

July 23, 2007

Honorable Edward M. Kennedy
Chairman
Committee on Health, Education,
Labor and Pensions
United States Senate
SD 428, Dirksen Senate Office Building
Washington, D.C. 20510

Honorable Michael B. Enzi
Ranking Member
Committee on Health Education,
Labor and Pensions
United States Senate
SH 835, Hart Senate Office Building
Washington, D.C. 20510

Re: Nomination of David Palmer to Commissioner Position,
Equal Employment Opportunity Commission

Dear Chairman Kennedy and Ranking Member Enzi:

As former career managers, attorneys, and career professionals who worked with David Palmer in the Employment Litigation Section, Civil Rights Division, U.S. Department of Justice, we strongly urge you to oppose Senate confirmation of Mr. Palmer to become a commissioner of the Equal Employment Opportunity Commission (EEOC).

The EEOC is the nation's preeminent agency for enforcing Title VII of the Civil Rights Act of 1964, as amended, and other federal statutes that collectively prohibit job discrimination based upon race, religion, sex, national origin, age, disability, and pregnancy. The importance of the Commissioner position for this important agency cannot be overstated. The EEOC deserves Commissioners who personally are above reproach and who have demonstrated leadership ability; a commitment to the fair, yet vigorous, enforcement of anti-discrimination in employment statutes; the expertise to enforce those laws; and the exercise of reasoned and sound judgment. All of us believe firmly that Mr. Palmer fails in all of these important areas and we urge that the Senate reject his nomination.

Each of the signatories to this letter was a long-time employee in the Employment Litigation Section of the Civil Rights Division. Many of us worked in the Employment Litigation Section for virtually our entire government careers. Others would have remained in the Section for the remainder of our professional careers, but for the work environment permeated with partisanship and animosity created and furthered by Mr. Palmer. We each cherished the opportunity to be part of the federal government's historic commitment to the elimination of discrimination in employment. To a person, we believe working to advance civil rights on behalf of the United States was a deep honor and privilege. Each of us is grateful for the opportunities we had to conduct this work.

It is our commitment to the cause of ensuring equal employment opportunities to all Americans that causes us to write this letter. We do not write this letter lightly. However, we believe that given our unique position as former colleagues of Mr. Palmer it is our obligation to share our considered thoughts with the Committee regarding Mr. Palmer's nomination.

Mr. Palmer became Acting Chief of the Employment Litigation Section in May 2002. Later, he was appointed Chief of the Section. Earlier in his Department of Justice career, Mr. Palmer served as a Senior Trial Attorney in the Employment Litigation Section.

For those of us who supervised or worked collaboratively with Mr. Palmer when he served as a Senior Trial Attorney, we believed that his work performance was well below the high standards expected of Department of Justice attorneys. Senior Trial Attorneys are expected to handle independently the most difficult and complex civil rights cases and to be able to lead a trial team. In the opinion of the undersigned attorneys, Mr. Palmer lacked that ability. Indeed, many of us believe that he did not understand the basic principles of Title VII and constitutional law. The attorneys further believe that during the time that Mr. Palmer was a trial attorney in the Section, his performance level remained at a mediocre level, while the performance of less senior attorneys was on an upward trajectory.

It is our understanding that Mr. Palmer was reprimanded for his poor work performance during the time that he was a Senior Trial Attorney. Indeed, upon becoming Section Chief, Mr. Palmer noted to one of the undersigned that it was ironic that he would then be supervising the career manager in the Section who had formally reprimanded him. The individual with whom Mr. Palmer discussed his reprimand is available to discuss the matter with the Committee.

We also understand that at least one internal complaint of discrimination or other improper activity has been filed against Mr. Palmer since he became Section Chief. Before Mr. Palmer, no manager in the Employment Litigation Section to our knowledge had ever been charged with engaging in discrimination in the forty years the Section has existed. Although we do not know the precise substance of the complaint or complaints against Mr. Palmer or their merit, we believe strongly that the Committee should fully investigate the complaint or complaints and give them careful scrutiny, especially given that Mr. Palmer has been nominated to a leading position in enforcing laws that prohibit job discrimination.

We are not surprised that a complaint or complaints were filed against Mr. Palmer. It is our collective experience that as Section Chief, he treated many of his subordinates with disdain and contempt. Many of the undersigned served under Mr. Palmer after he became Section Chief. Under his leadership, the morale of the Section plummeted, as did its productivity. The Section's work environment became characterized by secrecy and mistrust. Indeed, some of the controversial new matters

brought by the Section were kept secret from Section attorneys, and those attorneys handling such matters were instructed not to discuss them with their colleagues. The longstanding Section practice of conducting monthly Section meetings of all staff was simply terminated by Mr. Palmer.

Mr. Palmer's leadership resulted in the unprecedented departure of managers, line attorneys, and other professional staff from the Civil Rights Division. This departure of veteran attorneys and professional staff in the Civil Rights Division has been well documented in the press and before Congress. We believe it is clear that Mr. Palmer fully supported and implemented the personnel policies of the Division's political leadership over the past several years.

Given his performance as a trial attorney and his failure to treat colleagues with a basic standard of fairness and candor, we perhaps should not have been surprised with the upheaval in the priorities of the Employment Litigation Section under Mr. Palmer's leadership. Over the past several years, Mr. Palmer took a law enforcement organization that was the vanguard of civil rights enforcement for forty years and noticeably changed its direction. The Section has seen a decline in the filing of new cases at the same time that the Section has involved itself in controversial matters that would undermine core civil rights protections. The Section has failed in its core mission to secure the rights of African-Americans, Hispanics, women, and other protected groups, as the number of cases has declined precipitously. On the other hand, the Section filed two reverse discrimination pattern or practice lawsuits under Mr. Palmer's tenure. In addition, it immersed itself in defending the rights of employers to discriminate based on religion. These cases speak volumes about Mr. Palmer's commitment to equal employment opportunity.

Mr. Palmer has led the Employment Litigation Section in a radical and dangerous direction – away from professionalism to partisanship, and away from a commitment to the fair and vigorous enforcement of Title VII to a rejection of the United States' core commitment to ensuring equal employment opportunity. We believe firmly that Mr. Palmer undoubtedly would lead the EEOC in the same direction -- a direction, we submit, that is not in America's interest.

Sincerely,

RICHARD S. UGELOW
Deputy Section Chief (1989-2002)
Senior Trial Attorney (1973-1989)

MARYBETH MARTIN
Deputy Section Chief (1994-2003)
Senior Trial Attorney (1984-1994)
Trial Attorney (1978-1984)

TERESA FERANTE
Deputy Section Chief (2001-2002)

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MARIAN L. THOMPSON, Ph.D.
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