

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

UNITED STATES OF AMERICA, Plaintiff,

vs.

JEFFERSON COUNTY, ALABAMA, *et al.*,
Defendants.

Civil Action No. CV-75-S-666-S

JOHN W. MARTIN, *et al.*,
Plaintiffs,

vs.

CITY OF BIRMINGHAM, ALABAMA, *et al.*,
Defendants.

Civil Action No. CV-74-S-17-S

PROPOSED PLAN FOR TRANSITION OF AUTHORITY FROM RECEIVER TO
COUNTY AND APPOINTMENT OF MONITOR

The Martin Plaintiffs and Bryant Intervenors (“Martin/Bryant Parties”), the United States, the Receiver, and Jefferson County (the “County”), jointly submit the following Proposed Plan for Transition of Authority from the Receiver to Jefferson County (“Transition Plan”) and the proposed Order Adopting the Transition Plan (“Transition Order”).

1. **Oversee and Direct All Employment Decisions.** The Human Resources Director (“HR Director”), County Manager, and County Commission shall oversee and direct all employment decisions of the County. (See Order Appointing Receiver (“OAR”), Doc. 1982 at ¶¶ 2(a), 2(j), 3(a).) Specifically, the HR Director shall have the power to operate, manage and administer all decisions by the County pertaining to the hiring, promotion, demotion, transfer, discipline, suspension or termination of merit-and non-merit-system employees, except those powers vested by law to the County Manager, County Commissioners and other elected officials

of the County. Further, the HR Director shall collaborate with the County Manager in making employment decisions. The County Commission shall retain its appointing authority and other lawful authority and powers over the County Attorney and County Manager. The County Attorney shall retain full and complete authority over employment decisions for the other attorneys and staff in the Legal Department. Those elected officials of the County with statutory authority to make non-merit appointments shall retain authority over employment decisions relating to such appointments. (See Doc. 1982 at ¶ 2(a), 2(j).)

2. Fulfillment and Implementation of County Manager's and County Commission's Obligations. The County Manager and County Commission shall reassume responsibility for fulfillment and implementations of all functions and obligations vested by law, including, but not limited to, "(i) all powers vested by Alabama Act Nos. 2011-69 and 2011-70 in the County Manager that relate to employment decisions, including the power to hire, promote, demote, transfer, discipline, suspend, or terminate employees as necessary, and (ii) all powers reserved by Alabama Act Nos. 2011-69 and 2011-70 to the Jefferson County Commission that relate to employment decisions, including the powers to appoint non-merit system employee and to employ, appoint, promote, demote, transfer, supervise, discipline, suspend, or terminate department heads or other non-merit system employees a necessary". (Doc. No. 1982 at ¶ 2(a).)

3. Employment of Individuals in the Human Resources Department. The HR Director, together with the County Manager, shall have the power to employ, appoint, promote, demote, transfer, discipline, suspend or terminate all persons within the Human Resources Department.

4. Assessment of Knowledge, Skills, Abilities and Competencies of

Employees. The HR Director, together with the County Manager and the County's department heads, shall assess the knowledge, skills, abilities and competencies of County employees.

5. Review and Resolve Employment Discrimination Complaints.

The Chief Equity & Inclusion Officer ("CEIO," formerly known as the "Affirmative Action Officer") and the HR Director shall have the power to review, resolve, and remediate complaints of employment discrimination against the County.

6. Appeals from Demotion, Discipline, Suspension or Termination.

Merit system County employees subject to demotion, suspension, discipline, or termination may avail themselves of all rights and procedures of appeal as provided by the Rules and Regulations promulgated by the Personnel Board of Jefferson County and any applicable state or federal law.

7. Fulfillment and Implementation of the Consent Decree.

The CEIO, the HR Director, the County Manager, the County Commission, and the department heads shall assume responsibility for fulfillment and implementation of all terms of the County's 1982 Consent Decree, as modified by this Court on November 12, 2013, *nunc pro tunc* October 16, 2013 (the "Consent Decree") (Doc. 1842), and shall ensure day-to-day compliance with the same by all employees of the County.

8. Implementation of Plan to Comply with Paragraph 33 of the Consent

Decree. The CEIO, together with the HR Director, shall continue to implement a plan to ensure the County Human Resources Department acts in compliance with all provisions of Paragraph 33 of the Consent Decree. (See Doc. 1842 at ¶ 33.)

9. **Implementation of Lawful Selection Procedures.** The HR Director shall continue to develop and implement lawful selection procedures for appropriate merit- and non-merit positions (*see supra*, ¶ 1).

10. **Implementation of Employee Training and Development Programs.** The HR Director shall continue to determine, direct, and implement employee training and development programs in all areas the HR Director deems necessary to ensure that the County remains a strong and competent institution.

11. **Ensure Accountability of County's Department Heads.** The HR Director shall continue the Receiver's work as specified in Paragraph 3(h) of the OAR, in ensuring the County Human Resources Department remains a strong and competent institution with a clearly defined mission and the ability to provide meaningful accountability to the County's department heads. The HR Director shall also ensure that the County's Human Resources Department "discharges all functions in an efficient, professional, and cost-effective manner in substantial compliance with all applicable federal and state laws and regulations". (*See* Doc. 1982 at ¶ 3(h).)

12. **Ensure Training on Anti-Discrimination and Anti-Nepotism Policies.** The CEIO, together with the HR Director, shall ensure that all employees of the County, as well as the County's elected and appointed officials and their appointees, receive periodic, mandatory training regarding anti-discrimination and anti-nepotism policies. The CEIO, together with the HR Director, shall further provide all Human Resources training it deems necessary to employees of the County, elected and appointed officials, and their appointees.

13. **Management of the Human Resources Department.** The HR Director shall manage the Human Resources Department in "a manner compliant with all applicable

federal and state laws and regulations concerning the privacy and/or confidentiality of employee information, including but not limited to personal, medical, criminal, and financial information, as well as Social Security numbers”. (See Doc. 1982 at ¶ 3(j).)

14. Review of Contracts. The County shall include the HR Director in any and all decisions and correspondence related to requests by the County for independent contractors.

15. Reports. Not later than the 15th day of each month, the HR Director and County Manager shall submit to the Court, Special Master, the Monitor, and the parties monthly status reports describing significant actions and monthly updates, including those that relate to the County’s compliance with its obligations under the Consent Decree, or on the County’s ability and commitment to function in compliance with federal law absent judicial supervision.

16. Actual Transfer of Authority. The Receiver’s authority and responsibilities as set forth above shall be transferred on the date at which the Transition Order is entered by this Court, at which point the Modified Order Appointing Receiver (Doc. 1982) shall be deemed terminated.

17. Monitorship. On the date at which the Transition Order is entered by this Court, Lorren Oliver will be appointed as Monitor of Jefferson County. Mr. Oliver shall serve in that capacity from the date at which the Transition Order is entered by this Court until such time as this Court enters an order terminating the Consent Decree, or as otherwise directed by subsequent order.

a. The Monitor, as an officer or agent of this Court, shall be independent of the parties and shall serve at the pleasure of the Court. The County shall indemnify the Monitor for liability, damages, and losses incurred, and shall pay, upon certification of expenses approved by the Court, all expenses reasonably incurrent in defending any lawsuit or administrative

proceeding in which the Monitor is named as a party, either personally or as the Monitor, or in which liability may otherwise attach to him, if such suit or proceeding is based upon or arises out of any action taken within the scope of the Monitorship as defined in this Transition Plan.

b. The Monitor shall have the responsibility of investigating facts that may bear on the County's compliance with its obligations under the Consent Decree, or on the County's ability and commitment to function in compliance with federal law absent judicial supervision.

c. The Monitor may regularly confer with, and engage in *ex parte* communications with, counsel for any party, the County, and the Special Master, together or separately, to discuss progress, barriers to progress, and further measures needed to achieve full compliance with the terms of the Consent Decree, or the ability and commitment of the County to function in compliance with federal law absent judicial supervision.

d. The Monitor may attend any meetings of the parties, counsel, the County, or any other proceedings (including telephone conferences) that relate to the County's efforts to comply with its Consent Decree, or the County's ability and commitment to function in compliance with federal law absent judicial supervision.

e. The Monitor shall attend all status conferences scheduled by this Court unless instructed otherwise by the Court.

f. The Monitor shall bring to the attention of this Court, the Special Master, and the parties any issue that, in his professional judgment, the County should consider in order to comply with the Consent Decree, and in order to demonstrate its ability and commitment to function in compliance with federal law absent judicial supervision, and any actions, events, or occurrences that the Monitor believes may hamper or thwart the County's efforts to comply with

its Consent Decree, or that may bear upon the County's ability and commitment to function in compliance with federal law absent judicial supervision.

g. The Monitor may request from the parties any documents he deems necessary to perform his duties. If any party objects to providing the requested documents, the objections must be reduced to writing, clearly and specifically stating the basis for the objection, and filed with this Court within three working days of the Monitor's request. The Monitor shall also have access to all County information and access to all County employees, including Accela access to review all contracts proposed by the County.

h. The Monitor shall review the monthly report of the HR Director and County Manager and provide feedback regarding additional information that, in his professional judgment, the HR Director and County Manager should consider adding to future reports in order to comply with the Consent Decree and Paragraph 15 of the Transition Plan.

i. Upon consent of this Court, the Monitor may employ staff and consultants, including attorneys, as reasonably required to perform his duties.

j. Although the cost of the Monitor's services shall be charged to and paid by the County, the Monitor shall have no contractual relationship with the County, but shall instead be responsible solely to the Court, and shall serve at the Court's pleasure. Mr. Oliver will continue to be employed by the Personnel Board of Jefferson County, serving as an "executive on loan" to the County, devoting approximately 30% of his work time to his duties as Monitor. The Personnel Board will continue to pay Mr. Oliver's salary and benefits as Monitor, but the County will reimburse the Personnel Board for his services. Thirty percent of Mr. Oliver's time will be expensed to the County, and appropriate credits will be made to the Personnel Board's payroll account. In the event that Mr. Oliver spends significantly more or less than 30% of his

time at the County, the Personnel Board will notify the County, and appropriate entries and adjustments will be made. It is anticipated that Mr. Oliver's annual salary for the period of the Monitorship will continue at his current rate. In the event the Monitor's services are terminated by this Court for any reason, the Monitor shall be compensated under this paragraph only through the date of such termination.

k. The Monitor's compensation and all other reasonable expenses of the Monitor arising under the provisions of this Order, including but not limited to travel, lodging, and the fees of any consultants or attorneys retained by the Monitor, shall be paid by requisition order submitted to the County. In the event any requisition order is not paid within 30 days after submission, the Monitor shall institute an appropriate proceeding in this Court.

DATED: May 15, 2018.

Respectfully submitted,

/s/ Jennifer A. Hanson

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CERTIFICATE OF SERVICE

I hereby certify that on May 15, 2018, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all parties of record.

/s/ Jennifer A. Hanson
Of Counsel

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**PROPOSED ORDER ADOPTING THE PROPOSED PLAN FOR TRANSITION
OF AUTHORITY FROM RECEIVER TO COUNTY AND APPOINTMENT OF
MONITOR**

This Court hereby ratifies, approves and adopts the Proposed Plan for Transition of Authority from Receiver to County and Appointment of Monitor (“Transition Plan”) submitted by the Martin Plaintiffs and Bryant Intervenors (“Martin/Bryant Parties”), the United States, the Receiver, and Jefferson County (the “County”). A copy of the Transition Plan is attached hereto as “Exhibit A,” and, by this reference, is expressly incorporated herein.

DONE this _____ day of May, 2018.

United States District Judge