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Judge Names Morgenthau to Monitor Fire Dept.'s Minority Hiring

By **A. G. SULZBERGER**

Frustrated by what he has characterized as continued obstructionism by the Bloomberg administration, a federal judge on Wednesday appointed [Robert M. Morgenthau](#) as a special master to oversee the city's adoption of practices aimed at increasing the number of black and Hispanic firefighters.

The appointment of Mr. Morgenthau, who recently [stepped down](#) as district attorney of Manhattan after 35 years, can be seen as an effort by the judge, Nicholas G. Garaufis, to choose someone with the stature and the will to tussle with city leaders. In fact, the relationship between Mr. Morgenthau and Mayor [Michael R. Bloomberg](#) has been [less than cordial](#).

"For whatever reason — inertia, resource allocation or calculated strategy — the city has been dragging its feet," said the ruling by Judge Garaufis, who sits in United States District Court in Brooklyn.

"The city," the judge wrote, "does not appear to understand that it already lost this case, and that its obligation now is not to fight tooth and nail against the possibility of change, but to move with alacrity to cure its illegal practices. Put bluntly, the constitutional rights of thousands of its citizens are at stake."

The appointment came about four months after Judge Garaufis ruled that the city had intentionally discriminated against black applicants to the Fire Department by continuing to use an exam that it had been told put them at a disadvantage. That ruling was one of several made over the past year in response to a lawsuit filed in 2007 by the Justice Department on behalf of the Vulcan Society, an organization of black firefighters.

The society had filed a federal complaint that led to an investigation of the department's hiring practices to determine, among other things, the reasons that blacks and Hispanics accounted for fewer than 10 percent of the city's firefighters in 2009, even though they represented more than half of the city's overall population.

In January, [Judge Garaufis found](#) that the city knew that the entrance exam it used from 1999 to 2002 was disproportionately weeding out black and Hispanic applicants. He ordered the city to

give 300 of those applicants priority hiring status and retroactive seniority, and to financially compensate 7,400 more who had taken the test. He called the problem “a persistent stain on the Fire Department’s record.”

Since those rulings, the judge’s frustration with the city has been evident. He recently threatened to sanction it, accusing it of “violating a judicial order, perverting the efficient administration of justice and ultimately imperiling its ability to hire new firefighters in a timely manner.” He issued the threat after the city’s lawyers suddenly produced thousands of documents related to the case more than two years late, saying they had been misplaced.

Instead of sanctions, the judge announced this month that he would appoint a special master to handle problems and disputes related to putting in place a new exam, as well as the city’s “chronic failure” to produce required documents for court hearings. “These problems could be ameliorated by the sort of steady, vigilant, immediate and comprehensive oversight” of a special master, he wrote.

Darius Charney of the Center for Constitutional Rights, one of the [lawyers for the plaintiffs](#) in the case against the city, said Mr. Morgenthau was a good choice.

“We’re talking about someone with vast, vast experience on very complex legal cases and someone who won’t be intimidated by the high-profile nature of this case,” Mr. Charney said. “The clear message, the one laid out in the decision, is that the court is fed up with the foot dragging.”

City officials declined to comment on Mr. Morgenthau’s appointment.

“This is a lengthy order in a very complex case, and we’re reviewing it now,” said Kate O’Brien Ahlers, a spokeswoman for the city’s Law Department. Though Judge Garaufis directed the parties to compile a list of potential candidates for the post, Mr. Morgenthau’s name was not among those submitted. Lawyers for the parties admitted the selection had caught them by surprise.

For Mr. Morgenthau, the move signifies a swift return to public life less than five months after he stepped down as district attorney at the age of 90. He and other members of his firm, Wachtell, Lipton, Rosen & Katz, have agreed to work on the case free, with reimbursement paid by the city only for expenses. Mr. Morgenthau will be required to report to the court every 90 days.

Mr. Morgenthau released a statement saying he was honored to be asked to serve. “I look forward to working with the parties to facilitate their carrying out the relief ordered by the court,” he said.

For Mr. Bloomberg, the appointment is another setback in a lawsuit that he has aggressively contested. But perhaps the greater ignominy is that his administration must now report to Mr. Morgenthau, who will oversee changes that the mayor has opposed.

Their chilly relationship bubbled messily to the surface late last year, when Mr. Bloomberg accused

Mr. Morgenthau of maintaining secret bank accounts outside the reach of the city. That prompted a fiery response from Mr. Morgenthau and the revelation that the city had maintained similar accounts.

At one point, Mr. Morgenthau declared that the dispute was not about money, adding, "It's about power."

This article has been revised to reflect the following correction:

Correction: May 26, 2010

An earlier version of this article misstated the length of Mr. Morgenthau's tenure as district attorney as a "half-century."