

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

SAM STINSON, on his behalf  
and on behalf of all persons  
similarly situated,

Plaintiffs

v.

Civil Action File  
No. 1-94-CV-240-GET

FULTON COUNTY BOARD OF  
COMMISSIONERS, and MITCH  
SKANDALAKIS, in his official  
capacity as Chairman of the Board of  
the County Commissioners,

Defendants

**MOTION TO AMEND CONSENT ORDER TO CONFORM  
TO GEORGIA INDIGENT DEFENSE LAW AND STANDARDS**

The Plaintiff, Sam Stinson, through counsel, moves the Court to amend the Consent Decree entered in this action on May 21, 1999, by striking paragraphs 3 and 4 of Section II (Substantive Provisions) on page 4-6, and providing in lieu thereof: Counsel shall be provided to indigent defendants in accordance with the

Georgia Indigent Defense Act of 2003, Official Code of Ga. Ann. § 17-12-1 *et seq.*, and the standards promulgated by the Public Defender Standards Council.

In support of his Motion, the defendant states as follows:

1. The provisions of paragraphs 4 and 5 of the Substantive Provisions of the Consent Decree conflict with provisions of the Georgia Indigent Defense Act of 2003, Official Code of Ga. Ann. § 17-12-1 *et seq.* In particular, the Consent Order provides for initial interviews of defendants within one business day of arrest by Pretrial Services officers, who are to assign counsel (paragraph 3), followed within two days by interviews of defendants who remain detained by a “Legal Assistant Specialist” or paralegal from either the Fulton County Public Defender office or the Conflict Defender Office (paragraph 4), but does not provide for the appointment of an attorney within a specified time period. The Georgia Indigent Defense Act provides that the “entitlement to the services of counsel begins as soon as is feasible and no more than 72 hours after the indigent person is taken into custody or service is made upon him or her of the charge, petition, notice, or other initiating process.” O.C.G.A. §17-12-23 (b). The Public Defender Standards Council, in promulgating standards as authorized and required

by the Act,<sup>1</sup> has elaborated on the duties of counsel upon assuming responsibility for a case by providing in its standards that “[c]ounsel or a representative of counsel have an obligation to meet with incarcerated defendants with 72 hours of arrest” and take “prompt action necessary to provide quality representation,” including invoking the protection of state and federal constitutional provisions, statutes and rules,<sup>2</sup> and seeking the pretrial release of the defendant.<sup>3</sup> The Standards also provide for representation at first appearance hearings, required by Uniform Superior Court Rule 26.1 and County of Riverside v. McLaughlin, 500 U.S. 44 (1991), “where possible.”<sup>4</sup> Such representation is certainly possible in Fulton County and public defenders are in fact representing the accused at first appearance hearings.

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1. *See* O.C.G.A. 17-12-8. Standards having a fiscal impact become effective only when ratified by joint resolution of the Georgia General Assembly, but the standards “shall be utilized as a guideline prior to ratification.” O.C.G.A. 17-12-8 (c). The standards are available on the Georgia Public Defender Standards Council web site, [www.gpdsc.com/cpdsystem-standards-main.htm](http://www.gpdsc.com/cpdsystem-standards-main.htm) (last visited June 13, 2005). The standards cited in this pleading are appended.

2. *Performance Standards for Criminal Defense Representation in Indigent Criminal Cases*, Standard 2.A (A)(a) (appended).

3. *Id.*, Standard 2.A (B) (appended).

4. *Id.*, Standard 2.A (A)(b) (appended).

2. Thus, the Georgia Indigent Defense Act and the standards adopted by the Public Defender Standards Council provide a more comprehensive and specific requirements regarding the initial appointment and performance of counsel than paragraphs 3 and 4 of Section II of the Consent Order. One purpose of the Indigent Defense Act was to provide for uniformity in the representation provided to indigent defendants in Georgia. Amendment of Section II, paragraphs 3 and 4 of the Consent Order will avoid any confusion as to whether the Indigent Defense Act and the Performance Standards adopted by the Council or the provisions of the Consent Order in this case apply with regard to the initial appointment of counsel for those accused of crimes in Fulton County.

WHEREFORE, for the foregoing reasons and such other reasons as may appear to the Court, Plaintiff moves the Court to amend the provisions of the Consent Decree by striking paragraphs 3 and 4 and inserting in lieu thereof: Counsel shall be provided to indigent defendants in accordance with the Georgia Indigent Defense Act of 2003, O.C.G.A. § 17-12-1 et seq., and the standards promulgated by the Public Defender Standards Council.

This 14th day of June, 2005.

Respectfully submitted

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By s/Stephen B. Bright  
Stephen B. Bright

**CERTIFICATE OF COMPLIANCE**

I, Stephen B. Bright, do hereby certify that the foregoing document has been prepared in 14-point Times New Roman font and complies with Local Rule 5.1.

s/Stephen B. Bright

**CERTIFICATE OF SERVICE**

I, Stephen B. Bright, do hereby certify that on this day I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification to counsel for the defendants:

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

Opposing counsel has also been served by first class mail.

This 17th day of June, 2005.

s/Stephen B. Bright

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**INDEX OF ATTACHMENTS**

Appendix - Portions of *Performance Standards for Criminal Defense Representation in Indigent Criminal Cases* cited in Motion.

Proposed Order

**APPENDIX**  
**PERFORMANCE STANDARDS FOR CRIMINAL DEFENSE**  
**REPRESENTATION IN INDIGENT CRIMINAL CASES**  
adopted by the Georgia Public Defender Standards Council, May 21, 2004

\* \* \*

**Performance Standard 2.A Obligations of Counsel Regarding Pretrial Release**

(A) Counsel or a representative of counsel have in obligation to meet with incarcerated defendants within 72 hours of arrest, and shall take other prompt action necessary to provide quality representation including:

(a) Counsel shall invoke the protections of appropriate constitutional provisions, federal and state laws, statutory provisions, and court rules on behalf of a client, and revoke any waivers of these protections purportedly given by the client, as soon as practicable via a notice of appearance or other pleading filed with the State and court.

(b) Where possible, counsel shall represent an incarcerated client at the USCR Rule 26.1 First Appearance hearing (Riverside v. McLaughlin 500 U.S. 44 (1991) in order to contest probable cause for a client arrested without an arrest warrant, to seek bail on favorable terms (after taking into consideration the adverse impact, if any, such efforts may have upon exercising the client's right to a full Pretrial Release hearing at a later date), to invoke constitutional and statutory protections on behalf of the client, and otherwise advocate for the interests of the client.

(B) Counsel has an obligation to attempt to secure the pretrial release of the client.

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