

UL v. Carteret (Plainsboro) 6/18 (1987)  
Letter Brief in support of Civic League's  
motion for Enforcement of ~~the~~ Litigant's Rights

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June 18, 1987

VIA LAWYERS SERVICE

The Honorable Eugene D. Serpentelli  
 Assignment Judge, Superior Court  
 Ocean County Court House, CN 2191  
 Toms River, NJ 08754

RE: Urban League, et al. v. Carteret, et al.  
 (Plainsboro)  
 Civil No. C 4122-73

Dear Judge Serpentelli:

This Letter Brief is respectfully submitted in support of the Civic League's Motion for the Enforcement of Litigant's Rights. There can be no serious question here of Plainsboro's persistent refusal to comply with the terms of the Consent Order reviewed and signed by this Court on July 30, 1985. The precise extent of Plainsboro's contravention of that Order is difficult to ascertain, however, because the defendant municipality has not even complied with the reporting requirements of that Order. Defendant's failure to comply with this provision of the Order effectively prevents the Civic League from monitoring the settlement. Moreover, considered in conjunction with the sequence of events, or nonevents, described in the Certification submitted herewith, it suggests that Plainsboro believes it can disregard the Order of this Court with impunity. Rather, it is apparently the Township's view that periodic self-serving statements of a vague, future intent to meet its obligations under that Order should suffice.

This is exactly the kind of municipal conduct decried by the New Jersey Supreme Court in Mount Laurel II. As Justice Wilentz noted: "We have learned from experience, however, that unless a strong judicial hand is used, Mount Laurel will not result in housing, but in paper, process, witnesses, trials and appeals." So. Burlington County N.A.A.C.P. v. Tp. of Mount Laurel, 92 N.J. 158. Plainsboro's deliberate efforts to delay implementation of the agreed upon settlement have been all too successful. It is respectfully submitted that the Township's conduct should be condemned by this Court and that specific performance pursuant to the terms of that settlement should be directed forthwith. In the

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alternative, the Civic League plaintiffs respectfully request that the matter be referred to a Master, the fallback mechanism set forth at paragraph 7 of the Consent Order.

Finally, since Plainsboro's wilful refusal to comply with the Order of this Court compelled the instant application, as a matter of fundamental fairness it should be charged with the Civic League's enforcement expenses. As Judge Pressler has observed:

"Although the general rule continues to require each party to bear his own counsel fees except as otherwise provided by R. 4:42-9, [R. 1:10-5], recognizes that as a matter of fundamental fairness, a party who wilfully fails to comply with an order or judgment entitling his adversary to litigant's rights is properly chargeable with his adversary's enforcement expenses."  
Pressler, Current N.J. Court Rules, Comment R. 1:10-5.

It is respectfully submitted that the Civic League plaintiffs should accordingly be awarded counsel fees pursuant to R. 1:10-5 in connection with enforcing the Order of this Court, the amount to be determined following the submission of an affidavit of services .

Respectfully yours,

cc/Joseph Stonaker, Esq.