

**INTEROFFICE COMMUNICATION
COUNTY OF MILWAUKEE**

DATE: February 28, 2017

TO: Milwaukee County Board Chairman Theodore Lipscomb
Chair, Committee on Judiciary, Safety and General Services
Chair, Committee on Finance, Personnel and Audit

FROM: Colleen Foley, Deputy Corporation Counsel 

SUBJECT: Status update on pending litigation

The following is a list of some of the significant pending cases that may be of interest to the Committees. New information and additions to the list since the last committee meetings are noted in **bold**. However, our office is prepared to discuss any pending litigation or claim involving Milwaukee County, at your discretion.

1. *DC48 v. Milwaukee County* (Rule of 75)
Case No. 11-CV-16826 (Judge Rothstein issued 5/27/16 decision against county on renewed motions for summary judgment holding that plaintiffs were not covered by terms of a CBA as used in Ordinance 11-15 for purposes of evaluating Rule of 75 eligibility; final order issued by circuit court on 6/17/16; Order to stay execution of judgment issued on 6/27/16; Notice of Appeal filed with Wisconsin Court of Appeals on 7/19/16)
2. *Trapp et al. v Milwaukee County et al.*
Case No. 15-CV-0019 (Milw. County Circuit Court; stayed pending IRS approval of pension ordinance amendments)
3. *Wosinski et al. v. Advance Cast Stone et al.* (O'Donnell Park)
Case No. 11-CV-1003 (Jury Verdict; appeals filed by ACS and Liberty; County et al. response brief filed on 2/25/16; Attorney Michael Brennan of Gass Weber Mullins filed notice of appearance (along with Corporation Counsel) to Wisconsin Court of Appeals on 8/1/16; 10/24/16 mediation; Court of Appeals oral argument scheduled for 1/31/17 at 9:00 a.m.)
4. *Christensen et al. v. Sullivan et al.* (jail population and health care)
Case No. 96-CV-1835 (May 2016 status report on Jail/HOC following 5/16/16 jail tour and 5/18/16 HOC tour; 10/31/16 jail and HOC tour; 11/21/16 status conference at 3:00 p.m.; 2/2/17 status conference at 10:00 a.m. on staffing issues; 4/11/17 status conference at 9:00 a.m. on staffing issues)
5. *Milwaukee Riverkeeper v. Milwaukee County, et al. & Nenn, et al. v. Milwaukee County Board of Supervisors* (Estabrook dam public nuisance case &

declaratory judgment/injunction case) Cases No. 11-CV-8784 & 16-CV-2268 (court found dam a nuisance and ordered repair or removal; 6/30/16 status conference; 8/12/16 hearing held at which court ruled no evidentiary hearing required to test viability of abatement issue; no special district required; 11/22/16, 3:00 p.m. hearing on public purpose doctrine and 4:00 p.m. hearing on status of rezoning by City of Milwaukee and authority for CEX to sell parcel to MMSD; 1/26/17, 2:30 p.m. status conference regarding DNR plans for the dam; 5/26/17, 9:30 a.m. status on MMSD regarding WDNR permits to remove dam, any contested hearings related thereto)

6. ***Nenn and Milwaukee Riverkeeper. v. WDNR, et al.* (Judicial review of WDNR plan approval for county plans to repair dam) Case No. 16-CV-4669 (RK seeks judicial review of WDNR's Plan Approval; WDNR defending; county intervening; (status set for 5/17/17 at 8:30 a.m)**
7. *Milwaukee Riverkeeper v. WDNR* (Estabrook Dam permit)
Case No. 16-CV-1396 (filed 5/23/16 in Dane County, seeking judicial review of WDNR's environmental impact statement/permitting process; does not halt work toward repair remedy; stipulation by parties to change venue from Dane to Milwaukee County; Milwaukee County and City of Milwaukee are intervening parties)
8. ***Nenn and Milwaukee Riverkeeper v. Milwaukee County Board of Supervisors* (open meetings) Case No. 15-CV-5131 (3/24/16 jury demand; 8/31/16 pretrial conference; 9/29/16, 1:30 p.m. motion hearing on motion to compel at which court scheduled status conference for 7/10/17 at 10:00 a.m.)**
9. *Midwest Development Corporation v. Milwaukee County* (Crystal Ridge)
Case No. 12-CV-11071 (court dismissed both side's claims; Midwest filed appeal; County cross-appeal filed)
10. Froedtert Hospital petition to disturb burial sites – petition granted by State
11. *Orlowski v. Milwaukee County* (2007 death of inmate in HOC)
Case No. 13-C-994 (E.D. Wis. federal court; court granted County's motion for summary judgment on 4/21/16. Oral argument before 7th Circuit on 11/7/16)
12. *Jane Doe v. Milwaukee County* (sexual assault by CO in jail)
Case No. 14-CV-200 (E.D. Wis. federal court; County motion for partial summary judgment filed; jury trial 9/12/16; 3/25/16 decision allowing plaintiff to amend complaint to add class action allegation)
13. *Johnson v. Milwaukee County et al.* (patient care at BHD)
14-CV-1408 (E.D. Wis. federal court) (discovery phase)

14. *Johnson v. Milwaukee County et al.* (2012 patient death at BHD) 16-CV-01043 (E.D. Wis. federal court) (complaint filed 8/8/16)
15. *Estate of James Perry v. Wenzel et al.* (death in booking room of jail) Case No. 12-C-664 (E.D. Wis. federal court; 5/6/16 order granting county's motion for summary judgment and for sanctions; appeal filed by plaintiffs with 7th Circuit Court of Appeals; oral argument before 7th Circuit on 1/5/17 at 9:30 a.m.)
16. ***Lipscomb and Milwaukee County Board of Supervisors v. Abele (County Board and Executive authority) Case No. 2016-CV-2888 (Action filed 4/15/16; Answer and Counterclaims filed on 6/13/16; Scheduling Conference held 8/11/16; amended counterclaim filed by CEX on 8/15/16; summary/declaratory judgment motions by 12/9/16; summary/declaratory judgment replies by 1/10/17; hearing on all motions for summary/declaratory judgment on 2/13/17 at 1:30 p.m. – decision within 90 days)***
17. *Voces de la Frontera, Inc. v. Clarke, L.C.* (public records claim) Case No. 2015CV2800 (June 15, 2016 Order from the Wisconsin Supreme Court granting petition for review; briefs filed by county on 8/11/16; oral argument before Wisconsin Supreme Court scheduled for 11/3/16; 2/24/17 Wisconsin Supreme Court decision reversing lower court rulings and ordering writ of mandamus quashed)
18. *State v. Dennis Dietscher* (official misconduct) Case No. 2014CF3620 (Defendant pled guilty to accepting bribes and making false statements on 7/1/16; sentenced on 10/7/16 to 18 months in prison with 24 months on probation/supervision thereafter; On 10-0 reconsideration vote on 11/16/16, Pension Board suspended pension and recommended recovery of backdrop benefit and monthly payments paid out to date
19. ***Shade Swayzer and her deceased child v. Milwaukee County, et al.; Estate of Terrill Thomas v. Milwaukee County, et al.; Estate of Kristine Fiebrink v. Milwaukee County, et al.; Estate of Michael Madden – Notices of Claim/Circumstance filed with the County Clerk (precursors to state court lawsuit) and 42 USC 1983 lawsuit in federal court in Swayzer against Armor Medical and Milwaukee County Sheriff's Office alleging 5th, 8th, 14th Amendment violations for failure to properly train, supervise, formulate investigative processes)***