

THE HONORABLE JAMES L. ROBERT

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

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8	UNITED STATES OF AMERICA,)	Case No. 2:12-cv-01282-JLR
9)	
10	Plaintiff,)	CITY OF SEATTLE’S OPPOSITION TO
11	v.)	EMERGENCY MOTION TO
12)	INTERVENE (DKT. #427)
13	CITY OF SEATTLE,)	Noted For: December 5, 2017
14)	
15	Defendant.)	
16)	
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18)	
19)	

I. Introduction

The Estate of Charleena Lyles’s Emergency Motion to Intervene (Dkt. #427) presents neither an emergency nor a basis to intervene. The Court should deny the motion outright, or at a minimum should re-note it on an ordinary briefing schedule for no sooner than December 22, in accordance with its Local Rules. Local Rules W.D. Wash. LCR 7(d)(3).

II. Background

On November 20, the Court ordered supplemental briefing on the results of SPD’s Force Review Board (“FRB”) review of the officer-involved shooting death of Charleena Lyles, and has asked what bearing the FRB’s review should have on the City’s pending motion for full and effective compliance. Nov. 20 ord. (Dkt. #424). The City, DOJ, and Community Police Commission have filed

1 responses to that order today. The Estate apparently believes that the Court is currently “fully
2 review[ing]” that incident. Mot. at 2. That is not the City’s understanding. Other courts will adjudicate
3 the facts underlying Ms. Lyles’ tragic encounter with SPD officers and determine if anyone is liable.
4 The Estate has sued the City and the two officers who shot Ms. Lyles in King County Superior Court.
5 *Lyles v. City of Seattle*, No. 17-2-23731-1 SEA. The Estate has declined to assert any claims in that
6 suit arising under federal law. The Estate is also participating in the King County Prosecutor’s inquest
7 into Ms. Lyles’s death, which is set to convene in April 2018. *In re Inquest into the Death of Charleena*
8 *Lyles*, No. 517IQ9301 (King County Dist. Ct.).

9 Fifteen days after the November 20 order, the Estate filed this “emergency” motion to
10 intervene. The Estate has had its current personal representative since his appointment on November
11 1, 2017. Sharifi Decl., Ex. A (Nov. 1 Clerk’s Minutes, *In re Estate of Lyles*, No. 17-4-04905-8SEA,
12 King County Super. Ct.) (appointing Eric Watness), Ex. B (Nov. 3 Letters of Administration). The
13 Estate did not contact counsel for the City before filing its motion to intervene. Sharifi Decl. ¶ 2. The
14 Estate points to no exigency requiring an immediate decision on its motion. Although the parties must
15 file supplemental briefs by the end of this week, there is no hearing scheduled on any issue, and no
16 indication that the Court could not consider this motion on an ordinary briefing schedule.

17 **III. Argument**

18 The Estate cannot satisfy the intervention requirements of Federal Rule of Civil Procedure 24.
19 As the Estate recognizes, intervention as of right via Fed. R. Civ. P. 24(a) requires, among other things,
20 a “significant protectable interest relating to the property or transaction that is the subject of the action”
21 and evidence that the disposition of the action “may, as a practical matter, impede the applicant’s ability
22 to protect its interest.” *Citizens for Balanced Use v. Mont. Wilderness Ass’n*, 657 F.3d 893, 897 (9th
23 Cir. 2011). This Court is presiding over a case focused on an alleged pattern or practice of the use of

1 excessive force and a Consent Decree intend to end any pattern and practice, not over any individual
2 incident in which a party alleges excessive force. Whatever the Estate’s “significant protectable
3 interests” might be, they are not at stake in this litigation. By the Estate’s logic, any party to a suit
4 claiming that a Seattle police officer used excessive force would have a right to intervene in this case.
5 This Court will not adjudicate the events that led to Ms. Lyles’s death; no party to this proceeding is
6 asking it to. Any Court determination that touches upon those events will not bind any party to either
7 the Estate’s state court suit or the inquest into Ms. Lyles’s death.

8 The Estate fares no better even under the relaxed requirements for permissive intervention via
9 Rule 24(b). That Rule requires the putative intervenor to show “independent grounds for jurisdiction.”
10 *Perry v. Prop. & Official Proponents*, 587 F.3d 947, 955 (9th Cir. 2009) (citation omitted). There are
11 no independent jurisdictional grounds here. The Estate does not suggest a basis for federal jurisdiction
12 and has, as noted, declined to pursue federal claims arising out of Ms. Lyles’s death. Permissive
13 intervention also requires that the intervenor’s claim and the case in which she seeks intervention have
14 a “question of law or a question of fact in common.” *Id.* The Estate has not pointed to a common
15 question of law or fact. And even if the Estate could satisfy the requirements for permissive
16 intervention, the Court must still exercise its discretion, considering factors like the “nature and extent
17 of the intervenor’s interest,” and “whether the intervention will unduly delay or prejudice the
18 adjudication of the original parties’ rights.” *Id.* at 955-56 (upholding district court’s discretionary
19 denial of permissive intervention, recognizing that intervention would “consume additional time and
20 resources of both the Court and the parties that have a direct stake in the outcome of these
21 proceedings”) (citations omitted). The Court’s discretion should not stretch so far as to permit this
22 action, focused for five years on a broad Consent Decree, to become a referendum on a single tragic
23 incident.

1 At a minimum, the Court should re-note this motion in accordance with its local rules, and
2 permit the parties to offer a less rushed response. The Court’s local rules do not permit “emergency”
3 motions, and they allow motions noted for same-day consideration only in the circumstances
4 enumerated in Local Civil Rule 7(d)(1). Putting that aside, there is no emergency here, and any urgency
5 is a product of the Estate’s delay in seeking relief. The Estate has not contacted counsel for the City
6 about its desire to intervene, Sharifi Decl. ¶ 2, and it offers no evidence to explain its decision to wait
7 15 days after the Court’s November 20 order. The only evidence is that the Estate has had the same
8 personal representative since no later than November 3. Sharifi Decl., Exs. A-B. Because there is no
9 hearing scheduled on any issue, including the issues underlying the November 20 order, there is no
10 reason that the Court could not hear the Estate’s motion for intervention on the regular third-Friday
11 schedule of Local Civil Rule 7(d)(3).

12 **IV. Conclusion**

13 For the reasons stated above, the City requests that the Court deny the Estate’s motion to
14 intervene. If the Court does not deny the motion outright, then it should re-note it for no sooner than
15 December 22, in accordance with Local Civil Rule 7(d)(3).

16 DATED this 8th day of December, 2017.

17 For the CITY OF SEATTLE

18 s/Josh Johnson

19 Josh Johnson

20 Assistant City Attorney

21 Seattle City Attorney’s Office

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CERTIFICATE OF SERVICE

I hereby certify that on December 8, 2017 I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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DATED this 8th day of December, 2017, at Seattle, King County, Washington.

*s/*Josh Johnson _____
Josh Johnson, Assistant City Attorney

THE HONORABLE JAMES L. ROBART

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

CITY OF SEATTLE,

Defendant.

Case No. 2:12-cv-01282-JLR

**[PROPOSED] ORDER DENYING
EMERGENCY MOTION TO
INTERVENE (DKT. #427)**

This matter came before the Court on The Estate of Charleena Lyles’ Emergency Motion to Intervene (Dkt. # 427). Having reviewed the motion and all material submitted in opposition or reply, the Court orders as follows:

The Court DENIES the motion to intervene.

[or, in the alternative]

The Court concludes that there is no emergency warranting expedited consideration of the motion, and this directs the Clerk to RENEOTE the motion for December ____, 2017 *[no sooner than December 22, 2017]*. The parties may respond (and the Estate may reply) as provided in Local Rules

1 W.D. Wash. LCR 7(d)(3).

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3 DATED this ____ day of December, 2017.

4
5
6 _____
7 Hon. James L. Robart
8 United States District Court Judge

9 Presented by:

10 s/ Josh Johnson

11 Josh Johnson, WSBA #33570

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