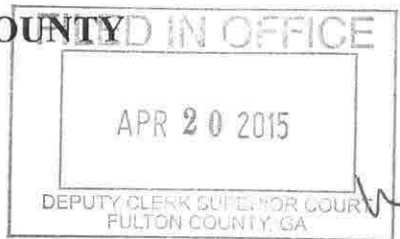


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IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA



N.P. ex rel. DARDEN, *et al.*,
Plaintiffs,
v.
THE STATE OF GEORGIA, *et al.*,
Defendants.

Civil Action No. 2014CV241025

CONSENT DECREE

A. Introduction

Plaintiffs brought this class action lawsuit by filing a complaint on January 7, 2014, in Fulton County Superior Court, seeking declaratory and injunctive relief against Defendants based upon alleged violations of the constitutional right to counsel for indigent adults and children accused of crime in the Superior and Juvenile Courts of the Cordele Judicial Circuit. Plaintiffs allege both federal and state law claims.

In order to resolve all issues pending between the parties without the expense, risks, delays and uncertainties of a trial and any appeals that might follow such a trial, Plaintiffs and Ben Hill County; the Ben Hill County Board of Commissioners; Crisp County; the Crisp County Board of Commissioners; Dooly County; the Dooly County Board of Commissioners; Wilcox County; and the Wilcox County Board of Commissioners; the Georgia Public Defender Standards Council (hereinafter "GPDSC") and its director; and the Cordele Judicial Circuit Public Defender agree to the terms of this Consent Decree. Plaintiffs and the defendants listed in this paragraph are referred to collectively as "the Parties" hereinafter. The Defendants entering into this Consent Decree, do not admit to the truth or validity of any claim made against them by Plaintiffs. The parties to this Consent Decree acknowledge that the Court has jurisdiction over this case and authority to enter this Consent Decree and to enforce its terms.

B. Class Certification

The parties agree for the purposes of settlement only that two classes shall be certified as follows:

1. The “Juvenile Class” consists of all indigent children who are or will in the future be accused of delinquent acts and subject to proceedings where they face confinement, commitment, probation, or revocation of probation in the Cordele Judicial Circuit’s Juvenile Courts, and are entitled to assistance of counsel by the Georgia and United States Constitutions, the Indigent Defense Act, the Juvenile Code and other applicable law.
2. The “Adult Class” consists of all indigent adults who are or will in the future be accused of felonies, misdemeanors, or violations of the conditions of probation in the Cordele Judicial Circuit’s Superior Courts, and are entitled to counsel by the Georgia and United States Constitutions, the Indigent Defense Act, and other applicable law.

Based on the parties’ agreement, this Court finds that the classes identified herein are certified for purposes of this Consent Decree only. The finding of the two classes shall not constitute *res judicata* or establish a basis for collateral estoppel, except in connection with this action. Further, because providing notice to class members is impracticable under the circumstances of the resolution proposed, no notice to the class members shall be required.

C. Definitions

For purposes of this Consent Decree, the following terms have the meanings indicated below:

1. “Circuit Public Defender” or “CPD” means the Cordele Circuit Public Defender, as defined in O.C.G.A. § 17-12-2(2).
2. “Conflict Attorney” means any attorney hired on an *ad hoc*, contractual or any other basis by the GPDSC or any other entity to represent a Juvenile or Adult Class Member because the Circuit Public Defender’s Office is unable for any reason to represent the Juvenile or Adult Class Member.

3. "County Defendants" means Ben Hill County; the Ben Hill County Board of Commissioners; Crisp County; the Crisp County Board of Commissioners; Dooly County; the Dooly County Board of Commissioners; Wilcox County; and the Wilcox County Board of Commissioners.
4. "Defense Counsel" means both a "Public Defender" as defined herein and a "Conflict Attorney" as defined herein.
5. "Director" means the director of the Georgia Public Defender Standards Council, as provided in O.C.G.A. § 17-12-5, and his or her successors.
6. "GPDSC" means the Georgia Public Defender Standards Council, as provided in O.C.G.A. § 17-12-3; and the Georgia Public Defender Council as it shall be called after July 1, 2015.
7. "Public Defender" or "Public Defenders" refers to any lawyer who is employed by, contracted with, or otherwise engaged to provide legal representation to Adult and/or Juvenile Class Members as a member of the Cordele Judicial Circuit Public Defender Office.

D. The Representation of Indigent Defendants

1. Staffing

- a. The staff of the Cordele Circuit Public Defender office shall be increased by the addition of two full-time, salaried lawyers and one full-time, salaried investigator, effective July 1, 2015, or as soon thereafter as practicable. The positions shall include benefits. These positions are in addition to the Circuit Public Defender, the two existing state-funded Public Defender positions, and the state-funded investigator position. The positions shall be funded as follows:

1. The County Defendants shall fund one Assistant Public Defender position and an investigator position.

2. GPDSC shall fund one additional Assistant Public Defender position.

The provision of additional assistant public defender positions and an investigator is due to the unique needs and circumstances of the Cordele Circuit.

- b. When a position in the Circuit Public Defender office becomes vacant, the Circuit Public Defender shall notify the GPDSC, which shall promptly announce the openings by posting an announcement on the GPDSC and Team Georgia websites. The Circuit Public Defender and the GPDSC may publicize the opening in other ways as well. Other ways may include asking the following organizations to post it on their websites and circulate it to their list serves: the Georgia Association of Criminal Defense Attorneys, Gideon's Promise, the Gate City Bar, and the Georgia Association of Black Women Attorneys. The Circuit Public Defender and GPDSC may also send the announcement to the placement offices of all law schools in Georgia.

The announcement may require that applicants submit a resume, writing sample, the names of three references, and describe any demonstrated interest in public defense.

- c. Nothing in this consent decree prevents the County Defendants, the GPDSC, or any other entity from funding additional positions in the Cordele Circuit Public Defender office.

2. Providing Representation to Class Members

- a. A representative from the CPD's office shall interview detained Class Members within three (3) business days of the date when the Class Member is taken into custody to determine whether the Class Member is entitled to services under the Indigent Defense Act of 2003. Defense Counsel shall meet with detained class members within three business days of their eligibility having been determined. Defense Counsel shall interview Class Members released on bond as soon as practicable. Where a detained Class Member is represented by a Conflict Attorney and an in-person interview is impracticable within three business days, the Conflict

Attorney shall send notice of representation to that Class Member by first-class mail within three business days of appointment to the Class Member's case. The CPD shall cooperate with the Sheriff's Office in each county of the Cordele Judicial Circuit to establish as part of the initial jail booking procedures an effective notification to each arrested person of his or her right to an attorney if he or she cannot afford counsel, and information regarding how to request the services of the Circuit Public Defender's Office whether the person remains in jail or is released on bond.

- b. After undertaking the representation of a Class Member, Defense Counsel shall continue to represent the Class Member through final disposition and any other related proceedings unless there is good cause for the substitution of counsel. If Defense Counsel is ethically required to withdraw his or her representation in a case, he or she must do so as soon as practicable after discovering a conflict of interest and in a manner that avoids prejudice to the Class Member. Defense Counsel must obtain leave of court pursuant to Uniform Superior Court Rule 4.3. Counsel must provide the Class Member written notification of the withdrawal, unless such withdrawal occurs during a court proceeding with the Class Member present. Nothing in this provision shall limit the ability of co-counsel from the CPD's office to stand in when the situation demands it, such as the unavailability of counsel primarily responsible for the case, or the ability of one lawyer to announce for another in ministerial matters.
- c. The CPD's office shall provide copies of all disclosable discovery material to represented Class Members. Defense Counsel shall review discovery with Class Members in person.
- d. Where strategically and tactically appropriate in the representation of an Adult Class Member, Defense Counsel shall request a preliminary hearing.
- e. Defense Counsel shall seek sufficient time to assess a case and make an informed, professional recommendation to Class Members with regard to the advisability of accepting a plea offer.

- f. The CPD shall ensure at the time of application for services that notice is provided to Class Members, as described on the GPDSC form application, that a court can waive the public defender application fee imposed by O.C.G.A. § 15-21A-6(c) on a showing that the Class Member is unable to pay the fee or that paying the fee would impose on the Class Member a measurable hardship. Defense Counsel shall, where appropriate, seek waivers on behalf of represented Class Members. In no case shall Defense Counsel request that payment of the public defender application fee be imposed.
- g. When necessary to competently represent a Class Member, Defense Counsel shall seek the assistance of experts to assist with the preparation of the defense, rebut the prosecution's case, and/or provide an adequate understanding of the prosecution's case.

3. Maintenance of a Juvenile Division

- a. The Circuit Public Defender shall maintain "a juvenile division within the circuit public defender office to specialize in the defense of juveniles" as required by O.C.G.A. § 17-12-23(c).
- b. At least one full-time public defender shall be responsible for developing and maintaining knowledge about issues unique to the representation of children and Juvenile Court. That public defender shall maintain contact with other juvenile public defenders and appropriate organizations in order to keep abreast of developments in the law and other areas of juvenile representation and training opportunities.
- c. On reasonable notice from the juvenile court, a public defender from the juvenile division shall speak to any indigent juvenile eligible for services under the Indigent Defense Act of 2003 who seeks to waive counsel and shall describe services of counsel available to the juvenile and the benefits of such representation.

4. Training

- a. Every Public Defender shall attend, as soon as is practicable, the National Criminal Defense College in Macon, Georgia, the Bill Daniel Trial Advocacy Program in Athens, Georgia, or similar programs approved by the director of GPDSC.
- b. Public Defenders assigned to the CPD's Juvenile Division shall attend at least one juvenile delinquency defense training program per year, organized by the Child Protection and Advocacy Section of the State Bar of Georgia, the Barton Child Law and Policy Center at Emory University, the National Juvenile Defender Center, or the Southern Juvenile Defender Center, or a similar program focusing on juvenile delinquency defense approved by the director of the GPDSC.
- c. The Georgia Public Defender Standards Council shall provide consultation and training for the members of the Cordele Circuit Public Defender office, including consultation and training by persons with expertise in juvenile representation.

E. Duration of Decree

1. This Consent Decree shall remain in effect for three (3) years from July 1, 2015, with the positions called for in paragraph D(1)(a) above subject to appropriation for all years after the first year, which appropriations are fully anticipated. However, no provision herein is intended to impose obligations on the County Defendants in violation of the principles set forth in O.C.G.A. § 36-30-3, as applied to counties by *Madden v. Bellew*, 260 Ga. 530 (1990) and its progeny.

F. Enforcement

1. Any party shall bring any issues of non-compliance to the attention of all counsel before seeking a judicial remedy. Any such notice of alleged non-compliance shall be in writing and state with specificity the alleged non-compliance. The parties shall promptly engage in negotiations to resolve the issue, if possible. 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 the notice, a party may seek an appropriate judicial remedy. The parties may extend this time period by agreement.

2. The Fulton County Superior Court shall have jurisdiction to resolve any disputes relating to the Consent Decree.

G. Miscellaneous Provisions

1. 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.
2. Any ambiguity shall not be construed either for or against any party.
3. This agreement will be executed by counsel for all parties. The signatories below represent that they have authority to execute this agreement on behalf of the parties for whom they sign. The Consent Decree shall be jointly submitted for approval by the Court pursuant to O.C.G.A. § 9-11-23(e).
4. All parties waive all rights to attorney's fees in this action.
5. The following non-settling Defendants to this action are dismissed with prejudice, are not parties to this Consent Decree, and are not subject to this consent decree: the Governor, the State of Georgia, the individual members of the County Commissions, the individual members of the GPDSC, the judge defendants, and the district attorney defendants. The non-settling Defendants maintain the defenses set forth in their pleadings.

SO ORDERED this 20th day of April, 2015.



**HONORABLE TODD MARKLE
FULTON COUNTY SUPERIOR COURT
ATLANTA JUDICIAL CIRCUIT**

CONSENTED TO

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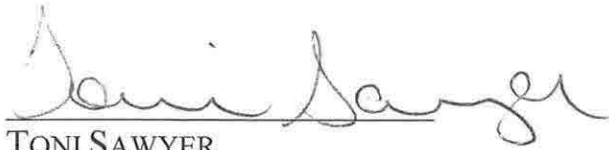
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