UL v. Piscataway (1984)

Letter ~~reject~~ requesting to join the motion made by Mr. Paley on 7/19/84 to strike all testimony

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July 16, 1984

Honorable Eugene Serpentelli,
Judge, Superior Court of N.J.
Ocean County Court House
CN 2191
Toms River, N.J. 08754

Re: URBAN LEAGUE, et al. v. TOWNSHIP OF PISCATAWAY, et als.
Docket No. C 4412-73

Dear Judge Serpentelli:

I am writing this letter for the purpose of joining in the motion made by Mr. Paley, which is returnable before Your Honor on July 19, 1984.

Like Mr. Paley, I first learned on June 21st of this year that Mr. Meiser and Mr. Eisdorfer had attended the third meeting of the consensus methodology experts which was apparently held on March 2nd, of this year. This information was communicated to me via a telephone conversation that I had with one of the attorneys for Parsippany-Troy Hills in the Morris County litigation presently pending before Judge Stillman. It came up quite by accident when in passing the attorney inquired as to why the attorneys in the Urban League case had not objected to the presence of these gentlemen at this meeting. Like Mr. Paley, I was shocked

by this revelation. My shock was based upon the fact that counsel for all parties had specifically inquired of the court as to whether or not counsel would be permitted to attend these meetings and were very strongly discouraged from doing so. In fact, Janet LaBella, one of the attorneys for the Urban League specifically requested permission to attend the last meeting of the planners and my understanding is that she again was discouraged from so attending.

Despite this, at the apparent invitation of the court, two attorneys who represent virtually identical positions to the positions of the plaintiffs in these consolidated cases, were not only permitted to attend, but asked to attend. Apparently, they were asked to attend because it was felt that somehow, there should be input at these meetings from someone representing the "public interest". The fact of the matter is that the Public Advocate's office is just what its name suggests -- an advocate. In the Morris County case, it is advocating the position which is contrary to the position taken by most of the defendant Municipalities in that case. That position is virtually identical to the position taken by the plaintiffs, including the public interest plaintiff in this case. To have invited the public advocate to attend these meetings when counsel for the defendant Municipalities were not permitted to attend, is tantamount to permitting one side to talk to and have input into the development of this methodology to be presented by a court appointed expert and to deny the same opportunity to the other side.

It is analogous to the idea of allowing defendant's counsel in an automobile negligence case to be in the same room with plaintiff's doctor as plaintiff's doctor is preparing his expert report, and to make comments and suggestions during the preparation of that report, out of the presence and without the knowledge of plaintiff's counsel.

To argue that the Municipalities positions were represented by the fact that their planner experts were in attendance at the meeting begs the question. Planners are not advocates. Their expertise and their training do not lend themselves to attempting to impose their views on others in the same way that a lawyer's training is designed from the very beginning to accomplish that purpose.

The arguments by Mr. Mallach to the effect that the presence of Messrs. Meiser and Eisdorfer in no way influenced the outcome of the consensus methodology sessions overlooks the obvious. Since at least one issue had not been resolved at the time of their attendance, there is no way of ever being able to accurately gauge the effects of their attendance on the voting pattern which existed concerning that factor, i.e. the wealth factor. Apparently, this was a close call among the members and if the attendance and input of Eisdorfer and Meiser subconsciously influenced just one vote, it could have had a substantial impact on the outcome of the meetings.

As is frequently pointed out to Municipal attorneys in ethics opinions of the Advisory Committee on Ethics, it is not the issue of impropriety, but the appearance of impropriety which is the controlling factor in determining the proper course of conduct. For a Municipal attorney to explain to his governing body who are conscientiously attempting to abide by ethical standards and adhere to the law, that their attorney was not allowed to attend meetings which would have a profound influence on the future course of their Municipality, while at the same time attorneys who represented the contrary viewpoint were not only permitted to attend those sessions, but invited to attend, detracts from the credibility of the Municipal attorney.

There is no possible explanation that I can conceive of which would be understandable to a Municipal official or to the members of the general public for that matter.

For these reasons, I think it is inherent in the responsibility of the court in this matter that the testimony of the court appointed expert be stricken.

Respectfully submitted,

WILLIAM C. MORAN, JR.

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cc: All counsel of record