

**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**

MAURICE FLOURNOY, et al.,	)	
	)	
Plaintiffs, on behalf of	)	CIVIL ACTION
themselves and all persons	)	FILE NO. 2009CV178947
similarly situated,	)	
	)	
v.	)	CLASS ACTION
	)	
THE STATE OF GEORGIA, et al.,	)	
	)	
Defendants.	)	
_____	)	

CONSENT DECREE

1. Introduction

Plaintiffs brought this class action lawsuit by the filing of a complaint on December 15, 2009, in the Superior Court of Fulton County, seeking mandamus, declaratory and injunctive relief against Defendants based upon alleged violations of constitutional rights arising out of the provision of legal representation to indigent defendants in the motion-for-new-trial and appellate stages of their criminal cases. Plaintiffs alleged both federal and state law claims. All Defendants denied that their operation of the indigent defense system violated any constitutional or statutory requirements.

In order to resolve all issues pending between these parties without the expense, risks, delays and uncertainties of a trial and any appeals that might follow such a trial, Plaintiffs and Defendants agree to the terms of this Consent Decree as stated below. By entering into this Consent Decree, Defendants do not admit to the truth or validity of any claim made against them by Plaintiffs. All parties acknowledge that the Court has jurisdiction over this case and authority to enter this Consent Decree and to enforce its terms. The duration of this Consent Decree shall be as provided in Section 14 below.

- A. The parties agree that, at the present time this Consent Decree was executed, no backlog of Cases currently exists where requests for appointment of conflict-free appellate counsel have been received by GPDSC but have not been appointed new appellate counsel.
- B. Subject to Section 4 below, Defendant GPDSC shall continue to abide by the requirement of the Court's Order of February 23, 2010 mandating that Class Members who make valid requests for conflict-free appellate counsel that have

been received by GPDSC are appointed counsel as soon as possible after the receipt of a valid request.

- C. Plaintiffs and their counsel agree to use reasonable efforts to inform Defendants in a timely manner of any potential class member whose request for conflict-free appellate counsel has not been received by GPDSC or has been received but not responded to by GPDSC in a manner the Plaintiffs believe is sufficient to properly address the request in accordance with this decree.

2. Definitions

For purposes of this Consent Decree, the following terms have the meaning indicated below.

- A. "Appellate Division" means the Appellate Advocacy Division of the GPDSC.
- B. "Attorney" means any licensed member of the State Bar of Georgia who is employed by, contracted with, or otherwise engaged, whether for pay or on a volunteer basis, by GPDSC to provide legal representation to one or more Class Members.
- C. "Business days" mean every day except Saturdays, Sundays and legal holidays, pursuant to O.C.G.A. § 1-4-1.
- D. "GPDSC" shall mean the Georgia Public Defender Standards Council.
- E. "Calendar days" mean every day including Saturdays, Sundays, and legal holidays.
- F. "Case" means, for caseload purposes, the open file of each Class Member, but is more clearly defined in Section 5.
- G. "Class Member" or "Class Members" means all indigent persons who (i) were or will be convicted in a Georgia court of a criminal offense carrying a term of incarceration; and (ii) have provided or will provide notice to Defendants of their request for conflict-free appellate counsel to pursue a motion for new trial and/or first direct appeal.
- H. "Contract Attorney" means any attorney hired on an *ad hoc* or contractual basis by the GPDSC to represent a Class Member.
- I. "CPD" means the Circuit Public Defender of the Circuit from which the Class Member's case originates.
- J. "Day" or "days" mean calendar days unless otherwise indicated.

3. Dismissal of Governor and Director of the Office of Treasury as Defendants

Subject to Paragraph 13(B) below, Defendants represent that the State of Georgia, GPDSC, and GPDSC officials named as Defendants in this action are capable of entering this Consent Decree and complying with its terms. Based upon and in reliance upon this representation, Plaintiffs agree to dismiss without prejudice the Governor and the Director of the Office of Treasury from this lawsuit. In the event that Defendants assert an inability to comply with the terms of this Decree or failure to join an indispensable party, Plaintiffs may move the Court for permission to add the Governor and Director of the Office of Treasury as defendants to this lawsuit and the Defendants may move to join indispensable parties, as well.

4. Revised Procedure for Addressing Requests for Conflict-Free Appellate Counsel

The parties agree that conflict-free appellate counsel may be more efficiently and effectively provided to Class Members through the adoption and implementation of a revised procedure for responding to requests for conflict-free appellate counsel ("Revised Transfer Procedure") that is consistent with *Garland v. State*, 238 Ga. 201 (2008), and the more recent decisions of the Georgia Supreme Court in *Williams v. Moody*, 287 Ga. 665 (2010); and *Bell v. State*, 287 Ga. 670 (2010). To that end, the parties agree as follows:

A. Revised Transfer Procedure. The parties agree that GPDSC may adopt, subject to Section 4(B) and 4(C) below, a written Revised Transfer Procedure which:

- (i) governs the manner in which CPDs communicate a Class Member's request for conflict-free appellate counsel to GPDSC;
- (ii) provides a procedure for a staff attorney in the Appellate Division of the GPDSC ("reviewing counsel") to timely evaluate the asserted conflict-of-interest and/or Class Member's potential claim for ineffective assistance described in the request;
- (iii) provides a procedure for reviewing counsel to timely notify and advise a Class Member of the results of her independent evaluation;
- (iv) provides measures to ensure that the both the Class Member's request for conflict-free counsel and the communications between GPDSC, reviewing counsel, and/or the Class Member are confidential and protected by the attorney-client privilege; *and*
- (v) provides for the appointment of new, conflict-free counsel in the event that either

- (a) reviewing counsel determines there is a conflict-of-interest between the trial attorney and Class Member *or* the client has a good faith basis to assert an ineffective assistance of counsel claim; *or*
- (b) the Class Member invokes his or her right to conflict-free counsel on appeal notwithstanding reviewing counsel's determination that there is no conflict of interest and no good faith basis to assert a claim of ineffectiveness.

B. **3-Month Evaluation Period.** GPDSC has proposed to adopt a revised "Conflict Appeals Transfer Procedures in Cases Subject to Appeal" procedure in substantially the form as attached hereto as Appendix A ("Proposed Appellate Conflicts Procedure"). The parties agree that GPDSC may adopt the Proposed Appellate Conflicts Procedure set forth in Appendix A on or after ninety (90) days after the date of entry of this Order provided that:

- (i) In the event Plaintiffs raise a good faith objection or proposed amendment(s) to the Proposed Appellate Conflicts Procedure on or before ninety (90) days after the date of entry of this Order, the GPDSC and Plaintiffs will promptly engage in in-person, good-faith negotiations concerning Plaintiffs' objections or proposed amendment(s).

C. **Right to Seek Rescission.** If, at any time during the duration of this Consent Decree, any party forms a reasonable belief that the Revised Transfer Procedure or implementation thereof infringes or otherwise is inconsistent with Section 4(A), Georgia law, or a Class Member's constitutional right to conflict-free counsel on appeal, that party should give notice to the other parties and shall state with specificity the basis for their reasonable belief. The parties will promptly engage in good-faith negotiations and appropriate measures to cure the alleged noncompliance. If the parties do not reach agreement concerning the curative measures within 30 days after notice, any party may move the Court for rescission of the Consent Decree.

5. **Additional Full-Time Staff Attorneys and Workload Controls**

A. **Additional Full-Time Staff Attorneys.** GPDSC will begin to hire by January 15, 2012, seven (7) additional full-time attorneys to staff the Appellate Division and be responsible for handling new cases per calendar year. The additional full-time staff attorneys shall be hired by July 1, 2012. After, July 1, 2012, the GPDSC shall continue to staff the Appellate Division with an additional seven

full-time attorneys through the duration of this Consent Decree, allowing for GPDSC discretion as to management of Division personnel.

- B. **Workload Controls.** Attorneys representing Class Members shall not maintain a total workload of cases per each calendar year exceeding 27 points, as calculated pursuant to the "Workload/Caseloads Controls And Weighted Case Assignment System" attached hereto as Appendix B. A "case" shall be defined as set forth in Section 2(F) above, except that GPDSC shall have the discretion to determine that a case which has been fully briefed and argued and is awaiting decision by a Georgia appellate court does not constitute a "case" for purposes of calculating an Attorney's workload. For purposes of calculating an Attorney's total workload, a "case" shall include a case assigned in any previous year which remains open and a transcript has been completed.
- C. **Hiring Process.** Before hiring any Attorney as a full-time staff attorney to represent Class Members on their motions for new trial and appeal, the Appellate Division must:
 - 1) Have the applicant submit a resume, writing samples and references who have reviewed the applicant's written work;
 - 2) Conduct a reference check by phone or email;
 - 3) Conduct an in-person interview with the applicant that is attended by the Appellate Division Director.
- D. **Qualifications for Staff Attorneys.** All Attorneys employed as full-time staff attorneys by the Appellate Division to represent Class Members in their motions for new trial and on appeal must:
 - 1) Be assigned a supervisory attorney employed within the Appellate Division who, as to the staff attorney, will:
 - a. Review the pleadings to be filed in assigned cases;
 - b. Provide consultation on investigative and procedural matters;
 - c. Ensure compliance with applicable workload standards;
 - d. Monitor the staff attorney's workload to ensure that all essential tasks on behalf of clients are being performed, including but not limited to:
 - i. Whether sufficient time is devoted to interviewing and counseling clients;
 - ii. Whether necessary investigations are conducted;
 - iii. Whether sufficient legal research is undertaken; and

- iv. Whether sufficient preparations are made for motion for new trial hearings and appellate arguments.
- 2) Attend specialized trainings relating to Georgia appellate practice and procedure, including but not limited to an initial training seminar that addresses Georgia appellate practice and procedure, and regular trainings throughout their employment by the Appellate Division pertaining to Georgia motion for new trial and appellate practice and recent decisions affecting Georgia appellate law and procedure;
- 3) Be subject to an annual written evaluation process through which the Appellate Division Director and supervisory attorney will review the staff attorney's performance, including, but not limited to: (1) the staff attorney's written work in assigned Cases; (2) the Case status and progress since time of assignment for all cases assigned to the staff attorney; and (3) any complaints or inquiries made by Class Members represented by the staff attorney.

6. Contract Counsel

Subject to provisions set forth below, Defendant GPDSC shall be authorized to contract with qualified private attorneys, as that term is defined below, for representation of Class Members. From the inception of this Consent Decree until its termination, Defendants will provide Plaintiffs with a copy of any new or amended contract(s) on a monthly basis.

- A. **Contract Counsel Fees.** The contracts will provide that the Contract Attorneys shall be paid \$2,000.00 for the first 40 hours of work, which shall be paid in 3 installments: upon receipt of a copy of the Contract Attorney's entry of appearance, upon proof of filing of first substantive brief, and upon completion of the case. Upon proof of completion of the first 40 hours of work, GPDSC shall pay \$60.00 per hour for in court work, and \$45.00 per hour for out of court work, up to 66 hours total for hours reasonably worked. In the event that the case requires that the Contract Attorney reasonably expend more than 66 hours on the case, the Contract Attorney shall be authorized to request additional per-hour compensation for time reasonably expended in the case. In the event GPDSC denies a request for additional compensation, it shall describe the reason for the denial in writing. The contracts shall provide that the denial of additional per-hour compensation is reviewable within a reasonable time by a committee of the Council which shall consist of three (3) members, two of whom must be sitting Judges of a Georgia Superior or State Court with the authority to reverse the denial of a fee or expense request.
- B. **Reimbursement or Advancement of Cases Expenses.** GPDSC agrees to advance or reimburse Contract Attorneys for any reasonable request for expert, investigative, travel and other case-related expenses incurred in connection with

the representation of a Class Member. Contracts would have no pre-assigned limits to travel, experts or other costs, but may require pre-approval for certain expenses at the discretion of GPDSC. Such pre-approval shall not be unreasonably withheld.

C. Minimum Qualifications and Hiring of Contract Counsel

- 1) All Contract Attorneys must either (i) have at least three years of prior experience in handling criminal cases including criminal appeals; or (ii) be a licensed attorney for five years; or (iii) be supervised by a lawyer, with at least three years of prior experience in handling criminal cases including criminal appeals or has been a licensed attorney for at least five years.
- 2) Before hiring any Contract Attorney to represent Class Members in their motions for new trial and appeal, the Appellate Division must:
 - a) Have the applicant submit a resume, writing samples and several references who have reviewed the applicant's written work;
 - b) Have the applicant disclose the volume and nature of his or her current and anticipated private caseload during the contract term and ensure through a discussion of same that the applicant will have the required time and experience to handle the number and type of Cases that will be assigned under contract;
 - c) Conduct a reference check by phone or email; and
 - d) Conduct an in-person interview with the applicant that is attended by the Appellate Division Director in instances where the Contract Attorney candidates main office is within 100 miles of the GPDSC Appellate Division Office. Interviews for those candidates outside of 100 miles away may be conducted by telephone or by other available electronic means.
- 3) Contract Attorneys representing Class Members must certify in writing that they have not been subject to disciplinary findings by the State Bar or other court or agency in the previous five years.
- 4) Contract Attorneys representing Class Members must undergo a training program organized and produced by the GPDSC.

D. Other Contractual Elements. All contracts with Contract Attorneys representing Class Members must also include the following elements:

- 1) An affirmation by the Contract Attorney that the Contract Attorney will (i) provide for the allotted time; (ii) not accept additional work that prevents the Contract Attorney from devoting that amount of time to the Case or Cases; and

(iii) comply with the workload standard set forth in Appendix B taking into account the percentage of time spent on Contract Attorney's private caseload.

- 2) A provision giving GPDSC the ability to restrict the number of Cases a Contract Attorney may be assigned by GPDSC per fiscal year, which takes into account whether the cases assigned under contract are the only cases handled by the Contract Attorney, whether the Contract Attorney handles other cases (i.e., conflict trial cases) under GPDSC contracts, and whether the Contract Attorney maintains a private caseload in addition to Cases assigned under contract.
 - 3) A provision requiring the Contract Attorney to certify that he or she meets the minimum levels of experience and specific qualifications required to represent Class Members;
 - 4) A description of GPDSC's case management and reporting system;
 - 5) A description of available training and professional development opportunities and requirements as well as the workload standard set forth in Appendix B;
 - 6) A provision requiring a Contract Attorney to provide a timely written report on a quarterly basis the status of their cases and the number of hours they have spent on each case;
 - 7) Protection of client confidences, attorney-client information and of work product related to contract cases;
 - 8) Identification of attorney(s) who will perform legal representation under the contract and prohibition of substitution of counsel without prior approval;
 - 9) A provision imposing on the Contract Attorney an ongoing duty to report bar complaints, any findings of ineffective assistance of counsel against the Contract Attorney, contempt findings or other disciplinary findings;
 - 10) The term of the contract and the responsibility of the Contract Attorney for completion of cases assigned under the contract;
 - 11) Grounds for termination of the contract by the parties and/or prohibition of future contracts with GPDSC, including noncompliance with any of the above terms.
- E. **Current Contracts.** As it pertains to contracts executed before the entry of this Consent Decree, GPDSC shall, within a reasonable time after entry of the Consent Decree, notify all current Contract Attorneys that GPDSC will not enforce any provision in their contracts that impose maximums for reimbursements of travel, experts or other costs and expenses, but GPDSC may continue to require pre-

approval for certain expenses at the discretion of GPDSC. GPDSC shall also notify current Contract Attorneys of the procedure set forth in Section 6(A) pertaining to per-hour compensation for work on Cases that exceeds 40 hours, and said provisions shall apply to all contracts executed in the current fiscal year if the Contract Attorneys can provide reliable documentation, as determined by the GPDSC, of hours reasonably worked.

7. **Monitoring of Contract Counsel**

- A. Defendant GPDSC shall monitor Contract Attorneys who are assigned to the class member's cases. Steps taken to monitor the contractors shall be documented in an electronic database. Defendant GPDSC shall use reasonable efforts to enforce the contractual requirement that contractors who are assigned to the class member's criminal cases provide, on a quarterly basis, the status of their cases and the number of hours they have spent on each case ("Quarterly Reports"). Beginning April 10, 2012 until the termination of this Consent Decree, Defendants will provide Plaintiffs with copies of any such Quarterly Reports received from Contract Attorneys on a monthly basis (redacted of privileged information). Contractor attorneys will be monitored using the "GPDSC Extra-net System." Factors to be evaluated and monitored will include:
 - i. Whether sufficient time is devoted to interviewing and counseling clients;
 - ii. Whether necessary investigations are conducted;
 - iii. Whether sufficient legal research is undertaken;
 - iv. Whether sufficient preparations are made for motion for new trial hearings and appellate arguments.
- B. The monitoring procedure shall set forth objective and subjective criteria for evaluating, including, but not limited to: (1) review of the Contract Attorney's written work in assigned Cases; (2) review of Case status and progress since time of assignment; and (3) any complaints or inquiries made by Class Members represented by the Contract Attorney.
- C. Pursuant to the monitoring procedure set forth above, the GPDSC shall conduct a review of all Cases assigned to Contract Attorneys on at least a quarterly basis to determine whether progress has been made and whether timely action has been taken in each Case. If, upon review, it appears that no action has been taken and no progress made, and there is no explanation apparent from the monthly status reports submitted by the Contract Attorney, the Appellate Division Director must

conduct a discussion with the Contract Attorney to determine whether effective representation is being provided in that Attorney's assigned Cases.

8. **Data Collection**

- A. GPDSC Appellate Division will hire a full-time accountant/auditor to be responsible for maintaining and updating relevant data by February 1, 2012.
- B. GPDSC shall maintain an electronic database of all cases in which appellate counsel has been assigned by GPDSC to present and future Class Members, including for each case:
 - 1) Case number, charges, county of conviction, dates of conviction and sentencing, length of sentence, judge presiding over the case;
 - 2) Date of request for new, conflict-free counsel;
 - 3) Date of assignment of new, conflict-free counsel;
 - 4) Name of assigned counsel and designation as GPDSC staff attorney, public defender, or contract attorney;
 - 5) Date of entry of appearance;
 - 6) Any subsequent assignments of counsel made, including date of new appointment;
 - 7) Date of filing of transcript;
 - 8) Date of filing for motion for new trial (and any subsequent amended motions);
 - 9) Date of motion for new trial hearing;
 - 10) Disposition of motion for new trial;
 - 11) Date of filing appellate briefs;
 - 12) Disposition of appeal;
 - 13) Current status of the case, as provided in any status updates;
 - 14) Any requests for expert, investigative, travel, or other case-related expenses and the GPDSC's response.

9. **Reporting to Class Counsel**

- A. Beginning on April 10, 2012, GPDSC shall provide to Class Counsel on a monthly basis non-privileged documents sufficient to show, as it relates to each Class Member's Case, the data set forth in Section 7(A) and 8.
- B. Within 30 days of when a contract is executed between GPDSC and a Contract Attorney, GPDSC shall provide a copy of the executed contract to Class Counsel.
- C. GPDSC shall provide to Class Counsel non-protected information used to determine contractor is qualified and in compliance at the time of contracting with each contractor.
- D. Beginning on April 10, 2012, Class Counsel shall be permitted to inspect on a quarterly basis on request the following non-privileged information maintained by GPDSC: (i) JCATS data of any Attorney hired to represent one or more Class Members; (ii) briefs and motions filed by any Attorney hired to represent one or more Class Members; (iii) any complaints made by Class Members regarding their appellate representation; (iv) information relating to the denial of any request by an Attorney for additional compensation or expense reimbursement; and (v) documents relating to implementation and operation of the Revised Transfer Procedure set forth in Section 4 above.

10. **Class Member Communications**

- A. The GPDSC shall establish, administer, and comply with a procedure requiring the recording of Class Member inquiries and complaints (oral or written) in a searchable and organized database with sufficient non-privileged descriptive information concerning the nature of the communication and the status of the Class Member's case and present representation.
- B. Defendant GPDSC shall use reasonable efforts to put in place within 60 days of the signing of the Consent Decree a system to track written communications received from class members. The tracking system will include the name of the class member, the criminal case number, the name of the class member's criminal attorney, and the non-privileged description of the nature of communication received from the class member. This information shall be maintained in an electronic database.
- C. Defendant GPDSC shall use reasonable efforts to respond in writing within 30 days of receipt of each written communication from a class member. The date of the response will be entered into the tracking system.

- D. From the inception of this system until the termination of the Consent Decree, Defendants will provide Plaintiffs with a copy of the information in this electronic database on a monthly basis.
- E. Defendant GPDSC shall use reasonable efforts to ensure that the conflict-free attorney assigned to the class member's criminal case is reminded that his/her professional responsibility to the client includes informing the client of his/her representation of the client.

11. Relief for Named Plaintiffs

The parties agree that Class Counsel may contact GPDSC as necessary concerning any of the named plaintiffs in this action. Class Counsel and the GPDSC will cooperate in good faith pursuant to applicable law in advocating for the best interests of the named plaintiffs.

12. Other Mechanisms for Providing Counsel

The parties agree that the preferable method of delivering indigent defense services to Class Members is through the use of full-time staff attorneys within the Appellate Division of the GPDSC. Notwithstanding the above, GPDSC retains the ability to use other methods at its discretion to appoint conflict-free counsel to Class Member cases, including the use of the Inter-Circuit program, provided that such methods are consistent with the provisions of this Consent Decree, including the application of the workload standard set forth in Appendix B.

13. Enforcement

- A. **Notice and Opportunity to Cure Non-Compliance.** If Class Counsel form a reasonable belief that Defendants are not in compliance with this Consent Decree, Plaintiffs must give notice to GPDSC in writing, and if so shall state with specificity the alleged noncompliance. Upon GPDSC's receipt of such notice, the parties will promptly engage in good-faith negotiations concerning the alleged noncompliance and appropriate measures to cure the alleged noncompliance. If the parties have not reached an agreement on the existence of the alleged non-compliance and curative measures within forty-five (45) days after Plaintiffs' notice to GPDSC, Plaintiffs may seek an appropriate judicial remedy with respect to the alleged non-compliance. The parties may extend this time period by agreement. Plaintiffs have a duty to bring suspected non-compliance to Defendants attention in a timely manner and in good faith before seeking a judicial remedy. Defendants must be allowed a reasonable time to cure any alleged non-compliance. Plaintiffs agree that this procedure must be followed to in order seek judicial remedies.
- B. **Relief Upon Defense of Insufficient Funds.** Defendants do not speak for the Georgia General Assembly, which has the exclusive power under Georgia law to

determine the appropriations for the State's programs for indigent defense. However, Defendants acting under their existing authority agree that it will be a condition of their provision of indigent defense services covered by this Consent Decree to substantially comply with the Consent Decree within their ability. If Plaintiffs seek a judicial remedy for Defendants' substantial noncompliance with this Consent Decree, and at any stage of subsequent enforcement proceedings Defendants assert insufficient funds as a legal excuse, Plaintiffs may move to rescind their consent to the Consent Decree.

14. Duration of Decree

- A. This Consent Decree shall remain in effect until the later of March 1, 2014 or until such time as Defendants have been in substantial compliance with the terms of this Consent Decree for one year.
- B. At that point parties may file a motion to terminate jurisdiction over this Consent Decree with the Court. Plaintiffs shall not contest a timely and appropriate motion to terminate unless: (i) Plaintiffs dispute State Defendants' assertion that they have achieved and sustained substantial compliance on all provisions of the Consent Decree for one year; (ii) an unresolved motion relating to non-compliance with any other provision of this Consent Decree remains pending; or (iii) any Court Order or Stipulation providing a remedy for a prior allegation of such non-compliance with any other provision of this Decree is in effect or has not been complied with at the time of the motion to terminate.

15. Miscellaneous Provisions

- A. Unless otherwise provided in this Consent Decree, all notices under this Consent Decree shall be deemed duly given upon delivery by email, hand, or three days after posting, if sent by registered mail, return receipt requested. All notices under this Decree shall be provided to the party at the address set forth as follows:

As to Plaintiffs:

Gerald Weber
Melanie Velez
Lauren Sudeall Lucas
Atteeyah Hollie
Southern Center for Human Rights
83 Poplar Street N.W.
Atlanta, Georgia 30303
Telephone: (404) 688-1202
Facsimile: (404) 688-9440

Emmet J. Bondurant
Michael A. Caplan
Bondurant, Mixson & Elmore, L.L.P.
3900 One Atlantic Center
1201 West Peachtree Street
Atlanta, Georgia 30309
Phone: (404) 881-4100
Facsimile: (404) 881-4111
E-mail: caplan@bmelaw.com

As to Defendants:

DeBrae Kennedy, Esq.
Office of the Attorney General
40 Capitol Square, S.W.
Atlanta, Georgia 30334

- B. This Consent Decree constitutes the entire agreement between the parties with regard to the subject matters contained therein, and hereby supersedes all prior agreements, representations, statements, negotiations, and undertakings.
- C. All parties to the Consent Decree have participated in its drafting and, consequently, any ambiguity shall not be construed either for or against any party.
- D. If, for any reason, the Court fails or refuses to enter this proposed Consent Decree as signed by the authorized signatories, or as altered in accordance with their consent freely given prior to entry, then the proposed Consent Decree itself, and any agreement or statement contained in the proposed Consent Decree, is null and void and may not be enforced.
- E. This agreement will be executed by Class Counsel and Counsel for all the Defendants except GPDSC. The signatories below represent that they have authority to execute this agreement on behalf the parties for whom they sign. GPDSC shall, as early as practicable, meet to consider this Consent Decree, and upon approval of GPDSC, the Consent Decree shall be jointly submitted for approval by the Court pursuant to O.C.G.A. § 9-11-23(e).
- F. Any party may add or amend the name of the party's representative to whom notice shall be given as set forth in Section 15(A) by providing written notice to all parties of their addition or amendment.

16. Attorney's Fees and Expenses of Litigation

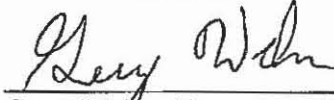
- A. The parties shall attempt without court intervention to resolve the proper amount of Class Counsel's fees and expenses of litigation. If the parties cannot reach agreement on the proper amount of attorneys' fees and expenses of litigation, Class Counsel shall file an application for fees and expenses in accordance with the requirements of applicable law and procedure within forty-five (45) days following entry of this Consent Decree. Any objection to Class Counsel's motion seeking a fee award shall be filed within twenty-one (21) days following the docketing of Class Counsel's motion. For purposes of this settlement, Defendants will not oppose Plaintiffs' characterization of themselves as the prevailing party in this litigation pursuant to 42 U.S.C. § 1988; provided, however, defendants do not concede that plaintiffs are entitled to any specific award of attorneys' fees. The amount of any award shall be determined by the Court in accordance with the requirements of applicable law and procedure.
- B. All parties reserve whatever rights each may have to appeal the award of attorneys' fees and expenses awarded by the Court.

SO ORDERED this ____ day of _____, 2011.

HONORABLE JERRY W. BAXTER
FULTON COUNTY SUPERIOR COURT
ATLANTA JUDICIAL CIRCUIT

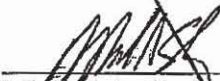
CONSENTED TO:

For the Plaintiffs:



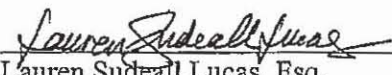
Gerry Weber, Esq.
Class Counsel

12/14/11
Date



Michael A. Caplan, Esq.
Class Counsel

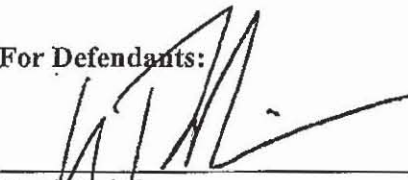
12/14/11
Date



Lauren Sudeall Lucas, Esq.
Class Counsel

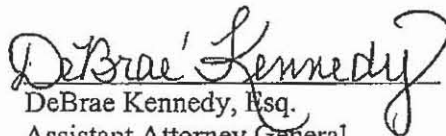
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For Defendants:



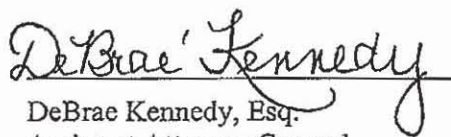
Travis Sakrison
Director, Georgia Public Defender Standards Council

12/14/11
Date



DeBrae Kennedy, Esq.
Assistant Attorney General
On Behalf of All Defendants Except GPDSC

12/14/2011
Date



DeBrae Kennedy, Esq.
Assistant Attorney General
On Behalf of GPDSC

12/21/2011
Date for authority
given on 12/16/2011

APPENDIX A

Conflict Appeals Transfer Procedures in Cases Subject to Appeal

Initiation of request

- If the client wishes to appeal, trial counsel shall promptly file a skeleton motion for a new trial (and order the transcript; see USCR 41.3), thereby securing the client's appellate rights within the 30-day deadline.
- Either the client or trial counsel may suggest an ineffectiveness claim and seek transfer of the case and substitution of new counsel.
- The CPD will be responsible for the initiation and completion of the necessary forms for the process.
- The claim will be initiated on a revised GPDSC "Conflict Appellate Transfer Request Form" identifying the case, the court, the judge, the charges, the procedures and chronology culminating in the conviction, the sentences, the date the skeleton motion was filed and the transcript ordered, the names and addresses of trial counsel, prosecuting counsel, and the court reporter, and the number of days consumed in trial and hearings.
 - The heart of the form will be a section (or an attachment) outlining the specific professional derelictions of counsel in enough detail that they can be promptly and intelligently considered or investigated. Each dereliction should address its effect upon the trial and the "reasonable likelihood" standard for harm. For client-initiated claims, it may be necessary for counsel or a colleague to meet with the client and assist in writing out or articulating the specific claims. If detailed enough, a client's letter of complaint could suffice.
 - Another section (or attachment) will include counsel's response to each asserted dereliction, her reasons or reasoning for proceeding as she did, and her assessment of the effect of the complained act or omission on the outcome of the proceedings, all in appropriate detail.
 - The CPD will review all forms and attendant documents to ascertain the nature of the claim, whether immediate corrective action is required on the part of the CPD as a result and whether the materials are complete.
- The completed form and attendant documents shall be transmitted by the CPD or her designee via email to Appellaterequest@gapublicdefender.org.

GPDSC Inquiry into Claim

- The GPDSC shall assign a staff attorney within the Appellate Division (“Reviewing Attorney”) to timely review and evaluate the asserted conflict-of-interest and/or Class Member’s potential claim for ineffective assistance described in the request.
- With the specific claims identified on the form and with attached documents, the next step is for the Reviewing Attorney to consult with the client, either personally or by letter regarding his basis for the claims. In either form, the consultation will be documented.
- Following consultation, the Reviewing Attorney shall analyze whether the the client has a good faith basis to assert ineffectiveness based on the available information and whether trial counsel otherwise has a conflict of interest from representing the client on appeal. *See Harden v. Johnson* 280 Ga. 464, 464-465 (2006) (holding that in reviewing counsel’s performance, the focus is not the accused’s evaluation of his counsel’s performance; instead, the focus is whether there has been a true adversarial process with the accused’s counsel acting as a reasonably effective advocate for the accused. Accordingly, in evaluating an ineffective assistance claim, no weight is attached to the accused’s expression of satisfaction or dissatisfaction with counsel.); *Grace v. State*, 262 Ga. 485, 486 (1992); *see United States v. Cronin*, 466 U.S. 648, 657, n. 21 (1984). If further investigation is necessary to advise the client on any of the two matters set forth above, the Reviewing Attorney should presume for the purposes set forth below that the trial attorney has a conflict of interest from representing the client on appeal.

Action on request

- If the Reviewing Attorney concludes that there is no good faith basis for asserting ineffectiveness and the trial attorney does not otherwise have a conflict of interest from representing the client on appeal, she shall advise the client in writing of her conclusion. The client should be afforded copies of the important, relevant cases which he can study for himself, ideally along with the Reviewing Counsel’s written analysis.
 - The client should be advised of the definition of a conflict of interest and the legal basis for an ineffective assistance of counsel claim resulting in a conflict. *See Edwards v. Lewis*, 283 Ga. 345 (2008) (“One component of the right to the effective assistance of counsel is the right to representation that is free of actual conflicts of interest.”)
 - The client should also be made aware that the decision whether to raise an ineffectiveness claim falls exclusively to counsel (*Jones v Barnes*; *Bell v. State*) and that Georgia’s forfeiture rule (*Glover v. State*) would bar the claim subsequently if counsel elected not to raise it.

- The client shall also be notified that, notwithstanding the Reviewing Attorney's conclusion that no good faith basis exists to assert ineffectiveness and that trial counsel does not otherwise have a conflict of interest from representing the client, the client nevertheless is entitled to request and be provided new, conflict-free counsel on appeal. (*Garland v. State.*)
- Conversely, if Reviewing Attorney determines that a good-faith basis exists to assert ineffectiveness or trial counsel otherwise has a conflict of interest from representing the client on appeal, the Reviewing Attorney shall notify the client of that determination in writing. The Reviewing Attorney shall also advise the client of the difficulties and disadvantages of reserving an ineffectiveness claim for pursuit on habeas (namely that the client will not be constitutionally entitled to counsel). Particularly for counsel-initiated substitutions, the client should be aware that substitute counsel will make the ultimate decision as to whether the claim is actually raised on appeal, and be provided an opportunity to forego his request for conflict-free counsel and preserve the claim for habeas.
 - The client should be afforded copies of the important, relevant cases which he can study for himself, ideally along with the reviewing lawyer's written analysis.
 - The client should be made aware that the decision whether to raise an ineffectiveness claim falls exclusively to his new counsel (*Jones v Barnes; Bell v. State*) and that Georgia's forfeiture rule (*Glover v. State*) would bar the claim subsequently if counsel elected not to raise it.
 - The client shall also be notified that the client is entitled to request and provided new, conflict-free counsel on appeal. (*Garland v. State.*)
- Under either determination above, the decision on the viability of the claim and notification to the client will be made within 30 days of the submission of a completed transfer form to the appellate email address. Should GPDSC be unable to make a determination within 30 days, the case shall be assigned to new conflict-free counsel within 15 additional days (45 days from receipt of notification).
- Where either (i) there appears to be a viable claim of ineffectiveness; or (ii) the client requests new, conflict-free counsel notwithstanding the GPDSC's determination that his or her potential claim of ineffectiveness is not viable, new conflict-free counsel will be identified and appointed by the central Appellate Division within 15 days from the decision (45 days from receipt of notification) or request for conflict-free counsel notwithstanding Reviewing Counsel's determination that no good faith basis exists for raising ineffectiveness.
- When the Division has identified new counsel, trial counsel should formally move to withdraw concurrently with new counsel's entry of appearance, and both should assure

that this information is conveyed to client, court reporter, and prosecuting counsel. Old and new counsel should arrange directly between themselves for the transfer of the case file.

- The GPDSC and CPDs shall take all measures appropriate to ensure that all communications concerning the client's request for new counsel and potential grounds for a new trial or appeal shall be maintained as confidential and be entitled to the protection of the attorney-client privilege.

APPENDIX B

Workload/Caseloads Controls And Weighted Case Assignment System

The assignment capacity for attorneys is set using a weighted system as depicted in the chart below:

Type of Case	Weight
MWGP	.25
Misdemeanor (MNT through direct appeal)	.25
Felony less than 5 days (MNT through direct appeal) "standard" case	1
Felony more than 5 days (MNT through direct appeal)	1.5
Felony (appeal only)(rarity)	1

Case Complexity Factors

Pursuant to the scope of this decree, the majority of cases appointed to new counsel will not be at a stage where the transcripts of the trial or sentencing have been produced. As a result, the length of the transcript will generally not be a factor that could be considered in evaluating the complexity of a case in determining to whom the case should be appointed. Instead and prior to the appointment of cases, within the discretion of GPDSC, the following factors taken from the new "Conflict Appellate Transfer Request Form" will be assessed in relation to the overall anticipated complexity of the case on appeal:

1. Days of trial from first witness to final witness
2. Presence of charges involving statutory seven deadly offenses
3. Number of felony charges in indictment
4. Number of offenses for which the defendant stands convicted
5. Number of co-defendants

While there is no numerical corollary attributed to any one of these factors, the greater number of factors suggests a greater complexity, and may require adding weight to a particularly complex case.