

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

United States of America,)
)
 Plaintiff,)
)
 v.)
)
 City of Meridian; County of Lauderdale; Judge)
 Frank Coleman, in his official capacity; Judge)
 Veldore Young, in her official capacity; State)
 of Mississippi; Mississippi Department of)
 Human Services; and Mississippi Division of)
 Youth Services)
)
 Defendants.)
)
 _____)

Civil Action No.
3:13-CV-978-HTW-LRA

**MEMORANDUM IN SUPPORT OF JOINT MOTION
FOR ENTRY OF SETTLEMENT AGREEMENT**

The State of Mississippi, the Mississippi Department of Human Services and the Mississippi Division of Youth Services (the “State”) and the United States of America (collectively, “the Parties”) jointly and respectfully request that this Court enter the attached Settlement Agreement (“Agreement”) as an order of the Court. *See* Attachment 1. The Agreement is the result of two (2) years of litigation and negotiations by the parties, and provides relief that is fair, reasonable, and adequate. Through the Agreement, the Parties seek to resolve the United States’ claims against the State and avoid the burdens of contested litigation. The State does not admit legal liability, but has engaged cooperatively in settlement negotiations and the Parties have agreed to enter into the Agreement out of a mutual desire to protect the constitutional rights of Lauderdale County youth involved in the youth probation system.

I. Background

On October 24, 2012, following an eight-month investigation, the United States filed a complaint against the State of Mississippi, City of Meridian, Lauderdale County, and Judge Frank Coleman and Judge Veldore Young, pursuant to the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141.¹ U.S. Compl., ECF No. 1. The allegations with respect to the Mississippi Department of Human Services and the Division of Youth Services (DYS) are set forth in the United States' Complaint, ECF No. 1.

The proposed Agreement resolves these claims.²

II. Discussion

This Court should enter the proposed Agreement because it resulted from arm's length negotiations by sophisticated parties; it is fair, adequate, and reasonable; and it is the most effective way to implement the reforms needed to address the allegations in the complaint.

¹ The United States has resolved its claims against the City of Meridian through a separate agreement to be filed with this Court. In November 2014, the United States reached an impasse with the Youth Court Judges and the County and returned to a litigation track with these defendants. *See* Judges Renewal of Mot. to Dismiss, ECF No. 57; Judges' Mot. to Dismiss, ECF No. 58; Judges' Mem. of Law, ECF No. 59; County Joinder of Mots. to Dismiss, ECF Nos. 60 and 61. *See also* Order, ECF No. 75.

² In 2013, this Court approved a settlement between the Civil Rights Division's Educational Opportunities Section ("EOS") and the Meridian Public School District. *See* Consent Order, ECF 36, *Barnhardt v. Meridian Municipal Separate School District, et al.*, No. 4:65-CV-01300 (S.D. Miss 2013). The *Barnhardt* case was initiated by private plaintiffs and this Court later granted leave for the United States to intervene as a plaintiff. The Agreement in *Barnhardt* was adopted to ensure that the school district administers student discipline in a fair and non-discriminatory manner, reduces the disproportionate assignment of exclusionary sanctions to black students, and provides all students with an equal opportunity to learn in a safe, orderly, and supportive environment. *Id.* at ¶ 27. The State is not a party to the *Barnhardt* agreement, and that agreement does not address the State's policies or practices concerning youth probation. The instant case is not a class action and does not involve private plaintiffs. The attached Agreement only binds the United States and the State.

Moreover, the “strong judicial policy” of the Fifth Circuit “favor[s] the resolution of disputes through settlement.” *Parker v. Anderson*, 667 F.2d 1204, 1209 (5th Cir. 1982). Settlement is a particularly effective resolution in this case because the Parties represent two government agencies. By allowing the Parties to “avoid the risks as well as costs of full scale litigation,” a settlement agreement is a “highly useful tool for government agencies, since it maximizes the effectiveness of limited law enforcement resources.” *United States v. City of Jackson, Miss.*, 519 F.2d 1147, 1151-52 (5th Cir. 1975). In addition, “[b]ecause of the consensual nature of the decree, voluntary compliance is rendered more likely.” *Id.* at 1152, n. 9.

The Agreement is the result of two (2) years of litigation and settlement negotiations, including numerous in person and telephonic negotiations mediated by Magistrate Judge Anderson and many conference calls and exchanges of draft agreements between the Parties. The Parties have compromised opposing purposes to reach an agreement “and the resultant decree embodies as much of those opposing purposes as the respective parties have the bargaining power and skill to achieve.” *United States v. Armour & Co.*, 402 U.S. 673, 682 (1971) (requiring that, in reviewing negotiated agreements, “the scope of a consent decree must be discerned within its four corners, and not by reference to what might satisfy the purposes of one of the parties to it.”). In approving the Agreement, this Court must “only assure[] itself that there has been valid consent by the concerned parties and that the terms of the decree are not unlawful, unreasonable, or inequitable.” *City of Jackson, Miss.*, 519 F.2d at 1151. The attached Agreement meets these requirements and effectively remedies the allegations identified by the United States in its Complaint.

The Agreement requires Youth Services Counselors to provide youth with notice in youth-appropriate language of the role of Youth Services Counselors, potential consequences to

youth for violating probation, an explanation of the probation review and revocation process, the youth's right to challenge allegations of probation violations, and the youth's right to counsel in revocation hearings as well as how they can satisfy the requirement that youth on probation must attend school. If a youth violates the terms of probation, the Agreement prohibits DYS from recommending incarceration unless the violation itself amounts to a detainable offense, and only after all other reasonable alternatives to incarceration have been exhausted. When setting review meetings with youth, the Agreement requires DYS to set a fixed meeting schedule, to make reasonable efforts to advise the youth's attorney of the scheduled times, and to document best efforts to accommodate the attorney's schedule. Finally, to further the sustainability and transparency of reforms, the Agreement requires that DYS provide training on topics relevant to implementation of the agreement and participate in a community input program to inform the community about the progress of reforms and hear community questions and concerns.

The Agreement will be monitored by a Probation Services Independent Auditor, jointly selected by the parties, whose reports will be filed with the Court. In addition, to preserve resources and to promote the efficient implementation of this Agreement, the Parties will meet on an annual basis regarding the possibility of transferring supervision of provisions of the Agreement from external monitoring to monitoring by the United States. The monitoring terms that the Parties have agreed to are reasonable.

The Agreement will terminate when the State has achieved substantial compliance with all substantive provisions and has maintained that substantial compliance for 12 consecutive months. In addition, subsections of the agreement may be terminated earlier if the State maintains substantial compliance with the relevant subsections for a period of one year.

III. Conclusion

The State of Mississippi, the Department of Human Services and the Division of Youth Services and the United States share the same interest in protecting the constitutional rights of Lauderdale County youth and have worked together cooperatively to develop this Settlement Agreement. The Parties concur that the Agreement resolves all issues related to the United States' investigation of the Mississippi Department of Human Services, Division of Youth Services. Therefore, the Parties respectfully and jointly request that this Court approve the Agreement in its entirety, and enter it as an order of the Court.

Respectfully submitted this 19th day of June, 2015.

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CERTIFICATE OF SERVICE

I hereby certify that on June 19th, 2015, I electronically filed a copy of the foregoing Memorandum in Support of Joint Motion for Entry of Settlement Agreement with the Clerk of the Court using the ECF system which sent notification of such filing to the following:

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