

THE CITY UNIVERSITY OF NEW YORK

*Office of the General Counsel and Vice Chancellor for Legal Affairs*

535 East 80 Street, New York, N.Y. 10021

212/794-5382



**BRIEFING MEMORANDUM NO.7**

December 10, 1991

To: College Presidents

From: Vice Chancellor Robert E. Diaz

Re: Melani v. CUNY (Section XIII Claims)

A handwritten signature in black ink, appearing to be 'R. Diaz', is written over the 'From:' line of the memorandum.

I am writing this memorandum both to inform you of the status of the remaining Melani claims and to explain the Melani case to our presidents appointed during the last several years.

The Melani case was a sex discrimination case filed in December 1973, on behalf of all women on the instructional staff of the City University. The Melani Consent Decree, which was effective September 10, 1984, settled the class action case against the University. The Melani Consent Decree was entered into following a decision by the United States District Court which, based upon statistical evidence, found systematic sex discrimination at the City University in the salaries of women. The University did not agree with the Court's findings on salary discrimination and maintained its right to appeal until the case was settled.

The Melani case was settled for 7.5 million dollars which included 4 million dollars for a formula payout to about 3,600 then current female instructional staff members, 1.7 million dollars for severed employees, 1.3 million dollars for current employees at the top of their salary schedule, \$350,000 for non-hires, \$100,000 for a Women's Research and Development Fund, and \$50,000 for the 23 named plaintiffs. The Consent Decree designated Sol Schreiber as the Special Master for the implementation of the Consent Decree.

The Consent Decree, in addition to the 4 million dollar formula payout, provided for an elaborate system of claims which could be filed by women against the other funds, as well as a procedure for future salary adjustments for women

who were not at the top of the scale in 1984. The primary purpose of the claims procedure for current employees was to resolve any remaining salary inequities still existing on the date of the settlement, *i.e.*, September 10, 1984, so that the class action would not be settled with underlying grievances remaining. Almost all of the salary claims have now been settled.

The Melani Consent Decree also provided a three year period from 1984-1987, during which women could file claims that they were not promoted (faculty) or appointed to a higher title (HEOs) because of sex discrimination. These claimants are entitled to the equivalent of a federal sex discrimination trial before the Special Master with broad rights of discovery, and with CUNY paying the fees of the Special Master. Although the Melani Consent Decree expired on September 9, 1987, and no new claims could be filed after that date, court jurisdiction has continued until the outstanding claims are resolved.

In disposing of existing claims, there are three options:

- (1) Settlement. Where the facts warrant, cases may be settled, either for a lump sum payment or an agreed upon promotion.
- (2) Alternative Resolution Procedure. This procedure consists of a review by the Special Master to determine whether there was a rational basis for not promoting the claimant based upon a comparison of the claimant's credentials with other employees considered for promotion, during the 1984-1987 time period. If the claimant prevails the promotion is made effective in the future and back pay liability is waived.
- (3) Trial. Where the claims of the claimant are frivolous or appear to be totally lacking in merit, the case will be scheduled for trial. Once a case is scheduled for trial, the Special Master will establish tight deadlines for requests for documents and information, depositions, pre-trial briefs, hearing dates, and post-trial briefs.

When a case is submitted to the alternative resolution procedure, the following timelines apply:

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| Day 1  | The Agreement to submit a matter for consideration under the alternative resolution procedure is executed.   |
| Day 10 | Claimant's counsel will receive curriculum vitae of all candidates promoted to claimed rank from 9/10/84 through 9/9/87.   |
| Day 15 | Parties will agree to contents of claimant's personnel file (as of 9/1/87) and each side will identify the four comparison personnel files it wishes to review.  |
| Day 30 | Parties will review the files; claimant will select two candidates who were promoted and CUNY will select two who were not promoted. The candidates' credentials will be compared with the claimant's credentials. |
| Day 35 | Parties will agree to contents of comparison files or submit disputes concerning contents to the Special Master.   |
| Day 50 | Parties will submit briefing memoranda to the Special Master.  |
| Day 55 | Parties will submit reply memoranda to the Special Master.   |

As you can see, once a stipulation is signed designating a claim as an alternative resolution matter, or a claim is set for trial, we are under strict and difficult timelines and the complete cooperation of the College is necessary to meet these timelines.

A year ago, there were 38 Melani promotion claims still pending. In the last year, 10 of these claims have been settled and four have been submitted under the alternative resolution procedure. The remaining 24 claims\* are being, or will be, reviewed with the colleges to determine whether settlement is viable and if not, whether the case will be submitted pursuant to the alternative resolution procedure or scheduled for trial.

We hope to continue to make progress in resolving these claims. If your campus is listed as a campus with an outstanding Melani claim, please distribute a copy of this memorandum to all members of your staff who may be called upon to assist my office in defending the claim.

c: Chancellor W. Ann Reynolds  
Deputy Chancellor Laurence F. Mucciolo  
Legal Affairs Designees  
Labor Designees

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\*Outstanding claims remain for Baruch College, Borough of Manhattan Community College, Hostos Community College, Hunter College, Lehman College, Medgar Evers College, Queensborough Community College, The College of Staten Island, and Central Office.