

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

MICHAEL EUGENE ROBINSON, et al.	:	
Plaintiffs	:	
	:	
v.	:	
	:	Civil Action No. 15-cv-0803 KBJ
BRANDON CARL FARLEY, et al.	:	
	:	
Defendants.	:	

**DEFENDANTS’ MEMORANDUM OF LAW IN SUPPORT OF THE MOTION FOR
BIFURCATION AND STAY OF DISCOVERY**

Defendants, Prince George's County, Maryland (“County”), Brandon Farley, Thomas Hilligoss, Sean Babcock, Alan Larmore, and Kenneth Meushaw, submit the following Memorandum of Law in support of their Motion to for Bifurcation and Stay of Discovery, which is adopted and incorporated by reference as if fully set forth herein, and state as follows:

I. BACKGROUND

This case arises from the alleged apprehension and arrest of Michael Robinson inside of his home by members of, among other law enforcement agencies, the Prince George’s County Police Department. *See generally* (ECF No. 33-1 Second Amended Complaint.) In Count I of his Second Amended Complaint, Plaintiff claims that the County is liable to him for the acts of County police officers and Prince George’s County Office of the Sheriff deputies due to the County’s “deliberate indifference to the obvious consequences of [its] inability to train, monitor, and/or discipline [its] police officers regarding the use of excessive force” (ECF No. 33-1, ¶ 96.) Similarly, in Counts II and III, Plaintiff and Agnes Robinson contend that the alleged unlawful entry into their home and Plaintiff’s arrest were also pursuant to an unlawful policy of the County. *Id.* at ¶¶ 105-109, 120-124. Finally, in Count IV, Plaintiff contends that the County police officers’ alleged violation of Title II of the Americans with Disabilities Act was caused by

the County's deliberate indifference to training, monitoring and disciplining its officers. *Id.* at ¶134. To prove these claims, Plaintiffs intends to present evidence of a hodgepodge of lawsuits, criminal charges, and media accounts of incidents involving County and Metropolitan Police Department (MPD) officers spanning more than ten years to which some or all of the individual defendants were not parties. Because the Plaintiffs have a full remedy at law without proof of the allegations in Counts I through IV, and because the individual defendants would suffer unfair prejudice as a result of proof of any or all of these alleged prior deficiencies, Defendants move to bifurcate Plaintiffs' *Monell* claims and stay discovery as to the allegations therein.

Discovery has not commenced with respect to the any of the claims against any of the defendants

II. THE LAW

Rule 42(b) of the Federal Rules of Civil Procedure provides that a court may order a separate trial of one or more issues or claims “[f]or convenience, to avoid prejudice, or to expedite and economize.” A court may also bifurcate claims or issues for a separate trial “to avoid the possibilities of confusion, to further convenience, to avoid delay and prejudice, and to serve the ends of justice.” *Am. Nat’l. Red Cross v. Travelers Indem. Co. of Rhode Island*, 924 F.Supp. 304, 306 (D.D.C. 1996) (citing *Webb v. Hyman*, 861 F.Supp. 1094, 1119 (D.D.C. 1994) ((internal citation omitted)). Federal courts routinely and consistently grant requests for bifurcation of constitutional claims alleged against an individual and a governmental entity. *See McIntosh v. District of Columbia*, 1997 U.S. Dist. LEXIS 23891 *5 (D.D.C., Dec. 9, 1997) (bifurcating plaintiff’s § 1983 claim alleging excessive force against a police officer from claim against District of Columbia alleging a custom or policy of indifference to plaintiff’s decedent’s rights. *See, also, Ransom v. Baltimore County*, 111 F. Supp. 2d 704 (D. Md. 2000) (bifurcating

claims that officer violated plaintiff's rights and committed various common law torts from claim that violation resulted from local government's policy and custom of permitting such violations and inadequately training its officers); *Marryshow v. Town of Bladensburg*, 139 F.R.D. 318 (D. Md. 1991) (bifurcating claims that police officers violated plaintiff's constitutional rights from his claims that the officers' supervisors and employer failed to train, supervise and investigate police misconduct).

In *McIntosh*, the District Court found the grounds for bifurcation in *Marryshow*, among other cases cited therein, persuasive. *See McIntosh*, 1997 U.S. Dist. LEXIS 23891 at *4-5. In *Marryshow*, the court reasoned that necessary use of prior incidents of police brutality, the nature of such incidents and the municipal officials' reaction to them to establish the liability of the "inactive" defendants would present the danger of unfair prejudice to the active defendants. *Marryshow*, 139 F.R.D. at 319-320. In addition, the court recognized that proving the occurrence of any alleged prior incidents of police misconduct would require that a jury "hear, and consider, evidence in 'sideshow' trials regarding these matters." *Id.* at 320. In bifurcating the case, the court held that "the interests of convenience, the avoidance of prejudice, as well as expedition and economy, will best be served by severing the trial issues pertaining to Plaintiff's claims against the individual Defendants from those against the inactive Defendant[s]." *Id.* at 319.

III. ARGUMENT

In this case, Plaintiffs allege in Counts I through IV that their respective injuries caused by the defendant police officers resulted from the County and the District's policy and custom of deliberate indifference to the obvious consequences of their inability to train, monitor, and/or discipline adequately their police officers regarding the use of excessive force, unlawful entry of their respective residents' homes, and application of the ADA and Rehabilitation Act. In order to

prove these claims, Plaintiffs would first have to establish that the defendant officers violated their rights. Second, Plaintiffs will necessarily have to present evidence of prior incidents that may or may not involve the defendants in order to prove that such a policy or custom exists. As such, the reasoning of *Marryshow* is applicable to the facts and circumstances of this case.

The *Monell* claims against the County and the District – the inactive defendants – necessarily depends on the validity of the claim that the individual defendants officers acted improperly on May 30, 2014 and/or May 31, 2014. *Marryshow*, 139 F.R.D. at 319. *See also City of Los Angeles v. Heller*, 475 U.S. 796, 799, 106 S.Ct. 1571, 1573, 89 L.Ed.2d 806 (1986); *Harbin v. City of Alexandria*, 712 F.Supp. 67, 73 (E.D.Va. 1989), *aff'd* 908 F.2d 967 (4th Cir. 1990); *Temkin v. Frederick County Commissioners*, 945 F.2d 716 (4th. Cir.1991). Thus, if the result in a first trial is a verdict that no individual defendant violated the Plaintiffs’ constitutional rights, the Plaintiffs would have no claim against the County. Bifurcation of the claims would obviate the necessity of extensive preparation, including discovery, and trial as to the derivative claims against the County.¹

The same goals of convenience, expedition and economy also would be served by bifurcation, even if Plaintiffs obtained a verdict against one or more individual defendants, because payment of the judgment for Plaintiffs’ damages would obviate the need for a second trial. *See Marryshow*, 139 F.R.D. at 320. Moreover, the absence of the County as an active defendant in the first trial would have no bearing on the amount of any verdict as punitive damages may not be assessed against the County. Md. Code Ann., Cts. & Jud. Proc. § 5-303(c)(1) (“A local government may not be liable for punitive damages”).

¹ While it is possible that the individual defendants could avoid liability on the basis of qualified immunity, the likelihood of success of such a defense by the County defendants is small given the nature of the claims against the police officers. It is clearly established that officers may not use excessive force or enter homes without permission or a warrant.

The final goal of bifurcation, avoidance of prejudice, would also be served in this case by virtue of the proof necessary to sustain a claim against the County. In addition to showing improper conduct by the individual defendants, the Plaintiff must establish that these actions were proximately caused by a custom, practice or policy of the County. *Monell*, 436 U.S. at 691-94). Much, if not all, of this custom, practice or policy evidence would be irrelevant to the jury's decision as to the events of May 30, 2014, and highly prejudicial to the individual defendant officers. Moreover, it is likely, if not inevitable, that there will be conflicting evidence regarding any alleged prior incidents. Thus, as recognized in *Marryshow*, in determining Plaintiffs' claims against the individual defendants, the jury will have to hear, and consider, evidence in 'side show' trials regarding these matters. Bifurcation would avoid this time and expense, as well as the prejudice to the individual defendants. It is largely for these reasons that federal district courts routinely bifurcate so-called *Monell* claims.

IV. PRAYER FOR RELIEF

Defendants respectfully request that this Court bifurcate the claims in this case.

Accordingly, the following specific relief is requested:

1. Discovery regarding Plaintiffs' claims against Prince George's County, Maryland ("inactive defendant") is stayed to the extent that it does not relate to the claims against the individual defendant officers;
2. There shall be separate trials of those issues relating to the Plaintiffs' claims against the individual defendant officers, and the Plaintiff's claims against the County;"
3. The first trial shall resolve Plaintiff's claims against the individual officers and the amount of any damages to which they may be entitled.
 - a. The County may, but need not, participate in the first trial.
 - b. In any event, Plaintiff and the County shall be bound by the results of the first trial.
4. If, in light of the result of the first trial and existing circumstances, it will be

necessary to proceed with Plaintiffs' claim against the County, a second trial will be scheduled. Prior to this trial, however:

- a. The parties will be permitted a reasonable period of time to engage in discovery as to Plaintiffs' claims against the County.
- b. The Court will consider, in due course, any dispositive motions addressed to Plaintiffs' claims against the County.

WHEREFORE, Defendants respectfully pray that this Honorable Court grants this motion and bifurcate the claims against the individual defendant officers from those against Prince George's County, Maryland, for the purpose of trial, stays discovery regarding the liability of Prince George's County, Maryland, and for such other relief as the Court may grant in the interest of justice.

Respectfully submitted,

M. ANDREE GREEN
COUNTY ATTORNEY

/S/

William A. Snoddy Federal Bar No. MD14012
Prince George's County Office of Law
14741 Gov. Oden Bowie Drive, Room 5121
Upper Marlboro, MD 20772
(301) 952-5249
(301) 952-3071
wasnoddy@co.pg.md.us
Attorneys for Defendant