

Regarding Future Claims for Fees and Costs. (Doc. 27) The Order provides:

1. Plaintiffs have presented Defendants with invoices for fees and costs performed from the time period August 30, 2006 through February 15, 2008. The parties have agreed to liquidate those claims upon the payment of \$5,846.60 to paralegal Megan Buffington, and the payment of \$33,477.50 to Heberle & Finnegan, PLLC. **It is hereby Ordered** that payment of these amounts shall be made by Defendants by separate checks to each of these parties in these amounts. Payment shall be made no later than 90 days [June 26, 2008] following entry of this Order. If Defendant fails to make payment as agreed herein, Plaintiffs' claim for payment to Heberle & Finnegan, PLLC shall revert to the full amount of the invoice; \$36,988.35. (Doc. 27, ¶ 1)

No payment has been made. Defendant's failure to act timely has automatically cost the City an additional \$3,512.00, and exposed the City to liability for damages, the fees and costs incurred in this motion, and civil fines.

2. During February and March 2008, Attorney Jarvis assured Counsel for Plaintiffs that he would request the checks immediately upon entry of the Order and that his secretary Pal Brooks would follow through with the payment.

3. In late April (about a month after the Order was entered) Counsel for Plaintiffs inquired about the status of the payments. Attorney Jarvis and secretary Brooks each informed Counsel for Plaintiffs that in early April, Ms. Brooks submitted the invoices to the Finance Department, but with an incorrect number. According to Ms. Brooks, when "Finance" told her about the error, she immediately "hand walked" the corrected invoice number "up two floors to Finance." If this is true, the Finance Department had the invoices, had determined that Ms. Brooks submitted an invalid invoice number and had received the corrected number sometime in the third week of April, 2008. On April 24, attorney Jarvis sent the following email to Plaintiffs:

From: Andrew Jarvis [mailto:jarva@law.ci.detroit.mi.us]
Sent: Thursday, April 24, 2008 1:03 PM
To: Mark Finnegan
Subject: Re: Fees

Mark:

Here is what I know:
"the check has been requested. Finnegan's Check it will probably available next Tuesday (April 29th) or Friday (May 2nd), and Buffington's the week after."

But the checks did not materialize and despite repeated inquiries, neither Jarvis nor Brooks would provide any explanation.

6. Attorney Jarvis and secretary Brooks have failed and refused to produce the checks or to tell Counsel for Plaintiffs when they will be available. They have refused to provide any real information and have ignored emails, faxes and phone calls. Each has claimed "there is no one else to speak to" about the situation. Jarvis told Counsel for Plaintiffs, "there is nothing I can do."

7. Jarvis and Brooks expect Plaintiffs and this Court to believe that there is no one in the City of Detroit who can so much as trace the requisition for a court-ordered payment of nearly \$40,000.00, far less do anything to shake that payment loose. Jarvis and Brooks should appear immediately to show why the Order has not been complied with and to explain why they should not be held in contempt along with the City.

8. Attorney Jarvis' and Secretary Paul Brooks' willful failure to comply with the Court's March 28, 2008 Order is greatly harming the non-profit Plaintiffs and their counsel, a small private law firm, both of whom are acting at great expense against great odds to force the City of Detroit to stop mispending millions of dollars building dangerous, inaccessible curb ramps and sidewalks.

9. **Exact Repeat of Earlier Failure to Pay Ordered Fees.** This is exactly what happened the last time the Court entered a Stipulated Order requiring Defendant to pay fees, August 31, 2006. (Doc. 14, ¶ 6) Jarvis and Brooks failed then as they have now to take any action whatsoever, they failed to respond in any way to repeated requests for information, and did not even initiate the payment process until Plaintiffs drafted and announced their intent to file a motion for contempt.

10. **Failure to Build Thousands of Ordered Curb Ramps.** The City has repeatedly failed to comply with this Court's Orders in other ways. As one of many examples, although the August 31, 2006 Order required the City to build ADA compliant ramps, the City admitted to the Court that it continued to resurface city streets while failing to install nearly 4,000 Court-Ordered ramps.

11. **Upcoming Contempt Motions.** The City continues to violate the Court's August 31, 2006 in myriad ways. Plaintiffs have drafted and will file motions for contempt for Defendant's failures to correct deficiencies on the Woodward Project, the Bagley (Mexican Village) Project, and the East River Walk. These corrections were part of the Court's August 31, 2006 Court Order. All deadlines have passed, and these projects are still not accessible to or readily usable by Plaintiffs Paralyzed Veterans of America and all similarly situated persons. In addition, the City has failed to correct any of the thousands of admitted defective curb ramps in the "special survey area." (Doc. 14, ¶ 5). The City is more than one year past the court-ordered deadline and gives no sign of any intention to comply.

The Court Must Act Immediately to Protect the Integrity of Its Orders, and to Create Access for Thousands of Persons With Disabilities.

12. Plaintiffs implore this Court to act promptly to sanction the City's, Attorney Jarvis' and secretary Brooks' misconduct, and to send the message that the Court expects Defendant and its departments to follow the Orders of the Court for the remainder of this lawsuit.

13. Plaintiffs ask the Court to direct Jarvis and Brooks to show cause why they should not be held in contempt and held personally and jointly liable along with the City of Detroit for:

- a. the difference between the amount agreed to for timely payment and the full amount of the invoice,
- b. damages to the Plaintiffs, and
- c. the additional attorney fees and costs generated by their failure to comply with the Order.

14. Plaintiffs also ask the Court to order the City, attorney Jarvis and secretary Brooks to pay Plaintiffs \$500.00 per day until they satisfactorily explain under oath their failure to comply with the Order and provide a date certain for the payment. Plaintiffs ask the Court to award an additional \$250.00 for each day that Defendant fails to pay the full \$36,988.35 to Heberle & Finnegan, PLLC and \$5,846.60 to paralegal Megan Buffington after June 26, 2008.

15. Plaintiffs ask the Court to convene a scheduling conference requiring attendance by parties with authority for each side, and schedule a hearing as soon as possible to permit Plaintiff Paralyzed Veterans of America to testify about the harm caused by Defendant's repeated failures to comply with any of

the Court's Orders in this lawsuit, including the attorneys fees Orders.

s/ J. Mark Finnegan
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MEMORANDUM IN SUPPORT

Compliance With Local Rule 7.1

By email dated June 11, 2008 (attached hereto), Plaintiffs notified attorney Jarvis of the legal basis for this contempt motion and of Plaintiffs' intent to file if the City did not conform, and attached a draft of this motion and memorandum. As of this writing, neither the City, attorney Jarvis nor Ms. Brooks has responded or paid the fees.

APPLICABLE LAW

Civil contempt sanctions are designed to enforce compliance with court orders and to compensate injured parties for losses sustained. Accordingly, a fine that is payable to the complainant as compensation for damages caused by the contemnor's noncompliance or that is contingent upon performing the act required by the court's order is civil in nature. *United States v. Koubriti*, 305 F.Supp.2d 723 (E.D. Mich. 2003). The Court should properly use the remedy of civil contempt "to coerce the defendant into compliance with the court's order, and to compensate the complainants for losses sustained." *Electrical Workers Pension Trust Fund of Local Union # 58, IB EW, et al., v. Gary's Electric Service Company*, 340 F.3d 373, 378-79 (6th Cir. 2003)(internal citations omitted.)

The City's failure to pay the attorney fees and costs along with attorney

Jarvis and secretary Brooks' delay and obfuscation have caused Plaintiffs to divert resources to consult with their Counsel to authorize them how to proceed, and to act to enforce the Court's Order. Plaintiffs have also incurred additional attorney fees due to the City's, Jarvis' and Brooks' failure to comply immediately.

CONCLUSION

The City of Detroit understood that payment of fees and costs was integral to successful settlement of this matter. Attorney Jarvis told Plaintiffs that he would begin the payment process promptly upon the entry of the March 28, 2008 Order. He then failed to follow through in any meaningful way. The 90 day period for payment has passed. Despite Plaintiffs' agreement to make an incentive discount, Attorney Jarvis and secretary Brooks have ignored the Court's Order, have willfully failed to provide accurate information, are needlessly delaying payment, and are increasing the costs of litigation, while harming Plaintiffs. The Court should grant the relief requested.

s/ J. Mark Finnegan
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Certificate of Service

I hereby certify that on this 1st day of July, 2008, the foregoing Motion was filed electronically. Parties will receive notice of the filing through the Court's electronic filing system. Parties may access the document through the Court's electronic filing system.

/s/ J. Mark Finnegan