

DR
7-8-10
J. DAVID ROPER, JUDGE

IN THE SUPERIOR COURT OF ELBERT COUNTY

STATE OF GEORGIA

_____)
CHRISTOPHER MICHAEL)
CANTWELL, et al.,)
))
Plaintiffs,)
))
v.)
))
MACK CRAWFORD,)
in his official capacity as Director)
of the Georgia Public Defender)
Standards Council; ROBERT)
LAVENDER in his official capacity)
as District Attorney for the Northern)
Judicial Circuit; and JOEL SHIVER,)
in his official capacity as Circuit)
Public Defender, Northern Judicial)
Circuit.)
))
Defendants.)
_____)

CIVIL ACTION
NO. 09EV275M

CONSENT ORDER

1. The term "Plaintiffs" refers to Christopher Michael Cantwell, Mitchell Cleveland Major, Donna Gail Adams, Bobby Gene Gunter, Brandon Ransom, and a class, subject to the terms below, of all indigent persons accused of crimes in Georgia's Northern Judicial Circuit whose cases conflict with those of criminal defendants represented by the Circuit Public Defender.

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2. The term “Director” refers to Defendant Mack Crawford, in his official capacity as Director of the Georgia Public Defender Standards Council, and his successors.

3. “District Attorney” refers to Defendant Robert Lavender, in his official capacity as the District Attorney for the Northern Judicial Circuit, and his successors.

4. “Circuit Public Defender” or “CPD” refers to Defendant Joel Shiver, in his official capacity as Circuit Defender for the Northern Judicial Circuit, and his successors.

5. “Contract Counsel” refers to any attorney retained by GPDSC pursuant to contract to represent any Plaintiff or class member.

6. “Contract Counsel Agreement” refers to a contract entered into by Contract Counsel with GPDSC pursuant to which Contract Counsel agrees to represent indigent criminal defendants in the Northern Judicial Circuit.

7. “GPDSC” refers to the Georgia Public Defender Standards Council.

8. “JCATS” refers to the computer database system maintained by GPDSC which contains information regarding indigent criminal defendants.

9. This lawsuit was brought as a class action seeking declaratory and injunctive relief. Plaintiffs alleged systematic denial of the right to counsel and the right to access the courts.



10. This Court finds, and the parties agree, that indigent criminal defendants have a right to counsel. See Gideon v. Wainwright, 372 U.S. 335 (1963); Argersinger v. Hamlin, 407 U.S. 25 (1972); Alabama v. Shelton, 535 U.S. 654 (2002).

11. This Court finds that the CPD is a necessary and indispensable party to affording relief pursuant to O.C.G.A. § 9-11-19 and joins him as a party to this action and this *Consent Order*. To the extent he requires representation in this matter he appears and shall be represented by counsel of his selection rather than State appointed or selected counsel. For purposes of this *Consent Order* only, the Court finds that the CPD is an independent actor and is not the agent or servant of GPDSC or the other Defendants and they are not the guarantors of his conduct.

12. The parties agree for the purposes of settlement only, for the purposes of this action solely, and not to be used in any other action or manner whatsoever, that a class may be certified of all indigent, unrepresented persons accused of crimes in Georgia's Northern Judicial Circuit whose cases conflict with those of criminal defendants represented by the CPD. Based on the parties' agreement, and the hearing for class certification, this Court finds that the class identified herein may be and is hereby certified for purposes of this *Consent Order* only. The finding of a class shall not constitute *res judicata* or establish a basis for collateral



estoppel, except in connection with this action, and shall not be relied upon in any future action.

13. By consent of the parties, and by order of this Court: (a) the CPD for the Northern Judicial Circuit shall provide the Conflict Division of the GPDSC with notice, by completing a form provided by the Director, of the need for conflict counsel for any indigent criminal defendant within 24 hours of the CPD's awareness of the need for conflict counsel, and (b) the Conflict Division shall, by 5:00 p.m. the next business day (that is, excluding weekends, State holidays or other days when the offices of the GPDSC are closed) after receiving notice on the appropriate form, appoint counsel for any such indigent criminal defendant and convey to conflict counsel his or her appointment and the contact information for the client, unless extenuating circumstances prevent the appointment of such counsel. Extenuating circumstances shall be narrowly construed to include the unavailability of conflict-free counsel to represent the criminal defendant or of counsel capable of representing the criminal defendant due to language barriers, refusal of conflict-counsel to provide representation, or similar unanticipated problems. In all situations of extenuating circumstances the parties shall take immediate steps to resolve the circumstances to see that counsel is appointed. In all circumstances, the Conflict Division shall endeavor to see that counsel is appointed

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so that counsel may meet with his or her client within three business days of when the Conflict Division received notice of the need for counsel.

Information Provided to Contract Counsel

14. The Director and the CPD shall provide to Contract Counsel, within three business days of Contract Counsel's appointment as counsel for a member of the class, all information from the JCATS system pertaining to said plaintiff, including plaintiff's telephone number and address, criminal charges, case number or warrant number, arrest date, and jail status. If this information is not available through JCATS, the Director and the CPD will endeavor to provide this information to Contract Counsel from another source. It is understood by the parties that it is the CPD's responsibility for the entry of all JCATS information regarding indigent defendants. It is the primary responsibility of the CPD to enter all information required under this paragraph in the JCATS system. The Conflict Division shall provide to Contract Counsel the information that is available in JCATS at the time of the appointment. The CPD shall be responsible for providing current and complete information in his possession or available by reasonable inquiry. GPDSC and the CPD shall use reasonable efforts to ensure that the JCATS information is current and complete. In the event that the CPD has provided the information called for by this paragraph to Contract Counsel, then the Director shall not be required to provide this information.



Contract Counsel Applicants

15. All applicants for a Contract Counsel position shall be thoroughly screened by the Director.

16. The Director shall exercise his best and reasonable efforts to hire experienced criminal attorneys as Contract Counsel.

17. An applicant for a Contract Counsel position shall be required to provide the applicant's contact information, employment history, and qualifications to serve as contract counsel, information regarding his or her current practice, and caseloads (including a best estimate of capital cases, other felonies, misdemeanors, juvenile cases, appeals and civil cases) and information regarding his or her prior criminal cases. In obtaining this information, the Director shall use an application that requests information similar to that contained in the form attached hereto and shall obtain applicable information available from JCATS. The information shall be reviewed and considered by the Director prior to hiring an applicant for a Contract Counsel position.

Contract Counsel Agreements

18. In no case shall the Director enter into a Contract Counsel Agreement for more than:

- 125 clients charged with felonies for an attorney with five or more years of experience;



- 75 clients charged with felonies for an attorney with less than five years of experience;
- 300 clients charged with misdemeanors for an attorney who only provides representation to indigent defendants charged with misdemeanors.
- For purposes of calculating the caseload limit herein, three misdemeanor cases shall be equivalent to one felony case.

In no instance shall the Director knowingly allow Contract Counsel to have assigned open cases in excess of the above limits. In addition, the Director shall assess whether the private caseload of an applicant, in conjunction with the proposed contract case volume, would interfere with the rendering of quality representation and/or lead to the breach of ethical obligations when determining whether or not to enter into a contract with said applicant. The Director may take into consideration Contract Counsel's professional determination that Contract Counsel is capable of handling additional cases based on Contract Counsel's overall workload and/or the resolution of cases assigned under his or her Contract Counsel Agreement. Nothing in this *Consent Order* shall prevent the Director or the Conflict Division from assigning additional cases to Contract Counsel in this circumstance, within the limits set out herein, and/or further contracting with Contract Counsel, within the limits set out herein. The determination of which contract an assigned case falls under shall be made by the Director.



19. All Contract Counsel Agreements shall include the following provisions or substantially similar language:

(a) "Contract Counsel shall adhere to the 'Performance Standards for Representation' prepared by GPDSC and any other applicable standards." (The "Performance Standards for Representation" shall be attached to the Contract Counsel Agreement or be incorporated therein and made available).

(b) "Contract Counsel is obligated to decline any appointment that would interfere with the rendering of quality representation or lead to the breach of ethical obligations."

(c) "Contract Counsel shall inform GPDSC, the CPD, the Chief Judge of the Northern Circuit, and all other judges before whom he/she appears under the Contract Counsel Agreement if his/her caseload limit is reached and if any motion to withdraw as counsel is filed on any case entered into pursuant to the Contract Counsel Agreement."

(d) "Contract Counsel shall complete a 'Case Update Form' (in a form similar to or providing information similar to that requested in the Case Update Form), and forward the same to GPDSC by the 15th day of the month following the month for which the form was completed." The Case Update Form is attached hereto.

20. Prior to any renewal of a Contract Counsel Agreement, the Director shall review the case update information and any other applicable information as it may deem appropriate and determine whether Contract Counsel adequately performed his or her contractual duties under the prior contract. The Director may communicate with any judges that Contract Counsel has appeared before to solicit their views on whether Contract Counsel has adequately performed his or her contractual duties under the prior contract.



21. The Director shall not renew the contract for any Contract Counsel that he has determined inadequately performed his or her duties in representing indigent defendants or otherwise materially failed to fulfill his or her duties under his or her contract with GPDSC, unless the Director reasonably determines that deficiencies in Contract Counsel's performance have been materially remedied and do not appear likely to recur.

22. The Director shall use his best efforts to renew or replace all Contract Counsel Agreements at least 30 days prior to the expiration of the existing contracts. It is understood that in some instances Contract Counsel Agreements do not need to be renewed or replaced due to a change in the need or availability of conflict counsel, changes in caseload requirements, or other reasons.

23. The Director shall obtain regular updates from Contract Counsel as to cases handled and their disposition, motions filed, client and witness meetings, investigations, and other pertinent information that in his opinion will show the work and effectiveness of Contract Counsel as described in paragraph 19(d), above.

24. The Director will monitor the monthly total number of cases for Contract Counsel and document this information. If Contract Counsel is approaching the total number of cases that can be handled under the Contract

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Counsel Agreement, the Director shall take steps to ensure that all of the class members continue to be represented by counsel as required by this *Consent Order*.

Conflict Procedures

25. The Director shall use reasonable efforts to obtain and shall review on an annual basis the CPD's conflicts policies and procedures to ensure that a process is in place that provides for counsel in a timely manner for each criminal defendant who cannot be represented by the CPD due to a conflict, and to ensure that such policies and procedures conform to the GPDSC Performance Standards for Representation.

Breach of Consent Order

27. If counsel for any party believes that any other party to this *Consent Order* is in violation of the substantive terms and conditions hereof, counsel shall bring any deficiencies to the attention of all parties in writing with a reasonable opportunity to correct the alleged violation. The parties shall negotiate and attempt in good faith to resolve the dispute. If there remains a dispute about compliance following an effort to negotiate and resolve the dispute in good faith, the party seeking compliance may apply to the Court for appropriate relief.

Denial of Liability

28. The Director and the CPD deny liability and enter into this *Consent Order* solely for the purposes of resolving this matter and without an admission of



any liability or wrongdoing on their part whatsoever. This *Consent Order* is only for use in resolving and administering this action and is not admissible in any other matter or to be used in any other manner except as described herein.

Attorneys' Fees

29. No attorneys' fees or expenses of litigation are claimed by any party, and each consents to waive all claims for attorneys' fees and expenses associated with the entry of this *Consent Order*. However, any party may in the future seek attorneys' fees and expenses for any material breach of this *Consent Order*.

Separate Findings

30. Independent of this *Consent Order*, this Court has made certain findings based upon the hearing on class certification held on March 3 and 4, 2010. The parties have not reviewed, and do not take a position on, such findings by the Court, and such findings shall not be considered *res judicata* or establish a basis for collateral estoppel in any future proceeding.

Binding Effect

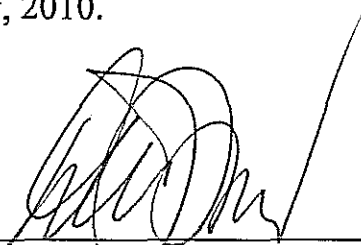
31. The terms of this *Consent Order* shall continue by operation of law against the successors of the parties to this action. If by action of the Georgia General Assembly any party to the present case shall cease to be in legal existence or if the Director is no longer responsible for the handling, funding, or assignment of conflict indigent defense cases, the parties shall immediately inform this Court.



32. The class shall remain in existence and this *Consent Order* shall remain in effect for no more than 30 months, provided that the Court enters a finding that the parties have substantially complied with this *Consent Order*. At least two months prior to the expiration of this *Consent Order*, the parties shall request a hearing before this Court to determine whether this *Consent Order* shall be terminated.

This Court, with consent of the parties, and pursuant to the terms hereof, retains jurisdiction of this case to enforce the terms of this *Consent Order*.

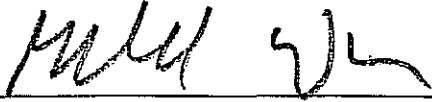
SO ORDERED: This 8th day of July, 2010.

A handwritten signature in black ink, appearing to read 'J. David Roper', is written over a horizontal line. The signature is stylized and cursive.

J. DAVID ROPER
Superior Court Judge
Augusta Judicial Circuit

Consented to:

ON BEHALF OF PLAINTIFFS:

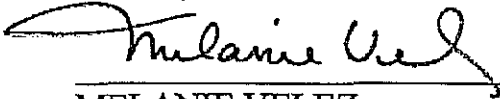


GERALD WEBER

Southern Center for Human Rights

83 Poplar Street, N.W.

Atlanta, GA 30303



MELANIE VELEZ

Southern Center for Human Rights

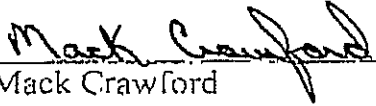
83 Poplar Street, N.W.

Atlanta, GA 30303




Consented to:

ON BEHALF OF DEFENDANT MACK CRAWFORD:



Mack Crawford
GPDSC
104 Marietta Street
Suite 200
Atlanta, GA 30303



STEFAN RITTER
Senior Assistant Attorney General
Office of the Attorney General
40 Capitol Square, S.W.
Atlanta, Georgia 30334-1300



Consented to:

ON BEHALF OF DEFENDANT
NORTHERN CIRCUIT PUBLIC
DEFENDER/



JOEL SHIVER



APPLICATION TO THE GEORGIA PUBLIC DEFENDER STANDARDS COUNCIL
AS CONTRACT COUNSEL

Name: _____
Home Address: _____
Phone Number: _____
Cellular: _____
Office Address: _____
Phone Number: _____
Facsimile: _____
E-mail: _____
Social Security or Tax I.D. Number: _____

Please direct correspondence about my application to:

() Home () Office

In which judicial circuit do you wish to contract? _____

Law School: _____

Date of Graduation: _____

When were you admitted to the Georgia Bar? _____

1. List all law positions held since law school graduation, including part-time employment and clerkships (provide name and address of immediate supervisor, employer or judge and dates of employment):

Employer: _____ Position: _____
Address: _____ Dates: _____
Reason for Leaving: _____

Employer: _____ Position: _____
Address: _____ Dates: _____
Reason for Leaving: _____

Employer: _____ Position: _____
Address: _____ Dates: _____
Reason for Leaving: _____

Employer: _____ Position: _____
Address: _____ Dates: _____

Reason for Leaving: _____

Employer: _____ Position: _____
Address: _____ Dates: _____
Reason for Leaving: _____

2. Present law position or title held (e.g., partner, associate, sole practitioner, etc.):
3. General nature of current position (e.g., criminal – trial or appellate; civil litigation, corporate, etc):
4. How many hours per week do you work?
5. What is the number of cases you currently bill for? _____ What is the average number of hours worked per case? _____ What is your hourly rate?

6. How many criminal cases have you participated as sole or lead counsel?
7. Of those cases, how many were Felonies? Misdemeanors?
8. Of those cases, approximately how many resulted in the following:

| | Felony | Misdemeanor |
|---|--------|-------------|
| Negotiated Plea | _____ | _____ |
| Dismissals | _____ | _____ |
| Other non-trial dispositions | _____ | _____ |
| Jury trials that proceeded to verdict | _____ | _____ |
| Bench trials that proceeded to verdict | _____ | _____ |
| Litigated motions in which testimony was taken and a decision rendered | _____ | _____ |
| Preliminary hearings in which testimony was taken and a decision rendered | _____ | _____ |

9. How many civil cases have you participated as sole or lead counsel? _____

10. Of those cases, approximately how many resulted in:

| | | | |
|--|-------|----------------------|-------|
| jury trial that proceeded to verdict | _____ | mid-trial settlement | _____ |
| dismissal or other non-trial disposition | _____ | pre-trial settlement | _____ |

11. Approximately how many appellate cases, criminal and civil, have you been involved in as sole or principal counsel? Criminal _____ Civil _____

12. Please list all criminal CLE courses you have taken:

13. Do you have any other relevant legal experience, training or skills, including foreign language proficiency, that you feel will be helpful in evaluating your ability to work as contract counsel for indigent defendants?

Yes No

If yes, state particulars. (Use separate sheet of paper if necessary)

14. Have you ever been relieved from an assigned case? Yes No

If yes, state particulars.

15. Have you ever been the subject of a complaint to the Georgia Bar Association or Standards Council Compliance Director which resulted in your admonition, reprimand, or censure, your suspension from the practice of law, or your disbarment?

If yes, state particulars.

16. Have you been fired or asked to resign from a job during the last ten (10) years?

Yes No

If yes, state particulars.

17. List the names, address and telephone numbers of three (3) trial adversaries, other attorneys familiar with your work through observation or judges before whom you have argued a motion or jury trial within the last five (5) years.

18. Regarding each of your three (3) most recent jury trials or, if fewer, bench trials or litigated motions, list the case name, indictment number, principal charge, adversary and judge presiding.

| <u>Defendant</u> | <u>Ind.#</u> | <u>Charge</u> | <u>Adversary</u> | <u>Judge</u> |
|------------------|--------------|---------------|------------------|--------------|
|------------------|--------------|---------------|------------------|--------------|

- 1.
- 2.
- 3.



19. My current caseload, as of this date, is:

- _____ capital cases
- _____ other felonies
- _____ misdemeanors
- _____ juvenile cases
- _____ appeals
- _____ civil cases
- _____ other

I hereby affirm under penalty of perjury that the information by me on this application is corrected and complete to the best of my knowledge. I certify that I have read and am familiar with the State of Georgia Performance Standards for Criminal Defense Representation in Indigent Criminal Cases. I agree to abide by all rules and regulations now existing or from time to time promulgated by the GPDSC relating to the conduct of contract attorneys.

By: _____

Dated: _____



