

ORIGINAL

FILED IN CLERK'S OFFICE
U.S. DISTRICT COURT
Atlanta

DW
JUL - 6 2004

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

LUTHER D. THOMAS, Clerk
By: *W. Powell* Deputy Clerk

ATLANTA DIVISION

FREDERICK HARPER, individually
and on behalf of all present and
future inmates in the Fulton County
Jail in Atlanta, Georgia,

Plaintiff,

v.

Tyrone Bennett, et al.

Defendants

CIVIL ACTION

No. 1:04-cv-1416 (MHS)

MOTION TO INTERVENE

**MOTION OF C. ALAN POWELL, TORY DUNLAP, LEE ANTONIO
SMITH AND DAVID EVANS TO INTERVENE AS PARTY PLAINTIFFS
IN THIS CASE, INCORPORATING MEMORANDUM OF POINTS AND
AUTHORITIES**

Movants-Intervenors C. Alan Powell, Tory Dunlap, Lee Antonio Smith
and David Evans ("Movants-Intervenors" or the "Powell Plaintiffs"¹)

hereby respectfully move this Court for leave to intervene as plaintiffs for

¹ The docket sheet in Harper v. Bennett does not reflect that a related case notice referencing Powell v. Barrett has been filed, so, at the time counsel for Mr. Harper filed the amended complaint in his case, this Court may not have been aware that the Powell v. Barrett case, setting out the class definitions in

19

certain limited² purposes as a matter of right in this case pursuant to Federal Rule of Civil Procedure ("Rule" or "FRCP") 24(a)(2), or in the alternative, for leave for permissive intervention pursuant to FRCP 24(b).

The purposes for which Movants-Intervenors move to intervene include:

- 1) participating in the show cause on whether to remove Defendant *Jacqueline Barrett* from her role as custodian of the Fulton County Jail and to appoint a temporary receiver ordered by this Court in its order dated June 25, 2004 (the "June 25 Order") (docket # 7);
- 2) participating in the informal conference ordered by this Court in the June 25 Order;
- 3) participating in fashioning any equitable relief ordered by this Court in

Powell, had already been filed on April 21, 2004, and assigned to the Honorable J. Owen Forrester

² Intervention under Rule 24(b) by third parties for limited purposes is common. For example, the District of Columbia Circuit Court of Appeals has ruled that the proper procedure for a third party seeking access to materials in another case subject to seal or to a protective order is permissive intervention under Rule 24(b). EEOC v. National Children's Center, Inc., 146 F.3d 1042, 1046 (D.C. Cir. 1998). Third parties seeking to intervene under Rule 24(b) for the limited purpose of seeking access to documents under seal and to depositions covered by a protective order and other such materials do not have to establish an independent jurisdictional basis, close time requirements or rigorous standards of common questions of law or fact. 146 F.3d at 1047. Every circuit court that has considered the question has come to the conclusion that nonparties may permissively intervene for the purpose of challenging confidentiality orders. See Chi. Tribune Co. v. Bridgestone/Firestone, Inc., 263 F.3d 1304 (11th Cir. 2001); Sunbelt Veterinary Supply, Inc. v. Int'l Bus. Sys. United States, Inc., 200 F.R.D. 463 (M.D. Ala. 2001).

this case, and coordinating any such relief with any equitable relief ordered by the Court in Powell v. Barrett, 1:04-CV-1100 (JOF);

4) ensuring that any order or judgment entered in this case does not impair the rights of any of the Powell Plaintiffs or any members of any class they may represent in Powell v. Barrett, 1:04-CV-1100 (JOF);

5) defining scope of Fulton County's authority over the Fulton County Jail and the person designated to run it, and Fulton County's authority over jail staff; and

6) participating in discovery in this case to the extent it is relevant to Powell v. Barrett, 104-CV-1100 (JOF) and being made a party to any protective order entered in the case.

I. CONSENT SOUGHT BUT NOT OBTAINED FROM ANY PARTY

Movants-Intervenors sought the consent of Plaintiff Mr. Harper and defendants to intervene in this case, but plaintiff and defendants have not granted consent to the relief Movants-Intervenors request in this motion.

Counsel for Movants-Intervenors have tried to reach Mr. Bright and his staff by phone several times to discuss coordinating the two suits informally, but have been unable to do so, although the two sides have sent e-mails on the

subject.

II. FACTS

Background of Harper v. Bennett lawsuit.

1. On May 19, 2004, Mr. Harper filed his original complaint (docket # 1) pro se, naming Deputy T. Bennett as the sole defendant.
2. On June 22, 2004, Mr. Harper, through counsel, filed an amended complaint (docket # 4), adding class allegations, and adding as parties Fulton County, and the Fulton County Commissioners, and Jacqueline Barrett in their official capacities.
3. Mr. Harper's amended complaint states that it is an "individual action seeking compensatory, nominal and punitive damages" for Mr. Harper for injuries he suffered in the Fulton County Jail on April 25, 2004, and "a class action seeking declarative and injunctive relief with regard to conditions at the Fulton County Jail," for a class of present and future inmates of the Fulton County Jail, on the basis of 42 U.S.C.A. § 1983 and O.C.G.A. § 42-5-2. Amended Complaint Paragraph 1; "Prayer for relief," page 20.
4. The class allegations of Mr. Harper's amended complaint propose a class action on behalf of all present and future inmates at the Fulton County Jail, who seek relief from alleged unconstitutional conditions of confinement

arising from extreme overcrowding, neglected and deteriorating physical facilities, and staff shortages.

5. On June 25, 2004 this Court issued a show cause order (the "June 25 Order") (docket # 7) compelling the Harper defendants to appear in Courtroom 1707, United States Courthouse, 75 Spring Street, S.W., Atlanta, Georgia, at 10:30 a.m. on Thursday, July 8, 2004:

to show cause why this Court should not appoint a temporary receiver to replace Sheriff Barrett as the custodian of the jail until a new, duly-elected sheriff takes office. The receiver would assume all responsibility for jail operations, including but not limited to budgetary decisions and decisions regarding the hiring and firing of personnel. Any such appointment would in no way affect Sheriff Barrett's other duties as Sheriff of Fulton County.

June 25 Order, page 3.

6. The June 25 Order further states:

the Court invites counsel for the parties, the Fulton County Commissioners or their designated representative(s), the Fulton County Sheriff, the Chief Judges of the Fulton County Superior Court and Fulton County State Court, the Fulton County District Attorney, and the Fulton County Solicitor to meet with the Court in an informal conference [in chambers on Thursday, July 15, 2004, at 2:00 p.m.] to discuss alternatives to limit the flow of new prisoners into the jail and to expedite the release of prisoners who should no longer be detained.

June 25 Order, pages 5-6.

7. On June 23, 2004 Mr. Harper filed a motion (docket # 9) to certify his

lawsuit as a class of “all inmates who are now or will be in the future confined at the Fulton County Jail” as a class action pursuant to FRCP 23(a) and 23(b)(2) for the purposes of declaratory and equitable relief. Plaintiff’s Motion to Certify, page 13. Plaintiff’s motion for certification does not ask for a Rule 23(b)(3) class or any type of class to resolve claims for money damages for the class.

8. On June 28, 2004 certain persons moved to intervene in the case as plaintiffs (docket # 10).

9. On June 29, 2004 Plaintiff filed a motion (docket # 11) asking the Court to conduct an inspection of the Fulton County Jail in contemplation of the July 8, 2004 show cause hearing.

10. On June 30, 2004 certain defendants filed a motion asking this Court to recuse itself (docket # 12).

11. This Court denied the recusal motion by order dated July 2, 2004 (docket # 13).

Movants-Intervenors C. Alan Powell, Tory Dunlap, Lee Antonio Smith and David Evans’ lawsuit, Powell v. Barrett, 04-cv-1100 (OJF).

12. Movants-Intervenors C. Alan Powell, Tory Dunlap, Lee Antonio Smith and David Evans filed their class action complaint on April 21, 2004 naming

Defendant Jacqueline Barrett in her individual and official capacity.

13. On July 1, 2004, Movants-Intervenors C. Alan Powell, Tory Dunlap, Lee Antonio Smith and David Evans filed their amended class action complaint naming Defendant Jacqueline Barrett in her individual and official capacity, Fulton County, six of the Fulton County Commissioners, and the City of Atlanta. **All Powell defendants have been served with the first amended complaint.**

14. Both the original complaint and the first amended complaint sought money damages on behalf of past, present and future inmates of the Fulton County Jail who have been subject to over-detentions and unconstitutional strip searches on arrest and/or after being ordered released, and equitable relief, including stopping the blanket strip searches of arrestees, and appointment of a monitor or monitors to supervise strip searches and ensure prompt release of inmates on their Release Dates³

³ The Powell first amended complaint defines "Overdetain" in Paragraph 3 as holding an inmate in Fulton County Jail custody past the inmate's "Release Date". The Powell first amended complaint defines "Release Date" in Paragraph 5, for each inmate, as the day on which the inmate is entitled to be released by court order, or the date on which the basis for his or her detention has otherwise expired, for example by posting bond, or by being detained pretrial on a charge without judgment past the maximum period of any sentence on that charge.

15. **Both the original complaint and the first amended complaint**

defined two classes the Powell plaintiffs seek to represent, the:

Arrestee Strip Search Class: consisting of each person who, in the two years preceding the filing of this action up until the date this case is terminated, was or will be, (i) upon being arrested and committed into the Fulton County Jail; (ii) on a charge other than a charge of drugs, weapon or felony violence; (iii) was subjected to a blanket strip search without any individualized finding of reasonable suspicion or probable cause that he or she was concealing drugs, weapons or other contraband;

and the:

Overdetention Class: consisting of class consisting of: (a) each person who has been, is, or will be incarcerated in any Fulton County Jail facility in the two years preceding the filing of this action up to and until the date this case is terminated; and (b) who was not released, or, in the future, will not be released by midnight on the date on which the person is entitled to be released by court order, posting bail, or the date on which the basis for his or her detention has otherwise expired.

16. Movants-Intervenors plan to file their motion to certify the above two classes on or about July 19, 2004, about two weeks from now.

17. Movants-Intervenors will support their motion to certify with over 50 affidavits obtained from person from all walks of life who have been illegally overdetained and/or subject to illegal strip searches.

18. Movants-Intervenors are represented by highly qualified counsel. Dan DeWoskin and Charles Pekor are highly skilled attorneys who practice criminal defense law in Atlanta with many years of experience between them,

and are intimately familiar with the Fulton County Jail and the Fulton County criminal justice system. William Claiborne, Lynn Cunningham, Barrett Litt and Paul Estuar⁴ specialize in § 1983 civil rights class actions and have litigated or are litigating numerous similar class actions involving overdetention and/or strip search issues at jails and prisons. J. Patrick Claiborne is an expert on Georgia law and is highly skilled in complex civil litigation, including civil rights litigation.

Similarities And Differences Between The Two Complaints.

19. The Powell and the Harper classes overlap in some respects because Mr. Harper brings his complaint on behalf of all present and future inmates of the Fulton County Jail, and the Powell plaintiffs bring their action on behalf of some, but not all, persons who were (or will be) inmates at the Fulton County Jail or one of its annexes during the class period.

20. The classes are distinguishable because the Powell plaintiffs and the putative class members complain of the specific policies and practices enumerated above whereas the Harper plaintiff seeks relief as a result of overcrowding, inadequate staffing and the inappropriate physical plant of the jail. Further, the Harper and Powell classes are distinguishable because,

⁴ Barrett Litt and Paul Estuar are both members of the California bar, and are about to move for entry pro hac vice in the Powell v. Barrett case.

whereas Mr. Harper seeks only equitable relief for the class he seeks to represent, the Powell Plaintiffs seek both equitable relief and compensatory damages for the classes they seek to represent.

21. Mr. Harper complains of brutality, overcrowding, inmates being held longer than lawfully allowed, shortage of uniformed staff, imminent collapse of physical facilities such as plumbing, electric laundry and ventilation, resulting in “mounting tension within the living units, leading to increased violence and even death,” and a substantial increase in the risk of transmission of disease among inmates and staff. Harper Amended Complaint, paragraphs 2, 25, et seq.

22. Mr. Harper also complains of delays before court appearances and overdetentions. Harper Amended Complaint, paragraphs 32 and 33. In this respect alone, there is some overlap between the Harper and Powell cases.

23. Conversely, Mr. Harper’s complaint omits a significant claim for relief that the Powell original complaint and the Powell amended complaint states. Mr. Harper’s amended complaint does not complain of or seek relief for illegal booking searches of arrestees. The Powell plaintiffs specifically allege a policy, pattern and custom of illegal booking searches of arrestees. Powell First Amended Complaint, paragraph 1; counts 1-4; Prayer for Relief, item 7, page 77.

24. Moreover, Mr. Harper seeks money damages for himself, but not for any other class member. Harper Amended Complaint, paragraph 1, Prayer for Relief, item 4, page 20. In contrast, the Powell Plaintiffs specifically seek money damages for all class members subjected to illegal booking searches of arrestees and “overdetentions” of inmates. Powell First Amended Complaint, “Prayer for Relief,” item 7, page 77.

25. Moreover, the Powell first amended complaint specifically asks for equitable relief, including a stop to blanket strip searches of arrestees, and appointment of a monitor or monitors to supervise strip searches and to monitor the Records Room to ensure prompt release of inmates on their Release Dates. Powell First Amended Complaint, “Prayer for Relief,” items 8 and 9, page 78.

26. The relief Mr. Harper seeks on behalf of the class is an order to reduce the inmate population, increase the security staffing, and repair and maintain the basic systems required for basic health and safety, such as laundry, plumbing, electricity, and air handling. Harper Amended Complaint, Prayer for Relief, item 4, page 20. Mr. Harper’s amended complaint does not seek equitable relief on either the Records Room or the illegal booking strip searches.

27. Additionally, the Powell Plaintiffs name the City of Atlanta as a

defendant.

28. Finally, with respect to the class issues, the motion to certify filed by Mr. Harper seeks certification under Rule 23(b)(2). The Powell Plaintiffs will file a motion to certify their classes under both Rule 23(b)(2) and Rule 23(b)(3).

Effect of July 25 Order on the Powell Plaintiffs and their Proposed Classes.

29. The Court's June 25 Order directly implicates the interests of the Powell classes. First, the June 25 Order expressly references members of the Powell v. Barrett proposed Overdetention Class on pages 5 and 6. Secondly, placing the Fulton County Jail in receivership would implicate issues of the right to money damages of Arrestee Strip Search Class members and Overdetention Class members injured in whole or in part during the pendency of the receivership. Moreover, the equitable relief sought by the Powell plaintiffs on behalf of the Overdetention Class should be coordinated with the equitable relief sought by Mr. Harper on behalf of the class he seeks to represent. Changing the present policy of returning in-custody defendants ("court returns") from the courthouses to the Fulton County Jail after a judge has ordered their release is a crucial component resolving the overcrowding at the Fulton County Jail because returning court returns entitled to release because of their court appearances clogs an already overcrowded jail and an

overwhelmed release process.

Background of discussions between counsel for Mr. Harper and counsel for Movants-Intervenors.

30. Plaintiffs' counsel William Claiborne traveled to Georgia in March, 2004 and met with several attorneys (including Stephen Bright, Esq.) and law professors in Atlanta and Athens to investigate the bases and need for a class action lawsuit to address the overdetection and strip search issues in the Fulton County Jail.

31. After discussions with Mr. Bright personally (on several occasions) and with others, and having determined that no other lawyers planned to bring a similar suit, counsel for Movants-Intervenors filed Powell v. Barrett.

32. Counsel for Movants-Intervenors have been in touch with Mr. Bright several times since filing Powell v. Barrett. However, counsel for Movants-Intervenors learned of Harper v. Bennett through the newspapers. Counsel for Movants-Intervenors have tried to reach Mr. Bright and his staff by phone several times to discuss coordinating the two suits informally, but have received only an e-mail response. Thus, informal efforts among plaintiffs' counsel to coordinate the litigation have thus far been unavailing. Plaintiffs intend to continue to make efforts to reach Mr. Harper's counsel and are

hopeful that they can make a joint proposal to both this Court and to the Powell court to harmonize the relief sought in both actions to the extent there is an overlap.

III. APPLICABLE LAW

Rule 24 has two mechanisms for allowing a party to intervene: intervention as of right pursuant to Rule 24(a), and permissive intervention pursuant to Rule 24(b). Rule 24 (a) reads:

Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action: (1) When applicable law confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

Rule 24 (b) reads:

(b) Permissive Intervention. Upon timely application anyone may be permitted to intervene in an action: (1) when a statute of the United States confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or state governmental officer or agency or upon any regulation, order, requirement or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to

intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

Movants-Intervenors qualify under both provisions.

A. Rule 24(a): Intervention as of Right.

A party seeking intervention of right under Rule 24(a) must show that: "(1) his application to intervene is timely; (2) he has an interest relating to the property or transaction which is the subject of the action; (3) he is so situated that disposition of the action, as a practical matter, may impede or impair his ability to protect that interest; and (4) his interest is represented inadequately by the existing parties to the suit." Stone v. First Union Corp., 2004 U.S. App. LEXIS 10826, *6 (11th Cir. 2004).

(1) Application to Intervene is Timely

Movants-Intervenors' application to intervene is timely because it is filed less than two weeks after Mr. Harper filed his amended complaint, which raised the issue of class wide relief for the first time, while at the same time movants-intervenors' class action complaint was already pending at the time Mr. Harper filed his complaint. Harper docket showing Harper amended complaint docketed June 22, 2004 (docket # 4).

(2) Interest in the Subject Matter of the Suit

Under Rule 24(a)(2), a movant's intervention must be supported by a "direct, substantial, legally protectible interest in the proceeding," even though the legal nature of the interest need not be identical to that of the claims asserted in the main action. Georgia v. United States Army Corp of Engineers, 302 F.3d 1242 (11th Cir. 2003); Chiles v. Thornburgh, 865 F.2d 1197, 1213-1214 (11th Cir. 1989).

Movants-Intervenors have a direct, substantial and legally protectible interest in the subject matter of the Harper v. Bennett lawsuit because any judgment entered in Harper v. Bennett would affect, impair and might even extinguish certain of their rights to money damages or equitable relief. Mr. Harper's case seeks injunctive relief that will affect the Powell plaintiff's ability to obtain equitable relief with respect to the illegal booking searches and also with respect to the operations of the Records Room, and the release policies of the Fulton County Jail, and the Fulton County criminal justice system that cause in whole or in part the overdetentions.

Moreover, the Court's June 25 Order directly implicates the interests of the Powell classes with respect to fashioning an equitable remedy for each of the proposed classes, and because plaintiffs injured during the pendency of a court appointed receiver would be unable to sue for money damages because a

court appointed receiver enjoys the same judicial immunity afforded the judge who appointed him. Property Management & Invest., Inc. v. Lewis, 752 F.2d 599 (11th Cir. 1985). Thus, if the relief imposed appointed a receiver but the illegal conduct alleged in the Powell complaint continued, the Powell plaintiffs would be left without any effective remedy for such violations, including violations not addressed in the Harper case.

(3) Impairment of Interest

The nature of the Powell plaintiffs' interest in the Harper case, and the effect that the disposition of the Harper lawsuit will have on the Powell plaintiffs' ability to protect that interest are such closely related issues that, "[t]he second cannot be answered without reference to the first." Chiles v. Thornburgh, 865 F.2d at 1214, citing Hobson v. Hansen, 44 F.R.D. 18, 30 (D.D.C.1968). In fact, the June 25 Order expressly references members of the Overdetention Class proposed in Powell v. Barrett, and invites the Harper parties and others involved in the Fulton County criminal justice system to discuss issues impacting the Powell Plaintiffs' claims. June 25 Order, pages 5-6. Moreover, appointment of a court-appointed monitor would adversely impact the Powell Plaintiffs' claims for money damages. Property Management & Invest., Inc. v. Lewis, 752 F.2d at 602. To paraphrase the Chiles Court, the Powell plaintiffs' ability to litigate their claims in a separate

lawsuit might be an exercise in futility if the Harper lawsuit were decided in favor of defendants. See also, Georgia v. United States Army Corp of Engineers, 302 F. 3d 1242 (11th Cir. 2003) (Court held that Florida entitled to intervene in suit by Georgia against Army Corp of Engineers about water rights shared by Georgia, Alabama and Florida, because, Georgia's suit, if successful, would lead to a reallocation of water, and thus Florida's interest could be impaired in later litigation).

The differences in the claims, relief sought and defendants also justify intervention. Stone v. First Union Corp., 2004 U.S. App. LEXIS 10826 at *6.

(4) Ability of the Existing Parties to Represent Proposed Intervenor's Interest

The proposed intervenor has the burden of showing that the existing parties cannot adequately represent its interest, but this burden is "treated as minimal." Georgia v. United States Army Corp of Engineers, 302 F. 3d at 1256. Given the difference in the nature of the relief sought between Harper and Powell, and the lack of a specific Overdetention Claim and a Strip Search Claim in Harper, it is evident that the Harper action is not aimed at protecting all the rights asserted in Powell.

B. Rule 24(b): Permissive Intervention

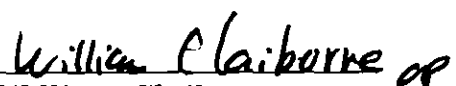
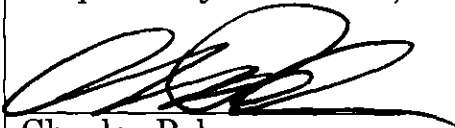
Rule 24(b) allows intervention "when applicable law confers a conditional

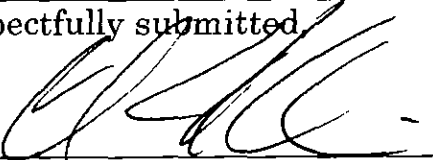
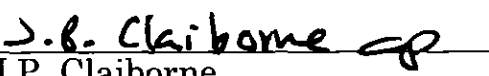
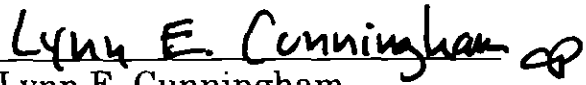
right to intervene," or "an applicant's claim or defense and the main action have a question of law or fact in common." This determination is discretionary, and "in exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties." Rule 24(b).

Movants-Intervenors claim in Powell v. Barrett covers many of the same putative class members, facts, claims and elements of relief covered in the Harper amended complaint. The intervention in the limited manner sought herein will in no way unduly delay or prejudice the adjudication of the rights of the original parties. Rule 24(b). Furthermore, permitting Movants-Intervenors to intervene will promote judicial economy.

III. CONCLUSION AND REQUEST FOR RELIEF

Based on the foregoing, Movants-Intervenors motion should be granted, and Movants-Intervenors proposed order attached hereto should be entered.

Respectfully submitted,  William Claiborne Georgia Bar # 126360 Counsel for Movants-Intervenors 717 D Street, NW	Respectfully submitted,  Charles Pekar Georgia Bar # 570601 Counsel for Movants-Intervenors 270 Peachtree Street, N.W. Suite 1060
--	---

<p>Suite 210 Washington, DC 20004 Phone 202/824-0700 Fax 202/824-0745</p>	<p>Atlanta, GA 30303 Phone 404-221-8887 Fax 404-221-8884</p>
<p>Respectfully submitted,  Dan DeWoskin Georgia Bar # 220327 Counsel for Movants-Intervenors 270 Peachtree Street, N.W. Suite 1060 Atlanta, GA 30303 Phone 404-221-8887 Phone 404-230-9171 Fax 404-221-8884</p>	<p>Respectfully submitted,  J.P. Claiborne Georgia Bar # 126337 Counsel for Movants-Intervenors 699 Broad Street Ste 1206 Augusta, GA 30901 Phone 706-722-8224 Fax 706-722-8236</p>
<p>Respectfully submitted,  Lynn E. Cunningham Admitted <u>pro hac vice</u> Counsel for Movants-Intervenors Professor of Clinical Law The George Washington University Law School 2000 G Street, N.W. Washington, DC 20052 Phone: 202/994-7659</p>	

CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of this Document with attachments to be served on July 6, 2004, by hand delivery, upon:

The Honorable Overtis Hicks Brantley
Fulton County Attorney
141 Pryor Street, Suite 4038
Atlanta, GA 30303
Counsel for Fulton County and Fulton County County Commissioners

Defendant Jacqueline Barrett
(address withheld for security purposes)

City Attorney
Linda DiSantis
Jerry deLoach
City of Atlanta
Department of Law
68 Mitchell Street
Suite 4100
Atlanta, Georgia 30303
Tel: 404.330.6400
Fax: 404.658.6894
Counsel for City of Atlanta

Stephen B. Bright
Southern Center for Human Rights
83 Poplar Street, N.W.
Atlanta, Georgia 30303-2 122
Telephone: 404/688-1202
Facsimile: 404/688-9440
Counsel for the plaintiff Frederick Harper

A copy of this motion with attachments marked "Chambers" was delivered by hand on the same date to the Chambers of the Honorable J. Owen Forrester and the Chambers of the Honorable Marvin H. Shoob.



Daniel DeWoskin
Georgia bar # 220327

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

FREDERICK HARPER, individually
and on behalf of all present and
future inmates in the Fulton County
Jail in Atlanta, Georgia,

Plaintiff,

v.

Tyrone Bennett, et al,

Defendants

CIVIL ACTION

No. 1:04-cv-1416 (MHS)

MOTION TO INTERVENE

CERTIFICATE OF COMPLIANCE

I, Daniel DeWoskin, do hereby certify that the foregoing document has been prepared in 13-point Century Schoolbook font and complies with LR 5dB.



Daniel DeWoskin
Georgia Bar # 220327
Counsel for Movants-Intervenors
270 Peachtree Street, N.W.
Suite 1060
Atlanta, GA 30303
Phone 404-221-8887
Fax 404-221-8884

ORIGINAL

RECEIVED IN CLERK'S OFFICE
U.S. D.C. Atlanta

JUL 06 2004

By: *[Signature]*
Deputy Clerk

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF GEORGIA

ATLANTA DIVISION

FREDERICK HARPER, individually
and on behalf of all present and future
inmates in the Fulton County Jail
in Atlanta, Georgia,

Plaintiff

v.

TYRONE BENNETT, et al,

Defendants

CIVIL ACTION

No. 1:04-CV-1416 (MHS)

MOTION TO INTERVENE

ORDER

On consideration of Movants-Intervenors C. Alan Powell, Tory Dunlap, Lee Antonio Smith and David Evans' motion to intervene pursuant to Rule 24(a), or alternatively, Rule 24(b), and plaintiff and defendants' opposition thereto, if any, it is hereby ordered that Movants-Intervenors C. Alan Powell, Tory Dunlap, Lee Antonio Smith and David Evans' motion be and hereby is granted under Rule 24(a) and Rule 24(b), and it is further ordered that they be and hereby are, added as plaintiffs in this case for the limited purposes of representing the interests of plaintiffs and class members in Powell v. Barrett, 1:04-CV-1100 (JOF) including:

1. participating in the show cause on whether to remove Defendant Jacqueline Barrett from her role as custodian of the Fulton County Jail and to appoint a temporary receiver ordered by this Court in its order dated June 25, 2004 (the "June 25 Order") (docket # 7);
2. participating in the informal conference ordered by this Court in the June 25 Order;
3. participating in fashioning any equitable relief ordered by this Court in this case, and coordinating any such relief with any equitable relief ordered by the Court in Powell v. Barrett, 1:04-CV-1100 (JOF);
4. ensuring that any order or judgment entered in this case does not impair the rights of any of the Powell Plaintiffs or any members of any class they may represent in Powell v. Barrett, 1:04-V:1100 (JOF);
5. defining the scope of Fulton County's authority over the Fulton County Jail and the person designated to run it, and Fulton County's authority over jail staff; and
6. participating in discovery in this case to the extent it is relevant to Powell v. Barrett, 1:04-CV-100 (JOF), and being made a party to any protective order entered in the case.

Marvin H. Shoob
United States District Court Judge

copies to:

William Claiborne
717 D Street, NW • Suite 210
Washington, D.C. 20004-2813
Counsel for Movants-Intervenors

The Honorable Overtis Hicks Brantley
Fulton County Attorney
141 Pryor Street, Suite 4038
Atlanta, GA 30303
Counsel for Fulton County and Fulton County County Commissioners

Defendant Jacqueline Barrett
(address withheld for security purposes)

Stephen B. Bright
Southern Center for Human Rights
83 Poplar Street, N.W.
Atlanta, Georgia 30303-2 122
Telephone: 404/688-1202
Facsimile: 404/688-9440
Counsel for the plaintiff Frederick Harper

City Attorney
Linda DiSantis
Jerry deLoach
City of Atlanta
Department of Law
68 Mitchell Street
Suite 4100
Atlanta, Georgia 30303
Tel: 404.330.6400
Fax: 404.658.6894
Counsel for City of Atlanta