

New Haven Register

City nets free legal work in firefighters' suit

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By William Kaempffer, Register Staff

NEW HAVEN — A mega-law firm with extensive experience before the U.S. Supreme Court has agreed to represent the city for free in a reverse discrimination lawsuit by 20 city firefighters.

The Boston-based firm WilmerHale has more than 1,000 lawyers in 11 cities on three continents, according to its Web site.

While the country's highest court has not yet indicated whether it will accept the case — it agrees to hear a minute fraction of petitions — recent correspondence signals an interest. The Supreme Court requested a legal brief from the city's attorney in response to the petition from the firefighters' lawyer, New Haven-based Karen Torre, asking the court to accept the case. The city's rebuttal brief is due at the end of this month.

"I think that this indicates that there's some level of interest in the court to understand the issues at play," said New Haven Corporation Counsel John Ward. The decision on whether the court will accept the case could happen as soon as next month.

Torre declined comment other than to confirm she also received a copy of the letter from the court.

Should the court accept the case, it would put New Haven's promotional practices, and in the process 19 white firefighters and one Hispanic firefighter, in the national spotlight and pose a question that could have ripple effects across the nation: Can a municipality disregard results of a civil service exam, crafted to be race-neutral, on the grounds that the exam yielded too many qualified applicants of one race and not enough of the other.

In New Haven, the firefighters sued in 2004 arguing civil rights claims when two promotional exams were thrown out because few minorities scored high enough to get promoted. The city argued the exams had a disparate impact and approving it would open

up the city to employment discrimination lawsuits from minority firefighters under Title VII of Civil Rights Act of 1964.

The lawsuit countered that race-based politics scuttled the exams, and that in doing so, the city instead violated the civil rights of the white firefighters who would have otherwise been promoted.

Cheshire-based lawyer Richard Roberts represented the city, and in district court won dismissal at summary judgment. Earlier this year, a three-judge panel for the 2nd U.S. Circuit Court of Appeals upheld the decision, although the action caused a rift among some other appellate judges who believed the case warranted more judicial scrutiny than it received and urged the Supreme Court to consider it.

Torre is asking the Supreme Court to overturn the district judge's dismissal and reinstate the case.

WilmerHale attorneys would write the Supreme Court brief and represent the city if the court were to accept the case. Robert's law firm will continue to represent the individual defendants named in the suit.

Why would a law firm like WilmerHale represent the city for free?

"Because it's the Supreme Court. Obviously, a lot of big law firms like to be involved in big cases that have some national bearing, and this one could I guess," Ward said.

Through a spokeswoman, the lead attorney in the case from WilmerHale declined comment.

WilmerHale is a prominent firm, described by the Boston Globe as one of the largest and most respected in the city. It has a history of pro bono work and high profile cases.

The team of lawyers from the firm represented, for free, before the Supreme Court, six Algerian terror suspects held without charge at Guantanamo Bay.

Lawyers from the firm also have represented serial killer Ted Bundy and President Richard Nixon during impeachment.

Because of the controversy and litigation, the city has not conducted promotional exams at the ranks of fire lieutenant and captain since the last ones were scuttled in 2004.