

CLOSED

**U.S. District Court
Eastern District of Virginia – (Norfolk)
CIVIL DOCKET FOR CASE #: 2:09-cv-00133-MSD-LRL**

United States of America v. City of Portsmouth, Virginia
Assigned to: District Judge Mark S. Davis
Referred to: Magistrate Judge Lawrence R. Leonard
Cause: 42:2000 Job Discrimination (Race)

Date Filed: 03/25/2009
Date Terminated: 01/29/2013
Jury Demand: None
Nature of Suit: 442 Civil Rights: Jobs
Jurisdiction: U.S. Government Plaintiff

Plaintiff

United States of America

represented by **Elizabeth Belle Banaszak**
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Date Filed	#	Docket Text
03/25/2009	<u>1</u>	COMPLAINT against City of Portsmouth, Virginia, filed by United States of America. (Attachments: # <u>1</u> Civil Cover Sheet)(lhow,) (Entered: 03/26/2009)
03/25/2009	<u>2</u>	Joint MOTION for Provisional Entry of Consent Decree and Scheduling of Fairness Hearing by United States of America. (Attachments: # <u>1</u> proposed order)(lhow,) (Entered: 03/26/2009)
03/25/2009	<u>3</u>	Memorandum in Support re <u>2</u> MOTION for Provisional Entry of Consent Decree and Scheduling of Fairness Hearing filed by United States of America. (lhow,) (Additional attachment(s) added on 7/9/2009: # <u>1</u> proposed consent decree) (lhow,). (Entered: 03/26/2009)
03/25/2009	<u>4</u>	MOTION for John M. Gadzichowski to appear Pro hac vice by United States of America. (lhow,) (Entered: 03/26/2009)

03/25/2009	<u>5</u>	MOTION for Jodi Beth Danis to appear Pro hac vice by United States of America. (lhow,) (Entered: 03/26/2009)
03/25/2009	<u>6</u>	MOTION for Meredith Lynn Burrell to appear Pro hac vice by United States of America. (Attachments: # <u>1</u> attachment)(lhow,) (Entered: 03/26/2009)
04/02/2009	<u>7</u>	ORDER granting <u>4</u> Motion for Pro hac vice, Appointed John M Gadzichowski for United States of America. Signed by District Judge Mark S. Davis and filed on 4/2/09. (lhow,) (Entered: 04/03/2009)
04/02/2009	<u>8</u>	ORDER granting <u>5</u> Motion for Pro hac vice, Appointed Jodi Beth Danis for United States of America. Signed by District Judge Mark S. Davis and filed on 4/2/09. (lhow,) (Entered: 04/03/2009)
04/02/2009	<u>9</u>	ORDER granting <u>6</u> Motion for Pro hac vice, Appointed Meredith Lynn Burrell for United States of America. Signed by District Judge Mark S. Davis and filed on 4/2/09. (lhow,) (Entered: 04/03/2009)
04/09/2009	<u>10</u>	ORDER GRANTED <u>2</u> Motion for Provisional Entry of Consent Decree. ORDERED that the Consent Decree agreed to and executed by the parties is provisionally approved and entered by this court. Further ORDERED that a Fairness Hearing will be held before this Court on Thursday, 7/23/09 beginning at 10:30 a.m. at the Walter E. Hoffman United States Courthouse located at 600 Granby Street, Norfolk, Virginia. Signed by District Judge Mark S. Davis and filed on 4/9/09. (lhow,) (Additional attachment(s) added on 7/9/2009: # <u>1</u> Proposed consent decree) (lhow,). (Entered: 04/09/2009)
04/10/2009		Set Fairness Hearing: Fairness hearing set for 7/23/2009 at 10:30 AM (lhow,) (Entered: 04/10/2009)
07/13/2009	<u>11</u>	NOTICE by United States of America of <i>Objection to Consent Decree</i> (Attachments: # <u>1</u> Exhibit 1)(Watt, Susan) (Entered: 07/13/2009)
07/13/2009	<u>12</u>	Memorandum in <i>Support of Entry of the Consent Decree and in Response to Objections</i> filed by United States of America, City of Portsmouth, Virginia. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4, # <u>5</u> Exhibit 5, # <u>6</u> Exhibit 6)(Watt, Susan) (Entered: 07/13/2009)
07/23/2009	<u>13</u>	AGREED CONSENT DECREE that the City, its officials, agents, employees, and successors, and all persons acting on its behalf or in active concert or participation with it, are enjoined from using any selection device, including a written examination for the entry-level firefighter position, that has a disparate impact upon African-American applicants on the basis of race and is not job related for that position and consistent with business necessity, or otherwise does not meet the requirements of Title VII. Further, during the term of this Consent Decree, the City shall not administer any written examination for use in the selection of entry-level firefighters without the prior agreement of the United States or, absent such agreement, prior approval of the Court (see order for specifics). No later than 90 days after the date of the entry of this Decree the City shall submit to the United States a proposal to use a selection device in place of the NFST for selecting entry-level firefighters. Upon execution of this Decree the parties shall file a joint motion for the provisional approval and entry of the Decree by the Court and shall request a fairness hearing on the Consent Decree. If the Court determines that the terms of this Decree are fair, reasonable, equitable and otherwise consistent with federal law the Court shall enter the Decree at or following the fairness hearing. Within 30 days after the date of the entry of this Decree by the Court or January 15, 2010, whichever is later, the City shall deposit the sum of \$145,000 into an interest bearing account established for this purpose in a federally insured financial institution agreed to by the parties. The funds in the settlement fund, including any interest, shall be distributed by the City to claimants entitled to monetary relief under this Decree. While this Decree remains in effect, the City shall maintain prescribed records. (see order for specifics) This Decree shall be dissolved and that this action shall be dismissed without further order of the Court upon the occurrence of the latter of (a) 30 days after the establishment of an eligibility list or (b) the fulfillment of all the parties obligations regarding individual relief. If both of these events have not occurred within three years of the entry of this Decree the parties shall jointly move the Court for a status hearing. Except as set forth in this

		Decree, each party shall bear its own costs and expenses incurred as a result of obligations imposed by this Decree, including the cost of all notification and publication procedures. Each party shall bear its own costs, expenses, and attorney's fees incurred in this litigation. The Court shall retain jurisdiction over this Decree for the purpose of resolving any disputes or entering any orders that may be appropriate to implement the Decree. Signed by District Judge Mark S. Davis and filed in open court on 7/23/09. (Attachments: # <u>1</u> Appendix)(lhow,) (Entered: 07/23/2009)
07/23/2009		HEARING minutes for proceedings held before District Judge Mark S. Davis: Paul McManus, OCR. Susan Watt, AUSA, Meredith Burrell and Jodi Danis, present on behalf of the United States; Alfred Bates, III and George Oksman, present on behalf of the the City of Portmsouth, VA. Hearing on Approval of Consent Decree held on 7/23/2009. Matter came on for approval of the Consent Decree; argument/presentation of counsel; comments of the Court; Court APPROVES and enters Consent Decree. Status Hearing scheduled for 7/23/12 at 10:00 a.m.; court adjourned. THIS IS A TEXT ONLY ENTRY. A PDF DOCUMENT IS NOT ATTACHED TO THIS ENTRY. (vwar) (Entered: 07/23/2009)
08/11/2009	<u>15</u>	TRANSCRIPT of Proceedings held on July 23, 2009 before Judge Mark S. Davis. Court Reporter, Paul L. McManus. The transcript is a paper document which may be viewed at the Clerk's Office. (lhow,) (Entered: 08/11/2009)
12/20/2009	<u>16</u>	MOTION to <i>Schedule Fairness Hearing on Individual Relief</i> by United States of America. (Attachments: # <u>1</u> Proposed Order)(Watt, Susan) (Entered: 12/20/2009)
12/20/2009	<u>17</u>	Memorandum in Support re <u>16</u> MOTION to <i>Schedule Fairness Hearing on Individual Relief</i> filed by United States of America. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4)(Watt, Susan) (Entered: 12/20/2009)
01/06/2010	<u>18</u>	MOTION for Elizabeth Belle Banaszak to appear Pro hac vice by United States of America. (lhow,) (Entered: 01/06/2010)
01/08/2010	<u>19</u>	ORDER granting <u>18</u> Motion for Pro hac vice, Appointed Elizabeth Belle Banaszak for United States of America. Signed by District Judge Mark S. Davis and filed on 1/8/10. (lhow,) (Entered: 01/08/2010)
01/28/2010	<u>20</u>	ORDER <u>16</u> Motion to Schedule Fairness Hearing on Individual Relief is GRANTED. It is further ORDERED that a Fairness Haring on Individual Relief will be held before this Court on 4/29/10, beginning at 10:00 a.m. Signed by District Judge Mark S. Davis and filed on 1/28/10. (lhow,) (Entered: 01/28/2010)
01/28/2010		Set Fairness Hearing on Individual Relief for 4/29/2010 at 10:00 AM (lhow,) (Entered: 01/28/2010)
04/19/2010	<u>21</u>	Response to <i>Objections to the Relief Awards List</i> filed by United States of America. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G, # <u>8</u> Exhibit H, # <u>9</u> Exhibit I, # <u>10</u> Exhibit J, # <u>11</u> Exhibit K, # <u>12</u> Exhibit L)(Watt, Susan) (Entered: 04/19/2010)
04/26/2010	<u>22</u>	NOTICE by United States of America of <i>Additional Objection to Relief Awards List and United States' Response</i> (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F)(Watt, Susan) (Entered: 04/26/2010)
04/29/2010		FAIRNESS HEARING on Individual Relief held before District Judge Mark S. Davis on 4/30/2010. Elizabeth B. Banaszak and Meredith L. Burrell, attorneys with the Dept. of Justice, and Susan Watt, AUSA, present on behalf of plaintiff. Alfred W. Bates, III, attorney with the Office of the City Attorney, present on behalf of the defendant. (Court Reporter, Sue Ash, OCR.) Comments of counsel re. three objectors and background history of case. Objector sworn and testified. Argument for good cause. Court stated findings and rulings on the record. Court rules no good cause exist for two objectors and that it does exist for one. Court rules one objector to be included in the claim. Comments of Court and counsel for plaintiff to recalculate relief to include one objector. Court directed plaintiff to submit an Order including the one objector in claim with attached Relief Awards List. Court stated Court to recess and reconvene at 2:00 p.m. today for plaintiff to submit

		Order. Counsel for plaintiff addresses Court for ruling on additional amendment for claimant to be eligible for hiring relief. Court stated findings and rulings on the record. Court finds good cause for claimant to be eligible for hiring relief. Court adjourned to reconvene at 2:00 p.m. LATER at 2:00 – Counsel for plaintiff presents to Court for entry, Order for redistribution of funds. Comments of Court and counsel re. Order. Order executed, entered and filed in open Court. Court adjourned. (THIS IS A TEXT ONLY ENTRY, A PDF DOCUMENT IS NOT ATTACHED TO THIS ENTRY). (evans) (Entered: 04/30/2010)
04/29/2010	<u>24</u>	ORDER re. Fairness Hearing finding good cause and to amend the Relief Awards List, signed by District Judge Mark S. Davis on 4/29/10; executed, entered and filed on 4/29/10.(evans) (Entered: 04/30/2010)
12/21/2010	<u>25</u>	MOTION for Extension of Time to Submit Objections, if any, to the City of Portsmouth's Determinations Regarding Priority Hiring Claimants by United States of America. (Watt, Susan) (Entered: 12/21/2010)
12/21/2010	<u>26</u>	Memorandum in Support re <u>25</u> MOTION for Extension of Time to Submit Objections, if any, to the City of Portsmouth's Determinations Regarding Priority Hiring Claimants filed by United States of America. (Watt, Susan) (Entered: 12/21/2010)
12/22/2010	<u>27</u>	ORDER <u>25</u> Motion for Extension of Time to Submit Objections is GRANTED; and further ORDERED that the United States shall submit its objections, if any, to the City of Portsmouth's determinations regarding priority hiring claimants on or before 1/26/11. Signed by Magistrate Judge F. Bradford Stillman and filed on 12/22/10. (lhow,) (Entered: 12/23/2010)
01/26/2011	<u>28</u>	NOTICE by United States of America Regarding the United States' Objection to the City of Portsmouth's Determination Regarding Priority Hiring Claimant (Watt, Susan) (Entered: 01/26/2011)
06/24/2011	<u>29</u>	MOTION to Withdraw as Attorney by City of Portsmouth, Virginia. (Attachments: # <u>1</u> Proposed Order Withdrawal as Counsel)(Bates, Alfred) (Entered: 06/24/2011)
06/28/2011	<u>30</u>	AGREED ORDER granting <u>29</u> Motion to Withdraw as Attorney. Attorney Alfred William Bates, III terminated. ORDERED that Alfred W. Bates, III, Attorney for defendant City of Portsmouth, Virginia, be hereby granted leave to withdraw as counsel of record in this case and is relieved of all responsibility as counsel of record. G. Timothy Oksman, City Attorney, and the Office of the City Attorney for Portsmouth, Virginia, will remain as counsel for the aforesaid. Signed by District Judge Mark S. Davis and filed on 6/28/11. (jcow,) (Entered: 06/28/2011)
10/25/2011	<u>31</u>	NOTICE of Appearance by Cheran Denise Cordell on behalf of City of Portsmouth, Virginia (Cordell, Cheran) (Entered: 10/25/2011)
10/26/2011		Status Conference set for 11/16/2011 at 10:00 AM in Norfolk Courtroom 5 before District Judge Mark S. Davis. (vwar) (Entered: 10/26/2011)
11/16/2011	<u>32</u>	STATUS CONFERENCE held before District Judge Mark S. Davis: Paul McManus, OCR. Susan Watt, Meredith Burrell and Elizabeth Banaszak, present on behalf of the United States. Cheron Cordell and George Oksman, present on behalf of the City of Portsmouth. Status Conference held on 11/16/2011. Matter came on for a status hearing. Comments of the Court. Comments of counsel heard re: status concerning Consent Decree. Testimony of Chief Don Horton and Captain William Quilian, Jr. Further comments of the Court. Court adjourned. (vwar) (Entered: 11/16/2011)
12/06/2011	<u>33</u>	TRANSCRIPT of Status Hearing proceedings for date of 11/16/11, before Judge Mark S. Davis, Court Reporter/Transcriber Paul McManus, Telephone number 757-222-7077. NOTICE RE REDACTION OF TRANSCRIPTS: The parties have thirty(30) calendar days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at www.vaed.uscourts.gov Transcript may be viewed at the court public terminal or purchased through the court reporter/transcriber before the deadline for

		Release of Transcript Restriction. After that date it may be obtained through PACER Redaction Request due 1/5/2012. Redacted Transcript Deadline set for 2/6/2012. Release of Transcript Restriction set for 3/5/2012.(McManus, Paul) (Entered: 12/06/2011)
07/13/2012	<u>34</u>	Status letter by both parties. (jcow,) (Entered: 07/17/2012)
07/17/2012	<u>35</u>	ORDER – The status conference currently set for July 23, 2012 is cancelled. Pursuant to the joint representations in the parties' July 13, 2012 letter to the Court, the parties are ORDERED to submit a final order by January 23, 2013, or notify the Court by then if there are any objections to submission of such Order. Signed by District Judge Mark S. Davis and filed on 7/17/12. (jcow,) (Entered: 07/17/2012)
10/03/2012		Case reassigned to Magistrate Judge Lawrence R. Leonard. Magistrate Judge F. Bradford Stillman no longer assigned to the case. (jcow,) (Entered: 10/03/2012)
01/23/2013	<u>36</u>	STATUS REPORT by City of Portsmouth, Virginia, United States of America. (Attachments: # <u>1</u> Exhibit 1 – Eligible Candidates, # <u>2</u> Exhibit 2 – Letters to Priority Hire Claimants)(Watt, Susan) (Entered: 01/23/2013)
01/29/2013	<u>37</u>	AGREED FINAL ORDER – The Court FINDS that the parties have fulfilled their obligations regarding injunctive and individual relief and that dissolution of the Consent Decree is warranted. The Court hereby ORDERS that the Consent Decree between the parties is TERMINATED and the underlying action is DISMISSED. Signed by District Judge Mark S. Davis on 1/28/13 and filed on 1/29/13. (jcow,) (Entered: 01/29/2013)