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Defendants, Patricia R. Kostyshyn, Mirosław E. Kostyshyn, John J. Kostyshyn and Peter T. Kostyshyn, *Pro Se*.

I. INTRODUCTION

Defendants Patricia A. Kostyshyn, Mirosław E. Kostyshyn, John J. Kostyshyn, and Peter T. Kostyshyn seek review of an Order and Recommendation issued by a Superior Court Commissioner denying various motions.¹ Because the Defendants' applications under Superior Court Civil Rule 132 were untimely, not properly supported as required, and are otherwise without merit, the Court **DENIES** their numerous and varied appeals.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. *The City of Wilmington Properties*

Before the Court is the culmination of a protracted and often acrimonious dispute of Defendants Patricia A. Kostyshyn, Mirosław E. Kostyshyn, John J. Kostyshyn, and Peter T. Kostyshyn (collectively the "Kostyshyns" or "Defendants")² over the City of Wilmington's (the "City") claim for unpaid property taxes, water and sewer charges, and vacant property registration fees

¹ These motions involved a wide range of issues, covering both case-dispositive and non case-dispositive matters. See Super. Ct. Civ. R. 132(a)(3) and (a)(4) (a Superior Court Commissioner is empowered to conduct proceedings in case-dispositive and non-case dispositive matters; the nature of his or her rulings on each, however, do differ).

² To the extent that it is necessary to refer to a single Defendant, the Court may refer to such Defendant using only his or her first name. The Court does not do so to suggest any familiarity or informality, but rather to ensure clarity.

assessed against three properties owned by the Kostyshyns.³ In addition to the individual bills that the City sent to the Kostyshyns and which went unpaid,⁴ the City attempted to communicate with the Kostyshyns via letter on multiple occasions between 2009 and 2013 to provide notice of those outstanding bills and to ensure payment.⁵

In July 2011, Defendant Patricia Kostyshyn mailed a partial payment of \$85.06, representing the past due real estate tax for the 1131 West 4th Street property, to the Department of Finance, Delinquent Accounts Division of the City of Wilmington. The City refused that payment, however, and returned the check to Ms. Kostyshyn. As the City explained in a subsequent letter, “[o]nce a property has been designated for sheriff sale as is the case here, the Delinquent Accounts

³ The properties in question are Tax Parcel Numbers 26-034.20-051, 26-034.20-050, and 26-027.30-277, located at 1129 West 4th Street, 1131 West 4th Street, and 505 North Broom Street, Wilmington, Delaware 19805 respectively (collectively the “City Properties”).

The City alleges that, for the West 4th Street properties, the Kostyshyns failed to pay real property taxes for the years 2010 through 2012, in the amount of \$1,118.52, plus penalty and interest; water and sewage charges for the years of 2009 through 2013, in the amount of \$1,722.63, plus penalty and interest; and vacant registration fees for the years 2009 through 2012, in the amount of \$35,000.00.

The City further alleges that, for the 505 North Broom Street property, the Kostyshyns failed to pay real property taxes for the years 2010 through 2012, in the amount of \$1,203.33, plus penalty and interest; water and sewage charges for the years of 2010 through 2013, in the amount of \$1,332.45, plus penalty and interest; and vacant registration fees for the years 2009 through 2012 in the amount of \$14,000.00. City’s Opp. to Kostyshyns’ Mot. To Stay Sheriff’s Sale, at 1-2 (Trans. ID #53347946).

⁴ Ex. C, City’s Opp. to Kostyshyns’ Mot. To Stay Sheriff’s Sale.

⁵ Ex. D-F, City’s Opp. to Kostyshyns’ Mot. To Stay Sheriff’s Sale.

Division will only accept full payment of all past due obligations because a partial payment will not stop a sheriff sale proceeding.”⁶ The City similarly denied the Kostyshyns’ request for mediation in lieu of full payment.

On May 21, 2013, the City filed two Writs of Monition in this Court against the Kostyshyns’ Properties. On June 20, 2013, the City issued a Writ of Venditioni Exponas Monition ordering the Sheriff to put the City Properties up for public sale in order to satisfy the Kostyshyns’ delinquent taxes and fees.

In response, the Kostyshyns filed a barrage of motions in this Court seeking, *inter alia*: (1) a stay of the Sheriff’s sale of the City Properties; (2) to have First Assistant City Solicitor Rosamaria Tassone-DiNardo “removed” from their case; and (3) to consolidate filings. The matter was referred to a Superior Court Commissioner who denied the Kostyshyns’ numerous motions on August 8, 2013.⁷ The Commissioner denied their Motion for Reargument the next day.

Defendants filed a Motion for Reconsideration with this Court on October 10, 2013.

⁶ Letter, dated July 28, 2011, from Rosamaria Tassone-DiNardo, First Assistant City Solicitor, to Patricia Kostyshyn, Ex. J, City’s Opp. to Kostyshyns’ Mot. To Stay Sheriff’s Sale.

⁷ The nature of the Kostyshyns’ entreaties was mixed. Consequently, the Commissioner’s rulings thereon trigger different forms of review. *See generally* Super. Ct. Civ. R. 132(a)(3)(iv) and (a)(4)(iv).

B. *THE NEW CASTLE COUNTY PROPERTIES*

Defendants own two other properties in New Castle County (the “County”) that are the subject of separate monition proceedings.⁸ On May 14, 2013, New Castle County filed monition actions (Case Nos. N13J-01613 and N13J-01614) for failure to pay property and school taxes, instant tickets for code violations related to the properties, and associated penalties, for the years 2009 to 2013.⁹ Defendants objected to the County’s inclusion of the instant ticket charges in the monitions, challenging the County’s statutory authority to do so. And Defendants moved to dismiss both monitions in July 2013.

The County elected to remove the instant ticket charges and subsequently filed amended monitions against the County Properties, seeking only unpaid taxes and penalties for the years 2009 to 2012. Neither amended monition included any instant ticket charges. While the taxes assessed to Defendants for 2013 have been levied, they were not included in the amended monition. All Defendants were notified in letters dated August 16, 2013 and September 17, 2013 that the 2013 taxes were not included in the monition, but were due on September 30, 2013. On

⁸ The properties located in New Castle County are Tax Parcel Numbers 17-00.200-101 and 17-00.100-094, and located at 1127 Brandywine Blvd., Wilmington, DE 19809 and 1223 Rosedale Ave., Wilmington, DE 19809 respectively (collectively the “County Properties”).

⁹ The County alleges that Defendants owe \$21,833.18, plus costs, for unpaid taxes, penalties, and instant tickets for the 1127 Brandywine Boulevard property, and \$10,657.17, plus costs, for the 1223 Rosedale Avenue property.

August 8, 2013, following the County's election not to pursue the instant ticket charges by monition, the Commissioner denied Defendants' motion to dismiss and entered an order instructing that costs be calculated beginning upon the County's filing of amended monitions.

On September 5, 2013, Defendant Miroslaw Kostyshyn filed a "Motion for Contempt of Court," arguing that the Assistant County Attorney for the New Castle County Law Department violated the Commissioner's order. Specifically, Mr. Kostyshyn alleged that the County's attorney violated the order by sending Defendants a notice of outstanding tax delinquencies and costs owed after the deduction of the 2013 tax assessments and the instant ticket charges. The Commissioner denied that motion on September 27, 2013.

Defendants filed a "Request for Review of the Commissioner's Dismissal and Contempt Orders" before this Court on October 23, 2013.¹⁰

¹⁰ An unnamed Defendant had filed a separate motion on October 7, 2013 asking the Court to institute criminal charges and an Office of Disciplinary Counsel investigation against unspecified County employees. This Court lacks the authority to initiate criminal charges and there appears in the record no basis for a disciplinary investigation. That motion therefore is DENIED.

C. PETER KOSTYSHYN'S FILINGS¹¹

In addition to the other Defendants' various motions and submissions, Peter Kostyshyn has filed numerous documents with the Court requesting a variety of forms of relief. Mr. Kostyshyn has asked, *inter alia*, that the Court: (1) order that he be transported to and from court for "any and all hearings" in these proceedings;¹² (2) issue an emergency injunction against Mayor Dennis Williams, the City of Wilmington, the New Castle County Sheriff's office, and Trinidad Navarro, the Sheriff for New Castle County; and (3) deliver to him copies of all court e-mails and records in these proceedings.

D. SUBSEQUENT MOTIONS

On February 19, 2014 an unnamed Defendant filed a motion alleging that: (1) the City of Wilmington's motion actions were procedurally deficient under Superior Court Civil Rule 41(a); (2) the applicable statute of limitations operated to eliminate or reduce the City's entitlement to recover the vacant fees assessed; and (3) "the Presiding Judge" should recuse himself because "Defendants conclude

¹¹ The Court, to the best of its abilities, attempted to decipher Defendant's various requests for relief and divine some bases in law or fact for the "claims" articulated in his letters. To the extent those claims comprehensible ensured that each received the degree of consideration warranted.

¹² Mr. Peter Kostyshyn is currently a sentenced inmate of the Howard R. Young Correctional Institution.

that recusal of the Presiding Judge would assist in the Relief in which the Defendants are seeking.”

On March 25, 2014, Miroslaw filed a “Motion to Dismiss Plaintiff’s Responsive Memorandum and Monitions”, in which he seeks to have the Court disregard as untimely the City’s response filed February 12, 2014.

III. STANDARD OF REVIEW

Under Superior Court Civil Rule 132,¹³ Commissioners have the power to conduct both dispositive and non-dispositive hearings and to make certain pre-trial determinations and recommendations. The fundamental nature of the subject matter under review—dispositive or non-dispositive—dictates the degree of deference a judge must give to such a determination. Upon review of a Commissioner’s case-dispositive determination, a judge engages in a *de novo* review.¹⁴ For such case-dispositive determinations, therefore, the Commissioner’s disposition constitutes proposed findings of fact and recommendations.¹⁵ For such case-dispositive determinations, therefore, the Commissioner’s disposition acts as proposed findings of fact and recommendations and the judge makes a *de novo* determination of those specified portions, proposed findings of fact, or

¹³ Super. Ct. Civ. R. 132(a)(3) & (4).

¹⁴ Super. Ct. Civ. R. 132(a)(4)(iv).

¹⁵ Super. Ct. Civ. R. 132(a)(4)(ii).

recommendations to which an objection is made.¹⁶ For non case-dispositive matters, by contrast, the Commissioner’s order is reconsidered by a judge only “where [it] has been shown on the record” that the order is “based upon findings of fact that are clearly erroneous, or [] contrary to law, or [] an abuse of discretion.”¹⁷

In this instance, the Commissioner’s denial of Defendants’ Motion to Stay the Sheriff’s Sale and requests to dismiss the monition actions affects a substantial legal right and under these circumstances should be considered case-dispositive.¹⁸ In turn, the Court must and has reviewed the Commissioner’s disposition thereof *de novo*. The Commissioner’s denials of Defendants’ Motion for Removal of Ms. Tassone-DiNardo and Motion to Consolidate, by contrast, are non case-dispositive, and therefore have been examined for clear error, violation of law and abuse of discretion.

IV. DEFENDANTS FAILED TO FILE TIMELY OBJECTIONS AND FAILED TO CAUSE TRANSCRIPTS TO BE PREPARED AND FILED

As applicable here, Rule 132 permits either party to file a challenge to the Commissioner’s decision, whether the matter is case-dispositive or non case-dispositive. Under either type—dispositive or non-dispositive—the party is

¹⁶ *Id.*

¹⁷ Super. Ct. Civ. R. 132(a)(3)(ii) & (iv).

¹⁸ *See In re Asbestos Litig.*, 623 A.2d 546, 549 (Del. Super. Ct. 1992).

allotted ten days to file its objection.¹⁹ Failure to file a timely objection may result in dismissal of the application for review.²⁰ Once an objection has been filed, the other party then has ten days from the service of the objection to file a written response.²¹

The Court applies its Civil Rule 6 to determine the deadline for such a filing.²² The Commissioner issued his Order and Recommendations on August 8, 2013. Applying Rule 6, i.e., counting the last day and omitting any intervening Saturdays, Sundays, or legal holidays, the deadline for the Defendants' objections was August 22, 2013. Defendants, however, did not file their objections in the City Property matters until October 10, 2013 and did not file their objections in the

¹⁹ See Super. Ct. Civ. R. 132(a)(3)(ii) (“Within 10 days after filing of a Commissioner’s order [for non case-dispositive matters], any party may serve and file written objections to the Commissioner’s order which set forth with particularity the basis for the objections.”); *Id* at 132(a)(4)(ii) (“Within 10 days after filing of a Commissioner’s proposed findings and recommendations [for case-dispositive matters], any party may serve and file written objections to the Commissioner’s order which set forth with particularity the basis for the objections.”).

²⁰ Super. Ct. Civ. R. 132(a)(4) (“[W]ho fails to comply with the provisions of this rule may be subject to dismissal of said motion for reconsideration or appeal.”).

²¹ Super. Ct. Civ. R. 132(a)(3)(ii) (“The other party shall then have 10 days from service upon that party of the written objections to file and serve a written response to the written objections.”); Super. Ct. Civ. R. 132(a)(4)(ii) (same).

²² Super. Ct. Civ. R. 6(a) (“In computing any period of time prescribed or allowed by these Rules . . . the day of the act, event or default after which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday or Sunday, or other legal holiday, or other day on which the office of the Prothonotary is closed When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and other legal holidays shall be excluded in the computation.”).

County Properties matters until October 23, 2013. Notwithstanding the applicable rule,²³ filings were styled: (1) as to the City Properties, a “Motions for a Hearing Before a Superior Court Judge”; and (2) as to the County Properties, a “Request for Review of the Commissioner’s Dismissal and Contempt Orders.”

Given the liberal standard for construing *pro se* pleadings,²⁴ the Court interprets these applications for review pursuant to Rule 132. But, whether represented by counsel or appearing *pro se*, a party must be diligent in preparing its case, meeting deadlines and following other procedural requirements.²⁵ And a *pro se* party risks dismissal for failure to prosecute when it does not. “There is no different set of rules for *pro se* [litigants], and the [] court should not sacrifice the orderly and efficient administration of justice to accommodate an unrepresented [litigant].”²⁶ Because Defendants have failed to timely pursue their right to further

²³ See Super. Ct. Civ. R. 132(a)(3)(ii) and (a)(4)(ii).

²⁴ See *Browne v. Saunders*, 2001 WL 138497, at *1 (Del. Feb. 14, 2001) (“As a general rule, we interpret pleading requirements liberally where the plaintiff appears *pro se*.”); see also *In re Estate of Hall*, 2005 WL 2473791, at *1 (Del. Aug. 26, 2005) (courts “allow [] a *pro se* litigant leeway in meeting the briefing requirements,” however “the brief at the very least must assert an argument that is capable of review”); *Vick v. Haller*, 1987 WL 36716, at *1 (Del. Mar. 2, 1987) (“A *pro se* complaint, however inartfully pleaded, may be held to a somewhat less stringent technical standard than formal pleadings drafted by lawyers....”); *Buck v. Cassidy Painting, Inc.*, 2011 WL 1226403, at *2 (Del. Super. Ct. Mar. 28, 2011) (“When appropriate, this Court will provide *pro se* litigants some degree of latitude in preparing and presenting their cases.”).

²⁵ See *Draper v. Medical Center of Delaware*, 767 A.2d 796, 799 (Del. 2001).

²⁶ See *id.*; see also, *Buck v. Cassidy Painting, Inc.*, 2011 WL 1226403, at *2 (dismissal warranted when filing submitted significantly beyond the deadline and litigant demonstrated a complete disregard of the Court’s procedural requirements).

review by a Superior Court judge,²⁷ they have waived any further review of the Commissioner's rulings or recommendations.²⁸ On that basis alone dismissal here is appropriate.²⁹

Failure to meet the filing deadline, however, is not the Defendants' only fatal deficiency. Rule 132 also requires that the Kostyshyns "cause a transcript of the proceedings before the Commissioner be prepared, served, and filed" unless the parties agree otherwise and the reviewing judge approves.³⁰ As Delaware courts

²⁷ Such failure is particularly inexcusable when the Defendants were given specific notice of this requirement by a judge of this Court. On August 9, 2013, one of the Kostyshyns faxed a communication to the Court regarding the Commissioner's August 8th rulings. That same day a judge of this Court notified each Defendant in writing that the requirements of Rule 132 must be followed to lodge an objection to the Commissioner's dispositions. *See* Court's letter to Defendants, Aug. 9, 2013 (Trans. ID #53618171) ("To appeal a Commissioner's order and to obtain a decision certified by a Judge, you must file your appeal in compliance with Superior Court Civil Rule 132. Unfortunately, what you have filed has not included written objections to the Commissioner's order nor have you served your objections on the opposing parties. Unless an actual appeal is filed within the appropriate ten days from the date of the hearing (when you received a copy of the Commissioner's orders), the Commissioner's order will become final at the end of those ten days.").

²⁸ *See In re Webb*, 2011 WL 4838972 (Del. Oct. 12, 2011).

²⁹ Super. Ct. Civ. R. 132(b). The Defendants filed a motion on March 25, 2014 requesting that the Court "dismiss" the City's responsive memorandum because it was filed outside the schedule set by the Court for such response. The Defendants' point is well-taken. Under the particular facts here, the Court should not enforce the applicable deadlines upon the Defendants while excusing the City's late filing. In turn, the Court will not consider the City's responsive memorandum in reaching its decision here. To the extent Defendants claimed also that the motion action itself should be dismissed, that application is DENIED. Exclusion of the late filing is the appropriate sanction.

³⁰ Super. Ct. Civ. R. 132(a)(3)(iii) ("The party filing written objections to a Commissioner's order shall cause a transcript of the proceedings before the Commissioner to be prepared, served, and filed unless, subject to the approval of a judge, all parties agree to a statement of facts."); Super. Ct. Civ. R. 132(a)(4)(iii)(same).

have held long and consistently, the failure to include adequate transcripts of the proceedings of which a party seeks review, as required by applicable Court rules, precludes appellate review of the party's claims of error in those proceedings.³¹ Just so here. The Defendants failure to meet this requirement to provide an adequate record for review of the proceedings before the Commissioner warrants dismissal.³²

Even if the Court were not to dismiss on these bases, the Court can identify no merit to the Defendants' claims.

³¹ See *Tricoche v. State*, 525 A.2d 151, 154 (Del. 1987); *Baker v. State*, 2013 WL 5532652 (Del.) (“Even an appellant who is *pro se* . . . is required to make his own financial arrangements to obtain the necessary transcripts. In the absence of such transcripts, we conclude that there is an inadequate record of the proceedings below, which precludes our appellate review of [appellant’s] claims.”); *Mahan v. Mahan*, 2007 WL 1850905, at *1 (Del. June 28, 2007) (rule applies equally to civil litigants; “The record provided to this Court by an appellant must include a transcript of all evidence relevant to the challenged finding or conclusion . . . with[out] those portions of the transcript . . . bearing on [appellant’s] claims . . . this Court has no adequate basis for evaluating [appellant’s] summary claims of error . . . and [his] appeal is, therefore, unavailing”).

³² Super. Ct. Civ. R. 132(b). See *John Petroleum, Inc. Parks*, 2010 WL 669461 (Del. Super. Ct. Jan. 6, 2010) (dismissal of appeal from Commissioner’s Findings of Fact and Recommendations due to failure to meet requirements of Rule 132(b)).

V. DEFENDANTS' OBJECTIONS TO DENIAL OF STAY³³

Defendants have failed to identify any entitlement to relief from the City's or County's Writs of Monition for unpaid taxes and fees, and therefore their objection fails. Defendants do not challenge the City's or County's assertion that the Kostyshyns owned the subject properties. They also do not challenge that they failed to pay the assessed taxes, charges or fees. The City and County provided ample opportunity for Defendants to repay their tax debt; when the Defendants persisted in failing to do so, the City and County properly sought the available remedy.

The claims that the monitions were procedurally deficient or were voluntarily dismissed by the County under Superior Court Civil Rule 41(a) are without merit. Rule 41(a) provides that an action may be dismissed either by a plaintiff through stipulation or by order of the Court.³⁴ The Court shall only order a dismissal of an action over a plaintiff's objection "upon such terms and conditions as the Court deems proper."³⁵ Dismissal is not granted as a matter of right, rather the Court must make the determination for or against dismissal in its

³³ Defendants' appeal in matters N13J-01614 and N13J-01613 (the County Properties) challenges to the Commissioner's denial of Defendants' Motion to Dismiss. That motion addressed only the County's imposition of instant ticket charges. Nevertheless, the Court will view Defendants' motion for the purpose of this analysis as challenging the monition as a whole. In doing so, the Court engages a *de novo* review of Commissioner's disposition.

³⁴ Super. Ct. Civ. R. 41(a).

³⁵ Super. Ct. Civ. R. 41(a)(2).

sound discretion and must seek to “secure substantial justice to both parties.”³⁶ The Court would not secure substantial justice by dismissing the monition actions and depriving the City of Wilmington and New Castle County from recovering its lost tax revenue through Sheriff’s sales of subject properties pursuant to properly pursued monition actions.

The contentions that the monitions were procedurally deficient or should be barred by the statute of limitations are similarly unpersuasive. Taxes accrue on an annual basis, and have been accruing on the City and County Properties since at least 2009. Defendants’ own delaying tactics have prolonged the collection process and these proceedings; they cannot now invoke such delay to avoid their tax burden.³⁷ Defendants also cite no legal authority or factual support for the claim that the monition actions were procedurally deficient. The monitions were performed according to procedures that Delaware courts have long recognized as valid mechanisms for recovering delinquent taxes³⁸; absent any specific contentions of procedural failings, the Court must deny Defendants’ motions to stay and dismiss.

³⁶ *AT&T Wireless Servs., Inc. v. Fed. Ins. Co.*, 2005 WL 2155695, at *3 (Del. Super. Ct. Aug. 18, 2005) (quoting *Draper v. Paul N. Gardner Defined Plan Trust*, 625 A.2d 859, 863 (Del. 1993)).

³⁷ *See City of Wilmington v. Janeve Co., Inc.*, 2013 WL 4811963, at *1-3 (Del. Super. Ct. Sept. 11, 2013) (Comm’r Order and Opinion).

³⁸ *See City of Wilmington v. McDermott*, 2008 WL 4147580, at *2-3 (Del. Super. Ct. Aug. 26, 2008), *aff’d*, 2009 WL 1058735 (Del. Apr. 21, 2009).

Defendants argue that, as Patricia attempted to remit partial repayment to the City of Wilmington, and the City rejected such payment, the City cannot claim that the Kostyshyns failed to meet their tax obligation. This argument fails, however, since the City's decision to reject this partial payment was made pursuant to Wilmington City Code Section 4-181 which requires complete repayment as the sole means of avoiding a Sheriff's sale.³⁹ The City's rejection of partial payment and of mediation offers does not constitute grounds to stay the Sheriff's sale or to dismiss the monition actions.

After *de novo* review⁴⁰, the Court adopts the recommendation of the Commissioner and the Defendants' Objection to the Denial of a Stay of the Sheriff's sale (and any related requests to dismiss any of the monition actions) is **DENIED.**

³⁹ 1 Wilm. C. § 4-181 (“At any time after the expiration of twenty days next following the return of the sheriff upon such monition, unless before the expiration of said twenty days the said judgment and costs on said judgment shall be paid . . . a writ of venditioni exponas shall issue out of the office of the said prothonotary directed to the sheriff commanding the sheriff to sell the property . . .”).

⁴⁰ See Super. Ct. Civ. R. 132 (a)(4)(iv) (requiring *de novo* review of case-dispositive matters).

VI. DEFENDANTS' MOTION FOR REARGUMENT ON COMMISSIONER'S DENIAL OF CONTEMPT

Defendants appear to argue that the Commissioner's August 8th order prevents the County from assessing costs relating to Defendants' failure to pay school and property taxes. The Court does not read the Commissioner's order as providing a broad exclusion on the assessment of costs. Rather, the Commissioner stated that "costs shall be calculated only to begin upon the filing of the amended monition."⁴¹ The costs subsequently assessed by the County complied with that order, i.e., they accumulated only from the time of the amended monition.⁴² There being no showing on the record presented here that the Commissioner's order is based upon clearly erroneous fact findings, is contrary to law, or is an abuse of discretion, the Defendants' Motion for Reconsideration thereof is **DENIED**.⁴³

VII. DEFENDANTS' RECUSAL MOTION

Defendants ask that the Presiding Judge recuse himself in this matter stating only that "recusal of the Presiding Judge would assist in the relief in which the

⁴¹ Comm'r Order, Aug. 8, 2013 (Trans. ID #53558227).

⁴² See New Castle Cnty's Response to Def.'s Mot. for Contempt (Trans. ID #54288639), at 3.

⁴³ Super. Ct. Civ. R. 132 (a)(3)(iv) (Court reconsider such a non-case-dispositive matter only upon a showing in the record of clear error, violation of law or abuse of discretion).

Defendants’ are seeking.” This is no valid basis for recusal.⁴⁴ Instead, a judge determines whether disqualification is appropriate using Delaware’s well-established two-part inquiry:

First, the judge must be satisfied, “as a matter of subjective belief,” that he or she can proceed to hear the matter free of bias or prejudice. Second, even if the judge believes that he or she is free of bias or prejudice, the judge must objectively examine whether the circumstances require recusal because “there is an appearance of bias sufficient to cause doubt as to the judge’s impartiality.”⁴⁵

After a careful examination of the record, the Court is unaware of, and the Defendants fail to identify, any subjective or objective factor that would necessitate disqualification. Therefore, the Motion for Recusal is **DENIED**.

VIII. DEFENDANTS’ MISCELLANEOUS MOTIONS

The Court has reviewed the Defendants’ other motions – both those addressed by the Commissioner and those raised for the first time now – and there has been no showing that the Commissioner’s orders were the product of findings of fact that are clearly erroneous, were contrary to law, were an abuse of discretion, or otherwise, as to new claims, are meritorious.

⁴⁴ See *BAC Home Loans Servicing v. Brooks*, 2012 WL 1413608, at * (Del. Super. Ct. Feb. 2, 2012) (“In the absence of genuine bias, a litigant should not be permitted to ‘shop’ for a judge of his or her choosing.”).

⁴⁵ *Stevenson v. State*, 782 A.2d 249, 255 (Del. 2001) (quoting *Los v. Los*, 595 A.2d 381, 384-85 (Del. 1991)); see also, *Weber v. State*, 547 A.2d 948, 951-52 (Del. 1988) (quoting the Delaware Code of Judicial Conduct).

Consequently, the Court cannot and will not reconsider: (1) the Defendants' claim the First Assistant City Solicitor should be "removed" from participation in their cases; or (2) that there need be "consolidation" of the City and County matters. The Court will not order Mr. Peter Kostyshyn's removal from prison to attend to these monition matters along with his siblings. Nor will the Court order production to Mr. Peter Kostyshyn the volumes of documents he suggests he is due. And lastly, the Court declines the Defendants' invitation to issue "emergency injunctions" against the Mayor of Wilmington and the Sheriff of New Castle County.

CONCLUSION

For the reasons set forth above, Defendants' Motion for Reconsideration of the Commissioner's Orders and Appeal from the Commissioner's Findings and Recommendations are **DENIED**.

IT IS SO ORDERED.

/s/ Paul R. Wallace

PAUL R. WALLACE, JUDGE

Original to Prothonotary
cc: Counsel via File & Serve
Ms. Patricia R. Kostyshyn
Mr. Miroslaw E. Kostyshyn
Mr. John J. Kostyshyn
Mr. Peter T. Kostyshyn