

- letter to Mallach stating his fees would not be paid until the court orders
- letter to plaintiff re fees
- letter to NCDH re fees

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CAC001550L

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RICHARD F. PLECHNER
ALAN A. DAVIDSON

April 1, 1976

Mr. Edward Holmgren
NCDH
1425 H Street, N.W.
Washington, DC 20005

Re: Urban League of Greater New Brunswick v.
The Mayor and Council of the Borough of
Carteret, et al, Docket No. C 4122-73

Dear Mr. Holmgren:

I am in receipt of two invoices sent to this office to cover out-of-pocket expenses of Ernest Erber in the sum of \$202.68 and to cover his availability for depositions on staff time in the sum of \$400.00. It is the position of this office that NCDH is not entitled to payment, nor is Mr. Erber.

Mr. Erber was not subpoenaed to testify but, rather, was subject to deposition on notice. I call your attention to Rule 4:14-7(b) which says, in pertinent part, that one who is subpoenaed as an expert witness is entitled to out-of-pocket expenses and loss of pay, but specifically this rule excludes those subject to deposition on notice. I would further point out that Mr. Erber, as a staff member of NCDH, would not lose any pay by attending the deposition. Instead it would have been NCDH that would have lost Mr. Erber's services and I am not able to say what the amount of that loss would be.

I suggest that you forget about having either invoice paid as the rules of court are squarely against you.

Yours truly,

RICHARD F. PLECHNER

By Alan A. Davidson
Alan A. Davidson

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July 7, 1976

Mr. Alan Mallach
108 West State Street
Trenton, N.J. 08608

Re: Urban League of Greater New
Brunswick v. Borough of
Carteret, et al

Dear Mr. Mallach:

I am in receipt of your correspondence dated July 1, 1976. With reference to same I regret to inform you, however, that your fee and expenses shall not be paid until so ordered by Judge Furman or, if appealed, by the Supreme Court.

As you no doubt remember, your qualifications as an expert were challenged at the time of the trial. They will continue to be challenged in the appeals which shall follow. Therefore, we have no intention of paying for the deposition of an expert, who may ultimately be judged as one with ample knowledge but little expertise.

I shall look forward to the anticipated motion before Judge Furman with regard to this matter.

Yours truly,

RICHARD F. PLECHNER

By



Alan A. Davidson

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RICHARD F. PLECHNER
ALAN A. DAVIDSON

April 22, 1976

Daniel A. Searing, Esq.
NCDH
1425 H Street, N.W.
Washington, DC 20005

Re: Urban League of Greater New Brunswick, v.
The Mayor and Council of the Borough
of Carteret, et al Docket No. C-4122-73

Dear Mr. Searing:

This letter is in response to yours of April 20, 1976. I must say that I am in total disagreement with your position.

Although I must commend you for properly quoting R. 4:10-2(d)(2), I do not believe that Ernie Erber is entitled to a reasonable fee as per your argument. Mr. Erber is an employee of the National Committee Against Discrimination in Housing and not an expert whose services were sought as an independent contractor, so to speak.

Although the Rule does not state specifically my position as outlined above, I believe that it can be properly inferred from the Rule itself - i.e. "an expert or treating physician" is generally one who is asked to testify and who otherwise is an employee or a consultant to someone other than the party to the suit. As NCDH saw fit to use its own employee it will be the position of the defendants collectively that no reasonable fee will be paid to Mr. Erber for his attendance at depositions.

Yours truly,

RICHARD F. PLECHNER

By Alan A. Davidson
Davidson