

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA,

Plaintiff,

v.

PALM BEACH COUNTY,
FLORIDA,

Defendant.

Civil Action No.

07-80713
CIV-MARRA
MAGISTRATE JUDGE
JOHNSON

CONSENT DECREE

This action was brought by the United States against the County of Palm Beach, Florida ("County") to enforce the provisions of § 703(a) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-2(a), ("Title VII"), following receipt by the Department of Justice from the Equal Employment Opportunity Commission of a charge filed by William J. Stewart, II, a former part-time Park Ranger in the County's Parks and Recreation Department.

In its complaint, the United States alleges the County has violated Title VII by:

- (a) failing or refusing reasonably to accommodate Stewart's religious observance, practice and/or belief of attending Church and refraining from work on Sundays;
- (b) constructively discharging Stewart because of his religious observance, practice and/or belief of attending Church and refraining from work on Sundays; and
- (c) failing or refusing to take appropriate action to remedy the effects of the discriminatory treatment against Stewart.

The County has denied all allegations.

The parties, nevertheless desiring that this action be settled by appropriate consent decree and without the burden of protracted litigation, agree to the jurisdiction of this Court over the parties, and the subject matter of this action. Subject to the Court's approval of this Consent Decree, the parties waive a hearing and findings of fact and conclusions of law on all issues, and further agree to the entry of this Decree as final and binding between themselves as to the issues raised in the United States' complaint filed in this case and the matters resolved in this Decree.

This Decree, being entered with the consent of the parties, shall in no way constitute an adjudication or finding on the merits of the case, nor be construed as an admission by the County or a finding of any wrongdoing or violation of any applicable federal or state law or regulation.

As used in this Decree, the term "date of entry of this Decree" is defined as the date on which the Court grants final approval to and enters this Consent Decree as a final order of the Court.

It is therefore, ORDERED, ADJUDGED AND DECREED as follows:

A. GENERAL INJUNCTIVE RELIEF

- (i) The County, by and through its officials, agents, employees and all persons in active concert or participation with the County in the performance of employment or personnel functions, shall not engage in any act or practice that has the purpose or effect of unlawfully discriminating against any employee or potential employee in the County's Parks and Recreation Department because of that individual's good faith religious observances, practices and/or beliefs.

- (ii) The County, by and through its officials, agents, employees and all persons in active concert or participation with the County, shall not unlawfully retaliate against or adversely affect Stewart or any other person because that person has opposed allegedly discriminatory policies or practices, has filed a charge with the Equal Employment Opportunity Commission, or because of that person's participation in or cooperation with the initiation, investigation, litigation or administration of this case or this Decree.
- (iii) The County shall use non-discriminatory employment policies designed reasonably to accommodate the good faith religious observances, practices and/or beliefs of employees in the County's Parks and Recreation Department, as per countywide policy CW-P-027, Reasonable Accommodation of Religious Practices.
- (iv) The County shall provide additional training with respect to Title VII's prohibitions against employment discrimination based on religion and retaliation to its Parks and Recreation Department supervisory personnel who are involved in the hiring and selection procedure, evaluation of job performance, discipline and scheduling of Parks and Recreation Department employees. A description of the training shall be submitted to counsel for the United States within three months from the date of entry of this Decree.
- (v) Within thirty days after the date of entry of this Decree, the County shall post notices of the settlement of this lawsuit in the form attached hereto as

Appendix A. Such notices shall be posted in a prominent and conspicuous location or locations used for posting notices at the County's Parks and Recreation Department. Such notices shall remain posted for a period of 90 days from the date of Entry of this Decree.

B. SPECIFIC REMEDIAL RELIEF

The United States alleges that the County failed or refused reasonably to accommodate Stewart's religious observance, practice and/or belief of attending Church and refraining from work on Sundays, and constructively discharged Stewart because of his religious observance, practice and/or belief. The County denies all allegations. However, without admitting the allegations of the United States, and in settlement of the claim of the United States for relief on behalf of Stewart, as well as in settlement of the claim of Stewart if he accepts the relief provided him by this Decree, the County agrees to the following:

1. The County shall offer Stewart reinstatement in the part-time position (20 hours per week) of Park Ranger in the County's Parks and Recreation Department with a remedial seniority date in that position for all purposes of May 17, 2003 (the date he was hired as a part-time Park Ranger by the County). If Stewart elects to accept the County's offer of employment, he shall be allowed to begin work for the County as a part-time Park Ranger in the Parks and Recreation Department no later than sixty (60) days after the County's receipt of the fully executed release and election form, as set forth in Appendix C.
2. The County shall offer to pay Stewart a monetary award in the amount of \$31,540, which includes \$29,629 in back pay and \$1,911 in accumulated interest on the back pay. The portion of this amount attributable to back pay shall be subject to income tax withholding and

FICA. The County shall separately pay the appropriate employer's contribution to the Social Security fund due on the back pay portion of the monetary award; *i.e.*, the employer's contribution shall not be deducted from the monetary award to Stewart.

3. The County shall offer to accommodate Stewart's request for a work schedule allowing him to refrain from work on Sundays.

4. The County shall offer to expunge from Stewart's personnel files and any other County files any negative references pertaining to Stewart's request for a religious accommodation and his subsequent cessation of employment with the County. In order to accomplish this objective, the County shall submit to the United States, within thirty (30) days from its receipt of the executed Release from Stewart pursuant to Paragraph B.8. of this Consent Decree, a copy of the personnel file of Stewart and copies of any and all other relevant files and documents pertaining to Stewart. Upon identification by the United States of the appropriate documents, the County shall expunge such documents from its records and files. For the purposes of this specific provision of the Consent Decree, and with respect only to this specific provision of the Consent Decree, the Court hereby orders that Art. I, s.24, of the Florida Constitution, Chapter 119 and 257, Florida Statutes, and any other state or local law, statute or ordinance that prohibits, or may be construed to prohibit, the removal and destruction of such records pertaining to Stewart from the County's files, shall be suspended in their application. The Court further orders that this suspension shall remain in effect only so long as is necessary to effectuate this specific provision of the Consent Decree.

5. The County shall issue to Stewart, if he accepts the monetary relief offered to him pursuant to this Decree, appropriate IRS forms that reflect the monetary relief.

6. The County shall notify Stewart of the terms of this Consent Decree within seven (7) days of its date of entry by mailing to him in care of his counsel, by certified mail, return receipt requested, a copy of the letter in the form set forth in Appendix B and enclosing a copy of this Decree and a copy of the Release and Election form in the form set forth in Appendix C. The letter identified as Appendix B will inform Stewart that in order to accept the relief offered to him, he must return the Appendix C Release and Election form to the County within forty-five (45) days of his receipt of the Appendix B letter.

7. In order to accept the specific relief to be offered by the County under this Decree, Stewart must execute a Release and Election form in the manner attached as Appendix C.

8. The County shall pay to Stewart the monetary award specified in Paragraph B.2. of this Decree, after appropriate deductions are made, within fifteen (15) days of its receipt of the executed Appendix C Release. The payment shall be made payable to Stewart and sent to Stewart in care of his counsel:

Arthur T. Schofield, Esq.
300 Clematis Street, Suite 207
West Palm Beach, Florida 33401

9. If Stewart elects to accept the County's offer of employment, that is, reinstatement to the position of part-time Park Ranger in the County's Parks and Recreation Department with remedial seniority, the County shall contribute its full share to any pension plan Stewart would have been in if he had been employed as a part-time Park Ranger by the County for the period of

time between August 27, 2005 and such time as Stewart begins working again in a part-time Park Ranger position in the Parks and Recreation Department. Stewart's monetary award shall not be reduced by the County's pension plan payments; however, any contribution Stewart would have made to a deferred compensation or pension plan during this period shall be paid into the plan from the back pay portion of his monetary award defined in B.2. above, if Stewart elects to accept the County's job offer.

10. Stewart need not accept the job opportunity relief in order to obtain the monetary award defined in B.2. above.

C. RECORD-KEEPING AND REPORTING

1. The County shall retain during the life of this Decree records necessary to document the implementation of this Decree. The County shall furnish records and documents relevant to its compliance with the implementation of this Decree to counsel for the United States within thirty (30) days of any written request to the County's attorney.

2. The County shall provide written notice to counsel for the United States of any disciplinary or other adverse employment action proposed or taken against Stewart during the life of this Decree promptly after such action is proposed or taken. The United States shall have the right to inspect and copy all documents related to such action upon reasonable notice to the County without further order of this Court.

3. The County shall retain all records that come into its possession relating to complaints or charges of employment discrimination based on religion or retaliation that may be filed against the County or an employee, agent or representative of the County and pertaining to an employee or applicant for employment in the Parks and Recreation Department: (a) through

the County's internal grievance procedure; (b) with the United States Equal Employment Opportunity Commission; or (c) through or with any other federal, state or local agency authorized to receive such complaints. The County shall provide copies of such complaints or charges to counsel for the United States within twenty (20) days of its receipt of such complaints or charges. In addition, the United States shall have the right to inspect and copy all documents related to such complaints or charges upon reasonable notice to the County without further order of this Court.

D. DISPUTE RESOLUTION

The parties shall attempt to resolve informally any dispute that may occur under this Consent Decree. The parties shall engage in good faith efforts to resolve the issue before seeking action by the Court. If the parties are unable expeditiously to resolve the issue, either party may move the Court for resolution, provided that written notice is first provided to the other party.

E. JURISDICTION OF THE COURT

1. During the life of this Decree, the Court shall retain jurisdiction over this Decree for the purposes of enforcing its provisions, resolving any disputes that may arise between the parties under it and entering such orders as may be appropriate.

2. This Decree shall terminate two (2) years from the date of its entry without further order of the Court.

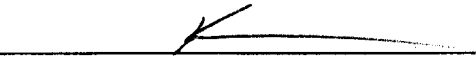
F. COSTS

The parties shall bear their own costs in this action, including attorney's fees.

G. SCOPE OF DECREE

This Consent Decree sets forth the entire agreement between the United States and the County, and supercedes all other negotiations, representations or agreements, either written or oral, between the United States and the County.

DONE AND ORDERED this 27th day of AUGUST, 2007.

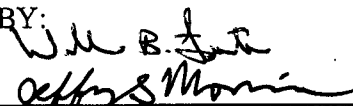

UNITED STATES DISTRICT JUDGE

Agreed and Consented to:

On behalf of Plaintiff
The United States of America:

WAN J. KIM
Assistant Attorney General
Civil Rights Division

BY:



DAVID J. PALMER (DC Bar No. 417834)
Chief

WILLIAM B. FENTON (DC Bar No. 414990)
Deputy Chief
JEFFREY G. MORRISON (MO Bar No. 44401)
Trial Attorney

U.S. Department of Justice
Civil Rights Division
Employment Litigation Section
950 Pennsylvania Avenue, NW
Patrick Henry Building, Room 4613
Washington, DC 20530
Telephone: (202) 353-1845
Facsimile: (202) 353-8961

R. ALEXANDER ACOSTA
United States Attorney
99 N. E. 4th Street, 3rd Floor
Miami, Florida 33132
Telephone: (305) 961-9327
Facsimile: (305) 530-7139
Attorneys for the United States of America

On behalf of Defendant
The County of Palm Beach Florida:



ROBERT WEISMAN
Palm Beach County Administrator
301 N. Olive Avenue
West Palm Beach, Florida 33401

Approved as to Form and Legal Sufficiency:



ERNEST CHASSEUR
(FL Bar No. 0975052)
Assistant County Attorney
Palm Beach County Attorney's Office
301 N. Olive Avenue, Ste. 601
West Palm Beach, Florida 33401

APPENDIX A

NOTICE OF SETTLEMENT OF EMPLOYMENT DISCRIMINATION LAWSUIT

On _____, 2007, the United States filed a complaint in the United States District Court for the Southern District of Florida, against the County of Palm Beach, Florida ("County") under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, et seq. ("Title VII"), alleging that the County had discriminated against a former Parks and Recreation Department employee on the basis of that employee's religion by failing or refusing reasonably to accommodate the employee's religious observance, practice and/or belief, and by constructively discharging that employee.

The County has denied all allegations of discrimination.

This notice is being posted to announce that the United States and the County have resolved this lawsuit by entering into a settlement agreement, called a "Consent Decree," which was approved by the Court on _____, 2007.

Under the terms of the Consent Decree, the County has agreed to do the following:

1. To not engage in any act or practice that has the purpose or effect of unlawfully discriminating against any employee or potential employee in the Parks and Recreation Department because of that individual's religion including, but not limited to, failing or refusing reasonably to accommodate an employee's good faith religious observance, practice and/or belief.
2. To not unlawfully retaliate against or in any respect adversely affect any person because that person has opposed alleged discriminatory policies or practices by the County or because of that person's participation in or cooperation with the initiation, investigation, litigation or administration of this action or this Decree.
3. To use nondiscriminatory employment policies designed reasonably to accommodate the good faith religious observances, practices and/or beliefs of employees in the Parks and Recreation Department, as per countywide policy CW-P-027, Reasonable Accommodations of Religious Practices.
4. To provide additional training with respect to Title VII's prohibition against employment discrimination based on religion and retaliation to Parks and Recreation Department supervisory employees.
5. To retain all records that come into its possession relating to complaints or charges of employment discrimination based on religion or retaliation filed against the County or an employee, agent or representative of the County and pertaining to an employee or applicant for employment in the Parks and

Recreation Department: (a) through the County's internal grievance procedure; (b) with the United States Equal Employment Opportunity Commission; or (c) through or with any other federal, state or local agency authorized to receive such complaints.

If any employee in the County's Parks and Recreation Department believes that he or she has been discriminated against in violation of Title VII, the employee should contact the U.S. Equal Employment Opportunity Commission ("EEOC") and/or the Florida Commission on Human Relations about filing a charge of discrimination.

The EEOC's address is:

Equal Employment Opportunity Commission
One Biscayne Tower
2 South Biscayne Blvd., Suite 2700
Miami, Florida 33131
1-800-669-4000

The Florida Commission on Human Relation's address is:

Florida Commission on Human Relations
325 John Knox Road
Building F, Suite 240
Tallahassee, Florida 32303-4149
(850) 488-7082

If any employee believes that any term(s) of the Consent Decree has (have) been violated, the employee should contact the following Department of Justice attorney:

Jeffrey G. Morrison
U.S. Department of Justice
Civil Rights Division
Employment Litigation Section
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
(202) 353-1845

APPENDIX B
NOTICE LETTER

[Date]

Mr. William J. Stewart, II
In care of Arthur T. Schofield, Esq.
300 Clematis Street, Suite 207
West Palm Beach, Florida 33401

Re: *United States v. Palm Beach County, Florida*

Dear Mr. Stewart:

A Consent Decree has been entered settling a complaint of employment discrimination filed by the United States against the County of Palm Beach, Florida ("County") based on the charge of discrimination you filed with the U.S. Equal Employment Opportunity Commission.

Under the terms of the Consent Decree entered on _____, 2007, in the case of *United States of America v. Palm Beach County, Florida*, Civil Action No. _____ (S.D. Fla.), you are being offered certain relief as settlement for your claim of employment discrimination against the County based on your EEOC charge.

First, as a monetary award, you are being offered \$31,540, which includes \$29,629 in back pay and \$1,911 in accumulated interest on the back pay.

Second, you are being offered reinstatement in the part-time position of Park Ranger in the Parks and Recreation Department of the County of Palm Beach with a remedial seniority date for all purposes of May 17, 2003 (the date you were hired as a part-time Park Ranger by the County). This position is being offered to you with your requested accommodation for a work schedule that will not include work on Sundays. If you accept the offer of employment, the County will allow you to resume employment as a part-time Park Ranger by a date no later than 60 days after the County's receipt of the fully executed release and election form enclosed with this letter. If you elect to accept the County's offer of employment, the County shall contribute its full share to any pension plan you would have been in had you been employed as a part-time Park Ranger by the County for the period of time between August 27, 2005, and such time as you begin working again in a part-time Park Ranger position with the Parks and Recreation Department. Your monetary award will not be reduced by the County's pension plan payments; however, any contribution you would have made to a deferred compensation or pension plan

during this period shall be paid into the deferred compensation or pension plan from your monetary award, if you elect to accept the County's job offer.

Third, the County is offering to expunge from your personnel files and any other County files any negative references pertaining to your request for a religious accommodation and your subsequent cessation of employment with the County.

This relief is being offered to you on the following condition: if you accept the relief, the County will require you to release it from all employment discrimination claims you may presently have against it on the basis of your religion arising out of this case and EEOC Charge No. 150-2005-04068. If you decline the relief, the County will nevertheless have satisfied its obligation to the United States pursuant to the Consent Decree in the above-captioned case and the United States will not seek additional relief for you.

You do not have to accept the job opportunity relief in order to accept the monetary awards. However, in order to obtain the offered relief, or any part of it, you must complete and return the enclosed Release and Election form. The Release must be signed in the presence of a notary public and thereafter notarized.

If you accept the offered relief, the County will send you in care of your counsel the appropriate monetary award within fifteen (15) days of its receipt of your Release. The County will also send you appropriate IRS forms with respect to the monetary award.

IF YOU FAIL TO SUBMIT THE RELEASE AND ELECTION FORM, AS DIRECTED IN THIS LETTER, WITHIN FORTY-FIVE (45) DAYS FROM YOUR RECEIPT OF THIS LETTER IN CARE OF YOUR COUNSEL, YOU WILL FORFEIT YOUR RIGHTS TO ANY MONETARY OR OTHER RELIEF UNDER THE CONSENT DECREE.

A copy of the Consent Decree is enclosed. If you have any questions concerning this settlement, you may contact Jeffrey Morrison, attorney for the United States Department of Justice, at (202) 353-1845.

Sincerely,

Ernest Chasseur

Attorney for Palm Beach County, Florida

Enclosures

APPENDIX C
RELEASE

KNOW ALL PERSONS BY THESE PRESENTS:

That the Undersigned, **WILLIAM J. STEWART II** (hereinafter referred to as "the RELEASOR"), being of lawful age, for the sole consideration set forth in the terms and provisions in Section B of the accompanying Consent Decree entered by the Honorable _____, United States District Judge, on _____, 2007, in *United States of America v. Palm Beach County, Florida*, Civil Action _____ (S.D. Fla.), does hereby and for his executors, administrators, successors and assigns, release acquit and forever discharge Palm Beach County (hereinafter referred to as "the COUNTY"), and its former and current Board of County Commissioners, officers, agents, employees, heirs, executors, administrators, successors and assigns, none of whom admit any liability to the RELEASOR, but all of whom expressly deny any such liability, from any and all claims, actions, demands, complaints, grievances, charges, causes of action, or suits of any kind or nature whatsoever, whether cognizable in law or in equity, filed or brought, or to be filed or brought, in any administrative agency, court or other forum, alleging employment discrimination based on religion, or retaliation arising from any allegation of employment discrimination based on religion, that accrued at any time prior to _____, 2007 [Date of entry of Consent Decree by the Court], and EEOC Charge No. 150-2005-04068.

FURTHERMORE, the RELEASOR understands and agrees that with respect to the claims he is waiving herein, that he is waiving not only his right to recover money or any other relief in any action or claim that he might institute, but also that he is waiving his right to recover money or any other relief in any action or claim that might be brought on his behalf by any other person or entity, including but not limited to the EEOC or any other federal, state or local government agency or department, to the extent such waivers are permitted by law.

FURTHERMORE, the RELEASOR agrees that each party shall bear that party's own costs and attorney fees.

FURTHERMORE, the RELEASOR understands and agrees that this settlement is the compromise of a disputed claim, and that the payment made shall not be construed as an admission of liability on the part of the COUNTY, and that the COUNTY denies any liability therefor and merely intends to avoid further litigation and buy its peace.

FURTHERMORE, the RELEASOR hereby declares and represents that no promise, inducement or agreement not herein expressed has been made to the RELEASOR, and that this Release contains the entire agreement between the RELEASOR and the COUNTY, and that the terms of this agreement are contractual and not merely a recital.

FURTHERMORE, the RELEASOR hereby declares that a copy of the Consent Decree noted above has been made available to him, and that the RELEASOR, with the assistance of counsel of his own choosing, has completely read and fully understands its terms and provisions.

THE RELEASOR hereby declares that the RELEASOR, with the assistance of counsel of his own choosing, has completely read, fully understands and voluntarily accepts the foregoing Release for the purpose of making a full and final compromise settlement of any and all claims, disputed or otherwise, and for the express purpose of precluding forever any further or additional claims against the COUNTY, arising out of any allegation of employment discrimination based on religion, that accrued at any time prior to _____, 2007 [Date of entry of Consent Decree by the Court] and EEOC Charge No. 150-2005-04068.

IN WITNESS HEREOF, I, WILLIAM J. STEWART II, have hereunto set my hand and seal this _____ day of _____, 2007.

IN THE PRESENCE OF:

WITNESS

WILLIAM J. STEWART II

Print Name

STATE OF FLORIDA)
) ss.
COUNTY OF PALM BEACH)

The forgoing Release was acknowledged before me, an officer duly authorized in the State and County aforesaid, to take acknowledgments, this _____ day of _____, 2007, by _____, who:

- ☐ is personally known to me; OR
- ☐ has produced _____
as identification; and who
- ☐ did take an oath; OR
- ☐ did not take an oath,

and who executed the within Release, and who acknowledged the within Release to be freely and voluntarily executed for the purposes therein recited.

[seal]

Notary Public in and for Palm Beach
County, Florida

My commission expires: _____

ELECTION FORM

Please complete by checking the appropriate response to each of the following:

A. Monetary Award

_____ I hereby accept the monetary award totaling \$31,540 contained in Section B.2. of the Consent Decree in *United States of America v. Palm Beach County, Florida*, Civil Action No. _____ (S.D. Fla).

B. Job Offer Award

_____ I hereby accept the offer of a part-time Park Ranger position with the County of Palm Beach, Florida, in its Parks and Recreation Department with remedial seniority and the religious accommodation contained in the Consent Decree in *United States of America v. Palm Beach County, Florida*, Civil Action No. _____ (S.D. Fla).

_____ I decline the job offer award.

Date _____ Signature: _____

TO RECEIVE EITHER AWARD, YOU MUST ALSO COMPLETE AND RETURN THE
ENCLOSED RELEASE. FAILURE TO RETURN BOTH FORMS WITHIN FORTY-FIVE (45)
DAYS MAY RESULT IN YOUR FORFEITURE OF THE AWARDS.

RETURN THE COMPLETED FORMS IN THE ENCLOSED ENVELOPE ADDRESSED TO:

Ernest Chasseur, Esq.
Assistant County Attorney
Palm Beach County Attorney's Office
301 N. Olive Avenue
Suite 601
West Palm Beach, Florida 33401