

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
BLUEFIELD DIVISION

ENTERED

JUN - 5 2000

SAMUEL L. KAY, CLERK
Bankruptcy Court
District of West Virginia

ROBERT LEMONT ELLISON,

Plaintiff,

v.

CIVIL ACTION NO. 1:99-0576

THE CITY OF BLUEFIELD, et al.,

Defendants.

CONSENT DECREE

The plaintiff and the City of Bluefield, being desirous of settling this action by appropriate Decree, agree to the jurisdiction of this Court over the respective parties and subject matter of this action and hereby waive the entry of findings of fact and conclusions of law. The parties accept this Decree as final and binding among the parties signatory hereto as to the issues resolved herein, as well as on all parties who consent to the relief hereinafter provided. This Decree, being entered with the consent of the City of Bluefield, shall not constitute an admission, adjudication, or finding on the merits of the case, and the City of Bluefield denies that any unlawful conduct has occurred.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

CITIZEN REVIEW PANEL

1. The City of Bluefield shall on or before December 1, 2000, establish a Citizen Review Panel (hereinafter referred to as the "CRP") for the purpose of providing civilian review of the investigations of alleged police misconduct undertaken by the City of Bluefield, including

internal investigations conducted by the Bluefield Police Department. Such review shall be undertaken to provide advice and recommendations to the City of Bluefield calculated to improve the operations of the Bluefield Police Department and community/police relations. The CRP shall meet the following requirements:

(a) Organization and Membership

The CRP shall consist of five members appointed by a majority vote of the Board of Directors of the City of Bluefield (hereinafter referred to as "Board of Directors") for three year terms, with no fewer than two being a minority. Of the minority members at least one will be an African-American. One member of the CRP shall be a member of the Board of Directors. One member of the CRP shall be a present or former member of the Bluefield Police Department. One of the said CRP members shall be selected as chairperson by a majority vote of the CRP panel and shall preside over all proceedings. When making such appointments, the Board of Directors shall consider the diversity of interests and the balance of such interests necessary for an effective panel membership. The Board of Directors may adopt such regulations as may be required to implement the appointment of the panel members and may appoint qualified persons to serve for an unexpired or temporary term, as required.

(b) Membership Eligibility

Nominees for appointees to the CRP must be residents of the City of Bluefield. City residency must be maintained to remain eligible to serve. Appointment to the CRP shall be conditioned upon voluntary submission to and completion of a thorough background check. Any member of the CRP may be removed or suspended by the Board of Directors for misconduct, malfeasance, inefficiency, incompetence, failure of attendance, or upon conviction of a criminal offense; or for the inability or failure to otherwise adequately perform the duties of membership.

(c) Conflict of Interest

Should a member of CRP become the focus of any criminal proceeding or otherwise have a personal interest in any matter before the CRP such that his or her ability to impartially participate in the deliberations of the CRP may be influenced, the CRP member shall notify the Chairperson of a potential conflict of interest and shall be excused from such deliberations or other participation. Any potential

conflict of interest otherwise coming to the attention of the CRP shall be resolved by majority vote as required.

(d) Meetings and Working Sessions

The CRP membership shall initially meet to adopt procedures for the conduct of meetings, the operational activities of the CRP, and a regular meeting schedule (which shall be at least quarterly). Additional regular or special meetings as may be required may be scheduled by the CRP Chairperson or the City Manager. A quorum for CRP meetings shall be three of the members appointed, and a majority vote of those appointed to the CRP shall be required to transact the substantive business of the CRP including determinations to review completed internal investigations, the adoption of reports, and recommendations to the Board of Directors. All meetings of the CRP shall be held in confidential, executive sessions.

The CRP, any committee composed of a lesser number of CRP members, or an individual member may, at the direction of the CRP, conduct such working sessions as are required to prepare for the transaction of business at regular or special meetings and to conduct such inquiries as may be required to implement the terms of this section. No business of the CRP requiring a vote shall be transacted in a working session.

The Chairperson shall preside over all meetings of the CRP and shall have the right to vote on all questions. The Chairperson shall ensure that the activities of the CRP are conducted in compliance with all applicable City laws.

(e) Facilities, Compensation, Staff, Training

(1) Members of the CRP shall serve without pay unless the Board of Directors determines otherwise.

(2) The CRP shall be provided, subject to the approval of the Board of Directors, with sufficient staff, facilities, and equipment as may be required to carry out the duties imposed by this Decree.

(3) CRP members shall be provided with any training deemed necessary to enable them to carry out their membership duties, subject to the approval of the Board of Directors.

(4) Legal counsel shall be provided, subject to the approval of the Board of Directors, to the CRP by the City Solicitor.

(f) Jurisdiction and Duties of CRP

(1) The CRP is authorized to review all investigations of alleged police misconduct performed by the Bluefield Police Department for the purpose of evaluating the thoroughness, accuracy, credibility, and unbiased nature of such investigations. The CRP shall receive a copy of all complaints of alleged police misconduct made to the Bluefield Police Department. The CRP shall determine, by vote, which investigations shall be subjected to the review process. However, no CRP review shall commence until the Police Department investigation has been completed. Further, such reviews shall not be conducted until such time as the effectiveness of any parallel criminal investigations and prosecution would not be threatened, as determined by the Chief of Police.

(2) The City Manager shall provide timely access to all city records and documents, including investigation files and reports and excluding employee personnel records. These records are to be kept strictly confidential and used solely for purposes of CRP evaluation. Under no circumstances are these records to be disseminated to persons outside the CRP. Criminal intelligence information shall not be provided unless a particularized need is demonstrated and the written approval of the Chief of Police is obtained. The CRP may, through the City Manager, request the timely appearance of any member of the Bluefield Police Department, or other city employees and may question such employees for the purpose of aiding in the evaluation and investigation of allegations of police misconduct. Any testifying witness will be permitted to assert any and all rights and privileges afforded citizens of the United States.

(3) All information obtained by the CRP shall be kept confidential. Such confidentiality shall be strictly maintained in any matter. If parallel criminal and administrative investigations are necessary, the CRP shall consult with and obtain the approval of the Chief of Police for the purpose of coordinating board inquiries with the criminal investigation.

(4) Interviews of city employees or other witnesses shall be conducted only in executive session under closed inquiry with the strictest confidentiality maintained. Such sessions shall not be open to the public and shall include only CRP members and any necessary staff or support personnel. The employee shall be advised that a failure or refusal to answer truthfully and completely can subject the employee to disciplinary action including termination. Any employee requested to appear before the CRP for such an inquiry session may bring a legal representative or other support person of choice. Any police officer or complainant, who is directly involved in the circumstances under review, may also attend such sessions and may bring a legal representative or other support person.

(g) Reports and Recommendations

The CRP is authorized to issue reports to the Board of Directors containing findings, conclusions, and recommendations. Such reports shall be limited to subject matter within the jurisdiction of the CRP as provided in this Decree. Any findings, conclusions, or recommendations made by the CRP may include a general evaluation of any discipline imposed but the CRP may not make any specific disciplinary recommendations concerning the matter under review. The CRP shall issue annual reports summarizing its activities for the previous year, including a review of significant cases and recommendations. Such annual reports shall be issued to the Board of Directors and maintained in the strictest confidence.

(h) Administration Authority

(1) The Board of Directors are required to adopt such regulations as are required to implement the provisions of this Decree.

RECRUITMENT OF MINORITY APPLICANTS

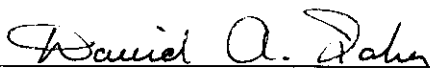
2. The City of Bluefield shall adopt and proceed to implement as promptly as possible meaningful measures to significantly increase the number of minority applicants for employment as police officers by the City of Bluefield Police Department. Those measures shall not conflict with any applicable federal or state statutes, laws, or ordinances and shall include, but are not limited to the following:

- (a) The City of Bluefield will undertake to recruit prospective minority applicants.
- (b) The City of Bluefield will intensify media advertising in order to recruit minorities, and will utilize minority police officers for the purposes of recruiting, publicizing examinations, and answering questions from potential applicants in minority neighborhoods.
- (c) The City of Bluefield will develop and maintain contacts within the minority community organizations to inform their respective memberships of employment opportunities in the Bluefield Police Department. A list of organizations will be provided to the City of Bluefield by the Plaintiff or his representative.

3. The plaintiff and/or plaintiff's designee, in full and complete settlement of his action, shall receive payment of \$1 million, or the equivalent thereof for the purchase of an annuity for a structured settlement, for his claim of damages. It is also agreed amongst the parties in the instant action that in consideration of the monies paid to Robert Ellison and the terms of this Consent Decree, Robert Ellison agrees to fully and completely release each and every Defendant in the instant action.

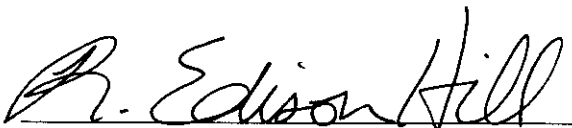
4. The Court will retain continuing jurisdiction of this action for such further relief or other orders as may be appropriate pending a showing of compliance with the terms of this Decree. Upon a showing of good cause, any provisions of this Decree may be amended or modified by an order of this Court.

IT IS SO ORDERED. 6/5/00.



DAVID A. FABER
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONSENT:



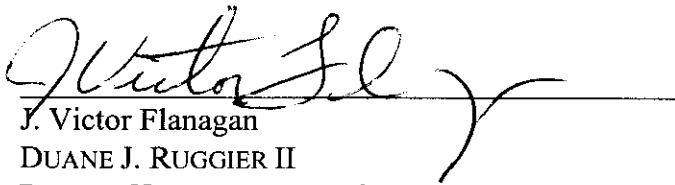
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Counsel for Plaintiff

A handwritten signature in cursive script, appearing to read "J. Victor Flanagan", is written over a horizontal line. The signature is fluid and extends to the right of the line.

J. Victor Flanagan
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Bluefield Police Department*

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