

Civil Action No. 00-2445 (JR)

EXHIBIT 40

SUPPLEMENTAL DECLARATION OF

ROSALIND GRAY

1. I am over 18 years of age and a United States citizen.
2. My business address is 607 Oneida Place, N.W., Washington, D.C.
3. I am a 1973 graduate of Howard University School of Law, a member of the Mississippi Bar and have practiced in many federal district courts. I am also a member of the Bar of the United States Supreme Court. From 1976 to 1986, as trial counsel and director for the Lawyers' Committee Municipal Services Equalization Project, I represented minorities in small, rural communities seeking to equalize municipal services. I have served as a consultant to the Legal Services Corporation, the Office of Revenue Sharing and the Departments of Justice and Housing and Urban Development. I have also served as Acting General Counsel to the U.S. Commission on Civil Rights and as Deputy General Counsel at the Equal Employment Opportunity Commission ("EEOC"). As Deputy General Counsel at EEOC, I managed its national litigation program and participated in the settlement of a number of major class actions. In addition, I have served as Associate General Counsel for the University of the District of Columbia ("UDC") where I represented UDC in federal litigation and administrative proceedings on employment discrimination and other labor claims. From July 13, 1998 to January 20, 2001, I served as Director of the Office of Civil Rights ("OCR") for the United States Department of Agriculture ("USDA").
4. The OCR has broad responsibility for implementing and coordinating all Department of Agriculture nondiscrimination, civil rights, and equal opportunity efforts in connection with all USDA programs and activities, including programs and activities which are operated or sponsored by USDA and carried out by non-federal organizations. During my tenure, the OCR Director served as the principal advisor to the Secretary and the Assistant Secretary for Administration on all matters related to equal opportunity and civil rights. In 2003, the duties of the Assistant Secretary for Administration with respect to civil rights matters were transferred to the Assistant Secretary for Civil Rights. One of the principal duties of the OCR is to process and investigate discrimination complaints filed by farmers and other producers with respect to the administration of USDA farm credit and non-credit benefit programs.
5. In my April 6, 2002 declaration, I described at length the problems that plagued OCR and stymied my best efforts to improve OCR's processing of discrimination complaints. Those problems continue to plague OCR.
6. Departmental Regulation 4330-3 requires that, among other things, OCR "will acknowledge to the complainant receipt of the complaint, in writing, within 5 calendar days" and sets forth minimum information that must be included in the acknowledgment letter. DR 4330-3, 10(b)(1)-(2) (p. 12). In addition, OCR is

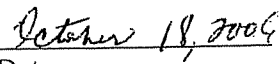
addition, OCR is required to "complete all complaint investigations within 180 days after determining jurisdiction." *Id.* at 10(e)(4) (p. 13).

7. Based upon my personal experience as the OCR Director, a competent reviewer should be able to determine whether a complaint asserts a claim within "USDA jurisdiction" in the time it takes to read the complaint allegations. Simply put, there can be no justification for complaints not being acknowledged, investigated, resolved or otherwise remaining open for years. The fact that farmers have not received any acknowledgment of their complaints much less had them investigated years after filing such complaints indicates to me that the system is still dysfunctional.

I have reviewed the foregoing supplemental declaration and declare under penalty of perjury that it is true and correct to the best of my personal knowledge.



ROSALIND D. GRAY



Date