

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JEFFREY BARHAM
et al.,

Plaintiffs,

v.

CHARLES RAMSEY,
et al.,

Defendants.

Case No.: 02-CV-2283 (EGS)(JMF)

**NOTICE OF SUBMISSION OF MONITORING REPORT AND COMMENTS BY
THE PARTNERSHIP FOR CIVIL JUSTICE FUND
TO THE DISTRICT DEFENDANTS' FIFTH SIX MONTH REPORT ON THE
IMPLEMENTATION OF REQUIRED CHANGES TO POLICIES AND PRACTICES
UNDER THE BARHAM CLASS ACTION SETTLEMENT AGREEMENT**

Pursuant to the September 22, 2011 Final Approval Order of the class action settlement between the Class and the District of Columbia Defendants (Docket No. 640), the Partnership for Civil Justice Fund respectfully submits its Monitoring Report and Comments in response to the "District Defendants' Fifth Six Month Report on the Implementation of Required Changes to Policies and Practices Under the Barham Class Action Settlement Agreement."

March 22, 2013

Respectfully submitted,

/s/

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MONITORING REPORT AND COMMENTS BY THE PARTNERSHIP FOR CIVIL JUSTICE FUND TO THE DISTRICT DEFENDANTS' THIRD SIX MONTH REPORT ON THE IMPLEMENTATION OF REQUIRED CHANGES TO POLICIES AND PRACTICES UNDER THE BARHAM CLASS ACTION SETTLEMENT AGREEMENT

(Issued March 22, 2013)

The class action settlement agreement in Barham v. Ramsey, Civil Action No. 02-00283, assigned monitoring responsibilities to the Partnership for Civil Justice Fund and imposed reporting requirements upon the District of Columbia regarding measures to implement changes to policies and practices to ensure evidence preservation and to prevent recurrence of the evidence loss and/or destruction that was identified by the PCJF in the course of litigation, and in the future.

"This is an oversight and reporting function that is intended to assure plaintiffs, the Court, and the public that the Document Management, Retention and Preservation goals of the Settlement Agreement are, in fact, advanced and achieved." Joint Motion for Final Approval of Proposed Class Settlement and Payment Distributions, Supporting Memorandum at 38 (Docket #629).

This is the fifth of six periodic reports, and accompanying comments by the PCJF, as required during a mandatory three year reporting period. Pursuant to the Settlement Agreement, the District of Columbia is required to provide an advance copy of its report to the PCJF. "The District shall consider the comments by Class Counsel. The comments or response of Class Counsel, if any, shall be incorporated as an included attachment or exhibit and published in the final report. The reports shall be transmitted to Judge Emmet G. Sullivan, as well as made publicly available."

With respect to prior submissions, the District of Columbia has refused to incorporate Class Counsel's comments as an included attachment and published in the final report, necessitating a separate submission to the Court by Class Counsel of its comments. Accordingly, the Partnership for Civil Justice Fund respectfully submits its fifth monitoring report, which follows herein:

With respect to the mechanical obligations of establishing proper policies as well as an audit trail and evidentiary management system, the District appears to be in compliance with the terms of the Barham settlement agreement.

However, so long as the District declines to hold accountable MPD General Counsel Terrence Ryan and attorneys working with him for their responsibility in connection with the secretion or loss or destruction of evidence in this matter, the landmark and effective system put into place by the Barham settlement could be circumvented.

It is clear, including from circumstances related to the discovery by D.C. Metropolitan Police Department Officer John Strader of a book labeled "JOCC Activation Running Resume," that delivering evidence directly into the hands of MPD General Counsel Terrence Ryan does not ensure the preservation of such evidence and its ultimate entry into the evidence management system. It is a matter of record that many trails of inaccurate statements, evidence document loss and destruction in this case converge at the Offices of General Counsel Terrence Ryan and/or his Deputy General Counsel Ronald Harris.

In this Fifth Report, as the preceding Reports, the PCJF recommends again that

any person implicated in [the secretion, mislocation or destruction] of evidence in the [MPD] Office of General Counsel be suspended pending investigation to protect the integrity of evidence that runs through the OGC. The system that has been established, including through settlement terms, for imposing litigation holds and for tracking and managing evidence can be effective only if evidence reaches the entry point.

Given the failure for such disciplinary action to be undertaken, the PCJF further recommends such investigation be undertaken by an independent agency, such as by referral for criminal investigation and prosecution to the Department of Justice for action by the Public Integrity Division, the Civil Rights Division or whatever special attorney or specialized division is deemed most suitable by the U.S. Attorney General; or for the appointment of special counsel consistent with the statutory authority provided in 28 U.S.C. § 1815.

The PCJF represented to this Court, in its Second Monitoring Report and Comments, issued September 23, 2011, that the Washington Field Office (WFO) of the Federal Bureau of Investigation (FBI) is itself conflicted out of any investigation into evidence or destruction or tampering by the Office of General Counsel. That representation was precisely correct, as reflected by the failure of the WFO, which was tasked with investigating obstruction of justice in connection with certain running resume data, to conduct a minimally proper investigation. The FBI failed to analyze and investigate the loss and destruction of the running resume data in the Group Systems, i.e., the operational running resume system (as distinguished from the E-Teams System, which appears to have been run in a testing mode as it was being considered as a successor system).

Ancillary or corollary to the implementation of an effective set of policies and document management systems to preserve evidence is the imposition of accountability for those responsible for loss, secretion or destruction of evidence. The District of Columbia agrees that

the threshold for a criminal investigation and potential prosecution has been met. However, as before, no personal accountability has been imposed to date.