

This copy is for your personal, noncommercial use only. You can order presentation-ready copies for distribution to your colleagues, clients or customers [here](#) or use the "Reprints" tool that appears next to any article. Visit www.nytreprints.com for samples and additional information. [Order a reprint of this article now.](#)

October 5, 2011

Monitor Must Oversee Fire Dept. Hiring Practices, Judge Rules

By **ALAN FEUER**

In a lacerating decision that accused Mayor [Michael R. Bloomberg](#) of willfully ignoring the racial imbalance in the New York Fire Department, a federal judge ruled on Wednesday that a court-appointed monitor would be installed to oversee the department's recruitment efforts and ensure that more minority candidates are hired.

[The decision](#) by the judge, Nicholas G. Garaufis of Federal District Court in Brooklyn, comes at the [end of four years of bitter litigation](#) in which the city and the Fire Department stood accused of allowing the department to remain almost 97 percent white for decades, despite the fact that the city's population is about 25 percent black.

Judge Garaufis's ruling was remarkable for both its language and its substance. He accused the city of "blame-shifting" and "accountability-avoidance" in ignoring the department's longstanding racial inequities. "The city still doesn't get it," he wrote.

The judge ruled that the only way to combat this official intransigence was to appoint a monitor with wide-ranging powers and a tenure of at least 10 years.

"The evidence adduced in this case gives the court little hope that Mayor Michael R. Bloomberg or any of his senior leadership has any intention of stepping up to the task of ending discrimination at the F.D.N.Y.," Judge Garaufis wrote. Later in the ruling, he continued, "Instead of facing hard facts and asking hard questions about the city's abysmal track record of hiring black and Hispanic firefighters, the Bloomberg administration dug in and fought back."

Even though the department undertook an unprecedented effort this year to increase minority recruitment, Judge Garaufis decided that the monitor, who has not been named, should have numerous powers. The monitor will help oversee the writing and administration of firefighter entrance exams, which were previously deemed to discriminate against minority candidates; will have the authority to audit and investigate the department's hiring practices; and will guide the city in overhauling its policies to prevent acts of discrimination or racially motivated retaliation.

This is not the first time a federal judge has tried to remedy the department's bias in hiring. In 1973, a judge ordered the city to hire one black firefighter for every three white ones; that effort

founded on what Judge Garaufis called “34 years of intransigence and deliberate indifference, bookended by identical judicial declarations that the city’s hiring policies are illegal.”

Declining to impose racial quotas, Judge Garaufis nonetheless ruled that a systemic effort was required. “It is the court’s view that nearly 40 years of discrimination will not be cured by a few simple tweaks to the city’s policies and practices,” he wrote.

This round of litigation began in May 2007 when the federal Justice Department sued the city, claiming that two Fire Department entrance exams, in 1999 and 2002, were biased against black and Hispanic test takers. The Center for Constitutional Rights and the Vulcan Society, a fraternal organization of black firefighters, quickly joined the suit; they have more or less led the charge against the city ever since.

“It’s incredibly gratifying that a federal court has recognized, deeply, what the city has done here — turned a blind eye to a major problem of racial discrimination,” said Richard Levy, the Vulcan Society’s lawyer. “We have tried for five years to get them to the table to resolve this case.”

In a news conference on Wednesday, Mr. Bloomberg said that the fire commissioner, Salvatore J. Cassano, and his predecessor, Nicholas Scoppetta, had “worked tirelessly on outreach to all of the city’s communities, and it resulted in the most successful and most diverse recruitment campaign in the history of the F.D.N.Y.”

“More than 61,000 people applied — half of them minorities, shattering any previous record for minority applicants,” he continued.

In response to a second question, the mayor said, “The judge was not elected to run the city, and you can rest assured that we’ll be in court for a long time.”

Officials from the Fire Department declined to comment on the case.

Much of the judge’s opinion was directed at Mr. Bloomberg, who, Judge Garaufis wrote, repeatedly ignored warnings about the failures in recruitment. The judge noted the individuals and official bodies that had advised the mayor of the problem: the list included the city’s Equal Employment Practices Commission; Mark Green, the former public advocate; and several members of Congress and of the City Council.

Judge Garaufis did not, however, lay blame entirely at Mr. Bloomberg’s feet.

“That this discrimination has been allowed to persist in New York City for so long,” he wrote, “is a shameful blight on the records of the six mayors of this city who failed to take responsibility for doing what was necessary to end it.”

The parties in the lawsuit have until Oct. 19 to make suggestions to the judge of people who they

think would be suitable to hold the role of special monitor.

David W. Chen and Kate Taylor contributed reporting.