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June 2, 2007

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## **Francis J. Orlando, Jr., A.J.S.C.**

Hall of Justice

101 S Fifth St – Suite 670

Camden, New Jersey

RE: Paff v. Lawnside Borough Council

Docket No. L-7027-06

**Returnable: June 8, 2007**

Dear Judge Orlando:

Please accept this letter in lieu of a more formal brief in opposition to Defendant's Cross-Motion and in further support of Plaintiff's Motion.

### **REGARDING THE AMENDED COMPLAINT**

Beginning on page 4 of its Letter Brief, Defendant makes two arguments against Plaintiff's application to amend his complaint. First, Defendant argues that since the Third Count of the present complaint already alleges that Defendant's nonpublic meeting minutes are not "reasonably comprehensive" [sic]<sup>1</sup> there is no need for an amended Third Count that pleads the same argument.

¶ 14 of the present Third Count begins with the following qualifier:

On information and belief, and based on Counsel's September 11, 2006 statement that Defendant's nonpublic meeting minutes "are not as 'formal' as are the open session meeting minutes" . . .

This qualifier was necessary at the time the original complaint was filed because the Plaintiff had not then seen any of the nonpublic meeting minutes he alleged were deficient.

Now that Plaintiff has seen and reviewed the nonpublic minutes, he can now revise his Third Count so that it pleads facts instead of supposition. Amendment is appropriate and necessary because pleading rules require complaints to plead facts. Glass v. Suburban Restoration Co., 317 N.J. Super. 574, 582 (App.Div.1998).

Second, Defendant argues that the relief demanded in the First Count of the present Complaint is duplicative of that demanded in the Fourth Count of the proposed Amended Complaint. The First Count of the present Complaint alleges that the motions Defendant passed prior to going into nonpublic session were not compliant with N.J.S.A. 10:4-13. The Fourth Count of the proposed Amended Complaint challenges whether any of the exceptions within N.J.S.A. 10:4-12b permitted Defendant to meet with redevelopers without the public present. Since these are distinct issues, Defendant's argument that they are duplicative of one another is incorrect.

### **REGARDING RELIEF UNDER R.1:10-3.**

At page 2 of its Letter Brief, Defendant argues that relief under R.1:10-3 is improper because there "has been no determination that the Defendant violated [the] April 13, 2007 Order." Defendant incorrectly believes that a judicial determination that a court order has been violated is a necessary prerequisite to maintaining an application under R.1:10-3.

An R.1:10-3 application is appropriate whenever a party believes that his adversary failed to comply with an order of the court. In Loigman v. Township Committee of Tp. of Middletown, 308 N.J. Super. 500 (App. Div. 1998), a case relied upon by Defendant, the plaintiff applied for relief under R.1:10-3 because he believed that certain actions taken by the defendant public body at its January 21, 1997 nonpublic meeting violated the court's August 30, 2006 judgment. When the plaintiff in Loigman filed his R.1:10-3 application on

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<sup>1</sup> N.J.S.A. 10:4-14 requires minutes to be "reasonably comprehensible" not "reasonably comprehensive."

January 30, 1997, he of course had not *already* received a judicial determination that the actions taken by Defendant at its January 21, 1997 violated the August 30, 2006 judgment. The very purpose of the R.1:10-3 application was to *establish* that such a violation had occurred.

In the present case, the Court ordered Defendant to file and serve a certification that explained its redaction to its nonpublic meeting minutes. Plaintiff applied for relief under R.1:10-3 because he believes that Defendant's certification does not contain the level of detail required by the Order. Plaintiff has not, of course, already received a determination that Defendant's certification violated the Order. Rather, his present application seeks to establish that violation.

#### **REGARDING THE CROSS-MOTION**

Defendant has cross-moved for "an Order confirming that the April 27, 2007 submission of [counsel] complied with the Court's Order of April 13, 2007." Since the cross motion seeks the opposite of Plaintiff's motion, Plaintiff relies upon the arguments he has already made in support of his application for relief under R.1:10-3.

Respectfully,

John Paff