

UL v. Centbet (Piscataway)

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(1985)

Letter addressing potential conflicts

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THE STATE UNIVERSITY OF NEW JERSEY
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School of Law-Newark • Constitutional Litigation Clinic
 S.I. Newhouse Center For Law and Justice
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JUDGE SERPENTELLI'S CHAMBERS

5289

January 30, 1985

Re: Urban League of Greater
 New Brunswick v. Borough of
 Carteret (Piscataway)

Dear Judge Serpentelli:

On Monday, January 28, 1985, the day previously scheduled to begin the vacant land hearing in Piscataway Township, co-counsel for the Urban League plaintiffs learned for the first time of a situation which may have an appearance of conflict of interest. I am writing to apprise the Court of this situation and to suggest a means of proceeding which will eliminate the appearance of conflict but not disrupt the present course of the hearing.

We are now informed that Rutgers University, by counsel, will seek to be heard with respect to site 55 on the list of vacant lands in Piscataway. This site is located in the southwestern portion of Piscataway and surrounds, but does not include, site 56, which Rutgers is in the process of developing as a hotel and conference center. Site 55 was not included in either the Urban League's initial list of suitable sites or Ms. Lerman's November 10, 1984, report. It was, however, evaluated subsequently by Ms. Lerman as a result of a suggestion made by counsel for Piscataway at the December 17, 1984, case management conference, and is discussed in her January 18, 1985, supplemental report. Without addressing the merits here, it is sufficient to note that Ms. Lerman finds the site suitable for high density residential development, but that there may be legal constraints on zoning state lands for this purpose, based on the case of Piluso v. Rutgers, The State University of New Jersey, 60 N.J. 142 (1972). We are informed that Rutgers does not desire to develop the land for residential uses and therefore plans to contest Ms. Lerman's report.

The appearance of conflict arises because three of the four co-counsel appearing for the Urban League in this case (Ms. Williams, Mr. Neisser and Mr. Payne) are employees of Rutgers University, working with students as part of the clinical instruction program at the Rutgers Law School - Newark. It is apparent that their representation of their

*Knows
 Tell Payne
 Partial substitution
 re OK*

Revised ✓

client, the Civic League of Greater New Brunswick, might require them to take a position contrary to that of their employer, Rutgers.

The fourth co-counsel, Mr. Gelber, is not associated with Rutgers in any way other than as co-counsel in this case, and therefore is neither in conflict nor appearance of conflict. See RPC 1.10 and ABA Commentary thereto. However, as the Court is aware, Mr. Gelber must of necessity withdraw his appearance in the entire Urban League case within a matter of weeks because of a change in employment, and it appears possible that all aspects of the vacant land hearing will not be completed before his departure. After Mr. Gelber's withdrawal, the three Rutgers Law School counsel had anticipated assuming total responsibility for the case, including any continuance of the Piscataway hearings. As a realistic matter, therefore, the possibility of conflict must be addressed.

We do not believe that there is an actual conflict of interest in this situation, because of the newly-adopted Rule of Professional Conduct, RPC 5.4(c), which provides:

A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

Since the Rutgers Law School attorneys cannot be instructed by the University, they need not advocate the University's position with respect to site 55. Moreover, simply by virtue of their membership in the university community, they have no inchoate obligation to do so, and none of their other university duties have placed them in a position to have either knowledge of or responsibilities for the university's land management policies. Therefore, the Rutgers Law School attorneys are free to proceed with respect to site 55 as their professional judgment and client's interest dictate.

We do recognize, however, that there remains an appearance of conflict, cf. RPC 1.7(c)(2), which we are anxious to alleviate. We believe that this can be accomplished simply, without delaying or disrupting this complex case at this late stage in its resolution. Having consulted with our client about this problem, the Civil League is prepared to retain another volunteer attorney to handle all questions relating to site 55, with present counsel retaining control of all other aspects of the case. Since any factual issues are site-specific, and any legal issues are peculiar to Rutgers' status as the State University, we believe that this division of responsibility would not be cumbersome, and that the hearing could proceed as now scheduled on February 11,

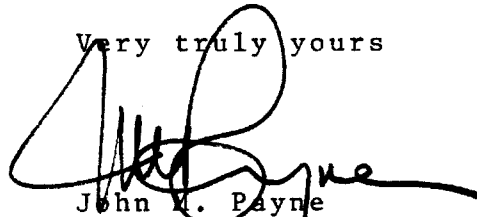
Hon. Eugene D. Serpentelli
January 30, 1985
Page 3

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Should new counsel (or counsel for the University) request additional time to prepare, or should the Court otherwise think it preferable, we believe that it would also be feasible to sever the site 55 issue from the remainder of the vacant land hearing. If this is done, we suggest that the Court not delay rendering a decision on fair share and non-compliance after the February 11 hearing has concluded, but instead make its order and the subsequent remediation proceeding conditional upon an increase in the fair share number if the Court later finds that site 55 or a portion thereof is factually and legally available for development of Mount Laurel housing. This would allow the master to begin work immediately, so that Piscataway would not fall even further behind the other towns in this litigation in coming into compliance.

Keeping in mind that it is the Township and not the Urban League which has put site 55 in issue, that the Township has otherwise sought to exclude sites rather than include them, and that it has consistently sought to delay resolution of the larger issue before the Court while continuing its non-residential development process as vigorously as possible, we respectfully ask the Court to accept partial substitution of counsel, with or without severance of site 55 from the remainder of the hearing, so that vindication of the housing opportunities that low and moderate income persons have sought in Piscataway since 1974, and to which they have been entitled since 1976, will not be delayed once again.

Very truly yours



John V. Payne
Attorney for the Urban
League Plaintiffs

JMP/id

cc: all Piscataway counsel