

5.20.14 #22

TO: The Honorable Chairman and Members of the
Board of County Commissioners

FROM: James L. Bennett, County Attorney *JLB*

SUBJECT: Recommendation to Grant Approval for the Interim County Administrator to
Execute the Joint Motion to Reopen Case and Joint Motion for Partial Dissolution
in the Case of United States of America v. Pinellas County, et al.
Middle District Case No. 80-cv-849

DATE: May 20, 2014

RECOMMENDATION: I RECOMMEND THAT THE BOARD OF COUNTY
COMMISSIONERS GRANT APPROVAL TO THE INTERIM COUNTY ADMINISTRATOR
TO EXECUTE THE MOTIONS AND ANY OTHER COURT-RELATED DOCUMENTS IN
THE ABOVE-STYLED ACTION.

DISCUSSION: In 1980, the U.S. Department of Justice (DOJ) sued Pinellas County (Board of
County Commissioners, UPS Board, Sheriff, Tax Collector, Clerk of Circuit Court, Property
Appraiser, Supervisor of Elections, and County Administrator) alleging that they pursued
policies and practices which discriminated against women, Spanish-surnamed Americans, and
Blacks with respect to recruitment, hiring, assignment, and promotional opportunities within the
agencies and departments of Pinellas County.

To resolve the lawsuit, the DOJ offered, and the Defendants agreed, to enter into a consent
agreement. The agreement, which was subsequently approved by the Federal District Court (see
attached order) and is subject to that Court's continuing jurisdiction, set forth interim and long-
term hiring and promotional goals, and permanently enjoined future discriminatory practices by
the Defendants.

Besides the general language forbidding the County Defendants from discriminating against
employees or applicants for employment, the agreement also included the following specific
requirements:

1. Goals:
 - A. As a long-range goal, Defendants agreed to recruit, hire, assign, and promote
Blacks, Spanish-surnamed Americans, and women in sufficient numbers so that
ultimately their composition in each job classification would be 11% Black, 2%
Spanish-surnamed Americans, and 25% female in traditionally non-female job
classifications, which are described in the agreement.
 - B. Certain job classifications were identified for an interim goal of a 33% fill of
existing vacancies by Blacks and Spanish-surnamed Americans.
 - C. The Sheriff was specifically required to seek to fill 40% of all vacancies at the
entry level for civil deputy, deputy, corrections officer, and bailiff with Blacks
and Spanish-surnamed Americans. Additionally, the Sheriff was required to seek

- to fill at least 25% of all vacancies in the entry-level job classifications of civil deputy, deputy, corrections officer, and bailiff with female applicants.
- D. If at any time subsequent to the entry of the agreement the Sheriff's office became able to achieve an employee complement at the entry-level job classifications of civil deputy, deputy, corrections officer, and bailiff of 10% black, 8% Spanish-surnamed Americans, and 8% female, the Sheriff could seek to dissolve the interim hiring requirements.
 - E. The Sheriff was also given an interim requirement to seek to fill at least 40% of all vacancies in entry-level non-uniformed positions with Blacks and Spanish-surnamed Americans, in a proportion relative to each group's representation in the agreement's long-range goals.
 - F. The Defendants were required to seek an interim goal of filling 40% of the vacancies and positions that were listed in an attached Appendix 1, and 25% of the vacancies listed in an attached Appendix 2, with qualified female applicants.
 - G. If at any time subsequent to the entry of the agreement the Defendants became able to achieve a work force of 25% female in the identified job classifications listed in Appendix 1, and 15% female of those listed in Appendix 2, they could move to dissolve those interim requirements.
 - H. The Defendants were required to engage in affirmative recruiting activities to reach its stated goals, and to discontinue past practices that were deemed discriminatory, such as internal-only advertisement of vacancies.
 - I. The Defendants were required to continue using what is referred to as "whole list" certification in preparing an eligible register, and to discontinue using such things as the "rule of 5" or "rule of 10," which limited the number of individuals that could be considered. For those positions that are filled by an unassembled examination, the Defendants were required to identify specific job qualifications and list those qualifications in notices and announcements.
 - J. The Defendants were required to maintain certain records relating to applications for employment, promotions, and training, and were required to file certain reports annually and some semi-annually with the DOJ.

In late 2013/early 2014, the DOJ and the County began discussing jointly moving to partially dissolve the Consent Agreement based upon the County's good record of compliance.ⁱ For the past several months, the County and the DOJ have been working diligently to achieve this goal. The attached motions are necessary to begin that process.

JLB:MAW:elb

Attachments (attachments referenced in Motions are not included)

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ⁱ This dissolution is with respect to all of the parties named above, with the exception of the Sheriff. The Sheriff is no longer a member of the Unified Personnel System, although the Sheriff was a member at the time the Consent Agreement was entered. The Sheriff and the DOJ have chosen to resolve the Sheriff's areas of the Consent Decree separately.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

MIDDLE DISTRICT
OF FLORIDA
TAMPA, FLORIDA

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

PINELLAS COUNTY, etc., et al.,

Defendants.

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1980

CASE NO. 80-S49 Civ-T-H

O R D E R

On July 24, 1980 the United States of America filed a complaint alleging that the Defendants have pursued and are continuing to pursue "policies and practices which discriminate against women, Spanish surnamed-Americans and blacks with respect to recruitment, hiring, assignment, and promotional opportunities within all the agencies and departments of Pinellas County [, Florida]." With the complaint the parties tendered for the Court's approval a consent decree setting forth interim and long range hiring and promotional goals, and permanently enjoining future discriminatory employment practices by the County. The consent agreement expressly stated, however, that it did not constitute an admission by the Defendants of any violations of law.

A conference was held on October 21, 1980 and the parties have since filed a joint motion and have modified the consent agreement to delete all provisions concerning promotions of existing employees, reserving those issues for later resolution.

The joint motion of the parties for entry of consent agreement is accordingly GRANTED, and the Clerk is directed to file the consent agreement tendered by the parties and to close the file for administrative purposes. Subject to the following stipulated amendments, the consent agreement is APPROVED and,

together with this order, shall constitute an enforceable decree of the Court:

1. On page 2 of the Consent Agreement, in the last sentence of the last paragraph of the Preamble, substitute for the sentence which begins with the words "The parties accept" and ends with "resolved herein" the following sentence:

"The parties accept this agreement as final and binding among the parties signatory hereto as to the issues resolved herein, except that the parties reserve for later resolution issues involving job classifications not specifically enumerated herein which have traditionally been filled by the promotion of incumbent employees."

2. On page 6 of the Consent Agreement, strike Paragraph 7 in its entirety. The parties do hereby reserve those promotional issues for later resolution.

3. On page 7 of the Consent Agreement substitute the following sentence for the first sentence of Paragraph 9:

"In the job classifications of the Defendants not listed in paragraphs 5, 6, 7 or 8 supra and excluding also those classifications which have traditionally been filled by promotion, the Defendants shall seek to achieve the interim goal of filling at least twenty-five percent (25%) of all entry-level vacancies (defined as job classifications with no supervisory responsibilities), taken as a group, with black and Spanish-surnamed American applicants in a proportion relative to each group's representation in the relevant long range goals set forth in this Agreement."

4. On page 8 of the Consent Agreement, strike Paragraph 11 in its entirety. The parties do hereby reserve those promotional issues for later resolution.

5. On page 9, on the seventh line from the top of Paragraph 16 strike "by November 1, 1980" and substitute the following: "within three (3) months from the entry of this Agreement."

6. On page 9, on the sixth line from the top of Paragraph 17 strike the date "July 1, 1978" and substitute October 1, 1978."

7. On page 11, on the third line of Paragraph 21 strike the date "March 1, 1981" and substitute "June 1, 1981."

8. On page 11, on the third line of Paragraph 21, strike the date "January 1, 1981" and substitute "April 30, 1981."

9. In Appendix III, on the fourth line of the second paragraph strike "July 1980" and substitute the date "October 1980."

IT IS SO ORDERED.

DONE and ORDERED at Tampa, Florida, this 10th day of December, 1980.



UNITED STATES DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

PINELLAS COUNTY, et al.,

Defendants.

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Cause No. 80-cv-849

JOINT MOTION TO REOPEN CASE

Come now Plaintiff United States of America ("United States") and Pinellas County to request that the Court reopen the above-captioned case to enable these parties to file a joint motion to dissolve the court-ordered Consent Agreement ("Agreement") as it applies to Pinellas County.¹ Reopening the case will also permit the United States and the Pinellas County Sheriff's Office ("Sheriff's Office") to dissolve the remainder of the Agreement, when appropriate. The United States and Pinellas County have conferred with Pinellas County Sheriff's Office ("PCSO"), and the PCSO does not oppose this motion.

¹ Although there are numerous signatories to the Agreement, all hiring authorities bound by the Agreement -- other than the Sheriff's Office -- are part of the Pinellas County Unified Personnel System ("UPS"), which is governed by the Pinellas County Personnel Board ("PCPB"). Therefore, the United States has been conducting one compliance review for all hiring authorities within the UPS and a separate compliance review for the Sheriff's Office. It is the understanding and intention of the United States and Pinellas County that all UPS hiring authorities are under the umbrella of "Pinellas County" for purposes of this motion and any related pleadings, and thus would be covered by the dissolution of the Agreement with respect to Pinellas County.

Factual and Procedural Background

On July 24, 1980, the United States filed a lawsuit against Defendants, alleging that they were engaged in a pattern or practice of discrimination in the recruitment, hiring, assignment and promotion of African Americans, Hispanics, and women, in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e, *et seq.* Thereafter, the parties settled on the terms of a Consent Agreement and filed a joint motion seeking approval of that Agreement, which was approved by the Court on December 10, 1980. *See* Dkt. Nos. 12 and 13.² That same day, the Court ordered the docket of *United States v. Pinellas County, et al.*, to be closed administratively but retained jurisdiction over the case “for such further orders as may be appropriate.” *See* Consent Agreement at 13, ¶ 25; Dkt. No. 12. The Court-ordered Agreement anticipates the parties will seek the Court’s permission to dissolve the Agreement. *See* Consent Agreement at 13, ¶ 24.

The Agreement has remained in effect through the present day and, in recent years, has involved extensive communications between the parties, the production of documentation by Defendants to the United States, and an in-depth compliance review by the United States. For reasons that will be set forth in greater detail in subsequent pleadings, the United States and Pinellas County now seek to file a joint motion dissolving the Agreement as to Pinellas County.

Legal Discussion

The administrative closing of a case does not constitute a final judgment or dismissal of a case. *See Penn West Associates, Inc. v. Cohen*, 371 F.3d 118, 127 (3d Cir. 2004) (“Administrative closings comprise a familiar . . . way in which courts remove cases from their active files without making any final adjudication.”). Therefore, “designating a case ‘closed’ does not prevent the court from reactivating a case either of its own accord or at the request of

² The Court signed the Order on December 10, 1980; however, the docket states that the Court entered the Agreement on December 11, 1980. The date stamp on the Agreement is illegible.

the parties.” *Florida Ass’n for Retarded Citizens v. Bush*, 246 F.3d 1296, 1298 (11th Cir. 2001). See also *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375, 381 (observing that a court may assert jurisdiction in order to enforce the terms of a consent decree after a case is closed).

Consistent with this jurisprudence and as stated above, the Court retained jurisdiction over this case, in part so that one or more parties could seek to dissolve the Agreement when the objectives of the Agreement had been met. See Consent Agreement at 13, ¶¶ 24 and 25. Without this Court’s intervention, the United States would be required to continue to expend time and resources to monitor Pinellas County’s compliance with an Agreement that has served its purposes with respect to the County, and the County would be required to incur the burdens associated with such monitoring. Similarly, although the United States is not presently seeking dissolution of the Agreement with respect to the Sheriff’s Office, reopening the case will also allow the United States and the Sheriff’s Office to stipulate to amend the Agreement, as necessary, and to dissolve the remainder of the Agreement, as soon as the circumstances so dictate.

CONCLUSION

For the reasons stated herein, the United States and Pinellas County respectfully request that this Court direct the Clerk of Court to reopen the above-captioned case.

Date: April __, 2014

Respectfully submitted,

/s/ Delora L. Kennebrew
DELORA L. KENNEBREW, Chief
(GA Bar No. 414320)

/s/ Esther G. Lander
ESTHER G. LANDER, Deputy Chief
(__ Bar No. _____)

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For Plaintiff United States of America

[Blocks to be filled in by Pinellas County]

For Defendant Pinellas County Personnel Board

CERTIFICATE OF SERVICE

I hereby certify that on April 1, 2014, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system. I further certify that I mailed the foregoing document and the notice of electronic filing by first-class mail to the following non-CM/ECF participants: _____.

/s/ Kristofor J. Hammond
Kristofor J. Hammond
Senior Trial Attorney
Employment Litigation Section
United States Department of Justice

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

PINELLAS COUNTY, et al.,

Defendants.

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Case No. 80-cv-849

JOINT MOTION FOR PARTIAL DISSOLUTION

Come now the United States of America and Defendant Pinellas County to move for an order partially dissolving the Consent Agreement entered by this Court on December 10, 1980. The parties seek relief from the Agreement Pinellas County, its officials, and its hiring authorities collectively, "Pinellas County"), to the extent they fall within the Unified Personnel System ("UPS"), which is governed by the Pinellas County Personnel Board. The Pinellas County Sheriff's Office (the "PCSO"), which is not part of the UPS, would continue to be bound by the terms of the Agreement. The United States has conferred with the PCSO, which does not oppose this joint motion for partial dissolution. In support of this motion, the parties stipulate to the following facts:

1. On July 24, 1980, the United States filed a lawsuit in this case against Pinellas County and the Pinellas County Sheriff's Office (collectively, "Defendants"), alleging they were engaged in a pattern or practice of discrimination against African

Americans, Hispanics, and women in the recruitment, hiring, assignment, and promotion of employees in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, *et seq.*

2. Thereafter, the parties filed a joint motion seeking approval of a Consent Agreement, which was approved by the Court on December 10, 1980. *See* Dkt. No. 12.

3. The Agreement enjoins Defendants from discriminating against any employee or job applicant on the basis of race, sex, or national origin in the recruitment, hiring, promotion, upgrading, training, assignment, discharge, compensation, or terms and conditions of employment of any such person. *See* Dkt. No. 13 (hereinafter “Agreement”) ¶ 1.

4. The Agreement also orders Defendants to take steps related to the recruitment, hiring, assignment and promotion of African Americans, Hispanics, and women such that long-term workforce goals are reached for all job classifications. The long-term goals are 11% for African Americans, 2% for Hispanics, and 25% for women. Agreement ¶ 4. Although the Agreement provided for these goals to be modified by the parties to reflect changes in the relevant civilian labor force to the extent appropriate, *see id.*, no such modifications occurred.

5. The Agreement further requires that Defendants actively recruit African Americans, Hispanics, and women and publicly advertise job openings (Agreement ¶ 13); develop entry-level and promotional selection procedures that do not have disparate impact on African Americans, Hispanics or women, or that have been validated under the

Uniform Guidelines (Agreement ¶ 18); and retain records and provide semi-annual compliance reports to the United States (Agreement ¶¶ 20 and 21).

6. In determining whether to move the Court for the dismissal of Pinellas County from the Agreement, the United States conducted an analysis of, among other sources of information: (1) extensive data produced by Pinellas County related to Pinellas County's workforce and to the selection process for various positions and job categories; (2) information produced by Pinellas County related to the policies, procedures, and practices that comprise the County's recruitment, hiring, and promotion processes; (3) data related to the relevant labor market with respect to particular positions and job categories; (4) EEOC charge data; and (5) information obtained from local advocacy groups.

7. Based on this and other information, the United States has determined that Pinellas County has achieved "the basic objectives of this Agreement." Agreement ¶ 24 (providing for dissolution of the Agreement).¹ The current composition of the Pinellas County workforce substantially both meets the Agreement's long-term goals and reflects the make-up of the relevant civilian labor force. Such progress has been accomplished by a combination of the County's expansion of its outreach and recruitment efforts, careful scrutiny of and modifications to its selection processes, and monitoring of its workforce demographics.

¹ Because the Agreement provides the authority for the filing of this joint motion, the parties have not included a memorandum of law in support of the motion, as would normally be included pursuant to Local Rule 3.01.

8. The Agreement has been in place for more than thirty years and the United States has determined that the alleged pattern-or-practice violations of Title VII that the Agreement sought to remedy three decades ago have been addressed to the extent practicable. Moreover, throughout the last several years, Pinellas County has cooperated in good faith with information requests sent by the United States as part of its compliance review.

9. Upon the release of Pinellas County and its respective components, the PCSO will remain under the Agreement. It is the burden of the PCSO to establish that it has achieved the long-term goals of the Agreement, *see* Agreement ¶¶ 4, 24; however, it is the position of the United States that the PCSO is still working towards achieving those goals and the basic objectives of the Agreement, *see* Agreement ¶ 24; *see also id.* at ¶¶ 4, 13, 18.² To that end, the United States will continue to work with the PCSO towards dissolution of the Agreement as it applies to that agency.

Accordingly, Plaintiff United States and Defendant Pinellas County jointly move this Court to dissolve the Agreement as to Pinellas County.

Date: April __, 2014

Respectfully submitted,

Jocelyn Samuels
Acting Assistant Attorney General

/s/ Delora L. Kennebrew
DELORA L. KENNEBREW, Chief

² This statement is based on information provided by the PCSO to the United States pursuant to the consent decree and information obtained by the United States from the United States' Census Bureau's website, *see* <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>. To maintain the confidentiality of the information produced by the PCSO, it is not attached or detailed herein; however, the United States can file it under seal if the Court determines such filing is appropriate.

(GA Bar No. 414320)

/s/ Esther G. Lander

ESTHER G. LANDER, Deputy Chief

(DC Bar No. 461316)

/s/ Kristofor J. Hammond

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For Plaintiff United States of America

[Blocks to be filled in by Pinellas County]

**For Defendant Pinellas County Personnel
Board**

CERTIFICATE OF SERVICE

I hereby certify that on April ____, 2014, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system. I further certify that I mailed the foregoing document and the notice of electronic filing by first-class mail to the following non-CM/ECF participants: [counsel for Pinellas County and the Pinellas County Sheriff's Office if they have not yet filed appearances].

/s/ Kristofor J. Hammond
Kristofor J. Hammond
Senior Trial Attorney
Employment Litigation Section
United States Department of Justice

DRAFT