

**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**

MAURICE FLOURNOY,
DARNELL AMAKER,
EUGENE NEAL,
EMORY TEASLEY,
CORNELIUS WHITE, and
DARRYL WHITE,

Plaintiffs, on behalf of
themselves and all persons
similarly situated,

v.

THE STATE OF GEORGIA,

GEORGIA PUBLIC DEFENDER
STANDARDS COUNCIL,

SONNY PERDUE, in his official
capacity as Governor of the State
of Georgia,

W. DANIEL EBERSOLE, in his
official capacity as Director of the
Georgia Office of Treasury and
Fiscal Services,

MACK CRAWFORD, in his official
capacity as Director of the Georgia
Public Defender Standards Council,

MICHAEL BERG, in his official
capacity as Chairman of the Georgia
Public Defender Standards Council,

JIM STOKES, in his official capacity

CIVIL ACTION

No. _____

CLASS ACTION

as Conflicts Division Director of the)
 Georgia Public Defender Standards)
 Council, and)
)
 JIMMONIQUE R.S. RODGERS,)
 in her official capacity as Appellate)
 Division Director of the Georgia)
 Public Defender Standards Council,)
)
 Defendants.)
 _____)

PETITION FOR WRIT OF MANDAMUS
AND VERIFIED COMPLAINT FOR INJUNCTIVE
AND DECLARATORY RELIEF

PRELIMINARY STATEMENT

1. This is an action for mandamus, declaratory, and injunctive relief to compel the State of Georgia and its responsible executive officials—Defendants Sonny Perdue, Mack Crawford, and others—to perform their *mandatory* and *non-discretionary* official duties to provide adequate, effective, and conflict-free counsel to Plaintiffs and others similarly situated who are without legal representation to assist in their motions for new trial and appellate proceedings.

2. The Constitutions of the United States and Georgia place ultimate constitutional responsibility on the State of Georgia to provide effective and conflict-free counsel at public expense to indigent defendants in all critical phases of a criminal prosecution, which includes the motion for

new trial phase and the direct appeal. *See* U.S. CONST. amend. VI; GA. CONST. art. I, § 1, ¶ XIV; *Gideon v. Wainwright*, 372 U.S. 335 (1963); *Douglas v. California*, 372 U.S. 353 (1963); *Adams v. State*, 199 Ga. App. 541, 405 S.E.2d 537 (1991); *Williams v. Turpin*, 87 F.3d 1204, 1210 (11th Cir. 1996).

3. The Indigent Defense Act of 2003 (“IDA”) mandates that the Georgia Public Defender Standards Council (“GPDSC”) and its officials “*shall* be responsible for assuring that adequate and effective legal representation is provided, independently of political considerations or private interests, to indigent persons who are entitled to representation under this chapter.” O.C.G.A. § 17-12-1 (emphasis added); *see also* O.C.G.A. § 17-12-5(d)(3); O.C.G.A. § 17-12-6(a); O.C.G.A. § 17-12-22(a); O.C.G.A. § 17-12-22(b).

4. The named Plaintiffs in this action are among nearly 200 indigent defendants convicted of offenses carrying a term of incarceration in the State of Georgia who are languishing in prison without legal representation to assist in their motion for new trial and appellate

proceedings. Some of these 187 persons have been without counsel for *over three years*.¹

5. Plaintiffs' cases have been transferred to the Appellate Advocacy Division of the GPDSC ("Appellate Division"), which, at its current staffing and funding levels, is utterly incapable of meeting the full weight of the State's constitutional obligation to provide counsel. Since 2008, as a result of gross underfunding, the Appellate Division has been staffed by *two full-time and one-part time staff attorneys* and has limited funding for the appointment of private counsel.

6. In December of 2008, the Appellate Division had been assigned 249 cases, and was unable to assign 75 persons appellate lawyers. The Appellate Division Director, Defendant Jimmonique Rodgers, raised an alarm with supervising officials, writing in a memorandum to her GPDSC superiors that the Appellate Division had an "impossible case load" and that as a result, it had "passed the crisis point." Defendant Rodgers warned then

¹ The official records relied upon in support of this Petition and Complaint are true and correct copies of the records received from the GPDSC in response to Open Records Act requests by Plaintiffs' counsel. The most recent "Appeals Status Report" dated November 23, 2009, details the Appellate Division's caseload. Among the 476 cases that are presently assigned to the Appellate Division, Plaintiffs' cases are six of 187 cases that have not been assigned a lawyer. See GPDSC Appeals Status Report, dated Nov. 23, 2009, attached hereto as Exhibit A. The "In House" designations in the "Attorney" column of the GPDSC Appeals Status Report reflect that no lawyer has been assigned.

that “if we did not take another case it should take the Division two years to discharge its current responsibilities.”²

7. In the year since December of 2008, the “impossible” caseload of the Appellate Division has nearly *doubled* and the number of unrepresented indigent defendants has increased by *150%*. As of the most recent Appellate Division Status report dated November 23, 2009, the Appellate Division reports a total caseload of 476 cases. Of those cases, *187* individuals are reported as having no lawyer to handle their appellate motions for new trial and direct appeals. That number continues to grow by at least ten unrepresented persons each month.

8. Since at least December 2008, Defendants have been fully aware of the State of Georgia’s pervasive and systemic failure to provide appellate representation to indigent persons, but have failed to take action to remedy this systemic and pervasive denial of Plaintiffs’ constitutional rights. Absent intervention by this Court, an ever-growing number of indigent defendants across the state will continue to languish in prison without counsel to handle their motions for new trial and direct appeals.

² GPDSC Annual Division Report – December 2008, attached hereto as Exhibit B; 2008 Annual Report of Appellate Division, attached as Exhibit C, GPDSC Appellate Division Status, dated December 2008, attached hereto as Exhibit D.

9. The absence of funding (or the unwillingness to fund) does not excuse a failure to provide counsel, and the final obligation rests on this Court to remedy this continuing constitutional violation. *See, e.g., Bounds v. Smith*, 430 U.S. 817, 825 (1977); *see also Georgia Public Defender Standards Council v. State*, 285 Ga. 169, 173, 675 S.E.2d 25, 28 (2009). Indeed, “Art. VI, § IX, ¶ I [of the Georgia Constitution] ... casts upon the courts the duty to ensure that crimes are speedily and efficiently prosecuted and that indigent defendants are effectively defended. Adequate funding of these functions thus becomes constitutionally mandated.” *Wilson v. Southerland*, 258 Ga. 479, 480, 371 S.E.2d 382, 383 (1988) (emphasis added).

10. Commensurate with the filing of this Complaint, Plaintiffs request that the Court grant mandamus nisi, and upon hearing, issue mandamus absolute requiring Defendants to provide effective and conflict-free counsel to Plaintiffs. Plaintiffs also move to certify a class of all indigent persons who have been or will be convicted in a Georgia court of a criminal offense carrying a term of incarceration and who do not, or in the future will not, have the assistance of conflict-free counsel to pursue a motion for new trial and/or first direct appeal.

JURISDICTION AND VENUE

11. This action is brought to enforce rights conferred by the United States and Georgia Constitutions and other applicable law. It is brought under the authority vested in this Court pursuant to O.C.G.A. § 9-4-2; O.C.G.A. § 9-4-3; O.C.G.A. § 9-5-1, O.C.G.A. §§ 9-6-20 to 23; O.C.G.A. § 9-6-25; 42 U.S.C. §§ 1983, 1985; 28 U.S.C. §§ 1331, 1343, 1367.

12. Venue is proper in Fulton County as substantial mandamus, declaratory, and equitable relief is sought against at least one Defendant residing in Fulton County. *See* O.C.G.A. § 9-10-30; GA. CONST. Art. VI, § 1, ¶¶ III, VI.

13. All actions, and refusals to act, of the Defendants have been under color of state law and with deliberate indifference to Plaintiffs' rights.

NAMED PLAINTIFFS

I. MAURICE FLOURNOY

14. Plaintiff Maurice Flournoy is a 29-year-old man who is presently without counsel to handle his motion for new trial or direct appeal. He is a veteran of the United States Marine Corps and attended the University of Mississippi. Mr. Flournoy has three children, ranging in age from two to ten years old, to whom he provided financial support prior to his incarceration. Since his incarceration, he has been unable to provide such

support.

15. Mr. Flournoy was convicted in Barrow County on March 1, 2007 of felony murder, kidnapping with bodily injury, two counts of kidnapping, armed robbery, three counts of aggravated assault, and possession of a firearm during the commission of a crime. Mr. Flournoy was subsequently sentenced to life imprisonment for the felony murder count, another life sentence for kidnapping (to run consecutively), 20 years for each count of kidnapping (one to run consecutive and one to run concurrently), another life sentence for armed robbery (to run concurrently), and five years for possession of a firearm (to run consecutively).

16. At trial, Mr. Flournoy was represented by Ms. Kathleen Anderson of the Barrow County Public Defender Office.

17. Upon conviction, Ms. Anderson filed a placeholder motion for new trial on March 28, 2007, and withdrew from Mr. Flournoy's case.

18. Responsibility for Mr. Flournoy's case has been transferred to the Appellate Division of the GPDSC.

19. Mr. Flournoy is entitled to have a new attorney advise him as to whether to raise ineffective assistance of counsel at trial.

20. Mr. Flournoy was notified by GPDSC approximately one year ago that GPDSC was trying to locate counsel to represent him on appeal;

Plaintiff has not yet been appointed counsel to represent him at the hearing on his motion for new trial or on appeal.

21. As of the date of filing of this complaint, Mr. Flournoy remains without legal counsel.

22. Because Mr. Flournoy cannot afford counsel without undue hardship, remains incarcerated at Smith State Prison, and seeks legal counsel to represent him in appealing his conviction, he currently suffers and in the immediate future faces the likelihood of suffering substantial and irreparable injury.

II. DARNELL AMAKER

23. Plaintiff Darnell Amaker is a 23-year-old man who is presently without counsel to handle his motion for new trial or direct appeal.

24. Mr. Amaker was convicted in Fulton County on April 14, 2006, of felony murder and possession of a firearm during a crime. Mr. Amaker was subsequently sentenced to life in prison for the felony murder count and five years to be served consecutively for possession of a firearm.

25. At trial, Mr. Amaker was represented by Kirby Clements, Jr., a private attorney who was appointed to the case. One of Mr. Amaker's co-defendants was represented by the Fulton County Public Defender Office.

26. Mr. Clements filed a motion for new trial on Mr. Amaker's behalf on April 28, 2006. Shortly thereafter, Mr. Clements withdrew from the representation.

27. The responsibility for Mr. Amaker's case has been transferred to the Appellate Division of the GPDSC.

28. Mr. Amaker was later appointed another attorney – Mr. Brandon Lewis – to represent him on appeal. However, Mr. Lewis withdrew from his representation of Mr. Amaker in 2008 based on his understanding that the GPDSC would be unable to fully compensate appointed attorneys for their work on indigent appeals.

29. When Mr. Lewis informed Mr. Amaker of his withdrawal, he suggested to Mr. Amaker that he had a number of issues to raise on appeal and that he should certainly have his new attorney explore ineffective assistance of counsel as a potential claim on appeal.

30. Mr. Amaker has not yet been appointed new counsel to represent him at the hearing on his motion for new trial or on appeal. As a result, he filed a motion in the Superior Court of Fulton County on November 21, 2008, seeking the appointment of appellate counsel to his case.

31. As of the date of filing of this complaint, Mr. Amaker remains without legal counsel. Moreover, even after several attempts to contact officials at GPDSC, Mr. Amaker has never received any communication or correspondence from the GPDSC.

32. Because Mr. Amaker cannot afford counsel without undue hardship, remains incarcerated at Macon State Prison, and seeks legal counsel to represent him in appealing his conviction, he currently suffers and in the immediate future faces the likelihood of suffering substantial and irreparable injury.

III. EUGENE NEAL

33. Plaintiff Eugene Neal is a 59-year-old man who is presently without counsel to handle his motion for new trial or direct appeal.

34. Mr. Neal was named a finalist for the Small Businessman of the Year Award in a 1992 publication of the Atlanta Business Chronicle.

35. After being charged with murder, he was convicted in the Fulton County Superior Court on October 31, 2008. Mr. Neal was subsequently sentenced to a life sentence.

36. At trial, Mr. Neal was represented by attorneys from the Fulton County Public Defender Office. That office filed a motion for new trial on Mr. Neal's behalf on November 6, 2008, and later withdrew from his

representation. Mr. Neal is no longer represented by the Fulton County Public Defender Office and has not yet been appointed counsel to represent him at the hearing on his motion for new trial or on appeal.

37. The responsibility for Mr. Neal's representation has been transferred to the Appellate Division of the GPDSC.

38. As a result of his incarceration, Mr. Neal has lost all of the assets tied to the business he owned and managed prior to his arrest. He has also lost his house, which became subject to foreclosure in late 2006.

39. Mr. Neal desires to have a new attorney appointed to his case to explore whether his attorneys from the Fulton County Public Defender Office provided ineffective assistance of counsel at trial.

40. As of the date of filing of this complaint, Mr. Neal remains without legal counsel. Because Mr. Neal cannot afford counsel without undue hardship, remains incarcerated at Smith State Prison, and seeks legal counsel to represent him in appealing his conviction, he currently suffers and in the immediate future faces the likelihood of suffering substantial and irreparable injury.

IV. EMORY TEASLEY

41. Plaintiff Emory Teasley is a 34-year-old man who is presently without counsel to handle his motion for new trial or direct appeal.

42. Mr. Teasley has four children, ranging in age from seven to fourteen years old, to whom he provided financial support prior to his incarceration; he also provided financial support to his mother who is diabetic. During his incarceration, he has been unable to provide such support.

43. Plaintiff Emory Teasley was convicted in Barrow County on June 29, 2006 of murder, aggravated assault, possession of a firearm during the commission of a crime, and tampering with evidence.

44. Mr. Teasley was subsequently sentenced to life imprisonment for murder, 20 years for aggravated assault (to run concurrently), five years for possession of a firearm (to run consecutively), and ten years for tampering with evidence.

45. At trial, Mr. Teasley was represented by Kathleen Anderson of the Barrow County Public Defender Office. Ms. Anderson filed a placeholder motion for new trial on Mr. Teasley's behalf on July 28, 2006, and has since withdrawn from Mr. Teasley's case.

46. Mr. Teasley has not yet been appointed counsel to represent him at the hearing on his motion for new trial or on appeal.

47. Mr. Teasley was notified by GPDSC in May 2009 that the Council was in the process of trying to find an attorney to represent him on appeal.

48. Mr. Teasley desires to have a new attorney appointed to his case to explore whether Ms. Anderson provided ineffective assistance of counsel at trial. Since his trial, Mr. Teasley has become aware of a witness whose testimony would provide critical support to a defense theory; he has never had a lawyer available to interview that witness. Also since trial, Mr. Teasley's brother and co-defendant Tyrone Teasley passed away while incarcerated at Autry State Prison in September 2009. As of the date of filing of this complaint, Mr. Teasley remains without legal counsel.

49. Because Mr. Teasley cannot afford counsel without undue hardship, remains incarcerated at Macon State Prison, and seeks legal counsel to represent him in appealing his conviction, he currently suffers and in the immediate future faces the likelihood of suffering substantial and irreparable injury.

V. CORNELIUS WHITE

50. Plaintiff Cornelius White is a 25-year-old man presently without counsel to assist in his motion for new trial or direct appeal.

51. Plaintiff White was convicted in DeKalb County on May 10, 2007 of two counts of murder, armed robbery, and possession of a firearm during the commission of a crime. Mr. C. White was subsequently sentenced to two life sentences (to run consecutively) for the two counts of murder, ten years for armed robbery (to run concurrently), and five years for possession of a firearm (to run consecutively).

52. At trial, Mr. C. White was represented by Juwayn Haddad of the DeKalb County Public Defender Office. The DeKalb County Public Defender Office filed a motion for new trial on Mr. C. White's behalf on June 8, 2007, and later withdrew from the representation.

53. The responsibility for handling Mr. C. White's case was transferred to the Appellate Division of the GPDSC.

54. Mr. C. White has written several letters over the course of 2007 to 2009, both to GPDSC and to the Clerk of DeKalb County Superior Court, inquiring about the status of his case and as to the appointment of appellate counsel. However, he has not yet been appointed counsel to represent him at the hearing on his motion for new trial or on appeal.

55. Mr. C. White desires to have a new attorney appointed to his case to explore whether his attorneys from the DeKalb County Public Defenders Office provided ineffective assistance of counsel at trial.

56. As of the date of filing of this complaint, Mr. C. White remains without legal counsel.

57. Because Mr. C. White cannot afford counsel without undue hardship, remains incarcerated at Autry State Prison, and seeks legal counsel to represent him in appealing his conviction, he currently suffers and in the immediate future faces the likelihood of suffering substantial and irreparable injury.

VI. DARRYL WHITE

58. Plaintiff Darryl White is a 45-year-old man who is presently without counsel to handle his motion for new trial or direct appeal.

59. Mr. D. White was convicted in Fulton County on February 17, 2009 of felony murder, aggravated assault with a deadly weapon, and possession of a knife during the commission of a crime.

60. Mr. D. White was subsequently sentenced to life imprisonment for the felony murder count and five years for possession of a knife (to run consecutively).

61. At trial, Mr. D. White was represented by Ms. Lolita Beyah of the Fulton County Public Defender Office. A motion for new trial was filed in Mr. D. White's case on February 18, 2009, and the Fulton County Public Defender's Office subsequently withdrew from the representation.

62. The responsibility for handling Mr. D. White's post-conviction proceedings was transferred to the Appellate Division of the GPDSC.

63. Mr. D. White was notified by GPDSC on May 18, 2009 that GPDSC was trying to locate counsel to represent him on appeal; Plaintiff has not yet been appointed counsel to represent him at the hearing on his motion for new trial or on appeal.

64. Mr. D. White desires to have a new attorney appointed to his case to explore whether Ms. Beyah provided ineffective assistance of counsel at trial.

65. As of the date of filing of this complaint, Mr. D. White remains without legal counsel.

66. Because Mr. D. White cannot afford counsel without undue hardship, remains incarcerated at Smith State Prison, and seeks legal counsel to represent him in appealing his conviction, he currently suffers and in the immediate future faces the likelihood of suffering substantial and irreparable injury.

67. Plaintiffs' Affidavits are attached as Exhibits 1-6 to Plaintiffs' Uniform Appendix of Exhibits, which is filed simultaneously herewith.

DEFENDANTS

I. STATE OF GEORGIA

68. Defendant State of Georgia is ultimately responsible under the Georgia and United States Constitutions for providing effective, adequately funded, and conflict-free legal counsel to indigent persons accused of crimes carrying a term of incarceration in the State of Georgia.

69. The State of Georgia's systemic failure to meet these obligations violates Plaintiffs' rights and subjects it to declaratory and equitable relief under Georgia law.

70. The State is not entitled to sovereign immunity because Plaintiffs seek only declaratory and injunctive relief against it.³

II. GEORGIA PUBLIC DEFENDER STANDARDS COUNCIL

71. Defendant Georgia Public Defender Standards Council ("GPDSC") has its principal place of business in Fulton County, Georgia.

³ *IBM Corp. v. Evans*, 265 Ga. 215 (1995); *In Interest of A.V.B.*, 267 Ga. 728, 728 n.2, 482 S.E.2d 275, 276 n.2 (1997) ("Sovereign immunity does not protect the state when it acts illegally and a party seeks only injunctive relief.").

72. GPDSC has the duty to administer or supervise the provision of legal defense services to indigent persons accused of crimes carrying a sentence of incarceration within the State of Georgia; to adopt and enforce standards and procedures relating to the provision of such indigent defense services; to act as the agent of the State of Georgia and Governor Sonny Perdue in the administration and supervision of the provision of indigent defense; and to comply with all constitutional and legal requirements for providing effective and adequately funded counsel to indigent defendants accused of crimes carrying a term of incarceration in the State of Georgia. *See* O.C.G.A. § 17-12-1; O.C.G.A. § 17-12-5(d)(3); O.C.G.A. § 17-12-6(a); O.C.G.A. § 17-12-22(a); O.C.G.A. § 17-12-22(b).

73. The GPDSC's systemic failure to meet these obligations violates Plaintiffs' rights and subjects it to declaratory and equitable relief.

III. GOVERNOR SONNY PERDUE

74. Defendant Sonny Perdue is sued in his official capacity as the Governor of the State of Georgia. His residence and principal place of business is in Fulton County, Georgia.

75. Defendant Perdue has the ultimate authority within the executive branch of the government of the State of Georgia to direct and control the operations of State Government, including the GPDSC.

76. As the chief executive of the State of Georgia, Defendant Perdue has an obligation to “take care that the laws are faithfully executed.” GA. CONST. Art. V, § II, ¶ II. Defendant Perdue therefore has a constitutional obligation to provide counsel to indigent defendants in motion for new trial and appellate proceedings in criminal cases.

77. Defendant Perdue is the appointing authority for the Director of the GPDSC, which has day-to-day operating and supervising responsibility for providing indigent defense services throughout the state. *See* O.C.G.A. § 17-12-5 (“The director shall be appointed by the Governor and shall serve at the pleasure of the Governor.”).

78. Likewise, as chief executive, the Governor has control over GPDSC’s budget.

79. Defendant Perdue’s failure to meet his constitutional and statutory obligations violates Plaintiffs’ rights and subjects him to mandamus, equitable, and declaratory relief.

IV. W. DANIEL EBERSOLE

80. Defendant W. Daniel Ebersole is sued in his official capacity as the Director of the Georgia Office of the Treasury and Fiscal Services.

81. Defendant Ebersole has a duty to administer and supervise the receipt and disbursement of state funds, lottery funds, and the state's financial resources.

82. Defendant Ebersole's failure to collect and appropriate sufficient funding to meet the State of Georgia's constitutional obligation to provide Plaintiffs and those similarly situated counsel in their motion for new trial and appellate proceedings violates Plaintiffs' constitutional and statutory rights and subjects Defendant Ebersole to declaratory and equitable relief.

V. MACK CRAWFORD

83. Defendant Mack Crawford is sued in his official capacity as the Director of the Georgia Public Defender Standards Council.

84. He resides in Pike County Georgia, and has his principal place of business in Fulton County, Georgia.

85. As Director of GPDSC, Defendant Crawford is constitutionally and statutorily responsible for providing counsel to indigent defendants accused of crimes.

86. He is statutorily obligated to "[a]dminister and coordinate the operations of the council," O.C.G.A. § 17-12-5(d)(3), and the Council is "responsible for assuring that adequate and effective legal representation is

provided, independently of political considerations or private interests, to indigent persons who are entitled to representation.” O.C.G.A. § 17-12-1(c).

87. By failing to authorize funding for additional staff attorneys and investigative staff, pursuant to the Appellate Division’s request and in light of the Division’s statements that it would be unable to fulfill its statutory and constitutional obligations without such staffing increases, or to otherwise provide for the appointment of counsel to Plaintiffs and others similarly situated, Defendant Crawford acted in breach of his constitutional, statutory and administrative obligations, and is subject to mandamus, equitable, and declaratory relief.

VI. MICHAEL BERG

88. Defendant Michael Berg is sued in his official capacity as the Chairman of the Georgia Public Defender Standards Council.

89. Defendant Berg resides in Dawson County, Georgia, and has his principal place of business in Fulton County, Georgia.

90. As Chairman, Defendant Berg is responsible for, *inter alia*, presiding over all GPDSC meetings and acting on behalf of the Council when express or implied authorization of the Council is granted. *See* Georgia Public Defender Standards Council Bylaws § 4.5. As a voting member of GPDSC and as its Chairperson, Defendant Berg is “responsible

for assuring that adequate and effective legal representation is provided, independently of political considerations or private interests, to indigent persons who are entitled to representation.” O.C.G.A. § 17-12-1(c).

91. Defendant Berg is also obligated to prepare, on behalf of the Standards Council a “budget estimate necessary for fulfilling the purposes of [the Indigent Defense Act].” O.C.G.A. § 17-12-26.

92. By failing to authorize funding for additional staff attorneys and investigative staff, pursuant to the Appellate Division’s request and in light of the Division’s statements that it would be unable to fulfill its statutory and constitutional obligations without such staffing increases, or to otherwise provide for the appointment of counsel to Plaintiffs and others similarly situated, Defendant Berg acted in breach of his constitutional, statutory and administrative obligations, and is subject to mandamus, injunctive, and declaratory relief.

VII. JIM STOKES

93. Defendant Jim Stokes is sued in his official capacity as the Conflicts Division Director of GPDSC.

94. Defendant Stokes resides in Fulton County, Georgia, and has his principal place of business in Fulton County, Georgia.

95. As Conflicts Division Director, Defendant Stokes is responsible for ensuring that legal representation is provided in cases where the Circuit Public Defender office has a conflict of interest. *See* O.C.G.A. § 17-12-22(a).

96. By failing to adequately provide counsel to Plaintiffs and others similarly situated, Defendant Stokes acted in breach of his constitutional, statutory and administrative obligations, and is subject to mandamus, declaratory, and injunctive relief.

VIII. JIMMONIQUE RODGERS

97. Defendant Jimmonique Rodgers is sued in her official capacity as the Appellate Division Director of the Georgia Public Defender Standards Council.

98. Defendant Rodgers resides in Fulton County, Georgia, and has her principal place of business in Fulton County, Georgia.

99. As Appellate Division Director, Defendant Rodgers is responsible for providing direct representation to clients at the motion for new trial stage and on direct appeal when the Circuit Public Defenders have a conflict.

100. By failing to adequately provide counsel to Plaintiffs and others similarly situated, Defendant Rodgers acted in breach of her constitutional,

statutory and administrative obligations, and is subject to mandamus, declaratory, and injunctive relief.

CLASS ACTION ALLEGATIONS

101. Plaintiffs bring this action as class representatives under O.C.G.A. § 9-11-23, on behalf of themselves and all persons similarly situated.

102. The class Plaintiffs seek to represent consists of all indigent persons who have been or will be convicted of a criminal offense in a Georgia court and who do not, or in the future will not, have the assistance of conflict-free counsel to pursue a motion for new trial and/or direct appeal.

103. Plaintiffs meet the requirements of O.C.G.A. § 9-11-23(a) in that:

- (a) The members of the class are so numerous as to make it impracticable to bring separate civil rights actions. Currently, there are at least 187 unrepresented people awaiting counsel to represent them on their motion for new trial and/or appeal and who cannot be represented by GPDSC's Appellate Division, and the number grows daily;
- (b) The customs and practices challenged in this action apply equally to Plaintiffs and all members of the proposed class. Accordingly,

the claims asserted by the members constituting the proposed class raise common questions of law and fact that will predominate over individual questions of law or fact;

(c) Plaintiffs assert claims which are typical of claims members of the proposed class have against the Defendants; and

(d) Plaintiffs and their counsel will adequately represent the interests of all members of the proposed class. The named Plaintiffs do not have any interests that would conflict with members of the class, and Plaintiffs' counsel have the experience and resources necessary to adequately represent all members of the proposed class.

104. Plaintiffs meet the requirements of O.C.G.A. § 9-11-23(b) in that:

(a) A class action is a superior and necessary form for resolving the issues raised by this Complaint because the Defendants' actions have resulted in constitutionally inadequate or nonexistent representation for all members of the proposed class, making appropriate declaratory and prospective injunctive relief against Defendants with respect to all members of the class.

105. Because the actions on the part of Defendants have denied Plaintiffs the right to counsel and because Plaintiffs are indigent and do not have alternative access to representation, the remedies available at law are both unavailing and unavailable. Thus, class members will suffer substantial and irreparable injury.

FACTUAL ALLEGATIONS

I. THE APPELLATE DIVISION OF THE GPDSC AND CASELOAD REQUIREMENTS.

106. The Appellate Advocacy Division of the GPDSC (the “Appellate Division”) was created in June of 2007 to meet the State’s responsibility to provide appellate counsel to indigent defendants convicted of crimes throughout the state.

107. The Appellate Division provides direct representation to clients at the motion for new trial stage and on direct appeal when the Circuit Public Defenders have a conflict.

108. Therefore, whenever an Assistant Circuit Public Defender or appointed private trial counsel withdraws after conviction from representing an indigent defendant and requests the appointment of conflict-free appellate counsel (as Plaintiffs’ trial attorneys did in Plaintiffs’ underlying criminal cases), the Appellate Division has a statutory obligation to appoint conflict-free counsel to advise convicted indigent defendants at the motion for new

trial and direct appeal stages as well as pursue motions for new trial and direct appeals on their behalf. O.C.G.A. § 17-12-23(a) and O.C.G.A. § 17-12-22(a).

109. The cases handled by the Appellate Division are scattered throughout the state and consistently involve extremely serious offenses, with more than half of its caseload involving murder, assault, rape, or child molestation. Moreover, the complicated nature of the cases and the necessity to investigate claims of ineffective assistance of counsel require a significant amount of time and investigative resources; efforts to obtain investigative assistance through local public defender offices have been largely futile, as those offices are already overburdened with ongoing trial investigations.

110. The Appellate Division is overseen by Defendants Mack Crawford, Jim Stokes, Michael Berg, and Jimmonique Rodgers, who have both a constitutional and statutory obligation under O.C.G.A. § 17-12-23(a) and O.C.G.A. § 17-12-22(a) to provide indigent representation for direct criminal appeals and conflict cases.

111. GPDSC Standards mandate that the Appellate Division be staffed—at a minimum—with a sufficient number of attorneys to maintain a less than 25-appeal-per-lawyer average caseload:

Each circuit public defender office shall employ . . . a sufficient number of full-time, qualified lawyers as public defenders, so that the average council case loads . . . shall not exceed the following limits:

* * * *

25 Appeals to the Georgia Supreme Court or the Georgia Court of Appeals per attorney per year.

The standard applicable to each category of cases is not a suggestion or guideline, but is intended to be a maximum *limitation* on the average annual case loads of each lawyer employed as a public defender in the Circuit Public Defender Offices. These limits *are not* intended to be cumulative or aggregated (e.g., an attorney may not represent defendants in 150 felonies and 300 misdemeanor cases per year), but should be applied proportionately in the case of an attorney whose case load includes cases in more than one category, based on the relative *weight* attributed to each case in each category under the Standard for Weighting Cases to be adopted by the Standards Council.

See GPDSC STANDARD FOR LIMITING CASE LOADS AND DETERMINING THE SIZE OF LEGAL STAFF IN CIRCUIT PUBLIC DEFENDER OFFICES (emphasis in original).⁴

112. ABA national standards similarly provide that attorneys should handle no more than 25 appeals per year.⁵ Moreover, such standards

⁴ Available at http://www.gpdsc.com/cpdsystem-standards-limiting_caseloads.htm (last checked Dec. 12, 2009).

⁵ *See* ABA STANDARDS FOR CRIMINAL JUSTICE: PROVIDING DEFENSE SERVICES Standard 5-5.3 and cmt. at 72 (3d ed. 1992); National Advisory Commission on Criminal Justice Standards and Goals, Task Force on Courts, *Courts*, Standard 13.12, p. 276 (Washington, D.C. 1973).

contemplate the filing of traditional appeals – i.e., those limited to the transcript and record, without additional factual development; they do not take into account the filing of an amended motion for new trial, the investigation and factual supplementation necessary to support claims made in such a motion, or the preparation for hearing on the motion for new trial (in addition to the subsequent appellate briefing and oral argument).

113. In 2007, the Appellate Division consisted of five attorneys and one paralegal. In the one-year period between July 1, 2007 to June 30, 2008 (FY2008), the Appellate Division’s then five attorneys handled roughly 75 appeals. At that time, each staff attorney had an average caseload that was consistent with the GPDSC and ABA’s mandatory caseload maximum of 25 appeals per full-time lawyer.

II. SINCE MARCH OF 2008, GROSS UNDERFUNDING OF THE APPELLATE DIVISION HAS LED TO A SYSTEMIC BREAKDOWN IN THE PROVISION OF INDIGENT DEFENSE

114. Since the Appellate Division’s first year of operation in FY 2007, Defendants’ neglect and gross underfunding of the Appellate Division have led to a systemic breakdown in Georgia’s obligation to provide counsel to convicted indigent defendants.

115. In a status report to the GPDSC in December 2008, Defendant Rodgers wrote that in the eight-month period between March and December

2008, the Appellate Division’s caseload had “exploded.”⁶ Indeed, the number of cases assigned to the Appellate Division skyrocketed from 75 to 249, with 75 cases left without counsel assigned.⁷

116. Despite this significant increase on the demands placed on the Appellate Division, the State of Georgia inexplicably slashed the Appellate Division’s funding for FY2009 and cut the number of staff attorneys in half, leaving only two full-time and one part-time staff attorneys, and limited funding for appointed private counsel.⁸

117. With only 2.5 staff attorneys and limited resources to appoint private counsel, Defendant Rodgers wrote to her supervisors—in December of 2008—that the Appellate Division had “an impossible case load”⁹ She warned that the Appellate Division could not ethically handle its caseload at that time, and that the 75 cases on the Appellate Division’s “backlog” would not be assigned appellate counsel for two years:

⁶ Ex. D, Appellate Division Status, dated December 2008.

⁷ On February 25, 2008, the Georgia Supreme Court held in *Garland v. State*, 283 Ga. 201, 657 S.E.2d 842 (2008), that a defendant is entitled to new, conflict-free counsel to determine whether he should raise ineffective assistance of counsel on appeal. The increased rate of withdrawals by trial counsel following conviction on account of *Garland* conflicts has contributed to the significant increase in cases assigned to the Appellate Division.

⁸ Although the FY 2010 budget contemplated the addition of a new attorney position, that position has not been filled.

⁹ Ex. B, Appellate Division Report – December 2008.

Ethically and practically, national standards contemplate that a lawyer can effectively handle only 25 appeals during a year, meaning that *if we did not take another case it should take the Division two years to discharge its current responsibilities.*¹⁰

118. Having no capacity to provide counsel for those cases on the “backlog,” much less assign counsel in the new cases arriving each month, Defendant Rodgers concluded—again, in December 2008—that the Division had “*passed the crisis point.*”

119. In her January 28, 2009, budget memorandum to the GPDSC, she requested “additional staff attorneys, investigators and supporting resources to fulfill [the Appellate Division]’s obligations.” The Division’s request was denied without explanation, resulting in a continuing backlog of cases and no foreseeable solution.

120. Since that time, the Appellate Division’s crippling caseload has only worsened, and consequently, the number of unrepresented indigent defendants in Georgia has continued to grow. In the one year since December of 2008, when Defendant Rodgers concluded that the Appellate Division had “passed the crisis point,” the caseload of the Appellate Division has nearly *doubled* and the number of unrepresented indigent defendants has increased by *150%*.

¹⁰ Ex. C, Appellate Division Status, dated December 2008.

121. As of November 23, 2009, the Appellate Division had a total of 476 cases for which it was responsible to provide legal representation on appeal. Approximately ten attorneys contracted for FY 2009 and six attorneys contracted for FY 2010 are handling more than 200 cases at an average rate of \$1,500 per case. The two full-time and one-part time staff attorneys at the Appellate Division are handling approximately 76 cases, leaving 187 cases without assigned counsel.¹¹

122. Absent intervention by this Court, the constitutional crisis that has pervaded Georgia's appellate indigent defense system for the last two years will only continue to grow worse.

III. THE NAMED PLAINTIFFS ARE SIX AMONG AT LEAST 187 INDIGENT DEFENDANTS IN THE STATE OF GEORGIA WITHOUT COUNSEL

123. The named Plaintiffs in this action have all been convicted in Georgia courts of crimes carrying terms of incarceration and are seeking counsel to assist in their motions for new trial and direct appeals.

124. The named Plaintiffs in this action have been without appellate counsel for between 10 and 41 months.

¹¹ See Ex. A, GPDSC Appeals Status Report, dated Nov. 23, 2009.

125. Plaintiffs Flournoy, Neal, Teasley, C. White, and D. White are indigent and were represented at trial by public defenders. Plaintiff Amaker is also indigent and was represented by appointed private conflict counsel at trial because his co-defendant was represented by the Fulton County Public Defender Office.

126. All Plaintiffs' trial counsel withdrew following Plaintiffs' convictions and transferred their cases to the Appellate Division of the GPDSC.

127. Plaintiffs and others are without counsel in violation of *Gideon*, *Douglas*, and their progeny because Defendants have failed to carry out their mandatory constitutional and statutory duties to provide counsel to indigent defendants at the motion for new trial stage and on direct appeal, including those defendants wishing to raise ineffective assistance of trial counsel and those defendants to whom the Circuit Public Defender is unable to provide representation due to a conflict. *See* O.C.G.A. § 17-12-1; § 17-12-5; § 17-12-8; § 17-12-22; § 17-12-23.

128. Plaintiffs Flournoy, Amaker, Neal, Teasley, C. White, and D. White bring this lawsuit as a class action pursuant to O.C.G.A. § 9-11-23 on behalf of themselves and all indigent persons who have been or will be convicted in a Georgia court of a criminal offense carrying a term of

incarceration and who do not, or in the future will not, have the assistance of conflict-free counsel to pursue a motion for new trial and/or direct appeal.

129. In purporting to carry out the responsibility of providing representation for indigent persons at the motion for new trial stage and those indigent persons seeking to appeal their convictions, Defendants Perdue, Graham, Ebersole, Crawford, Berg, Stokes, and Rodgers are state actors acting in their official capacity and subject to constitutional and legal obligations to provide indigent defense counsel. Likewise, Defendants State of Georgia and GPDSC are governmental entities subject to the constitutional and legal obligation to provide indigent defense counsel.

**COUNT I:
MANDAMUS ABSOLUTE**

(Asserted Pursuant to O.C.G.A. § 9-6-20 by all Plaintiffs and all Persons Similarly Situated against Defendants Perdue, Crawford, Berg, Stokes, and Rodgers in their Official Capacities)

130. Each and every allegation of the Complaint is incorporated herein as if set forth in full.

131. Defendants Perdue, Crawford, Berg, Stokes, and Rodgers have a clear and non-discretionary duty under the Sixth and Fourteenth Amendments of the U.S. Constitution; Article I, Section 1, Paragraph XIV of the Georgia Constitution; and the Indigent Defense Act of 2003 to appoint counsel to Plaintiffs and all similarly situated indigent defendants who

cannot otherwise afford a lawyer to handle their motions for new trial and direct appeals.¹² In failing to carry out this duty, these Defendants have deprived Plaintiffs of rights secured by the Constitution and laws of the United States as well as the Constitution and laws of the State of Georgia.

132. To the extent that Defendants have any discretion in discharging their obligation to provide adequate and effective legal representation to Plaintiffs and persons similarly situated, Defendants have committed a gross abuse of any such discretion.

133. There is no other legal relief available to remedy the present violations being committed by GPDSC. Trial courts presiding over the Plaintiffs' criminal cases "lack[] the authority" to order the appointment of counsel. *Bynum v. State*, 658 S.E.2d 196, 197-98 (Ga. Ct. App. 2008).¹³

134. Accordingly, Plaintiffs request that the Court grant mandamus nisi, and after hearing, issue mandamus absolute against Defendants Perdue, Crawford, Berg, Stokes, and Rodgers requiring them to provide effective

¹² See *Forsyth County v. White*, 272 Ga. 619, 620, 532 S.E.2d 392, 394 (2000) ("Where the duty of public officers to perform specific acts is clear and well defined and is imposed by law, and when no element of discretion is involved in performance thereof, the writ of mandamus will issue to compel their performance." (quoting *Hartsfield v. Salem*, 213 Ga. 760, 760, 101 S.E.2d 701, 701 (Ga. 1958))).

¹³ In *Bynum*, the Georgia Court of Appeals held that the IDA had removed responsibility for appointing counsel from the courts and instead placed it with GPDSC. Therefore, the court held that the proper course for an indigent defendant seeking new appellate counsel is for the defendant to file a petition for a writ of mandamus, which the trial court possesses the authority to grant. *Bynum*, 658 S.E.2d at 198.

and conflict-free counsel consistent with the Constitution and laws of the United States and the Constitution and laws of the State of Georgia.

**COUNT II:
DECLARATORY RELIEF**

(Asserted Pursuant to O.C.G.A. § 9-4-1 by all Plaintiffs
and all Persons Similarly against all Defendants)

135. Each and every allegation of the Complaint is incorporated herein as if set forth in full.

136. Plaintiffs and persons similarly situated seek a declaratory judgment under O.C.G.A. § 9-4-1 et seq. to afford relief from uncertainty and insecurity regarding their rights, status, and legal relations as indigent defendants subject to post-conviction proceedings without counsel.

137. A real and actual controversy exists in that the Plaintiffs and persons similarly situated have suffered from or face the imminent risk of suffering from the loss of their fundamental rights as stated herein.

138. The Plaintiffs and Class and Subclass Members therefore request that the Court issue a declaratory judgment as set forth in the prayer for relief below.

**COUNT III:
PERMANENT INJUNCTIVE RELIEF**

(Asserted Pursuant to O.C.G.A. § 9-5-1 and § 9-5-8 by All Plaintiffs
and All Persons Similarly Against All Defendants)

139. Each and every allegation of the Complaint is incorporated herein as if fully set forth.

140. Plaintiffs and those similarly situated seek permanent injunctive relief under O.C.G.A. § 9-5-1 and § 9-5-8.

141. Defendants' actions and inactions have caused and continue to cause, or create the risk of imminently causing, each named Plaintiff and those similarly situated irreparable harm. The injury suffered by Plaintiffs is actual and imminent: they are presently incarcerated awaiting pursuit of a motion for new trial and appeal without representation. There is a reasonable probability that they will be subjected to the wrongful conduct in the future: they will remain without counsel until Defendants provide counsel to them.

142. Plaintiffs and persons similarly situated have no adequate remedy at law.

143. As stated herein, Defendants' individual actions, customs, and practices have deprived and threaten to deprive Plaintiffs and persons

similarly situated their right to adequate, effective, and conflict-free counsel and other fundamental rights.

144. Plaintiffs and persons similarly situated therefore request that the Court enjoin the Defendants from violating their statutory and constitutional rights as alleged herein.

145. Following additional factual development, Plaintiffs and persons similarly situated will seek a particularized order of permanent injunctive relief, identifying, among other things, professionally accepted standards that the Defendants must meet in order to satisfy their statutory and constitutionally mandated duties to appoint effective, adequately-funded, and conflict-free counsel.

**COUNT IV:
DENIAL OF COUNSEL IN VIOLATION OF THE SIXTH
AMENDMENT TO THE U.S. CONSTITUTION**

(Asserted Pursuant to 42 U.S.C. § 1983 by all Plaintiffs and all Persons Similarly Situated against Defendants Perdue, Crawford, Berg, Stokes, and Rodgers in their Official Capacities)

146. Each and every allegation of the Complaint is incorporated herein as if set forth in full.

147. The Sixth Amendment of the United States Constitution guarantees a criminal defendant the assistance of counsel when he lacks the financial resources to provide for such assistance himself. *Gideon*, 372 U.S.

at 343-45. The right to counsel – and to the provision of counsel by the State when an indigent defendant cannot afford to provide for his own representation – extends to “all ‘critical’ stages of the criminal proceedings,” *Montejo v. Louisiana*, 129 S. Ct. 2079, 2085 (2009) (citing *United States v. Wade*, 388 U.S. 218, 227-28 (1967)), including the motion for new trial stage, see *Williams v. Turpin*, 87 F.3d 1204, 1210 (11th Cir. 1996).¹⁴

148. Moreover, the right to counsel includes the guarantee that counsel is not burdened by a conflict of interest. *Bonin v. California*, 494 U.S. 1039, 1044 (1990) (“The right to counsel’s undivided loyalty is a critical component of the right to assistance of counsel; when counsel is burdened by a conflict of interest, he deprives his client of his Sixth Amendment right as surely as if he failed to appear at trial.”) (citing *Holloway v. Arkansas*, 435 U.S. 475, 490 (1978)).

149. By their actions, inactions, customs, and practices alleged herein, Defendants, acting under color of state law, have failed to provide adequate conflict-free representation to Plaintiffs and other similarly situated indigent individuals in Georgia seeking to pursue motions for new criminal

¹⁴ In *Williams*, the Eleventh Circuit concluded that “the motion for new trial is a critical stage of the initial proceedings because it is at this stage that the constitutional right to equal and meaningful access to the courts, particularly through effective representation by counsel, attaches, and that the defendant’s substantial rights on direct appeal may be adversely affected.” *Id.*

trials. As such, Defendants have effectively terminated the provision of legal representation to Plaintiffs Flournoy, Amaker, Neal, Teasley, C. White, D. White, and others similarly situated in violation of the right to counsel as guaranteed by the Sixth and Fourteenth Amendments of the United States Constitution, as enforced through 42 U.S.C. § 1983 and other applicable law.

**COUNT V:
DENIAL OF COUNSEL IN VIOLATION OF
GEORGIA CONSTITUTION ART. I, § 1, ¶ XIV)**

(Asserted by all Plaintiffs and all Persons Similarly Situated
against all Defendants)

150. Each and every allegation of the Complaint is incorporated herein as if set forth in full.

151. Like the Sixth Amendment of the U.S. Constitution, the Georgia Constitution protects an indigent defendant's right to counsel. *See* GA. CONST., art. I, § 1, ¶ XIV. In Georgia, the right to counsel extends to the motion for new trial stage. *See Adams v. State*, 199 Ga. App. 541, 543, 405 S.E.2d 537, 539 (1991) (reasoning that a motion for new trial is a "critical stage" of a criminal proceeding because it is "one in which a defendant's rights may be lost, defenses waived, privileges claimed or waived, or one in which the outcome of the case is substantially affected in

some other way” (quoting *Ballard v. Smith*, 225 Ga. 416, 417, 169 S.E.2d 329, 330 (1969))).

152. The motion for new trial stage is a “critical stage” in part because a defendant waives his claim of ineffective assistance of counsel if it is not raised at the earliest available opportunity (i.e., by the first conflict-free attorney on the case post-sentencing), which is often in the motion for new trial. *See, e.g., Brooks v. State*, 267 Ga. App. 663, 664, 600 S.E.2d 737, 739 (2004); *Holland v. State*, 240 Ga. App. 169, 170, 523 S.E.2d 33, 35-36 (1999). The risk of waiving such a claim also means that the motion for new trial stage is a critical stage at which *conflict-free* (appellate) counsel must be made available to a defendant, so that the defendant may be free to raise such claims as necessary.

153. By their actions, inactions, customs, and practices alleged herein, Defendants, acting under color of state law, have failed to provide for adequate conflict-free representation for indigent individuals in Georgia seeking to litigate their criminal convictions or sentences at the motion for new trial stage. As such, the Defendants have effectively terminated the provision of legal representation to Plaintiffs Flournoy, Amaker, Neal, Teasley, C. White, D. White, and others similarly situated in violation of Article I, Section I, Paragraph XIV of the Georgia Constitution.

**COUNT VI:
DENIAL OF APPELLATE COUNSEL IN VIOLATION OF THE
FOURTEENTH AMENDMENT TO THE U.S. CONSTITUTION**

(Asserted Pursuant to 42 U.S.C. § 1983 by all Plaintiffs and all Persons
Similarly Situated against Defendants Perdue, Crawford, Berg, Stokes, and
Rodgers in their Official Capacities)

154. Each and every allegation of the Complaint is incorporated herein as if set forth in full.

155. Under the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution, an indigent defendant has the right to the effective assistance of counsel for his first direct appeal. *Douglas*, 372 U.S. at 355. Like the right to trial counsel, the right to appellate counsel requires effective and conflict-free assistance. *Wood v. Georgia*, 450 U.S. 261, 271 (1981).

156. By their actions, inactions, customs, and practices alleged herein, Defendants, acting under color of state law, have failed to provide for adequate conflict-free representation for indigent individuals in Georgia seeking to appeal their criminal convictions or sentences. As such, the Defendants have effectively terminated the provision of legal representation to Plaintiffs Flournoy, Amaker, Neal, Teasley, C. White, D. White, and others similarly situated in violation of the right to counsel as guaranteed by

the Fourteenth Amendment of the United States Constitution, as enforced through 42 U.S.C. § 1983 and other applicable law.

**COUNT VII:
DENIAL OF APPELLATE COUNSEL IN VIOLATION OF
GEORGIA CONSTITUTION ART. I, § I, ¶ II)**

(Asserted by all Plaintiffs and all Persons Similarly Situated
against all Defendants)

157. Each and every allegation of the Complaint is incorporated herein as if set forth in full.

158. Like the federal Constitution's Equal Protection Clause, Article I, Section I, Paragraph II of the Georgia Constitution guarantees indigent defendants the same rights as defendants who can afford their own legal representation. The Georgia Supreme Court has concluded that the right to appellate counsel requires effective and conflict-free assistance. *See Edwards v. Lewis*, 283 Ga. 345, 658 S.E.2d 116, 121 (2008); *Turner v. State*, 273 Ga. 340, 541 S.E.2d 641, 643 (2001). More recently, the Georgia Supreme Court has concluded specifically that the duty of conflict-free assistance bars trial counsel from advising a convicted criminal defendant on whether to raise ineffective assistance of counsel as a ground for new trial post-conviction; therefore, defendants considering whether to raise such claims are entitled to conflict-free counsel on appeal. *Garland*, 283 Ga. at 205, 657 S.E.2d at 845-46.

159. By their actions, inactions, customs, and practices alleged herein, Defendants, acting under color of state law, have failed to provide for adequate conflict-free representation for indigent individuals in Georgia seeking to appeal their criminal convictions or sentences. As such, the Defendants have effectively terminated the provision of legal representation to Plaintiffs Flournoy, Amaker, Neal, Teasley, C. White, D. White, and others similarly situated in violation of Article I, Section I, Paragraph II of the Georgia Constitution.

**COUNT VIII:
DENIAL OF COUNSEL IN VIOLATION OF INDIGENT DEFENSE
ACT OF 2003, O.C.G.A. § 17-12-1, *et seq.***

(Asserted by all Plaintiffs and all Persons Similarly Situated against Defendants GPDSC, Perdue, Crawford, Berg, Stokes, and Rodgers in their Official Capacities)

160. Each and every allegation of the Complaint is incorporated herein as if set forth in full.

161. Section 1 of the Indigent Defense Act of 2003 (“IDA”) provides that the GPDSC must appoint counsel for indigent defendants. O.C.G.A. § 17-12-1 (“The council shall be responsible for assuring that adequate and effective legal representation is provided . . . to indigent persons who are entitled to representation under this chapter.”).

162. Section 5(d) of the IDA mandates that the Director of the GPDSC administer and coordinate the operations of the Council, which include the appointment of counsel. O.C.G.A. § 17-12-5(d)(3) (“The director shall . . . [a]dminister and coordinate the operations of the council and supervise compliance with rules, policies, procedures, regulations, and standards adopted by the council.”).

163. Section 8 of the IDA mandates that the GPDSC “shall approve and implement programs, services, rules, policies, procedures, regulations, and standards as may be necessary to fulfill the purposes and provisions of this chapter and to comply with all applicable laws governing the rights of indigent persons accused of violations of criminal law.” O.C.G.A. § 17-12-8.

164. Section 22(a) of the IDA mandates that the GPDSC “shall establish a procedure for providing legal representation in cases where the circuit public defender office has a conflict of interest.” O.C.G.A. § 17-12-22(a).

165. Section 22(b) of the IDA mandates that the GPDSC contract with private counsel appointed in conflict cases: “If there is a conflict of interest such that the circuit public defender office cannot represent a defendant and an attorney who is not employed by the circuit public

defender office is appointed, such attorney shall have a contractual relationship with the council to represent indigent persons in conflict of interest cases” O.C.G.A. § 17-12-22(b).

166. Defendants, acting under color of state law, have failed to provide for adequate conflict-free representation for indigent individuals in Georgia at the motion for new trial stage and on appeal. As such, the Defendants have effectively terminated the provision of legal representation to Plaintiffs Flournoy, Amaker, Neal, Teasley, C. White, D. White, and others similarly situated, in violation of the Indigent Defense Act of 2003.

**COUNT IX:
DENIAL OF DUE PROCESS IN VIOLATION OF FOURTEENTH
AMENDMENT TO THE U.S. CONSTITUTION**

(Asserted Pursuant to 42 U.S.C. § 1983 by all Persons Similarly Situated
against Defendants Perdue, Crawford, Berg, Stokes, and Rodgers in their
Official Capacities)

167. Each and every allegation of the Complaint is incorporated herein as if set forth in full.

168. By their actions, inactions, customs, and practices alleged herein, Defendants, acting under color of state law, have arbitrarily and without justification failed to provide for adequate conflict-free representation for indigent individuals in Georgia at the motion for new trial stage and on appeal. As such, the Defendants have denied due process of

law to Plaintiffs Flournoy, Amaker, Neal, Teasley, C. White, D. White, and others similarly situated, in violation of the Fourteenth Amendment of the United States Constitution, as enforced through 42 U.S.C. § 1983 and other applicable law.

**COUNT X:
DENIAL OF DUE PROCESS IN VIOLATION OF GEORGIA
CONSTITUTION ART. I, § 1, ¶ 1)**

(Asserted by all Plaintiffs and all Persons Similarly Situated
against all Defendants)

169. Each and every allegation of the Complaint is incorporated herein as if set forth in full.

170. By their actions, inactions, customs, and practices alleged herein, Defendants, acting under color of state law, have arbitrarily and without justification failed to provide for adequate conflict-free representation for indigent individuals in Georgia at the motion for new trial stage and on appeal. As such, the Defendants have denied due process of law to Plaintiffs Flournoy, Amaker, Neal, Teasley, C. White, D. White, and others similarly situated, in violation of Article I, Section I, Paragraph I of the Georgia Constitution.

LITIGATION EXPENSES

(Asserted by All Plaintiffs and Class members against all Defendants)

171. Each and every allegation of the Complaint is incorporated herein as if fully set forth.

172. Plaintiffs are entitled to recover their expenses of litigation, including reasonable attorneys' fees, pursuant to 42 U.S.C. § 1988 and state law, and their costs pursuant to O.C.G.A. § 9-4-9.

PRAYER FOR RELIEF

WHEREFORE, based on the foregoing, Plaintiffs respectfully pray that this Court grant the following:

- A. Certify the case as a class action under O.C.G.A. § 9-11-23;
GA. CONST. art. I, § 1, ¶ XIV;
- B. Grant mandamus nisi and, upon hearing, issue mandamus absolute requiring Defendants to provide effective and conflict-free assistance counsel as required by the IDA and the U.S. and Georgia Constitutions;
- C. Enjoin all persons within the scope of an injunction under O.C.G.A. § 9-11-65(d) from proceeding against Plaintiffs in their criminal cases until such time as counsel is in fact provided to each Plaintiff;

- D. Grant preliminary and permanent injunctive relief under 42 U.S.C. § 1983 and O.C.G.A. § 9-5-1, *et seq.*, requiring Defendants to provide effective, adequately funded, and conflict-free counsel as required by the IDA and the U.S. and Georgia Constitutions;
- D. Order appropriate further system-wide remedial relief to ensure Defendants' future compliance with their legal and constitutional obligations to Plaintiffs;
- E. Declare that:
1. Defendants have deprived Plaintiffs and persons similarly situated of their constitutional right to effective, adequately funded, and conflict-free counsel in the manner stated herein, resulting in harm and a continuing threat of harm to these persons;
 2. A constitutionally compliant system of providing indigent appellate defense requires Defendants to appoint new, conflict-free counsel within 30 days of receiving notice that an indigent defendant seeking to pursue a motion for new trial or direct appeal is without counsel;
 3. A constitutionally compliant system of providing indigent appellate defense requires Defendants to adequately fund counsel such that counsel do not have a conflict of interest in zealously pursuing their motions for new trial and direct appeals;
 4. A constitutionally compliant system of providing indigent appellate defense requires Defendants to ensure that counsel maintain caseloads not to exceed professionally accepted standards and the mandatory

caseload standards adopted by the GPDSC;

5. If a constitutionally compliant system for appointing effective, conflict-free appellate counsel is not established within 60 days of the Court's Order, that Plaintiffs have received *per se* ineffective assistance of counsel that is presumptively harmful to their appeals;
 6. If a constitutionally compliant system for appointing effective, conflict-free appellate counsel is not established within 60 days of the Court's Order, that Plaintiffs have been denied due process of law;
 7. If a constitutionally compliant system for appointing effective, conflict-free appellate counsel is not established within 60 days of the Court's Order, that the continuing detention of any such indigent criminal defendant awaiting appeal is unlawful and clearly unconstitutional.
- F. Award costs and attorneys fees as permitted by 42 U.S.C. § 1988 and state law;
- G. Order that nonparties subject to this ruling be notified;
- H. Grant Plaintiffs such other relief as the Court deems just, necessary and proper.

[signatures on next page]

Respectfully submitted this 15th day of December 2009.

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CERTIFICATE OF SERVICE

I hereby certify that pursuant to Ga. Code Ann. § 9-11-4, I have this day perfected service of this **PETITION FOR WRIT OF MANDAMUS AND VERIFIED COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF** upon Defendants at the following address:

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[signature on next page]

This 15th day of December, 2009.
