

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

KENNY A., by his next friend, Linda :
Winn, et al., :

Plaintiffs, :

v. :

CIVIL ACTION FILE NO.
1:02-CV-1686-MHS

SONNY PERDUE, in his official :
capacity as Governor of the State of :
Georgia, et al., :

Defendants. :

-----:

**CONSENT DECREE BETWEEN PLAINTIFFS
AND DEKALB COUNTY, GEORGIA**

1. INTRODUCTION.

This class action lawsuit began with the filing of a complaint on June 6, 2002, in the Superior Court of Fulton County. This case was removed to the United States District Court for the Northern District of Georgia. Generally, Plaintiffs have alleged that Defendants DeKalb County, Fulton County, and the State of Georgia are violating various constitutional and statutory rights of children in the custody of the respective Juvenile Courts of DeKalb and Fulton Counties and in the custody of the State of Georgia’s foster care system. With respect to DeKalb County, specifically, Plaintiffs have alleged that DeKalb County is depriving such children of adequate and effective legal representation in violation of the Georgia Juvenile Code and the Georgia Constitution.

Defendant DeKalb County denies that it has violated the statutory or constitutional rights of any Class Member. Defendant DeKalb County does not admit liability under any theory by the execution of this Consent Decree, which is being entered in this case in order to compromise and resolve all issues pending between

Plaintiffs and Defendant DeKalb County and in order to avoid the time, expense, risks, delays and uncertainties of a trial.

2. JURISDICTION.

The Parties acknowledge and agree that the Court has jurisdiction in this case and the authority to enter this Consent Decree. The Court shall retain jurisdiction in this case to enforce this Consent Decree in accordance with its terms.

3. DEFINITIONS.

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

- A. “Case”** means, for caseload purposes, in accordance with Section 5, the open file of each Class Member.
- B. “Class Member”** means, in accordance with the Court’s Order, dated August 18, 2003, any child who has been, is, or will be alleged or adjudicated deprived who (i) is or will be in the custody of the State of Georgia, and (ii) has or will have an open case with the DeKalb County Department of Family and Children Services.
- C. “Child Advocate Attorney”** means any licensed member of the State Bar of Georgia who is employed by, contracted with, or otherwise engaged, whether for pay or on a volunteer basis, by DeKalb County to provide legal representation to one or more Class Members.
- D. “Compliance Report”** means the factual findings and report of the Compliance Agent.
- E. “Day”** means a calendar day, including weekend days and legal holidays; provided, however, that any deadline created in accordance with this Consent Decree shall not end on a weekend day or legal holiday, but shall be extended to the next following day.
- F. “DeKalb County”** means Defendant DeKalb County, Georgia, a political subdivision of the State of Georgia.

G. “Reporting Period” means the first six (6) months beginning 120 days after the date on which this Consent Decree is entered by the Court, and each six (6) month period thereafter until its termination in accordance with Section 11.

4. BEST PRACTICES.

The Parties acknowledge that Class Members are entitled to adequate and effective legal representation at all stages of deprivation and termination of parental rights proceedings, as such proceedings are defined in accordance with the Georgia Juvenile Code, and throughout the time they are Class Members and subject to the jurisdiction of the Juvenile Court of DeKalb County. In order to provide Class Members with such representation, DeKalb County will adopt and implement the principles, standards, policies and procedures set forth in the following Best Practices documents:

- 1) *Core Principles for Providing Quality Deprivation Representation Through DCCAC Advocacy Delivery Systems*, a copy of which is attached hereto as Appendix A;
- 2) *DeKalb County Child Advocacy Center Performance Standards for Juvenile Advocacy Representation*, a copy of which is attached hereto as Appendix B; and
- 3) *DeKalb County Child Advocacy Center Policies and Procedures*, a copy of which is attached hereto as Appendix C.

The Parties acknowledge and agree that the adoption and implementation of these Best Practices, along with the caseload standards to be implemented pursuant to Section 5, will provide the means for achieving Substantial Compliance with this Consent Decree. The Parties further acknowledge and agree, however, that DeKalb County shall be in Substantial Compliance with this Consent Decree when substantially in compliance with the obligations described at Sections 5 and 7.

5. CASELOAD OBLIGATION.

A. Within 120 days after the entry of this Consent Decree, DeKalb County shall ensure that no full-time Child Advocate Attorney is responsible for more than 130 cases at any given time. To the extent that DeKalb County engages less than full-

time attorneys, whether paid or on a volunteer basis, to provide representation to Class Members, the number of cases that such attorneys will be responsible for shall not exceed, on a proportionate basis, the maximum number of cases being handled by a full-time attorney. By way of example, a Child Advocate Attorney engaged to represent Class Members on a half-time basis will be responsible for no more than 65 cases at any given time.

B. Within 120 days after the entry of this Consent Decree, DeKalb County will hire five (5) additional full-time Child Advocate Attorneys, so that the number of such full-time Child Advocate Attorneys, not including the Director, shall be nine (9). No later than March 31, 2007, DeKalb County will hire two (2) additional full-time Child Advocate Attorneys, so that the number of such full-time Child Advocate Attorneys, not including the Director, shall be eleven (11).

C. The obligations contained in paragraphs A and B of this Section are separate and distinct obligations.

6. REPORTING REQUIREMENTS.

DeKalb County shall provide to the Compliance Agent the following documents and information on the timetable set out below:

A. A report showing (i) the number of Class Members then being represented by DeKalb County Child Advocate Attorneys, (ii) the number of Child Advocate Attorneys engaged full-time in such representation, (iii) the number of Child Advocate Attorneys engaged part-time in such representation, and (iv) the caseload of each Child Advocate Attorney. In addition, for each part-time Child Advocate Attorney, the report shall indicate whether the attorney is less than half-time, half-time, or more than half-time.

B. Copies of all Child Advocate Attorney training and CLE records completed during the Reporting Period;

C. Copies of all Child Advocate Attorney performance reviews and evaluations completed during the Reporting Period;

D. Copies of any complaints alleging or appearing to allege inadequate and ineffective legal representation by a Child Advocate Attorney and documents

relating to any such complaint; and

E. Copies of any updates or revisions to any of the documents attached hereto as Appendix A, B, or C adopted during the Reporting Period.

DeKalb County shall provide the Compliance Agent with the information in 6.A. above within 135 days after the entry of this Consent Decree. Thereafter, DeKalb County shall provide the Compliance Agent with the above information for each Reporting Period not later than fifteen (15) days following the end of the Reporting Period.

In addition to the above reporting requirements, DeKalb County shall make additional documents and information available, at the Compliance Agent's request, in accordance with the terms of Section 8 of this Decree.

7. RESPONSIBILITIES OF CHILD ADVOCATE ATTORNEYS.

Child Advocate Attorneys, in each instance of representing a Class Member, shall have the following responsibilities:

- 1) To prepare for, attend and participate in all court-ordered, judicial hearings and proceedings; to stay as reasonably aware and informed as possible of the existence and outcome of non-judicial reviews, meetings and conferences; and to attend such non-judicial reviews, meetings, and conferences when necessary in the reasonable exercise of professional judgment.
- 2) To prepare, make and/or file oral and/or written motions, and responses to same, when necessary in the reasonable exercise of professional judgment.
- 3) To attend to the possibility and/or existence of professional conflicts of interest and the resolution of same.
- 4) To investigate matters relevant to judicial proceedings affecting the legal interests of Class Member clients, including the formal process of propounding and responding to discovery, as well as informal investigation and discovery, and to conduct such investigation and discovery as is necessary in the reasonable exercise of professional judgment to adequately and effectively represent Class Member clients.

- 5) To establish and maintain an attorney-client relationship with each Class Member client and to maintain such contacts with the client as are necessary in the reasonable exercise of professional judgment to ensure adequate and effective legal representation.
- 6) To maintain contacts with social workers, service providers and family members, as reasonably possible, and as necessary to adequately and effectively represent Class Member clients.
- 7) To monitor the implementation of Juvenile Court orders relating to the child, to raise issues of non-compliance, and to advocate the child's best interests with the Court and other judicial decision-makers, as necessary in the reasonable exercise of professional judgment.
- 8) To participate in settlement negotiations as necessary in the reasonable exercise of professional judgment.
- 9) To prepare, file and participate in appeals affecting the legal interests of Class Member clients as necessary in the reasonable exercise of professional judgment.

8. RESPONSIBILITIES OF THE COMPLIANCE AGENT.

Karen Baynes shall serve as the Compliance Agent for this Consent Decree. The Compliance Agent shall have the duties described in this Section 8.

A. It shall be the responsibility of the Compliance Agent to (i) conduct an independent fact-finding review of the obligations described at Sections 5, 6 and 7, (ii) issue a Compliance Report of such factual findings, and (iii) review and report on curative plans as may be required in accordance with Section 9.

B. Each Compliance Report shall be based on the contents of the Reporting Requirements described in Section 6, as well as whatever information and documents are otherwise obtained by the Compliance Agent in accordance with the terms and conditions of this Section.

C. Each Compliance Report shall be issued simultaneously to counsel for the Class Members and counsel for DeKalb County. Within 150 days after the entry of this Consent Decree, the Compliance Agent shall issue a Compliance Report addressing solely the caseload and staffing requirements of Section 5. Thereafter, the Compliance Agent shall issue a Compliance Report not later than 90 days following the end of the immediately preceding Reporting Period. DeKalb County and Class Counsel shall be jointly responsible for filing each Compliance Report with the Court within seven days of the Parties' receipt of the report.

D. At all times during the Duration of this Consent Decree, DeKalb County shall ensure that the Compliance Agent is afforded the reasonable opportunity to review and obtain copies of such documents, including case file documents, as the Compliance Agent deems necessary to issue a Compliance Report in accordance with this Section 8.

E. Notwithstanding other provisions of this Section 8, DeKalb County will cooperate with the Compliance Agent, but shall not be responsible for ensuring the Compliance Agent's access to any Juvenile Court proceedings, transcripts, or other documents, and the County Attorney of DeKalb County shall not be prohibited from representing the Juvenile Court and any officials and employees thereof in any matter pertaining to the Compliance Agent's access to such proceedings, transcripts, or other documents.

F. DeKalb County will cooperate with the Compliance Agent, but shall not be responsible for ensuring the Compliance Agent's interview of any person, including any Class Member. In this regard, and as may be necessary on a case-by-case basis, DeKalb County will cooperate with the Compliance Agent to develop a protocol for the interview of Class Members, Child Advocate Attorneys and other officials and employees of DeKalb County; provided, however, that any and all such protocols shall ensure, at a minimum, (i) that the subject may refuse to be interviewed, and (ii) that the interview shall be only for the specific purpose of assessing DeKalb County's compliance with Sections 5 and 7 of this Consent Decree; provided, further, that in the case of any interview of any Child Advocate Attorney or other employee or official of DeKalb County, the Parties understand and agree that no such person may speak on behalf of DeKalb County.

G. In addition to the responsibilities above, if the Compliance Agent forms a belief that the ability of DeKalb County Child Advocate Attorneys to perform their

responsibilities is being impaired by any ongoing failure of the State Defendants, DHR, or DFCS to provide child advocates with information necessary and appropriate to the performance of their responsibilities, the Compliance Agent shall describe the particulars of the perceived problem in her Compliance Report. Any such information in a Compliance Report shall be for information purposes only and shall not affect the measurement of DeKalb County's compliance with this Consent Decree.

9. ENFORCEMENT.

A. In the event that Class Counsel forms a reasonable belief that DeKalb County is not in Substantial Compliance with this Consent Decree, within ten (10) days thereafter, Class Counsel may give notice of an alleged violation to DeKalb County, in writing, to the DeKalb County Attorney, with copies to the Compliance Agent and the Director of the DeKalb County Child Advocacy Center, and shall state with specificity the acts and/or omissions involved in the alleged violation.

B. When notice of an alleged violation is received, DeKalb County shall respond to Class Counsel, in writing, as soon as practicable, but not later than 30 days thereafter. In its response, DeKalb County may (i) propose, without admitting the substance of the alleged violation, a curative plan to address and remedy the violation, or (ii) deny the existence of the alleged violation.

C. If DeKalb County does not propose a curative plan, or if, after negotiation pursuant to paragraph D below, the Parties are unable to agree to a curative plan, Class Counsel may thereafter seek an appropriate judicial remedy; provided, however, that the County Attorney of DeKalb County and Class Counsel shall first meet, in person, and attempt to resolve the dispute and Class Counsel shall not seek a judicial remedy until (i) after such a meeting, or (ii) the 45th day following notice of the alleged violation. In all cases where there is a dispute as to whether or not DeKalb County is in violation of this Consent Decree, the determinative measurement shall be Substantial Compliance with respect to the obligations described at Sections 5 and 7.

D. If DeKalb County proposes a curative plan, Class Counsel shall either accept DeKalb County's proposal, or offer a counterproposal for a different or modified curative plan. Any curative plan proposed or agreed to by the Parties must include a definite date by which the Compliance Agent will issue a Compliance Report of

factual findings relevant to showing the curative plan's effectiveness in curing the alleged violation; provided, further, that the term of the curative plan shall expire ten (10) days thereafter, unless Class Counsel shall have first notified DeKalb County, in writing, that the curative plan has not cured the violation, in which case the County Attorney of DeKalb County and Class Counsel shall meet, in person, and attempt to resolve the dispute regarding the effectiveness of the curative plan and Class Counsel shall not seek a judicial remedy until (i) after such a meeting, or (ii) the 15th day following the definite date for review of the curative plan. In all cases where there is a dispute as to whether or not a curative plan has succeeded in curing an alleged violation, the measurement shall be whether the curative plan has brought DeKalb County into Substantial Compliance with the obligations described at Sections 5 and 7.

E. Unless the Parties explicitly agree otherwise, whenever the Parties may agree to the implementation of a curative plan, for purposes of the termination of this Consent Decree pursuant to Section 11, there shall be no presumption that DeKalb County was not in Substantial Compliance with Sections 5 and 7 at the time the curative plan was implemented; provided, further, with the implementation of any curative plan, the Parties may agree that the curative plan is not being implemented as a result of DeKalb County's failure to be in Substantial Compliance with Sections 5 and 7.

10. RELIEF FOR NAMED PLAINTIFFS.

The Parties acknowledge and agree that Class Counsel may contact the Director of the DeKalb County Child Advocacy Center whenever Class Counsel deems necessary regarding any of the named Plaintiffs in this action, who are then in the custody of the DeKalb County Department of Family and Children Services. Class Counsel and DeKalb County will cooperate in advocating for the best interests of such named Plaintiffs.

11. DURATION OF CONSENT DECREE.

A. This Consent Decree shall terminate, and Class Counsel will not oppose its termination, when DeKalb County has been in Substantial Compliance with Sections 5 and 7 for three (3) consecutive Reporting Periods.

B. At any time after the issuance of the Compliance Report for the third (3rd) Reporting Period, DeKalb County may move for the termination of this Consent Decree with respect to any or all of the obligations in Sections 5 and 7, even if DeKalb County has not been in Substantial Compliance with all provisions of Sections 5 and 7 for three (3) consecutive reporting periods. In considering whether to grant DeKalb County's request, the Parties agree that the following factors shall be considered by the Court:

- 1) The degree to which DeKalb County has achieved and sustained the delivery of adequate and effective legal representation to Class Members since the issuance of the Consent Decree;
- 2) The potential impact of a partial termination on the delivery of legal services to Class Members;
- 3) The demonstrated good faith of the Parties throughout the duration of the Consent Decree;
- 4) Whether Class Counsel has complied with the notice requirement in Subsection 9(A);
- 5) Whether any curative plan has been in effect during the previous eighteen (18) months, as well as the terms of any such plan and the efficacy of any such plan; and
- 6) The Compliance Reports.

C. In fashioning an order pursuant to a request under Subsection B, if the Court decides to continue the Consent Decree with respect to any or all of the obligations in Sections 5 and 7, the Parties agree that the Court may continue the Consent Decree for any specified period; provided, however, that nothing in this Subsection shall prevent an earlier termination of the Consent Decree pursuant to Subsection A or B.

12. SUBSTANTIAL COMPLIANCE.

For purposes of any judicial proceeding to enforce or terminate this Consent Decree, the Parties recognize that the standards governing whether DeKalb County

has substantially complied with this Consent Decree are set out in *United States v. City of Miami*, 2 F.3d 1497 (11th Cir. 1993). Applying that case, DeKalb County shall be considered to be in Substantial Compliance with this Consent Decree if (1) it has complied in good faith with the terms of the Consent Decree and (2) the basic purpose of the Consent Decree has been met. For purposes of applying this standard, the Parties agree that the basic purpose of this Consent Decree is to ensure provision of adequate and effective legal representation to Class Member children throughout the time they have open cases before the DeKalb County Juvenile Court. Furthermore, in determining whether DeKalb County has complied in "good faith" with the terms of this Consent Decree, whether the "basic purpose" of the Consent Decree has been met, and whether "adequate and effective legal representation" has been provided to Class Member Children, the Parties agree that the Court shall be guided by the reports and findings of fact of the Compliance Agent, Karen Baynes.

13. MISCELLANEOUS PROVISIONS.

A. This Consent Decree constitutes the entire agreement between the Parties and supersedes and replaces in their entirety all prior agreements, statements, representations, discussions and negotiations.

B. Unless otherwise noted, all notices required or permitted under the terms and conditions of this Consent Decree shall be deemed given and received upon hand-delivery, confirmation of the receipt of a facsimile, or three (3) days after posting, if by U.S. Mail, return-receipt requested. All notices shall be to the persons and addresses noted below:

Class Counsel:

Marcia Robinson Lowry, Esq.
Ira Lustbader, Esq.
Children's Rights, Inc.
330 Seventh Avenue
4th Floor
New York, New York 10001
212-683-2210
212-683-4015 (Facsimile)

Jeffrey O. Bramlett, Esq.
Bondurant, Mixson & Elmore, LLP
3900 One Atlantic Center
1201 West Peachtree Street
Atlanta, Georgia 30309
404-881-4100
404-881-4111 (Facsimile)

Erik S. Pitchal, Esq.
Lincoln Square Legal Services
33 W. 60th St., 3rd Floor
New York, NY 10023
646-312-8763
212-636-7349 (Facsimile)

DeKalb County:

County Attorney
DeKalb County Government
1300 Commerce Drive, 5th Floor
Decatur, Georgia 30030
404-371-3011
404-371-3024 (Facsimile)

Director
DeKalb County Child Advocacy Center
120 West Trinity Place
Decatur, Ga 30030
404-687-3705

Compliance Agent:

Karen Baynes
Carl Vinson Institute of Government
University of Georgia
201 North Milledge Ave.
Athens, GA 30602-5482

706-542-2736

706-542-9301 (facsimile)

C. The Parties acknowledge and agree that all have participated in the drafting of this Consent Decree. Accordingly, any ambiguity herein shall not be construed either for or against any Party.

D. If, for any reason, the Court fails or refuses to enter this Consent Decree as signed by the Parties, or as altered by the Parties with their consent, then the Parties agree that this Consent Decree is null and void and shall not be enforced or used as evidence in any proceeding.

14. COMPLIANCE AGENT COSTS AND EXPENSES.

DeKalb County shall pay the Compliance Agent \$725.00 per day of work performed, up to a maximum charge of \$37,500.00 per Reporting Period, for the services provided by the Compliance Agent.

15. ATTORNEY FEES AND EXPENSES OF LITIGATION.

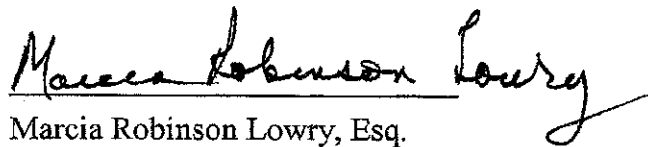
A. The Parties agree that, in the event that the Court grants final approval to this Consent Decree, DeKalb County shall pay Class Counsel the sum of \$175,000 in attorneys' fees, costs and expenses for work performed and to be performed through the date of anticipated final approval of settlement. All fees and expenses shall be paid on or before the fifth (5th) business day following the Court's entry of this Consent Decree.

B. DeKalb County will pay the costs of notice prescribed by the Court pursuant to Fed. R. Civ. P. 23 in connection with the process for final Court approval of this Consent Decree.

C. DeKalb County will pay the mediator's fees and expenses associated with the mediation of this Consent Decree.

CONSENTED TO:

For the Plaintiffs:

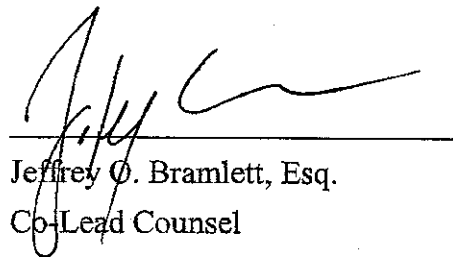


Marcia Robinson Lowry, Esq.

Co-Lead Counsel

3-22-06

Date



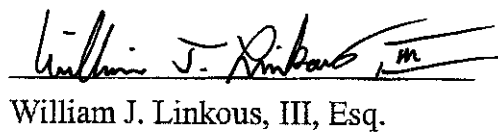
Jeffrey O. Bramlett, Esq.

Co-Lead Counsel

3-22-06

Date

For Defendant DeKalb County:



William J. Linkous, III, Esq.

County Attorney

3-23-06

Date