



Minneapolis
City of Lakes

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TO: Pam French

CC: Miriam Vaughn-Lee

FROM: Caroline Bachun,
Assistant City Attorney

DATE: January 12, 2007

MEMORANDUM

ATTORNEY-CLIENT PRIVILEGED AND ATTORNEY WORK PRODUCT

A meeting was held on January 10, 2007, which I attended with you, Ron Edwards, and Miriam Vaughn-Lee. In the meeting, Ron Edwards addressed a few issues, one of them being expanded certification and Civil Service Commission Rule 8.03B. After the meeting, you asked me to review the language of the expanded certification rule and to advise whether the language is sufficient or needs to be modified.

Expanded certification is a race conscious policy and therefore, if challenged in court, is subject to a strict scrutiny review standard. An expanded certification program will survive strict scrutiny only if the plan serves a compelling government interest and is narrowly tailored to further that interest. One compelling governmental interest is to remedy past discrimination by the City of Minneapolis as a hiring entity. To determine if an affirmative action program is narrowly tailored, the courts will look at several factors, including: (1) the necessity for the relief and the efficacy of alternative remedies; (2) the flexibility and duration of the relief, including the availability of waiver provisions; (3) the relationship of the numerical goals to the relevant labor market; and (4) the impact of the relief on the rights of third parties.

First, I will look at the compelling governmental interest of remedying past discrimination by the City in its hiring processes. I understand that after the conclusion of the case entitled Police Officers' Federation of Minneapolis v. City of Minneapolis, et al., which related to the use of expanded certification for Police Sergeant positions, the City of Minneapolis had an expert review the hiring practices of the police department to determine if there would be a basis to find discrimination sufficient to meet a compelling governmental interest to satisfy the strict scrutiny standard. It is my understanding that the expert, Paul Bayless, determined that there was no such discrimination in the MPD hiring practices. Further, I do not know of any studies that the City of Minneapolis has engaged in since that would demonstrate that the City has in the past or is currently engaging in discrimination in its hiring practices. In the absence of discrimination by