.

NOTICE TO APPEAR AND SHOW CAUSE

AT A SESSION of said Court, held in the
United States Courthouse, in the City of Port Huron,
State of Michigan, on the 29TH day of June, 2011

PRESENT: THE HONORABLE LAWRENCE P. ZATKOFF
UNITED STATES DISTRICT JUDGE

On March 10, 2011, following an extensive period of discovery and the opportunity for the parties to file dispositive and other motions, the Court conducted a Final Pre-trial Conference in this case. At that time, Eric Frey (co-counsel for both Plaintiffs) and John Schapka (counsel for all Defendants) discussed settling the case, but the parties did not reach any agreement. On March 11, 2011, in an e-mail authored by Gerald Posner (co-counsel for Plaintiffs) and copied to Mr. Schapka, the Court was notified that a settlement had been reached with respect to all claims before this Court. The e-mail also indicated that the City Council for the City of Detroit ("City Council") would need to approve the settlement on behalf of Defendants.

The Court has been advised that Mr. Schapka submitted all necessary paperwork to City Council on March 31, 2011. On two occasions since March 31, 2011 (specifically, May 4, 2011 and June 7, 2011), the Court emailed Mr. Posner and Mr. Schapka to inquire about the status of the settlement, specifically, whether City Council had approved (or rejected) the proposed settlement. On both occasions, the Court was informed that the settlement is being held up by members of City Council or, more specifically, members of the Internal Operations Sub-Committee, a three-member subsection of City Council, because of concerns regarding indemnification related to Defendant Michael Osman and Defendant Michael Parish. The Court also has been advised that these delays have “become a common problem with [City of Detroit] police department cases[.]” At no time has anyone even provided the Court with a date by or upon which City Council will begin to consider (let alone approve or reject) the settlement agreed to by Plaintiffs, counsel for Plaintiffs, the individual Defendants and counsel for Defendants.

Thus, it appears to the Court that this is a case where:

- (A) Counsel for the Plaintiffs and counsel for Defendants engaged in good faith efforts to reach a reasonable resolution of the claims brought by Plaintiffs;
- (B) Counsel for Plaintiffs and counsel for Defendants promptly set forth the terms of the settlement in written documents, and counsel for Defendants promptly submitted such settlement documents to City Council;
- (C) Approval of the settlement documents by City Council is a necessary step to resolving and closing this case;
- (D) Approval of City Council is the only remaining task required for formal settlement of this case (or, in the alternative, rejection of the settlement by

City Council will enable the Court to set this case for trial, as all pre-trial proceedings are complete);

- (E) City Council has taken no action with respect to the proposed settlement, even though Mr. Schapka provided City Council with the proposed settlement nearly three months ago;
- (F) City Council and/or its Internal Operations Sub-Committee does not have a scheduled date upon which the proposed settlement will even be considered (to say nothing of approved or rejected);
- (G) City Council has been and continues to be deliberately indifferent to taking any action with respect to considering - and approving or rejecting - the proposed settlement; and
- (H) City Council's deliberate indifference has had, and will continue to have, a significant detrimental effect on: (a) the economy and efficiency of the judicial system, generally,¹ and this Court, specifically, (b) the rights and interests of the Plaintiffs to this action, (c) the rights and interests of Defendants Osman and Parish, (d) the rights and interests of the residents of the City of Detroit, and (e) the rights and interests of the many non-residents of the City of Detroit who pay taxes to the City of Detroit.

¹The Court notes that this is not the only recent case where City Council has been egregiously dilatory in approving a settlement for a case that stemmed from alleged misconduct by City of Detroit police officers. *See Anderson v. Gaines, et al.*, No. 09-11193 (Docket #29, March 7, 2011) (Order imposing sanctions against the City of Detroit in the amount of approximately \$20,000 in a case settled for about \$25,000 because City Council failed to approve/reject a settlement for many months after the settlement was submitted to City Council).

Based on: (a) the deliberate indifference of City Council to take action with respect to the proposed settlement submitted to it nearly three months ago, and (b) the broad repercussions such inaction has with respect to specific members of this community, the members of this community as a whole, and the judicial system, the Court finds it necessary to fashion a means of facilitating a prompt resolution of this case.

Now, therefore, for the reasons set forth above and for the purpose of prompting resolving this case, the Court hereby ORDERS that:

- (1) **All** members of the City Council shall appear before the Court at 9:30 a.m. on Tuesday, July 26, 2011, in the Federal Building and U.S. Courthouse, 526 Water Street, Port Huron, Michigan, 48060, for a hearing regarding the manner of resolving this case;
- (2) At 9:30 a.m. on Tuesday, July 26, 2011, **all** members of the City Council shall be prepared to show cause before the Court why: (i) the City of Detroit; (ii) City Council as a whole; and/or (iii) certain members of City Council should not be sanctioned for failure to take timely action with respect to the proposed settlement of this case, a proposed settlement that City Council has had in its possession for nearly three months;
- (3) Counsel for Plaintiffs, the Plaintiffs, counsel for Defendants and the individual Defendants shall appear before the Court at 9:30 a.m. on Tuesday, July 26, 2011, in the Federal Building and U.S. Courthouse, 526 Water Street, Port Huron, Michigan, 48060, for a hearing regarding the manner of resolving this case;
- (4) At the conclusion of the hearing, absent a formal settlement entered on the record,

- (i) a firm trial date for this case shall be scheduled; and (ii) no settlement shall be accepted by the Court, except upon the imposition of such sanctions as the Court deems necessary and appropriate;
- (5) Counsel for Defendants shall immediately provide the individual Defendants and every member of City Council with a copy of this Notice to Appear and Show Cause; and
- (6) Counsel for Plaintiffs shall immediately provide the Plaintiffs with a copy of this Notice to Appear and Show Cause.

IT IS SO ORDERED.

s/Lawrence P. Zatkoff
LAWRENCE P. ZATKOFF
UNITED STATES DISTRICT JUDGE

Dated: June 29, 2011

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of this Order was served upon the attorneys of record by electronic or U.S. mail on June 29, 2011.

s/Marie E. Verlinde
Case Manager
(810) 984-3290