STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

ARNETTA GRABLE, Personal Representative of the Estate of LAMAR GRABLE, Deceased,

Plaintiff,

v.

EUGENE BROWN,

Defendant,

DAVID A. ROBINSON P38754
ROBINSON RUSSELL, P.C.
Attorneys for Plaintiff
28145 Greenfield, Ste 100
Southfield, MI 48076
248 423-7234

MELISSA Z. EL P29865
Co-Counsel for Plaintiff
2100 Cadillac Tower
Detroit, MI 48226
313 965-2002

WILSON A. COPELAND, II P23837
GRIER & COPELAND, P.C.
Attorneys for Eugene Brown
3000 Penobscot Building
Detroit, MI 48226
313 961-2600

PLAINTIFF'S AMENDED SUPPLEMENTAL BRIEF IN SUPPORT OF PLAINTIFF'S MOTION TO PRODUCE SHOULDERS INVESTIGATION REPORT

On March 14, 2001, this Honorable Court ordered on the record John Quinn, attorney for the City of Detroit, a non-party, to deliver on or before March 28, 2001, the Shoulder's (sic) Investigation Report. The trial scheduled for March 26, 2001, was stayed on the motion of

defendant Brown.

On the same date, while in chambers, counsel for the Plaintiff brought to the Court's attention information the plaintiff has learned that bears directly on the plaintiff's need for the Shoulder's report and more importantly, information which raises the question of potential criminal conduct of Defendant Brown in relation to the death of Lamar Grable. It has been learned that the Shoulder's report contains credible information on how Brown shot Lamar Grable which is contrary to the version given by defendant Brown in sworn deposition. It is alleged the Shoulder's report specifically states that Lamar Grable was on the ground when he was shot in the chest-neck area by Brown. It is further alleged that Shoulder's conducted his own physical investigation in support of his conclusion and relied on a nationally known ballistics expert who opined that Brown shot Grable in this specific area when Grable lay on the ground. The further contention follows that Grable posed no threat to Brown at the time of these shots. If this is true the issue of whether Lamar Grable was alive and viable at the time he was shot looms.

If the information as alleged is contained in the Shoulder's report, the dimensions of this case concern potentially more than a civil claim for the wrongful death of Lamar Grable. The judicial responsibility of this Court in search of the "truth"and the ethics that follow and the attorneys' who represent their respective clients ethics as officers of the court are now brought into this challenge. Even as this Court has now stayed this case on Brown's motion that he not be compelled to assert the Fifth Amendment on the stand in this civil case due to the pending Federal civil rights investigation, and while no substantive inference can be drawn that in doing so Brown is guilty, the scope of Shoulder's conclusions still must be brought to light. Even before the information plaintiff now has that a crime by Brown was committed on Lamar Grable,

it is clear from the discovery that has taken place in this case, through the depositions, police documents and admissions of Brown and agents of the City of Detroit, that *real and substantial* questions of what actually occurred during the killing of Lamar Grable were unanswered by the homicide Special Assignment Section and original Board of Review. Obviously this was also clear to the City of Detroit as the Shoulder's report was a direct result of those lingering questions. A very critical issue is if the City of Detroit possesses information in the form of it's own report, the Shoulder's report, that Brown committed a crime does that compel that ethics charge a higher duty to those of us involved directly and otherwise. In the City's response to Plaintiff's request for the Shoulder's report [page 2] attorney Quinn revealed that an "Executive Board of Review" was appointed by Chief Benny Napoleon. Quinn never revealed in his response to plaintiff's motion that a physical re-investigation by Shoulder's occurred and that there was further ***factual*** development on the specific issue of the propriety of Brown's use of deadly force[1]. Attached as exhibit one is the Executive Newsletter concerning the Board of Review General Procedures. "In all cases in which a death has occurred as a result of the use of a weapon or force by a member of the Department in the performance of police duties, Volume III, Chapter 19, Section 9, mandates the Executive Deputy Chief to convene a Board of Review to specifically ascertain the facts and make recommendations based on their determination as to the propriety of the officer's actions. The board must, when it finds any violation of department rules and regulations, recommend appropriate disciplinary action." While producing the report to the Court, Attorney Quinn nevertheless seeks to hide Shoulder's factual analysis that Defendant

[1] Shoulder's was observed by residents of 1764 Field digging up the ground in the spot where Lamar Grable was killed and collecting the contents of the find.

Brown shot Lamar Grable when he lay on the ground behind a shroud of so called privilege. Is it ethical to hide credible information of a crime behind a privilege? Is that the purpose of a privilege, to hide the truth? Quinn, in order to lead this Court to believe the Shoulder's report is not subject to disclosure, says of the report, "it includes frank criticism of the Police Department and some of its executives and employees" [page 3]. The real question is what else does the report include factually regarding this killing?

COUNSEL FOR THE CITY OF DETROIT MAY HAVE FAILED TO HONOR THE LETTER AND SPIRIT OF MCR 2.116 (D) AND THE RULES OF PROFESSIONAL CONDUCT BY ARGUING IN FAVOR OF NOT DISCLOSING THE SHOULDERS REPORT

The responsibility of counsel, to place candor to the Court above his advocacy for the client is a benchmark of our jurisprudence. At every turn, counsel must take care not to engage in dishonesty, deceit or misrepresentation (even by omission). Nor should counsel advance any position that is prejudicial to the administration of justice, or serves to thwart or subvert the truth finding process the adversary process is intended to implement.

In this case, counsel for the City of Detroit has asserted a procedural bar to the production of the Shoulders report as well as deliberative process privilege. First, with respect to the claim Plaintiff has not properly brought production of the report before the Court, that argument ignores pertinent parts of MCR 2.310. Specifically, while the rule provides a mechanism for serving a request for production of documents upon a non party, it clearly notes the following:

(D)(6) This rule does not preclude an independent

> action against a non party for production of documents and other things and permission to enter on land or a subpoena to a non party under MCR 2.305. (Emphasis added).

As the Court is well aware, Plaintiff elected to subpoena Deputy Chief Shoulders for the report and the City of Detroit responded in his behalf to quash the subpoena. This Honorable Court denied the motion to quash and ordered the surrender of the report to the Court. To date, that order has not been complied with. For whatever reason, therefore, counsel has failed "to disclose to [the] tribunal controlling legal authority in the jurisdiction known to the lawyer to be directly adverse to the position of the client..." (MRPC 3.3(a)(3). Moreover, MCR 2.116(D) articulates the impact of any attorney's signature upon a pleading:

> (D) Effect of Signature. The signature of an attorney...constitutes a certification that (2) to the best of his or her knowledge, information and belief, formed after reasonable inquiry, the document is well grounded in fact and is warranted by existing law or a good faith argument for the extension or modification, or reversal of existing law.

However, here, counsel has asserted a position that is neither well grounded in fact, nor warranted by existing law. Nor is the position taken a good faith argument for the extension of the privilege asserted. First, counsel has asserted Plaintiff's request for the Shoulders report is procedurally barred although he is presumed to know the court rules that apply to this issue. Notwithstanding this knowledge, counsel omits reference to the very subsection that permits Plaintiff to serve a subpoena for it. While the approach taken by counsel for the City of Detroit may be viewed by some as "clever advocacy", it actually misstates the controlling rule of law. One must ask, if counsel will misrepresent Plaintiff's procedural entitlement to request the report

in the manner she did, has he taken other positions that may well serve to conceal criminal or fraudulent acts by Defendant Brown? Next, the arguments of counsel fail to acknowledge the new facts contained in the report that cast doubt upon the accuracy of the earlier Board of Review findings. Thus, it cannot be said that counsel is acting in good faith by taking the position he does.

As stated earlier, Plaintiff has been provided with details of the Shoulders report from highly reliable sources. Those details are reportedly based upon forensic evidence. The evidence led to "frank criticisms" of Eugene Brown's conduct in this case and may even label the shooting of Mr. Grable as unjustified. If a shooting is unjustified in this jurisdiction, it is an illegal act tantamount to criminality. Thus, no matter how strenuously counsel for the City of Detroit desires to advocate for his client, he is strictly precluded from protecting a client's or an agent of the client's criminal acts. Defendant Brown has been provided legal representation by the City of Detroit through outside counsel. Defendant Brown continues to be an agent of the City of Detroit. As such, counsel is ethically bound by the Rules of Professional Conduct regarding knowledge of the Defendant's criminal behavior. MRPC 3.3 states in pertinent part:

> 3.3 Candor Toward The Tribunal. (a) A lawyer shall not knowingly...(2) fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client;...(b) the duties stated in paragraph (a) continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.

It is axiomatic from the language of Rule 3.3 that a lawyer's duty to assist the truth finding process and to avoid becoming a participant in the concealment of illegal conduct is

paramount to his duty to the interests of the client. The authors of the rule understood the potential for a lawyer's conflict in such a situation. In the comment to the Rule, the Supreme Court adopted the position that "such a disclosure can result in grave consequences to the client...But the alternative is that the lawyer cooperate in deceiving the court, thereby subverting the truth finding process which the adversary system is designed to implement". Consequently, it is not sufficient for counsel to stand behind an inapplicable privilege for the benefit of the client when his higher duty is to be candid with the Court and acknowledge the information requested contains evidence of criminal wrongdoing.

The City of Detroit has a public trust to protect and serve its citizens through the police department. This includes applying even handed treatment to members of the police department who may well be guilty of illegal conduct. To that end, the police department has a duty to provide a comprehensive, unbiased report of all homicides to the county prosecutor for evaluation. Despite requests from the county prosecutor for the report (which constitutes an amendment to the earlier Board of Review report) the requests have not been honored. Now, the City of Detroit seeks to preclude the report from ever being disclosed to the Plaintiff and thereby further its effort to conceal the true nature of the homicide herein. This should not be tolerated by counsel and he certainly should not participate in or facilitate its success by advancing legal theories for that purpose. The pursuit of a just resolution of this case should be the goal of everyone, counsel for the City of Detroit included. If justice is to be at the center of resolving this matter, the Court should not allow the truth to remain hidden behind a specious claim of privilege. The report must be produced to Plaintiff.

It is not uncanny that the City of Detroit in the course of this case provided to plaintiff a

copy of the original and unscientific Board of Review authored within a few weeks of Mr. Grable's death. This original report, based on no real proof, just supposition, presumably concluded Brown used reasonable force in the death of Lamar Grable and the death was justified. Now when the second professional and scientific reports alleges wrongdoing on Brown's part the City argues aggressively in opposition to disclosure of this negative information; the negative information being of a criminal nature. Plaintiff believes the privilege has in effect been waived for the duration of this case and the City of Detroit has a procedural duty to supplement the earlier responses to requests for discovery. Counsel can not now raise the privilege and avoid his ethical duty to provide full discovery and to discourage concealment of the magnitude discussed here. At every turn in the representation of his client counsel must avoid professional misconduct. MRPC 8.4 states counsel must not "(c) engage in conduct that is prejudicial to the administration of justice". To have complicity in the concealment of criminal behavior would indeed prejudice the administration of justice. This Honorable Court should for this reason as well, reject the arguments offered in behalf of non disclosure and order the report turned over to Plaintiff forthwith. This disclosure should be required even in the face of a so called deliberative process.

THE REPORT SHOULD BE DISCLOSED EVEN IF THE DELIBERATIVE PROCESS PRIVILEGE EXISTS.

The City of Detroit has not followed protocol found in Federal precedent to avail itself of the deliberative privilege. In the case of National Congress for Puerto Rican Rights ex rel. Perez v. City of New York, 194 F.D. R. 88 (2000), the court ruled there are two requirements for invocation of the deliberative process privilege: the document asserted to be privileged must be

both "predecisional" and "deliberative." *See Hopkins v. United States Dep't of Housing and Urban Dev.*, 929 F.2d 81, 84 (2d Cir.1991). A document is predecisional when it is " 'prepared in order to assist an agency decision maker in arriving at [her] decision.' " Id. (quoting Renegotiation Bd. v. Grumman Aircraft Eng'g Corp., 421 U.S. 168, 95 S.Ct. 1491, 44 L.Ed.2d 57 (1975)). Thus, the privilege protects "recommendations, draft documents, proposals, suggestions, and other subjective documents which reflect the personal opinions of the writer rather than the policy of the agency." Grand Central Partnership, Inc. v. Cuomo, 166 F.3d 473 (2d Cir.1999) (internal quotation marks and citation omitted). Other courts have held that a document will be considered predecisional if the agency can "(i) pinpoint the specific agency decision to which the document correlates, (ii) establish that its author prepared the document for the purpose of assisting the agency official charged with making the agency decision, and (iii) verify that the document precedes, in temporal sequence, the decision to which it relates." Providence Journal Co. v. United States Dep't of the Army, 981 F.2d 552, 557 (1st Cir.1992) (internal quotation marks and citations omitted). A document is deliberative when it is " 'actually ... related to the process by which policies are formulated.' " Hopkins, 929 F.2d at 84 (quoting Jordan v. United States Dep't of Justice, 591 F.2d 753, 774 (D.C.Cir.1978) (en banc)). Other courts have looked at whether the document "(i) formed an essential link in a specified consultative process, (ii) 'reflect[s] the personal opinions of the writer rather than the policy of the agency,' and (iii) if released, would 'inaccurately reflect or prematurely disclose the views of the agency.' " Providence Journal Co., 981 F.2d at 559 (quoting National Wildlife Fed'n v. U.S. Forest Serv., 861 F.2d 1114, 1118-19 (9th Cir.1988)). Thus, the privilege " 'focus [es] on documents reflecting advisory opinions, recommendations and deliberations comprising part of a process by which

governmental decisions and policies are formulated.' " Hopkins, 929 F.2d at 84 (quoting N.L.R.B. v. Sears, Roebuck & Co., 421 U.S. 132, 150, 95 S.Ct. 1504, 44 L.Ed.2d 29 (1975)) (internal quotation marks and citation omitted). "The privilege does not, as a general matter, extend to purely factual material." Id. (citation omitted).

In this case there is no showing that the report reflects Shoulder's personal opinion. Rather the report was generated by order of the police Chief consistent with police procedure found at Volume III, Chapter 19, Section 9, of the police department manual. Again, under this provision a voluntary duty exists by the department to determine whether department policy was violated. Apparently, Shoulder's not only found a violation of department policy in the shooting of Lamar Grable, but also conduct that was arguably criminal.

The privilege protecting deliberative and evaluative data may be overcome by a sufficient showing of need. Liuzzo v. United States, 508 F.Supp. 923, 938 (E.D.Mich.1981); McClelland, supra, 196 U.S.App.D.C., p. 382, 606 F.2d 1278..

However, on a showing of the plaintiff's need, even this privilege is overcome. In *Liuzzo*, the trial court dealt with the issue of the defense claim of privilege and the plaintiffs' need for the material to prove their case. The court sustained the privilege but held, "Plaintiffs' needs, however, can and will be met. Plaintiffs have asserted a substantial need for the information contained in the Report, a need which cannot be met in any other way. If protection of the Report from disclosure truly "deprives the plaintiffs of material evidence" to prove their allegations, the court will follow the suggested procedure in Rule 509(e) and enter a finding of liability on the part of the defendant as to the claims dealt with earlier in this memorandum opinion that remain in the case. The extent of plaintiffs' damages will then be the remaining issue as to those claims.

This approach, it should be emphasized, is adopted to reconcile the competing interests present in this particular case." Id at 63.

In *Soto v. City of Concord*, 162 F.R.D. 603, 612 the court cited to *Skibo v. City of New York*, 109 F.R.D. 58 (E.D.N.Y.1985). The court applied the self-critical analysis privilege to the plaintiff's request for certain internal police evaluations and other documents relating to incidents of excessive force by a police department. 109 F.R.D. at 63. The Skibo court ultimately held that the privilege would not shield the documents from discovery because the police's interest in maintaining secrecy did not outweigh the plaintiff's (and general public's) need for the information. Id. at 64. Similarly, in the case at bar, the defendants' interest in keeping the internal affairs investigations secret and confidential to encourage "frank discussion" does not outweigh Plaintiff's need for the information. Id at 63.

In a recent unpublished opinion, *Federated Publications, Inc., d/b/a The Lansing State Journal v. City of Lansing*, CA No. 218331 (November 14, 2000), the panel addressed the issue of disclosure of departmental initiated investigative files upon the claim of deliberative process privilege. The panel concluded, "Contrary to the trial court's conclusion, we believe that the public interest in this case would also be furthered by disclosing department-initiated complaints. The fairness of defendant's investigations into department-initiated complaints would also have bearing on citizens' confidence that defendant investigates their complaints thoroughly and fairly and that defendant punishes appropriately. The citizens have a strong interest in knowing if department-initiated complaints are pursued with more or less vigor than those initiated by citizens. The public interest is not concerned so much with the infraction as how the department handles its investigations. This interest applies to both citizen-initiated complaints and

department initiated complaints. The Court held, "Therefore, we believe that defendants did not demonstrate that the public interest favored nondisclosure regarding the department-initiated investigative files." Id at 6.

The Michigan Court of Appeal has ruled that an investigative report prepared by an assistant prosecutor concerning a decedent's death at the hands of police was not protected from disclosure to the decedent's personal representative under the deliberative-process privilege. *In re Subpoena Duces Tecum to the Wayne County Prosecutor,* 518 N.W.2d 522 (1994).

Federal and other courts have a long history of dealing with the issue of asserted secrecy by the government at what could be the sacrifice of the truth. Perhaps the most compelling, scholarly, and insightful analysis was made by Magistrate Judge Wayne D. Brazil in *Kelly v. City of San Jose*, 114 F.R.D. 652 (N.D. Cal 1987). The opinion not only cites most if not all of the most important cases decided up until 1987, but is also cited frequently in subsequent cases. In *Kelly*, Magistrate Brazil undertakes a lengthy analysis about privilege and describes a procedure whereby those claiming privilege are required to demonstrate affirmatively what privilege they are asserting. *Id.* at 667. *Kelly* advocates a balancing approach "moderately preweighted" in favor of disclosure to the plaintiff.

The *Kelly* opinion also dispatches a frequently invoked argument against disclosure of "deliberative process" materials, such as evaluative comments, opinions. *Id.* at 664. Defendants often claim that revealing this information will affect the candor of the officers making the statements and thus, have a "chilling effect" on police efforts, including efforts to police themselves. *Kelly* holds that there is no empirical evidence to support the contention that disclosing the type of information that Plaintiff seeks will make officers who participate in the

internal investigations less honest. In fact, the opposite proves true:

> A police officer who knows that no one from outside the law enforcement community will scrutinize his statements or his investigatory work may not feel the same level of pressure to be honest and accurate as would his counterpart in a system where some disclosure is possible. An officer might expect that someone within his organization would be less exacting in reviewing his statements or reports than someone from the outside, especially if the person from the outside has substantial information about the incident under investigation and has a strong motive to challenge the accuracy of the officer's memory or the reliability of his conclusions. We rely in our adversary system of justice on the fear of being challenged and exposed by an opponent to keep litigants and lawyers honest. Closer to home, there is little doubt that the greatest sources of discipline in judicial thinking are the fear of close scrutiny on appeal and the fact that judges are required to explain and justify their rulings, in public, to an audience half of which is always hostile. Fear of scrutiny by knowledgeable people motivated to be aggressive is likely to inspire police officers to conduct investigations and write reports that are less vulnerable to criticism, and the way to make them less vulnerable is to make them more thorough, more accurate, and better reasoned. In short, officers will feel pressure to be honest and logical when they know that their statements and their work product will be subject to demanding analysis under (sic) by people with knowledge of the events under investigation and considerable incentive to make sure that the truth comes out (i.e.. A civil rights plaintiff and her lawyer). Thus there is a real possibility that officers working in closed systems will feel less pressure to be honest than officers who know that they may be forced to defend what they say and report.

Kelly at 665.

The arguments raised in the City of Detroit's Response in Opposition to Plaintiff's Motion for Shoulder's Report is properly undermined in Kelly, *supra.*

Courts other than *Kelly,* which have dealt with these issues, have consistently ruled in favor of some form of disclosure. *See, e.g., Miller b. Panucci*, 141 F.R.D. 292 (C.D. Cal. 1992) (internal affairs files, personnel files, and personnel complaints made against officers are

discoverable); *Saviour v. City of Kansas City*, 1992 WL 135019 (D. Kan. 1992) (plaintiff allowed to discover prior complaints against officers, prior lawsuits against the city); *McLin v. Harvey*, 137 F.R.D. 527 (N.D. Ill 1990)(parties agreed that the personnel files were discoverable and were to be produced under protective order, but argues whether they could be released to third parties); *Cameron v. City of Philadelphia*, 1990 WL 1511770 (E.D. Pa. 190)(prior complaints against defendant officers and prior lawsuits and discipline are discoverable); *Gibson v. New York City Police Officer Carmody*, 1990 WL 52272 (S.D.N.Y. 1990) (plaintiff entitled to discover statements made by officers in internal affairs investigations and officer personnel files); *Mueller v. Walker*, 124 F.R.D. 654 (D.Or. 1989)(plaintiff entitled to reports of administrative complaints of incidents of violent behavior by officers and psychological and psychiatric evaluations of the officers); *King v. Conde*, 121 F.R.D. 180 (E.D.N.Y. 1988)(plaintiffs in federal civil rights actions are presumptively entitled to recollections as well as documents on prior complaints and police history); *Rodriquez v. City of New York*, 1987 WL 17466 (E.D.N.Y. 1987)(civilian Complaint review board files are discoverable to show pattern of racism and police abuse); *King v. McCown*, 821 F.2d 290, 1987 WL 38651 (4th Cir. 1987)(Unpublished disposition, *see* Forth Circuit I.O.P. 36.6) (plaintiff entitled to discover nine years of prior use of force investigative reports and files); *Johnson v. McTigue*, 122 F.R.D. 9 (S.D.N.Y. 1986)(plaintiff entitled to discover names and memo book entries of all individuals arrested by defendant officer on prostitution charges for one month prior to plaintiff's arrest, all documents demonstrating whether defendant officer appeared in court on said arrests, the outcome of said arrest, and all records of all prostitution arrests by any officer for the precinct for the month prior to plaintiff's arrest); *Skibo v. New York*, 109 F.R.D. 58 (E.D.N.Y. 1985) (files of citizen review

board concerning civilian complaints against officers for relevant years preceding incident discoverable); *Mercy v. Suffolk*, 93 F.R.D. 520 (E.D.N.Y. 1982) (internal affairs reports, including statements made by officers discoverable). In the aforementioned cases, the plaintiffs were held to be entitled to the information sought without individual names blacked out. *Spell v. McDaniel,* 591 F. Supp. 1090 (E.D.N.C. 1984)(discovery of named officer's history, documentation of all reported incidents within two-year period and department rules and regulations discoverable).

WHEREFORE, the Plaintiff respectfully prays that this court sustain it's Order requiring the production of the Shoulders Report and provide an unredacted copy to the Plaintiff to be used for trial purposes or on the alternative require the City to provide same for in camera review. Upon review, that the Court determine there is no privilege and Plaintiff be provided with an unredacted copy of the report. Plaintiff further prays that this Honorable Court make a ruling on this motion immediately and well in advance of trial.

Respectfully Submitted,

DAVID A. ROBINSON P38754
ROBINSON RUSSELL, P.C.
Attorneys for Plaintiff
28145 Greenfield, Rd., Ste. 100
Southfield, Michigan 48076
(248) 423-7234

Dated: March 21, 2022

G:\Closed Files\zz Older Backup 090321\2016 Closed Files\Ellsberry\pleadings\ECF\ECF 2012\grableamednedbrief46pgrpt.wpd

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

ARNETTA GRABLE, Personal
Representative of the Estate of
LAMAR GRABLE, Deceased,

Plaintiff,

v.

EUGENE BROWN,

Defendant,
_____/

DAVID A. ROBINSON P38754
ROBINSON RUSSELL, P.C.
Attorneys for Plaintiff
28145 Greenfield, Ste 100
Southfield, MI 48076
248 423-7234

MELISSA Z. EL P29865
Co-Counsel for Plaintiff
2100 Cadillac Tower
Detroit, MI 48226
313 965-2002

WILSON A. COPELAND, II P23837
GRIER & COPELAND, P.C.
Attorneys for Eugene Brown
3000 Penobscot Building
Detroit, MI 48226
313 961-2600
_____/

PLAINTIFF'S THIRD RENEWED MOTION TO LIFT STAY OF PROCEEDINGS SINCE THE FEDERAL CRIMINAL INVESTIGATION HAS CONCLUDED WITHOUT CRIMINAL CHARGES BEING MADE AGAINST THE DEFENDANT

Now comes the Plaintiff and in support of her motion claims the following:

1. On or about March 7, 2001, the defendant filed a Motion Requesting Stay of Proceedings. Trial in this matter was scheduled for March 26, 2001.

2. Plaintiff filed a timely response and the Court heard oral argument on the motion on or

about March 16, 2001. The Court granted the stay March 16, 2001 and now greater than two years has passed.

3. The Plaintiff filed her first motion to lift the stay on or about April 24, 2001, her second motion November 27, 2001 and her third motion, or in the alternative order de bene esse depositions, August 7, 2002.

4. The Court denied each of Plaintiff's motions ostensibly to protect the Defendant's 5th Amendment rights. The Court also denied the Plaintiff's request for the alternative relief to preserve testimonial evidence.

5. The Plaintiff has learned since December 2002, the Federal investigation into criminal civil rights violations against Defendant Brown has concluded and apparently no charges are will be filed against him.

6. Since the time of the stay a prime witness, Vickie Yost, has been shot and injured. Her testimony in this matter is critical to a trial.

7. Much time has passed since the stay and clearly manifest injustice would occur to the Plaintiff if this Court should not lift the stay.

8. Where there is no longer impending any immediate likelihood of criminal charges being made against Defendant Brown, any reasoning to preserve a 5th Amendment right is moot.

9. Plaintiff continues to suffer the potential of prejudice in that her expert and other lay witnesses and other evidentiary resources are at risk to unavailability given the uncertainty of the length of any stay and therefore any stay serves a detrimental harm to the plaintiff's right to have a fair trial.

WHEREFORE, the Plaintiff respectfully prays that this honorable court grant Plaintiff's Third Renewed Motion to Lift Stay and scheduled a trial date within the next 60 days.

Respectfully Submitted,

DAVID A. ROBINSON P 3 8 7 5 4
ROBINSON RUSSELL, P.C.
Attorneys for Plaintiff
28145 Greenfield, Rd., Ste. 100
Southfield, Michigan 48076
(248) 423-7234

Dated: March 21, 2022
G:\Closed Files\zz Older Backup 090321\2016 Closed Files\Ellsberry\pleadings\ECF\ECF 2012\grable third renewed motion to lift stay.wpd