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Bessye Neal, et al., v. Director, D.C. Department of Corrections, et al

Judge Royce C. Lamberth

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Bessye Neal, et al., v. Director, D.C. Department of Corrections, et al

Keywords

Bessye Neal et al. v. Director D.C. Department of Corrections et al, 93-2420 (RCL), Sex, Female, Retaliation, Sexual Harassment

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promises, covenants, and obligations in this Agreement, and for good and valuable consideration, plaintiffs and defendants, through their undersigned counsel, hereby stipulate and agree as follows:

I. Definitions and General Provisions

A. Definitions

1. "Plaintiff class" or "Class Member(s)" -- All current or former female employees of the Department between April 1, 1989 and July 22, 1997 who were adversely affected by sexual harassment in the Department and all current or former male and female employees of the Department between April 4, 1991 and July 22, 1997 who were adversely affected by retaliation in the Department.
2. "Named plaintiffs" or "Class Representatives" -- The original eight named plaintiffs to this suit: Sharon Bonds, Vera Brummell, Barbara Carter, Essie Jones, Bessye Neal, Shivawn Newsome, Tyrone Posey and Teresa Washington.
3. "Claimant(s)" -- Class members who actually file claims pursuant to the procedures set forth in this Decree. Claimants shall include those individuals who already filed claims challenging sexual harassment or retaliation that occurred before March 1, 1995, pursuant to the procedures set forth in Final Judgment and Order IV, and whose claims were not dismissed, or who filed a motion to vacate the dismissal prior to August 23, 1996, and those who may now file challenging sexual harassment or retaliation that occurred between March 1, 1995 and July 22, 1997.

4. "Defendants" -- The D.C. Department of Corrections and the District of Columbia.
5. "Department" -- The D.C. Department of Corrections.
6. "Effective Date of this Decree" -- The date, following the conduct of a Fairness Hearing, on which the Consent Decree has been finally approved by the District Court, affirmed on appeal (or any appeal has been dismissed or the time for taking any appeal has expired without an appeal having been taken), and affirmed by the Supreme Court (or the time for filing a petition for certiorari has expired without any petition having been filed or any such petition for certiorari has been denied). If there are no objections to the Consent Decree, this term refers to that date, following conduct of the Fairness Hearing, on which the District Court grants final approval of the Consent Decree.
7. "Preliminary District Court approval" -- The date, following submission of this Consent Decree to the Court by the parties but prior to the conduct of a Fairness Hearing, on which the Court grants initial approval of the Consent Decree.
8. "Final District Court approval" -- The date, following submission of this Consent Decree to the Court by the parties, and after conduct of a Fairness Hearing, on which the District Court grants approval of the Consent Decree.
9. "Plaintiffs' counsel," "Counsel for plaintiffs," or "Class Counsel" -- The counsel of record for the plaintiff class. They are the Washington Lawyers' Committee for Civil Rights & Urban Affairs and Piper & Marbury LLP.

10. "Counsel for the parties" -- Counsel for plaintiffs and counsel for the defendant.
11. "Retaliation" -- Taking or threatening to take adverse employment actions against a person because he or she has engaged in legally protected activity.
12. "Adverse employment action" -- Any negative change in the terms, conditions or privileges of employment. It includes, for example, negative changes in assignments, shifts or evaluations. It also includes creation of a hostile work environment because an employee has engaged in legally protected activity.
13. "Legally protected activity" -- Resisting or opposing sexual harassment, making oral or written complaints about sexual harassment, and testifying at, assisting in, or otherwise participating in an investigation of a sexual harassment complaint. Such activity is protected regardless of whether the conduct of which the employee complained was actually proved to have constituted sexual harassment.
14. "Sexual Harassment" -- Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature if:
 - a. submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
or
 - b. submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or

c. such conduct has the purpose or effect of interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment.

15. "Special Master" -- Pursuant to Federal Rule of Civil Procedure 53, a special master was appointed by the District Court on January 25, 1995. On March 14, 1996, Alan Balaran was appointed to fulfil the responsibilities of Special Master.

B. General Provisions

1. This Consent Decree constitutes both an order of the Court and a contract, and all of its provisions are enforceable by the parties.
2. The parties agree that, since this case was certified by the Court as a class pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure, no member of the class may opt-out.
3. This Consent Decree comprises the full and exclusive agreement of the parties with respect to the matters discussed herein. This agreement incorporates and supersedes the Agreement in Principle. No representations or inducements to compromise this action have been made, other than those recited in this Decree,

II. Class-wide Injunctive Relief

A. Office of the Special Inspector

1. The Department of Corrections (Department) will establish an Office of the Special Inspector, to be headed by a Special Inspector (SI). The SI, for three years after his office becomes operational, will operate independently of the Department. Thereafter, the SI will report directly to the Director of the Department, unless the Court concludes, after unsuccessful resort by the

parties to the dispute resolution procedure set forth in Section III.B. below, that some other arrangement is necessitated by the Department's failure to permit the SI to perform his functions effectively, in which case the independent status of the SI may be continued for one or two additional one-year periods.

2. The Office of the SI will have authority over all sexual harassment and retaliation complaints. Subject to applicable District of Columbia law, the SI shall have the authority to hire or contract for investigators to work full-time for the SI as well as such other staff as may be necessary to carry out the responsibilities of the Office of the SI. The investigators will investigate all complaints of sexual harassment or retaliation for having opposed sexual harassment. The SI will have the authority to issue findings of probable cause or no probable cause for each complaint. The investigators will be the proposing officials, as that term is used in Chapter 16, DPM, and will have authority to propose disciplinary action against employees found to have engaged in sexual harassment or retaliation. The proposed disciplinary action shall proceed under terms of Chapter 16 of the DPM and shall include the right of the employee to seek review by a disinterested designee (DD). The SI, however, shall have authority as the deciding official. Any challenge to the final decision shall proceed under Chapter 16 of the DPM or terms of any collective bargaining agreement.

3. The SI will have authority to provide such relief to the prevailing complainant as the Director can now order, such as personnel actions and back pay. This does not include any award of compensatory or punitive damages or attorney's fees. No finding by the SI will have preclusive effect as to liability in any proceedings before any administrative agency or court.

4. The first SI will be Alan Balaran, subject to his agreement to serve in that position. If Mr. Balaran declines the position, or if he leaves the position at any time while the Decree remains in effect, then each party to the Decree may suggest candidates for the position. If the parties reach agreement on a candidate to fill the position of SI, then the person agreed upon will be offered the position. If the parties cannot agree on who should fill the position, then the parties' proposals shall be submitted to the Court which shall select a candidate for the position.

5. The budget and perquisites of the Office of Special Inspector not elsewhere specified in the Decree shall be established through consultation between the Special Inspector and the District of Columbia, after plaintiffs' counsel have had the opportunity to review and comment on them. In the event that the Special Inspector and the District of Columbia cannot agree on either the budget or any perquisite of the Office of Special Inspector, the Special Inspector may present the unresolved matter to the Court, which shall have authority to determine the matter at issue. The parties understand that the Office of Special Inspector must operate within the normal budget cycle of the District of Columbia, but that measures outside the normal budget cycle may be needed to establish the budget for the Office of Special Inspector for the first year of its operation. The parties recognize that the budget of the OSI is subject to the budget constraints under which the District of Columbia generally operates.

B. Policies, Training Programs

1. The SI shall develop, in conjunction with the Department, and shall implement policies and procedures relating to sexual harassment and retaliation consistent with federal and District of Columbia law.

2. Counsel for the parties shall have the opportunity to review and comment upon any revision in the Department's policies and procedures relating to sexual harassment and retaliation, prior to such policies or procedures becoming final.

3. In conjunction with the Department, the SI shall design the training program and select the training materials and instructors for sexual harassment training. The SI will supervise on an ongoing basis the sexual harassment and retaliation training that is given.

4. The SI, or the Training Academy working with the SI, will maintain records of which employees receive sexual harassment training.

C. Table of Penalties

The SI and the Department will develop a table of penalties to guide proposed disciplinary actions against those found to have violated the Department's sexual harassment policies and procedures. This table shall be consistent with the DPM and all other governing personnel laws of the District of Columbia. In addition, consistent with the requirements of the DPM or other governing personnel law, and in no way lessening the effect of the DPM, the Department shall consider such disciplinary action in determining whether an employee found by the SI to have engaged in sexual harassment or retaliation should be promoted.

D. Performance Evaluations

1. Supervisors will continue to complete performance evaluations for their subordinates, consistent with the DPM.

2. The SI shall have the authority to investigate complaints that an individual employee's performance evaluation was affected by sexual

harassment or retaliation and take action such as is appropriate, including directing the correction of the performance evaluation.

3. Any final finding by the SI that an employee violated the Department's policies or procedures on sexual harassment shall be placed in the official personnel file of the employee. That information may be purged from the file as provided under District personnel regulations. Any such final finding will be reflected in the performance appraisal of the employee.

E. Ombudsperson, Sexual Harassment Advisory Committee, and Sexual Harassment Hotline.

The SI shall establish an advisory committee on sexual harassment. In addition, he shall appoint an Ombudsperson and establish a hotline. After these programs are in effect for one year, the SI will decide whether the continuation of these programs serves the goals of the Decree or whether other programs should be created to do so. No employee shall be excluded from consideration for appointment to any position established by the SI solely because of that person's participation in this litigation. Bessye Neal will be appointed the first Ombudsperson.

F. Employee Counseling

The SI shall coordinate with the Employee Assistance Program to provide counseling support and referrals to complainants seeking such assistance.

G. Prohibitory Injunction

Defendants, their employees and agents shall not engage in, or knowingly permit a pattern and practice of, sexual harassment or retaliation against any employee for opposing sexual harassment. Defendants, their employees and agents shall not be held to have violated this provision in the case of individual acts of sexual harassment and/or retaliation, except to the extent these individual acts comprise a pattern and practice, since investigation and

remediation in such instances are within the scope and authority of the SI. As provided in the Decree, the determination of whether an act of sexual harassment or retaliation has occurred shall be made by the SI. Defendants, their employees and agents will cooperate with the requests of the SI in carrying out his mandate, and shall not impede the operations of the OSI. Defendants, their employees and agents shall not be held to have violated this provision or any other provision of the Decree for any action taken by them in accordance with the Decree or taken at the direction of the SI. Any disputes will be resolved in accordance with the dispute resolution procedure in Section III.B. of the Decree.

H. Dissolution of Existing Injunctions:

Either 60 days after final approval of the Decree by the District Court, or upon a certification by the Special Inspector that his office is operational, whichever is later, all extant injunctions entered by the Court in this litigation shall dissolve and will be replaced by this Decree.

III. Administration of the Decree

A. Time Period

The Decree will be effective, and the Court will retain jurisdiction of this case, for three years from final district court approval. The Court may extend the duration of the decree in one-year increments for up to an additional two years if it determines, upon application by Plaintiffs, that there is good cause to do so. If, at the close of this period, Plaintiffs believe there has been a material breach of a term of this agreement which has not been cured, they may apply to the Court for a further extension. If the Court finds that a material breach has existed, and has not been cured, then the Court may grant further one-year

extensions of the decree to the extent necessary for the breach to be cured.

Before the Plaintiffs apply for such extensions as may be warranted upon belief that a material breach has occurred, the parties will utilize the dispute resolution procedure set forth in Section III B below in an effort to resolve the matter without the need for Court intervention. By agreement of the parties, the Court may also extend the term of the Decree for such period as the parties recommend.

B. Dispute Resolution Procedure

If Plaintiffs believe that there has been a breach of the Decree, they shall notify the Defendants and the SI in writing of the basis for that belief. The Defendants will have two weeks to respond in writing. The parties, and the SI, as appropriate, will meet in an effort to resolve the matter. If they are unable to do so within forty-five days of the original notification, then either party may apply to the Court for an order interpreting or enforcing the Decree with respect to the issue or issues in dispute. In the event that either party to the Decree believes that exigent circumstances exist that make it necessary to apply to the Court for relief more promptly than the Procedure set forth above would permit, either party may make such application to the Court after the Special Inspector has determined that such exigent circumstances exist. The term "exigent circumstances" applies only to those situations which cannot be remedied by the SI and from which severe irreparable harm would result absent immediate judicial intervention.

C. Intent of the Parties

The parties to this agreement and Consent Decree intend, by entering into this Decree, to address sexual harassment and retaliation by establishing an administrative procedure for handling complaints of sexual harassment and

retaliation at the D.C. Department of Corrections and for resolving disputes between the parties about compliance, so as to eliminate, to the extent possible, the need for and use of judicial intervention.

D. Distribution of the Decree

For the life of the decree, a copy of this Consent Decree, or a summary of its contents that is approved by the Special Inspector, shall be distributed to each employee of the Department of Corrections within 60 days after the Court finally approves the Decree as fair and reasonable. Thereafter, a copy of this Decree or the approved summary of its contents shall be distributed to each new employee within 30 days of the entry on duty of each new employee of the Department. Each employee shall be expected to acknowledge in writing his or her receipt of the Decree or its summary and the Department shall promptly lodge with the Office of Special Inspector copies of such acknowledgments.

E. Successors

The terms of the Decree shall each be binding on the District of Columbia, the D.C. Department of Corrections and their successors and assigns, subject to the modification clause set forth in Section III.F. below.

F. Modification as a Result of Changes in Applicable Law

The parties recognize that, following execution of this Consent Decree, there may be changes in controlling law which warrant modification of the Decree. For example, it is the understanding of the parties that a plan is under consideration by the U.S. Government which may result in the ultimate takeover by the United States of a significant part of the functions now performed by the D.C. Department of Corrections, such that different laws may apply to the Defendants. The Decree shall be subject to modification by

the Court upon the application of either party based on changes in applicable state or federal law.

IV. Class-wide Monetary Relief

A. Monetary Payments

The District will pay the sum of \$ 8 million to the plaintiff class in satisfaction of:

1. all claims of sexual harassment against the District, its agents or employees that were brought or which could have been brought under any theory of liability for such claims by all female employees of the Department between April 1, 1989 and July 22, 1997,^{1/} provided, however, that if the Court does not grant preliminary approval within two weeks of the parties submitting the Consent Decree to him for approval, then the Decree will satisfy all claims that could have been brought up to two weeks before the date on which the Court grants preliminary approval to the Decree;^{2/}

2. all claims of retaliation for opposing sexual harassment against the District, its agents or employees that were brought or which could have been brought under any theory of liability for such claims by all employees of the Department between April 4, 1991 and July 22, 1997,^{3/} provided, however, that if the Court does not grant preliminary approval within two weeks of the

^{1/}This includes, but is not limited to, all claims made by the named plaintiffs in the Complaint and all Amended Complaints.

^{2/}Claims which were dismissed and for which no appeal or motion to set aside the judgment was filed prior to August 23, 1996 have received final disposition, and claims which could have been filed pursuant to the August 9, 1995 notice, but which were not filed, have been extinguished by failure to comply with the August 9, 1995 Order.

^{3/}This includes, but is not limited to, all claims made by the named plaintiffs in the Complaint and all Amended Complaints.

parties submitting the Consent Decree to him for approval, then the Decree will satisfy all claims that could have been brought up to two weeks before the date on which the Court grants preliminary approval to the Decree;⁴

3. claims of sexual harassment or retaliation, which fall within the scope of the class definition in this case and which class members are asserting in separate lawsuits; and

4. all claims for attorneys' fees and costs for the representation of the plaintiff class, named representatives, any individual claimants, and/or individual class members that are incurred through the date on which the Court grants final approval of the Decree.

5. All such claims described in subsections IV.A. ¶¶1-3 above, including footnotes 1-4, are released (if not already extinguished) by the operation of this Decree, and the class members and named plaintiffs, or any of them, are barred from litigating those claims through any individual or putative class action, hereafter.

B. Initial Escrow

Within 45 days of preliminary approval of the Decree by the District Court, the Corporation Counsel will deposit \$2 million and the Department of Corrections will deposit \$2 million in escrow under the supervision of the Court through the Special Master. The escrow should be placed by the Special Master into a collateralized interest-bearing account at such financial institution or institutions as the parties shall approve. Any risk of loss of the escrowed monies shall be borne by the Plaintiffs, in that Defendants' payment of the \$4

⁴Claims which were dismissed and for which no appeal or motion to set aside the judgment was filed prior to August 23, 1996 have received final disposition, and claims which could have been filed pursuant to the August 9, 1995 notice, but which were not filed, have been extinguished by failure to comply with the August 9, 1995 Order.

million to the Court's Special Master for escrowing completely satisfies \$4 million of its total \$8 million monetary obligation under the Decree. If the Decree becomes effective, as defined in section I.A.6 of this Decree, then the escrowed funds shall be paid to Plaintiffs by the Special Master in accordance with this Decree. If the Decree is disapproved, the escrowed money and all accumulated interest shall be returned by the Special Master to the District of Columbia Government within 10 days of entry of the order or issuance of the mandate. The escrowed money shall be used for no purpose other than as set forth herein.

C. Final Escrow

By the end of the first quarter in which the Corporation Counsel and the Department of Corrections first have use of any funds appropriated pursuant to the FY 1998 budget, or within 45 days after Preliminary Court Approval of the Decree by the District Court (whichever is later), the Corporation Counsel and the Department of Corrections will each deposit \$2 million to the Court's Special Master for deposit in the escrow account(s) prescribed in ¶B of this subsection. The payment will be held under the same terms as those specified in Paragraph IV B for the "Initial Escrow" and will completely satisfy the Defendant's monetary obligations under the Decree.

D. Allocation of Monetary Relief

1. The \$8 million payment will be divided into portions for the class representatives, attorneys' fees and costs, and the class members as follows:
 - a. class representatives will receive \$1,618,000
 - b. attorneys' fees and costs will account for \$2,032,000
 - c. class members will receive \$4,350,000 plus all interest earned on the \$8 million while it is held in escrow.

2. No monies will be distributed until after the Effective Date of the Decree.

E. Procedure for Allocation

The Special Master will recommend an allocation of the class member funds, through non-adversarial proceedings as described below. These recommendations will be issued before the Fairness Hearing.

1. Each person who qualifies as a claimant, as provided in section I A(3) of this Decree, must submit a written summary of his or her claim, supporting documentation, as well as evidence of emotional distress and economic losses. A form identifying the information that should be submitted and instructions for its completion are appended hereto as Attachment C.

2. The Special Master will meet with each claimant for thirty minutes to discuss his or her claim for damages, unless the Special Master deems such an interview unnecessary to the preparation of a recommendation regarding a claim.

3. The Special Master will determine initially the amount of monetary relief that should be awarded to each claimant from the settlement fund established in IV.D(2) and make a recommendation to that effect to the Court.

4. The Special Master's recommendations will be presented to the Court for review at the Fairness Hearing.

V. **Equitable Relief for Individuals**

A. Named plaintiffs

The eight named plaintiffs will receive the non-monetary relief which was awarded to them by the Court in Final Judgment and Order II. In addition to the corrections to leave balances and the expungement of disciplinary action

which has already been put into effect, the following provisions from Order II will also be carried out:

1. Vera Brummell

a. When she is able to return to work, she will be given an appropriate assignment at her current grade level with the parole board, home monitoring program or a halfway house.

2. Barbara Carter

a. Ms. Carter resigned her employment effective August 21, 1997. Her benefits will be restored to what they would have been had she not been terminated in 1993, including specifically making any required contribution to her pension fund, if that has not already occurred.

3. Bessye Neal

a. She will retain her promotion to DS-15.

b. Her benefits, including pension, will be restored to the levels at which they would have been if her promotions had occurred on the dates set forth in Order II.

c. She will be assigned the position of Ombudsperson in the Office of the Special Inspector.

4. Tyrone Posey

a. 524 hours of AWOL will be converted to annual leave and will be credited towards his time in grade. Mr. Posey will be permitted to carry this leave without regard to the District's "use or lose" policy.

b. He will not be placed in the same facility as Althea Haynes.

5. Shivawn Newsome
 - a. Two days of AWOL will be expunged and she will receive annual leave for those days.
 - b. She will not be assigned to the same facility as Reginald Johnson or L.C. Jones.
6. Teresa Washington
 - a. Her leave and benefits will be restored as if she had been at work, on Leave Without Pay ("LWOP") status, since February 1993.
 - b. She will be maintained on LWOP, with whatever benefits employees on LWOP are entitled to receive, until her doctor determines she is able to return to work, she obtains full-time employment elsewhere, or she graduates from college, whichever occurs first.

B. Claimants

The Special Master will be authorized to award non-monetary equitable relief to claimants, including:

1. correction of records, including expunging disciplinary actions, and leave balances where the person can show that leave was improperly denied or charged because of sexual harassment or retaliation;
2. transfers to vacant positions within the Department, for claimants who can show that they were improperly denied a transfer because of sexual harassment or retaliation or who can show that they continue to work in an environment with their former alleged harasser or in an environment which continues to be a sexually harassing or retaliatory hostile work environment;
3. awarding up to, but no more than, fifteen reinstatements and fifteen promotions, to claimants as to whom he finds that, but for sexual harassment

or retaliation against them, they would have received such promotions or they would not have been separated, and who are eligible under the normal rules for such personnel actions.

- a. When employees are reinstated, the District of Columbia will make contributions to their retirement accounts for the time they were not employed. They will not get retirement service credit for the time they were out of work.
- b. No back pay, other than as part of the damages awarded pursuant to Section IV.E.3. above, or service credit will be awarded.
- c. Reinstatements will be to a position at the claimant's last grade and step level and the claimant will re-attend the Training Academy in accordance with Department policy.
- d. The Special Master will not have authority to create positions or displace other persons to award promotions, but the claimants will receive front pay and applicable benefits from the Department from the date of the final District Court approval of the Consent Decree, after the fairness hearing, until they are placed in their respective positions; provided that front pay awards, if any, shall begin to accrue as of the date of Final District Court approval, but shall not be paid to individual claimants until the Effective Date of the Decree. If the Defendants offer the individual a position, which the Special Master finds is commensurate with what he or she was awarded by the Special Master and the individual does not accept the position, front pay stops accruing at the time of such a finding.
- e. If the federal government assumes control of Departmental facilities or inmates and, because of that action, the Department

believes that one or more of the promotions or reinstatements provided herein cannot be made, then the Department may apply to the Special Master or Special Inspector for such relief from paragraph V B 3 as may be warranted. Either party may appeal to the District Court for review of the Special Master's or SI's determination on the matter.

f. Each claimant seeking a promotion, reinstatement, or transfer will have the opportunity to demonstrate to the Special Master that he or she was qualified for the position and, because of sexual harassment or retaliation, was wrongfully denied promotion or discharged or was improperly denied a transfer. The District will have the opportunity to show that the claimant is not qualified for the position sought or that there was another legitimate, non-discriminatory reason for the personnel decision. No back pay, other than as part of the damages awarded under Section IV.E.3. above, will be awarded to any of these claimants, if they receive a promotion.

g. The Special Master will make recommendations to the Court which shall be reviewed for fairness at the fairness hearing.

4. Any liability for attorneys' fees and costs incurred for actions before the Special Master on the claimants' request for equitable relief or damages is covered by and incorporated into the relief set forth in Section IV.A.4. above.

VI. Procedures for Approval of the Final Consent Decree

A. Application for Preliminary Approval

Upon execution of the Final Consent Decree, the parties will submit it to the Court for preliminary approval and counsel for both parties shall recommend that the Court approve the agreement as fair, adequate and reasonable.

B. Notice to Potential Claimants

Within 10 days after preliminary Court approval of this Consent Decree, a copy of the Notice (set forth in Attachment A), the Claim Form (set forth in Attachment C) and the Consent Decree shall be distributed to every person employed by the D.C. Department of Corrections at any time during the period from April 1, 1989 to the date on which the Court grants preliminary approval of the Consent Decree.

1. Defendants will distribute the Notice by hand to each current employee of the Department. Defendants shall obtain a signed statement from each employee indicating that he or she has received and read the notice, and the date on which he or she received the notice. Defendants may use first class mail to serve copies on current employees who are on leave of any kind during the 10 day notice period.
2. Defendants shall provide plaintiffs with a list of former employees who were employed by the Department from April 1, 1989 through July 22, 1997. The list will either be on self-stick labels or printed in a format that can be photocopied onto standard labels without re-typing. Plaintiffs will be responsible for sending the Notice by first class mail to the addresses provided by the District.
3. Originals or copies of the receipts signed by current employees will be delivered to the Special Master within 60 days of preliminary approval.
4. A modified form of the Notice (set forth in Attachment B) shall be published in the following newspapers: Washington Post, Washington Times and Afro-American. The notice shall be published twice a week for two weeks, in the section of the newspaper ordinarily devoted to

local news. Publication shall occur on at least one Sunday for each newspaper with a Sunday edition. The Defendants shall place the advertisements and submit the invoices for the actual cost to counsel for Plaintiffs who shall reimburse the District for one-half of the cost of newspaper publication.

5. Defendants shall post the Notice on each bulletin board in each facility of the Department and shall make available extra copies of the Claim Form. The Notice shall remain posted until the period for potential class members to return the Claim Form has expired.

C. Deadline for Submitting Claim Forms

Within forty-five days after preliminary approval (35 days from the date on which notice must be complete), any class member wishing to pursue a claim must file a Claim Form with the Special Master even if he or she had previously filed a Notification Form. Claim forms must be postmarked or received in hand by the Special Master by this date. Claimants may submit additional documentation in support of their claims up to and including 75 days from the date of preliminary approval of the Consent Decree.

D. Submission of Supporting Documentation

Claimants and defendants will supply the Special Master with any information or documentation he requests for consideration or for the verification of a class member's claim.

E. Status Conference

At approximately 120 days after preliminary approval of this Consent Decree, the Court will hold a status conference and the Special Master will report on the number of claims received and the estimated time to complete his report and recommendation on allocation of the individual relief. At the status

conference, the Court will, if possible, set a date for the report of the Special Master and a date for the final fairness hearing.

F. Recommendations for Allocation

By a date certain, the Special Master will submit to the Court recommendations on the amount of individual monetary relief from the settlement fund, and the nature of any equitable relief which each claimant should be awarded under this Decree.

G. Notice of Recommendation by Special Master

At least forty-five (45) days before the Fairness Hearing, the Special Master will send a copy of his report and recommendation and the procedure for participating in the Fairness Hearing to each claimant by first class mail. The Notice of Final Fairness Hearing will be in the form set forth as Attachment D.

H. Objections

Any person who wishes to object to the terms of this Consent Decree will be required, not less than twenty (20) days prior to the Fairness Hearing, to submit a written statement to the Court, with copies to counsel for the parties. The statement shall contain the individual's name, address and telephone number, along with a statement of his or her objection(s) to the Consent Decree and the reason(s) for the objection(s).

I. Application for Final Approval

The parties will jointly seek to obtain final approval of the Agreement as fair, adequate and reasonable. The parties do not intend this Decree to be severable; if it is not approved in its entirety, it will be null and void.

VII. Non-admission

The plaintiffs allege in their Amended Complaint that the Department has engaged in a pattern and practice of sexual harassment and retaliation. Defendants deny those allegations. Entry of the Decree does not operate as an admission of liability by the Department or the District of Columbia of Plaintiffs' allegations.

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SO ORDERED this ___ day of _____, 1997.

Royce C. Lamberth
U.S. District Judge