

TO: The Honorable Chairman and Members  
of the Personnel Board

FROM: Michelle Wallace *MW*  
Senior Assistant County Attorney

SUBJ.: Request for Approval of 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 22, 2014

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.

The members of the Personnel Board were included as defendants in the lawsuit. This was done as a technical matter because of your involvement with personnel matters in the County, although there is very little direct involvement between the terms and conditions of the referenced agreement and the Personnel Board.

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.<sup>i</sup> 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.

Attached for your consideration are two motions entitled "Joint Motion to Reopen Case" and "Joint Motion for Partial Dissolution." These Motions have been approved, and are in the process of being executed, by each of the constitutional officers (with the exception of the Sheriff), the Interim County Administrator, and the Director of Human Resources.

It is recommended that the Personnel Board approve the proposed Motions.

If you have any questions or comments, please feel free to give me a call at (727) 464-3354.

MW

Attachments (attachments referenced in Motions are not included)

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<sup>1</sup> 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.

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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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CASE NO. 80-S49 Civ-T-H

ORDER

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,

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 10<sup>th</sup> 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**

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**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.<sup>1</sup> 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.

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<sup>1</sup> 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.<sup>2</sup> 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

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<sup>2</sup> 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. \_\_\_\_\_)

KRISTOFOR J. HAMMOND  
(VA Bar No. 44133)  
CAROLYN WEISS  
(Member of the Bar for the State of Maryland)  
Senior Trial Attorneys  
U.S. Department of Justice  
Civil Rights Division  
Employment Litigation Section  
950 Pennsylvania Avenue, N.W., PHB Room 4522  
Washington, D.C. 20530  
Telephone: (202) 353-3011  
Facsimile: (202) 514-1005  
Email: [Kristofor.Hammond@usdoj.gov](mailto:Kristofor.Hammond@usdoj.gov)

**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 22, 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**

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**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 to release 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 modification has 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).<sup>1</sup> 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.

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<sup>1</sup> 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.<sup>2</sup> 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 Consent Agreement as to Pinellas County.

Date: April \_\_, 2014

Respectfully submitted,

Jocelyn Samuels  
Acting Assistant Attorney General

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

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<sup>2</sup> 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

KRISTOFOR J. HAMMOND

(VA Bar No. 44133)

CAROLYN WEISS

(Member of the Bar for the State of  
Maryland)

Senior Trial Attorneys

U.S. Department of Justice

Civil Rights Division

Employment Litigation Section

950 Pennsylvania Avenue, N.W., PHB

Room 4322

Washington, D.C. 20530

Telephone: (202) 353-3011

Facsimile: (202) 514-1005

Email: [Kristofor.Hammond@usdoj.gov](mailto:Kristofor.Hammond@usdoj.gov)

**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