

DUPLICATE

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,

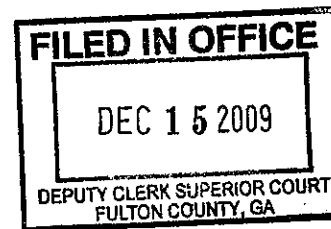
MICHAEL BERG, in his official
capacity as Chairman of the Georgia
Public Defender Standards Council,

JIM STOKES, in his official capacity)

CIVIL ACTION

No. 2009CV178947

CLASS ACTION



TV

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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Counsel for Plaintiffs

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:

State of Georgia
Office of the Attorney General
40 Capitol Square, SW
Atlanta, Georgia 30334

Georgia Public Defender
Standards Council
104 Marietta Street
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Atlanta, GA 30303

Sonny Perdue
The Office of the Governor
State of Georgia
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Appeals Division
Georgia Public Defender
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225 Peachtree Street, NE
Suite 900, South Tower
Atlanta, GA 30303

[signature on next page]

This 15th day of December, 2009.



**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.)
_____)

VERIFICATION DECLARATION

As Plaintiff in this case, I, Darnell Amaker, do hereby declare under penalty of perjury that the within and foregoing Complaint is true and correct to the best of my knowledge, information and belief and is based upon my personal knowledge. Declarant also states that the attached exhibits are true and correct.

FURTHER DECLARANT SAITH NOT.


Darnell Amaker

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A

Appeals Active Cases
as of 11/23/2009

Case Name	Case No	Charges	Attorney	County	Judge	Status	Date Rec'd
Abernathy, Hiram	2007CR393A		Horsley	Dawson	Fuller	Brief filed 06/29/09	14/4/2008
Able, Marvin	2007 CR 1063 A	VGCSA w intent	In House	Hall	Fuller	Pending MNT	08/18/09
Adams, John	2007-CR-185	Obscene Mat to	Trishmann (FY2010)	White	Barrett	Pending MNT	02/18/09
Adams, Ronald	07CR17567	Burglary	In House	Chattooga	Wood	Pending MNT	04/07/09
Adaway, Charles	2004CR0283	Agg Assault	Lamb	Meriwether		Pending OOT MNT	pre Garland
Alexander, Antonio	06SC50849	Child Molestation	Erickson	Fulton	Dempsey	drafted, pending order	7/21/2008
Alexander, Clinton	JFL003	Stalking	In House	Floyd	Durham	Pending MNT	04/20/09
Allen, Bernadette	05SC34499	Obstruction	Bonner	Fulton	Baxter	Pending MNT	2/3/2008
Allen, Jerome	05SC30647	Murder	Wang	Fulton	Campbell	digest)	3/31/2008
Amaker, Darnell	06SC42029	Murder	In House	Fulton	Manis	Pending MNT	05/11/09
Anderson, Antonio	05SC33238	Murder	In House	Fulton	Arrington	Pending MNT	08/20/09
Anderson, Nashon	1B02CR871T	Murder	Johnson	Bulloch	Turner	Brief filed S09A0676 1/29/09	7/2/2008
Arellano, Rolando	06CR3688-4	VGSCA	Erickson	DeKalb	Flake	Brief filed 9/15/09; NOA filed 7/30/09	5/6/2008
Arnold, Croff Bailey	05-R-101	Agg Assault	Lamb	Heard	McConnel	Brief filed	1/15/2008
Ashman, Ricardo	2007CR175		In House	Putnam	Wingfield	Pending MNT	06/08/09
Bailey, Reshad	07CR391	VGSCA	In House (Hailey)	Carroll		Pending MNT	07/27/09
Baker, Donald	05CR2717	Armed Robbery	Citronberg (pro bono)	DeKalb	Coursey	Pending MNT	
Baker, John	2006-SU-CR-103	Agg Asslt; Battery	Trishmann (FY2010)	Catoosa	Loggins	EOA, No t'script filed	4/29/2008
Banks, Marcus	05SC09874	Molestation	Frier	Fulton	Campbell	Hearing set 07/05/09	3/12/2008
Barber, Michael	04SC23722	Armed Robbery	Wang/Trishmann	Fulton	Bedford	10.	7/30/2008
Barclay, Jerry	2005-CR-0214	Agg Child	Lane	Jones	George	MNT hearing	05/08/09
Barner, Wilbert	05SC24892	Murder	In House	Fulton	Bedford	Pending MNT	07/31/09
Bates, David	06SC51014	Mal Mur	In House	Fulton	Campbell	Pending MNT	5/29/2008
Baugh, Charles	05SC38233	Agg Assault, Agg	In House (Mistry)	Fulton	Dempsey	EOA filed 09/16/08; Pending MNT	09/14/09
Bell, Henry	08R1061	Agg Sex Bat	In House	Dougherty	Lockette	Pending MNT (T'script ordered 9/14/09)	04/22/09
Benbow, Marcus	1B06CR5691	Arm Rob;	Cleitt (FY2010)	Bulloch	Turner	Pending MNT	09/24/09
Benyard, Cordell	08R1348	P F/A	In House	Dougherty	Goss	Pending MNT	1/22/2009
Bibb, Lewis	2007CR3105W		Trishmann (FY2010)	Oconee	Sweat	Hearing 09/25/09 @ 10:00	4/17/2008
Black, Omowale	06CR1423-6	Agg Assault	Rodgers	DeKalb	Becker	COA brief filed	03/30/09
Blich, Edwin	1B06CR178	VGCSA	Johnson (FY2010)	Bulloch	Peed	Pending MNT	6/11/2008
Booker, Larry	05SC38547	Murder	Little	Fulton	Arrington	EOA filed 09/16/08; Pending MNT	11/13/09
Booker, Patrick	2009CR583		In House	Columbia	Blanchard	TS ordered 10/30/09; Pending MNT	6/27/2008
Borders, Kenneth Trent	2007CR913B		Horsley	Hall	Burroughs	w/MNT 08/26/08	7/11/2008
Boring, Courtney	2006CR-316SW	Murder	Rodgers	Glimmer	Weaver	AMNT drafted; Trial atty never filed MNT;	02/26/09
Boring, Jackie	07-CR-1281	rel mat	Trishmann (FY2010)	Whitfield	Partain		08/10/09
Boyd, Lewis	06-R-909	VGSCA	Jones (FY2010)	Troup	Smith	Pending MNT	10/29/09
Boyd, Marcus (AKA Ford)	08SC65633	Murder	In House	Fulton	Baxter	Pending MNT	
Bradley, Shannon	08SC64772	Arm Rob	In House	Fulton	Bedford	Pending MNT (see note KK)	07/31/09

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			T by T	Lane (FY2010)	Stewart	Matthews	Pending MNT	
39	Bradshaw, Victor	05CR00086		Rodgers (Morgan)	Floyd	Matthews	Pending MNT	09/15/09
40	Bray, Douglas	07CR02098		Lane (FY2010)	Morgan	George	MNT hearing 07/01/08	6/25/2008
41	Brooks, Willie	2008-CC-52		Clell (FY2010)	Bulloch	Peed	Pending MNT	1/22/2009
42	Brower, Connie	1B06CR105		Little	DeKaib	Castellani	reset from 03/28/08	3/6/2008
43	Brown, Andrew	06CR48442-1		Johnson	Bulloch	Turner	Brief filed 02/02/2009	6/16/2008
44	Brown, Carlton	1B06CR067T		In House	Paulding	Osborne	Pending MNT; T script 2 vol, 324 pgs	09/16/09
45	Brown, Cecil	09CR367	Stat Rape	(FY2010)	Polk	Sutton	MNT pending filing	
46	Brown, Christopher	2000CR309		In House (Off)	Floyd	Matthews	Pending MNT	
47	Brown, Gabriel	07-CR-00423		In House	Dougherty	Marshall	Pending MNT	09/24/09
48	Brown, Jamaul	08R105	Arm Rob	In House	Fulton	Shoob	Pending MNT	06/10/09
49	Brown, Johnny	08SC66438	Agg Aslt	Hibbert (FY2010)	Fulton	Shoob	Pending MNT	09/23/09
50	Brown, Kenneth	SU08CR554	VGCSA	Rodgers	Muscogee	Allen	10/28/09 EoA and Mot Ext filed @ CoA	10/14/09
51	Brown, Ricky	05SC33314	Fel Mur	In House (CG file)	Fulton	Campbell	Pending MNT	12/3/2007
52	Brown, Robert Lee	06CR03472		Wang	Floyd	Colston	11/19/09	02/26/09
53	Bryant, Jr., Ray	07SC54048	Murder	In House	Fulton	Arrington	Pending AMNT, T script rec'd 9/23/09	5/2/2008
54	Bryant, VonTerry	05RCCR985		Little	Richmond	Ennis	Pending MNT	1/4/2008
55	Bunn, Michael Shane	06CR00067		Wang	Jackson	Motes	2/26/09; Production Order/Rule Nisi filed	10/23/09
56	Burke, Marcus	00SC05073	Murder	In House	Fulton	Brown	Mot Mod / Red Sentence (see file)	09/11/09
57	Bumette, Alex	06RCCR1885	Agg Aslt	In House	Richmond	Brown	Pending MNT (T script ordered 9/10/09)	17/2008
58	Butler, James	06SC44235		Bonner	Fulton	Bedford	Entry of Appearance filed 01/22/08	7/21/2008
59	Caldwell, Lorenzo	06SC41559		Wang	Fulton	Russell	Waiting on ruling, MNT partially granted	1/13/2009
60	Campanella, D'Angelo	1S07CR089		Clell (FY2010)	Screven	Turner	Pending MNT	7/21/2008
61	Cannon, Chas	06SC44488		Frier	Fulton	Manis	Remanded to Superior Court by order	4/23/2008
62	Canty, Martin	07SC55762		Erickson	Fulton	Baxter	Permission to file OOT MNT	10/30/09
63	Capers, Samuel	04SC23343	Vol Man	In House	Fulton	Baxter	hrg; pending order denying MNT; brief	7/16/2008
64	Captain, Cynthia	07GR01567		Erickson	Floyd	Durham	Pending MNT	04/28/09
65	Carmichael, Kenneth	07SC62803	Child Mol	In House	Fulton	Brasher	Pending MNT	09/24/09
66	Carter, Demetrius	07SC62746	VGCSA: Cocaine	In House	Fulton	McCoy	Pending MNT, Mot for Cont filed 10/20/09	07/31/09
67	Carter, Ricky	02R1108	Rape	In House	Dougherty	Marshall	Pending MNT	
68	Carter, Rodnick	07SC55789	Mal Mur	In House	Fulton	Adams	Pending MNT	
69	Chambers, Michael	2007-CR-1451-C		Horsley	Half	Deal	Hrg 1/06/09; EOA 12/19/08	10/24/09
70	Clark, Aundrea	08CR221	Arm Rob	(Conflict)	Toombs	Reeves	Pending MNT	4/28/2008
71	Clark, Freddie	07SC56481		Hibbert (FY2010)	Fulton	Johnson	Pending MNT	1/13/2009
72	Clark, Michael	07-RCCR-984		Clell (FY2010)	Richmond	Overstreet	Pending MNT	3/10/2008
73	Clarke, Elkin	05SC36848	Murder	In House	Fulton	Shoob	Order to continue hearing	04/07/09
74	Clemens, Trent	06R105		Lane	Upson	Edwards	Hrg set 12/15/09	08/13/09
75	Cobb, David Aaron	2008CR358C	Molestation	Wang	Hall	Deal	Pending MNT	06/22/09
76	Cody, Mark	08CR284-10	Agg Sod	In House	DeKaib	Barrie	Pending MNT	
77	Coley, Chris	2006R-10001	Murder	Lane (FY2010)	Pulaski	Mullis	Pending MNT	

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78	Coilier, Lester	05SC38040	Wang	Fulton	Brasher	Waiting on ruling from trial court on MNT	4/22/2008
79	Collins, Steven	04CR4347-2	Wang (Dominguez)	DeKalb	Hancock	NOA filed by 9/16	5/6/2008
80	Colton, Stan	2008CR235	In House	Meriwether		Pending MNT	03/04/09
81	Colzie, Matthew	07SC62906	Hibbert (FY2010)	Fulton	Johnson	Pending MNT	03/23/09
82	Conner, Ian (Juv)	0801027	Rodgers	Flint	Welch	10/27/09 Mot Recon filed; COA brief filed	02/26/09
83	Cooks, Quentin	05SC28398	In House	Fulton	Campbell	Pending MNT	10/23/09
84	Cooper, Roderick	06CR177	Wang	Banks		part. NOA filed by 9/04	
85	Craft, Jerry	2006-CR-0034	Lane (FY2010)	Turner	Reinhardt	Pending MNT	06/09/09
86	Crawford, Jason	2005-CC-082	Lane	Morgan	George	COA Brief filed 08/25/09	7/3/2008
87	Creamer, Richard	07CR2509-9	Gorrie (FY2010)	DeKalb	Scott	****MNT hrg set Dec 2, 2009@ 1:30	03/23/09
88	Grear, Jordan	04R2000	Wolinski (FY2010)	Clinch	McWhorter	Pending MNT	07/24/09
89	Crowley, Dennis	2007SUCR0090	In House	Oconee	Sweat	Pending MNT	
90	Crumity, Roosevelt	08SC64680	In House	Fulton	Johnson	Pending MNT	08/10/09
91	Cruz, Noe	01CR491	Wang	Carroll	Sullivan	filed 7/08/09	6/14/2007
92	Cuipepper, Dwight	06-R-764	Lamb	Troup	Keeble	COA brief filed 07/15/09	5/27/2008
93	Curry, Jonathan	2005CR003T	Johnson	Warren	Hinesley	Hrg MNT 4/16/09	6/26/2008
94	Damerow, George	08-R-024	Wolinski (FY2010)	Mitchell	Cato	T-script read. Hrg Nov 17, 2009	05/29/09
95	Daniels, Vandy (1)	1J06CR01W	Johnson	Jenkins	Woodrum	Hrg st 8/4/09	2/10/2009
96	Daniels, Vandy (2)	1B06CR274W	Johnson	Bulloch	Woodrum	Hrg set 8/4/09	2/11/2009
97	Davis, Dutch	06SC50352	Wang/Bonner	Fulton	Johnson	Davis	1/22/2009
98	Davis, Javarious	08SC64772	In House	Fulton	Bedford	Pending MNT	04/05/09
99	Davis, John	07SC61586	In House	Fulton	Newkirk	Pending MNT	08/03/09
100	Davis, Justin	06SC50352	Wang	Fulton	Johnson	in part	11/27/2007
101	Davis, Michael	2007-CR-270	Edwards	Tift	Reinhardt	sup MNT. Travel to Tifton to Clerk	9/15/2008
102	Davis, Norman	99-CR-159	(FY2010)	Decatur	George	office. See file.	10/27/09
103	Day, Brian	07CR23048	Friesmann (FY2010)	Walker	Wood	EoA. Digest part completed	12/08/08
104	Debow, Curt	08CR00661	Friesmann (FY2010)	Floyd	Matthews	evid hrg. Mot re tape; NOA	11/22/08
105	DeLeon, Yonlenon	06CR1029X	In House	Barrow			
106	Dixon, Jacqueline	07SC61319	In House	Fulton	Johnson	Pending MNT	06/10/09
107	Dixon, Jarmavis	07SC55021	In House	Fulton	Campbell	Pending MNT	
108	Dodd, William	2007-CR-382-LA	In House	Union	Alderman	continuance per tc 8/12/09	08/11/09
109	Dolphy, Darrell	06SC42342	Gorrie (FY2010)	Fulton	Russell	Pending MNT	12/15/2008
110	Dorsey, Markell	06SC50352	Wang	Fulton	Westmoreland	Pending MNT	7/8/2008
111	Drayton, Philip	2007-CR-270	Lane	Ben Hill	Pridgen	req docket sheet	8/18/2008
112	DuBose, Keith	06R-219	Wolinski (FY2010)	Telfair		AMNT filed	05/06/09
113	Dunlap, Christopher	07R-187	Lane (FY2010)	Crisp	Chasteen	****Hrg Sep 2, @2009 @ 9	06/08/09
114	Dunson, Joshua	SU06CR014W	Johnson (FY2010)	Effingham		EoA 5/22/09, pending MNT	05/06/09
115	Durham, Travis	2008-SU-CR-1271	Rodgers (JR)	Newton	Ozburn	Pending MNT	06/02/09
116	Durrant, Paul	2005GR87 & 88	In House	Coffee		Pending MNT	06/09/09

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117	Duvall, Bilal	06SC39099	Murder	In House	Fulton	Adams	Pending MNT	12/08/08
118	Elis, Cory	SU2008-459	Shoplifting	Humphries Intern	Coweta	Kirby	rights. NOA to be filed 9/16	05/15/09
119	Evans, Kelvin	08SC66990	Ent Auto	Hibbert (FY2010)	Fulton	Dempsey	Pending MNT	08/20/09
120	Fairwell, Priscilla	08CR3690	Agg Asit	In House	DeKalb	Flake	completed	5/21/2008
121	Faniel, Antonio	06-R-294		Lane	Spalding	Edwards	TC def's father. Spoke to def's mother	4/23/2008
122	Favors, Cedric	06SC42060		Little	Fulton	Baxter	EOA filed 09/16/08; Pending MNT	02/11/09
123	Flournoy, Maurice	06CR1030X	Inj; Kdnp; Arm	In House	Barrow	Motes	Pending MNT	08/21/09
124	Flowers, Juan	07SC57650	Murder	In House	Fulton	Russell	Pending MNT	3/10/2008
125	Fogarty, Robert	2007R-0140		Wang	Fayette	English	AMNT filed - hrg . Denied. NOA filed.	08/21/09
126	Ford, Demetrius	07SC61457	Murder	In House	Fulton	Goger	Pending MNT	04/15/09
127	Ford-Cailhour, Rosalyn	W	Arm Rob	Lane (FY2010)	Henry	Chafin	Pending MNT	10/28/09
128	Foster, James	2008CR281	Arm Rob	In House	Randolph	Bishop	Pending MNT	08/13/09
129	Fowler, Samuel	2008-SUCR-414		In House	Pickens	Weaver	Pending MNT	07/06/09
130	Francois, Derrick	07SC60286	Agg Asit	In House	Fulton	Goger	Pending MNT	5/6/2008
131	Franks, Andre	06CR2623-8		Erickson	Walton	Hunter	Brief filed 7/8/09	9/4/2008
132	Freeman, Kilo	08SC72465		Trieshmann	Fulton	Manis	AMNT filed, no hrg set; EOA	
133	Fullwood, Dale	05SC25885		Trieshmann	DeKalb	Manis	ruling; MNT hrg 07/18/09	
134	Funck, Marcus	06-RCCR-1832		Cliett (FY2010)	Richmond	Annis	Pending MNT	
135	Gadson, Nkosi	07SC62345		Hibbert (FY2010)	Fulton	Johnson	Pending MNT	2/4/2009
136	Gaither, Russell	08CR-0798-4	Simple Bat	In House	Walton	Johnson	Pending MNT	06/10/09
137	Gamble, Donald	07-RCCR-1815		Johnson	Fulton	Brown	& hearing to correct sentence	6/18/2008
138	Gandy, Craig	07-CR-2840	bur, agg asit	Wolinski (FY2010)	Colquitt	Altman	T script picked up	02/23/09
139	Garland, Mack (5/2009)	2004-CR-184		Rodgers	Glimmer	Bradley	9:30am	06/11/09
140	Garrett, Nakedrain	05-CR-48		Lamb	Stewart	Peagler	MNT filed	1/13/2009
141	Gary, Dexter (Juv)	05CR48		Edwards	Glimmer	Lockette	Transcript rec'd, drafted sup MNT	12/1/2007
142	Gaston, Anthony	06SC46326		Frier	Fulton	Baxter	Pending MNT	4/23/2008
143	Gibson, Antonio	1B06CR490		Cliett (FY2010)	Bulloch	Peed	Pending MNT	
144	Gilbert, Joseph	07R8764		Lane	Spalding	Scott	EOA, rec'd TS; Pending MNT	9/11/2008
145	Gillis, Michael	07-CR-2709-9		Bonner 2	Fulton	Caldwell	Pending MNT	3/26/2008
146	Gillis, Reaco	08CR34		Wolinski (FY2010)	Toombs	Palmer	Pending hrg 10/15/09	07/15/09
147	Gilmore, Kyle	07CR88A	Arm Rob	Rodgers (Huggins)	Jefferson	Reeves	2009	03/06/09
148	Gilyard, Tons	04-CR-106	Murder	Lamb	Terrell	Lane	Ltr to trial counsel; Pending MNT	
149	Givens, Alwando	06SC47945		Wang	Fulton	Baxter	trial t'script. Trial Counsel will not help.	12/13/2007
150	Glass, Ernest	03SC05062	Murder	In House	Fulton	Lane	Pending MNT	06/02/09
151	Goodman, Lori Ann	06CC92A	Murder	Lane (FY2010)	Morgan	Wingfield	Pending MNT	06/02/09
152	Googer, Gary	07SC53294		Hibbert	Fulton	Lane	(CPD)	
153	Gordon, Andre	07-RCCR-1476	Rape	Johnson (FY2010)	Richmond	Annis	Pending MNT	09/24/08
154	Gordon, John	05SC27996	Hij MV	In House	Fulton	Manis	Pending MNT	
155	Gray, Carlisha	06SC65868	Murder	In House	Fulton	Johnson	Pending MNT	10/30/09

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156	Gray, John	08SC64315	Rape; Agg Sod	Rodgers	Fulton	Schwall	NOA filed 12/18/08; TSO 1/23/09	02/18/09
157	Gray, John (2)	06SC49136	Agg Aslt	Rodgers	Fulton	Schwall	Pending MNT	08/26/09
158	(SB440)	07RCCR0933	Arm Rob	Johnson (FY2010)	Richmond	Blanchard	Pending MNT	05/18/09
159	Grissom, Jerry	2007-CR-120A	Murder	Horsley	Fulton	Fuller	Client ltr w/MNT 08/26/08; Pending filing	7/24/2008
160	Grissom, Michael	06SC42029	Murder	In House	Fulton	Manis	Pending MNT	05/11/09
161	Grogan, Anthony	2007-CR-258A		Bonner	Hall	Fuller	Brief filed COA 03/26/09	4/4/2008
162	Gullat, Nathaniel	06SC52013		Hibbert	Hall	Moulton	AMNT	
163	Gurule, Scott	06CR4276-2	Child Mol	In House	DeKalb	Hancock	Pending MNT	08/13/09
164	Hall, Antone Cortes	2008CR329C	Arm Rob	In House	Hall	Deal	Pending MNT	06/11/09
165	Hall, Jackie	05SC35040		Hibbert	Fulton	Glanville	AMNT, Hrg 4/24/09	7/15/2008
166	Hall, Robert Vincent	04CR21145		Bonner	Walker	Wood	Pending MNT	1/10/2008
167	Hall, Stephen Mark	1B06CR130		Johnson (FY2010)	Bulloch	Peed	Pending MNT	2/10/2009
168	Hamilton, Stanley	08SC64940	Kidnapping	In House	Fulton	Shoob	Pending MNT	1/22/2009
169	Hammock, Michael	08-1809		In House	Bartow	Howell	pending appt	11/02/09
170	Hammond, Timothy	05-CR-1268A		Horsley	Hall	Fuller	Brief filed 06/22/09	
171	Handley, Drexton	08SC64834	Murder	In House	Fulton	Goger	Pending MNT	11/03/09
172	Hannah, Tony	09R43	Forgery	Rodgers	Troup		Brief in Support 14Oct09	06/12/09
173	Hardeman, Joshua	04SC15325	Agg Aslt	In House (GC file)	Fulton	Bedford	Pending MNT and t'script	10/15/09
174	Hardigree, Robert	08RC1077-4	Mol	In House	Walton	Johnson	Pending MNT	11/06/09
175	Hardy, Shantario	05CR-0013		Rodgers	Dooly	Chasteen	App brief 03/07/09	
176	Harris, Randall	06SC45519		In House (Ng)	Fulton	Johnson	Pending MNT	8/18/2008
177	Harris, Xavier	06SC42029	Murder	In House	Fulton	Manis	Pending MNT	05/11/09
178	Haskell, Torrence	0021	Arm Rob	In House	McDuffie	Dunaway	TS ordered 11/02/09, Pending MNT	11/12/09
179	Hawkins, Earl	1S07CR098T		Cilett (FY2010)	Scriven	Turner	Pending MNT	2/10/2009
180	Head, Rodney	08R-376		Lane	Spalding		EOA, GCIC; Pending MNT	5/5/2008
181	Heard, Rodrigues	W	F/A	Lane (FY2010)	Henry	Crumbley	Note about Habeas	04/15/09
182	Hernandez, Danilo	07-676-04	Child Mol	Rodgers	Walton	Johnson	Record has been forwarded to CoA	10/13/09
183	Hernandez-Lopez, Lazaro	06SC45264	Child Mol	In House	Fulton	Campbell	Pending MNT	07/31/09
184	Herrington, Anthony	2006-0403		Cilett (FY2010)	Burke	Ennis	Conflict for Johnson. Pending MNT	2/6/2009
185	Ficks, DeAnthony	06SC52206		Wang	Fulton	Baxter	MNT denied w/ written order 7/09/09	4/22/2008
186	Hickson, Kelly	05SC25629		In House	Fulton	Newkirk	Pending MNT	8/21/09
187	Higginbotham, Brandon	17802 (2006)		Trishmann (FY2010)	Gordon	Smith	AMNT filed; evid hrg	6/10/2008
188	Hightower, Ricardel	06R379		Rodgers	Dougherty	Perkins	Remanded from CoA and req OOT MNT	1/22/2009
189	Hill, Anthony	2006CR0099		Edwards	Turner		hearing	3/3/2008
190	Hill, Christopher	1J07CR033P		Johnson	Jenkins	Peed	MNT 1/14/2009, Order pending	6/16/2008
191	Hill-Blount, Corey	07-RCCR-278	Arm Rob	Johnson (FY2010)	Richmond	Annis	Pending MNT	
192	Hobbs, Alan Scott	07CR988		Cilett (FY2010)	Columbia	Wheale	Pending Appeal; Hearing 09/17/08	6/11/2008
193	Hollman, Jamison	05SC37337	VGCSA Coc	In House	Fulton	Lane	Pending MNT	07/31/09
194	Holloway, Huresial	06CR4661-6	Rape	In House	DeKalb	Becker	Pending MNT	06/17/09

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195	Holmes, Anthony	06SC49668	Hibbert	Fulton	Dempsey	AMNT	8/13/2008
196	Holmes, Deandre	2007RCCR814	In House	Richmond	Brown	10/21/09	10/14/09
197	Holmes, Mitchell	08-RCCR-658	Johnson (FY2010)	Richmond	Blanchard	Pending MNT	1/28/2008
198	Horne, Curtis	08RCCR1407	Johnson (FY2010)	Richmond	Overstreet	Pro Se MNT and NOA files	07/06/09
199	Howard, Eugene	SU07CR30	Cliett (FY2010)	Efingham	Peed	Pending MNT	11/3/2009
200	Howard, Kenneth	07CR07034	Edwards	Lowndes	McLane	trans, ready few weeks	
201	Hughes, Christopher	08RCCR1449	Johnson (FY 2010)	Richmond	Blanchard	Pending MNT	05/18/09
202	Hurt-Whitire, Judith	08-CR-001C	Friesmann (FY2010)	Rabun	Cornwell	Pending MNT	07/27/09
203	Ingles, Rene	07SC59232	In House	Fulton	Schwall	Pending MNT	05/01/09
204	Ingram, Herman	06SC48971	Wang	Fulton	Newkirk	Pending MNT. Trial transcript reviewed	pre-Gatland
205	Jackson, Jamie	07CR1067-2	Derrick Watkins)	Walton	Ott	Pending MNT, T'script @ CPD	10/07/09
206	Jackson, Jamon	05SC36485	In House	Fulton	Newkirk	Pending MNT	
207	Jackson, Joshua	08SC64032	In House	Fulton	Shoob	Pending TS and MNT	
208	Jackson, Kendrick	SU-08-CR-0155-J	In House	Clarke	Jones	Pending MNT	10/15/09
209	Jackson, Marco	09CR046	In House	Decatur	Cato	AMNT filed 11/03/09	05/19/09
210	Jackson, Tasha	09CR045	Lane (FY2010)	Decatur	Cato	Pending MNT	05/19/09
211	Jackson, Zachery	2007CR44	Lane (FY2010)	Turner	Reinhardt	Pending MNT	07/15/09
212	James, Benjamin	2008RCCR1307	In House	Richmond	Blanchard	120 days	10/23/09
213	James, Christopher	06SC51020	In House	Fulton	Arrington	EoA mailed 09/15/08; Pending MNT	07/03/2008
214	Jennings, Samuel	09CR3471	Little	DeKalb	Seeliger	MNT hearing 12/12/08	4/29/2008
215	Johnson, Charvarious	08SC70153	In House	Fulton	Campbell	***Hrg reset Nov. 30, 2009@ 2:30	6/23/09
216	Johnson, Dwayne	SU07CR0488	In House	Clarke	Sweat	has been filed.	11/12/09
217	Johnson, Eric	07SC57745	In House	Fulton	Bedford	Pending MNT	6/4/2008
218	Johnson, Gregory	07SC54288	In House	Fulton	Johnson	cse file	09/14/09
219	Johnson, Henry	09CR17911	Triesmann (FY2010)	Chattooga	Wood	EoA filed; No transcript on file	04/07/09
220	Johnson, Kenneth	08-R-024	Edwards	Grady	Cato	Pending MNT	1/29/2009
221	Jones, Hiram	06R36	Wolinski (FY2010)	Dougherty	Gray	T'script read	5/6/2008
222	Jones, Jimmy	07-RCCR-1073	Johnson (FY2010)	Richmond	Blanchard	Pending MNT	
223	Jones, Jimmy Lee	06SC40812	Hibbert	Fulton	Lane	AMNT	6/13/2008
224	Jones, Quinton	06SC47612	In House	Fulton	Russell	Pending MNT	04/30/09
225	Jones, Calvin	05SC30351	In House	Fulton	Brasher	Pending MNT	05/15/09
226	Kay, Richard	07CR85	Edwards	Clay	Lane	counsel.	
227	Kelly, James	08-RCCR-1073	Johnson	Richmond	Ennis	hearing 09/11/08	3/31/2008
228	Kelly, Lonnie	06SC45952	Hibbert (FY2010)	Fulton	Schwall	Pending MNT	05/12/09
229	Kemp, Melvin	05SC34403	In House	Fulton	Campbell	Pending MNT, T'script here 10/08/09	09/22/09
230	Kinlaw, Harold	CR-0400213-063	Wolinski (FY2010)	Glynn	Tuten	Pending MNT	10/19/09
231	Knight, Daniel	08-CR-043	Edwards	Decatur	Porter	Received transcript, Sup MNT	7/24/2008
232	Lakes, Corey	07SC59209	In House	Fulton	Baxter	Pending MNT	
233	Lambert, Ernest	08SC73253	Rodgers	Fulton	Glanville	COA brief filed	02/18/09

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Case No.	Name	Case No.	Agg. Asst.	Conflict	Jefferson	Reeves	Pending MNT	Date
234	Lane, MerKeith	06CR36		Johnson (FY2010)	Candler	Reeves	Pending MNT	06/10/09
235	Lanier, Raynardo	07CR115		Hibbert	Fulton	Reeves	Hrg set Apr 29, 2009 @ 2;	
236	Lawrence, Leon	06SC42463		In House	Fulton	Baxter	AMNT	7/8/2008
237	Lawson, Herman	06SC51020		Lamb	Fulton	Arrington	Pending MNT (t'script here)	09/09/09
238	Laye, Randall	06CR816		In House	Coweta	Blackmon	Pending MNT; Ltr to client	8/14/2008
239	Lee, Kevin	07SC55564		Rodgers	Fulton	Bdford	Pending MNT	08/20/09
240	Lee, Victor	06CR2158-6	Arm Rob	Rodgers	DeKalb	Becker	10/08/09 EoA	10/08/09
241	Lee, Willard C.	06CR48B		Rodgers	Sumter	Sizemore	Brief filed	08/26/09
242	Leeks, Carrie	06SC49091	Murder	In House	Fulton	Glanville	Pending MNT	05/11/09
243	Leonard, Brandon (1)	07SC61277	Fel Mur X2	In House	Fulton	Russell	Pending MNT	02/13/09
244	Leonard, Brandon (2)	07SC61277	Fel Mur X2	In House	Fulton	Russell	Pending MNT; Case file rec'd	10/20/09
245	Lester, Damien	07SC62032	Arm Rob	Hibbert (FY2010)	Fulton	Russell	Pending MNT	06/02/09
246	Leverette, Andre	08CR1422	Carjacking	In House	DeKalb	Becker	Pending MNT	04/30/09
247	Lollis, James	06CR2572-3	Arm Rob	In House	DeKalb	Seeliger	***MNT hrg set Dec. 4, 2009 at 10am	08/13/09
248	Low, Khalique	06SC40528		Erickson	Fulton	Russell	MNT denied 6/11/09, NOA filed 7/7/09	8/14/2008
249	Lowery, Anthony	08CR1366	Obst	In House	Barrow	McWhorter	12/09; Pending MNT, t'script rec'd	03/25/09
250	Lowry, Eric	06SC47836	Murder	In House	Fulton	Arrington	Pending MNT, t'script rec'd 9/23/09	08/20/09
251	Lucas, Magic	00SC07634	Murder	In House	Fulton	Bedford	Pending MNT	10/23/09
252	Lunsford, James	08-CR-243W	VGCSA	In House	Stephens	Woods	Pending MNT	07/24/09
253	Mackey, James Eric	07CR00403B		Little	Floyd	Mathews	reset 11/05/08; MNT 07/01/08	3/26/2008
254	Mackie, Quinton	08SC67597		In House	Fulton	Schwall	Pending MNT	1/13/2009
255	Mangum, Gary	2008-CR-154-J	MV	Trieshmann (FY2010)	Dawson	Oliver	hearing rec'd 2/11/09	
256	Mann, Arthur	07SC55680		Erickson	Fulton	Baxter	order	1/29/2008
257	Manuel, Ron	06SC41791		In House	Fulton	Lane	Ret. By Erickson 1/27/2009	5/7/2008
258	Mask, William	07CR01367	F/A CF	Shea (FY2010)	Floyd	Mathews	Pending MNT	03/02/09
259	Mathews, Jarvis	06SC44503	Murder	In House	Fulton	Adams	PendInf MNT	04/28/09
260	Mathews, Jerry	07SC63567	Arm Rob	Hibbert (FY2010)	Fulton	Johnson	Pending MNT	2/5/2009
261	Max-Kanu, Tobangay	07003418		Rodgers	DeKalb	Peagler	Brief filed after remand	4/22/2008
262	McBurrows, Carlton	03SC05896		In House	Fulton	Johnson	Pending filing of AMNT	4/11/2008
263	McClain, Damion	06CR1446-1	Arm Rob	In House	DeKalb	Castellani	move on MNT; Pending MNT (t'script	09/08/09
264	McClain, William	08-R-451		Lamb	Troup	Keeble	Brief filed 08/11/09	
265	McClam, Eugene	06-CR-2810-10		Bonner	DeKalb	Workman	06/18/08 cert. pet.	12/19/2007
266	McCombs, Shedrick	2008R-0493		Rodgers	Fayette	English	Sup Brief 03/02/09; pending order	4/16/2008
267	McCowan, Larry	07-CR-106		Lamb	Coweta		Brief filed 08/05/09	
268	McCrary, Dezaell	06SC41920		Hibbert (FY2010)	Fulton	Johnson	12/19/08	9/2/2008
269	McDonald, Steve	2001-149	Murder	In House	Seminole	Bishop	received	10/22/09
270	McDonald, Steve	2001-149	Murder	In House	Seminole	Bishop	Pending MNT	10/21/09
271	McGill, Leon	03CR2734-6		Rodgers	DeKalb	Becker	CoA pending order	pre-Garland
272	McKenzie, Emma	08-CR-3297		Rodgers	DeKalb	Hunter	Cert filed; COA brief filed	

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273	Merck, Freddie	06-CR-415-LA		Horsley	Lumpkin		Hg 03/27/09	7/17/2008
274	Merritt, Montavis	06SC49425	Arm Rob	In House (CG)	Fulton	Westmoreland	Pending MNT	10/22/09
275	Merritt, Montavis	06SC49425	Arm Rob	In House	Fulton	Westmoreland	Pending MNT	10/22/09
276	Messick, Thomas	JFL004	Thfts	Rodgers (Blake)	Floyd	Salmon	transcript is complete	05/21/09
277	Middleton, Travon	06SC42756		Bonner 2	Fulton	Bedford	Pending MNT	3/25/2008
278	Mikell, Fredrico	1B06CR569T		Johnson	Bulloch	Turner	Brief S09A1766 7/29/09	2/26/2008
279	Milam, David	08RCCR1337	P F/A Arm Rob	In House	Richmond	Blanchard	9/08/09	09/11/09
280	Miller, Eric	07SC54975		Frier	Fulton	Bedford	Picked up TS	4/15/2008
281	Miller, Gregory	09SC75623	Rape	In House	Fulton	Arrington	Pending MNT, Tscript here 9/23/09	04/24/09
282	Miller, Jabaris	05SC31749		Hibbert	Fulton	Adams	Frier ret to AppDiv; EOA, viewed Clerk's	3/31/2008
283	Miller, Tonya	05SC31749		Rodgers	Fulton	Adams	M/AMNT filed 1/03/09	
284	Mincey, Maurice	09DR-0045	Contraband	Rodgers/Triestmann	Dooly	Fridgen	Tscript rec'd 10/13/09	09/23/09
285	Moody, Deondre	2007-CR-1176		Johnson	Columbia	Blanchard	Hg MNT 9/4/09	6/16/2008
286	Moon, Clifton	SU-06-CR-05025		Horsley	Clarke	Jones	08/25/08; Client Ltr w/MNT 08/26/08	3/31/2008
287	Moore, Calvin	04-CR-147		Edwards	Tift		transcripts (lengthy) Looking for Expert	4/8/2008
288	Moore, Demetric	1B05CR563T	Rape	Cleft (FY2010)	Bulloch	Harvey	Pending MNT	04/21/09
289	Moore, Ikeem (SB440)	2006RCR323	SB440: Agg Sod	Johnson (FY2010)	Richmond	Annis	Pending MNT	
290	Moore, Marland	07SC62497		In House	Fulton	Manis	Pending MNT	7/2/2008
291	Morgan, Eddie	06R-570B		Lane	Spalding		Call Clerk re client	
292	Morris, Steve	09CR90	Chl mol	In House	Toombs	Palmer	Pending MNT	10/14/09
293	Morris, Willie	04SC22321		In House	Fulton	Lane	EOA 09/16/08; Pending MNT	11/12/2007
294	Morrison, Jarvis	2005-CR-333A		Erickson	Hall	Fuller	Brief filed 3/12/09	6/2/2008
295	Muckle, Virginia	03SC2389		Erickson	Fulton	Russell	yet to sign order; Judge Russell a no	5/8/2008
296	Muder, Jason	06-CR-01203		Little	Floyd	Colston	10/27/08; 09/05/08 hearing cancelled in	4/22/2008
297	Mullis, Barry	JE 9CR32	Arm Rob	Shea (FY2010)	Jefferson	Reeves	Pending MNT, Eoa 13Oct09	08/25/09
298	Nations, David	07CR31-LA		Horsley	Towns	Alderman	Hg 4/20/2009	7/10/2008
299	Neal, Eugene	07SC54343	Murder	In House	Fulton	Goger	Pending MNT	1/22/2009
300	Nelson, Jurdis	07SC58547	Rape; Agg Sod	In House	Fulton	Shoob	Pending MNT	07/31/09
301	Nelson, Samuel	2005CR284		Back to CPD	Tift	Reinhardt	MNT granted June 2009	3/12/2008
302	Newsome, Mark	07SC58554		In House	Fulton	Newkirk	Pending MNT	6/12/2008
303	Nicely, Willis	2006-CR-313-LA		Horsley	White	Alderman	Hg 2/20/09	11/12/2007
304	Norris, Damien	07SC59248	Mur	In House	Fulton	Baxter	Pending MNT	07/31/09
305	Obie, Zaccheus	09SC79934	Plmping	In House	Fulton	Manis	Pending MNT	07/21/09
306	Oglesby, Rafeal	SU05CR0396	Bat	In House	Clarke	Stephens	Pending MNT	04/08/09
307	Oliphant, Marcus	06CT-R816		In House	Carroll	Blackmon	Pending MNT	7/24/2008
308	Orengo, Michael	08SC67430	Rape	In House	Fulton	Russell	Pending MNT	05/12/09
309	Osorto-Aguilera, Adrian	06 CR 2558-1	Child Mol	In House	DeKalb	Castellani	move on MNT; Pending MNT	08/18/09
310	Pardon, Anthony	07CR01844; 45	F to Reg SO	In House	Floyd	Durham	Pending MNT	
311	Parker, Dewayne Lejon	06R-669CB		Lane	Spalding	Caldwell	rescheduled, transcript not available	6/2/2008

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312	Parks, William	08R-034		Edwards	Crisp	Chasteen	Pending MNT	2/3/2009
313	Patrick, Mannoletto	05SC25898	Arm Rob	In House	Fulton	Lane	Pending MNT	07/31/09
314	Patterson, Charles	07SC60221	Arm Rob	In House	Fulton	Bedford	Pending MNT	04/24/09
315	Payne, Kevin	07CR02586		Little	Floyd	Matthews	12/03/08	7/3/2008
316	Pelowski, John	2006-CR-12274		Rodgers/Bonner	Newton	Johnson	Pending order	5/23/2008
317	Pendley, Daniel	2005CR-801	Chi Mol	Trishmann (FY2010)	Glimer	Bradley	EoA, CD of tscript on file	06/23/09
318	Perdue, Shawn	09RCCR144	Murder	In House	Richmond	Brown	Pending MNT; Mot Cont 7/27/09	10/14/09
319	Perkins-Grubbs, Jairo	07CR937A		Horsley	Hall	Fullet	to file NOA	
320	Perry, Benjamin	08CR17857	VGCSA	In House	Chattooga	Graham	Pending MNT	07/27/09
321	Porter, Stanley	01SC10549	Moi; Crty Chld	Rodgers	Fulton	Bedford	COA affirmed 9/21/09	02/13/09
322	Porter, Jr., James	M	Tft x Taking	Lane (FY2010)	Henry	McGarly	NOA filed (???)	04/15/09
323	Powell, Lerone	07CR4537-2		Hibbert	DeKalb	Hancock	AMNT	
324	Powell, Marquez	05SC34927	Murder	In House (CG)	Fulton	Arrington	Pending MNT	10/22/09
325	Prescott, Elliott	05SC31821		Little	Fulton	Westmoreland	EoA 09/16/08; Pending MNT	4/3/2008
326	Preval, Silvano	2007-CR-383-M	VGCSA	Wang	Henry	McGarly	Brief filed 08/31/09	2/26/09
327	Puckett, Jeremy	2008 CR 345 A	Child Molestation	In House	Hall	Fuller	Pending MNT	07/19/09
328	Pullen, Charles	07RCCR1739		Johnson	Richmond	Overstreet	set and continued	3/31/2008
329	Ramirez, Carlos	07CR0839		Wang	Clarke	Sweat	Htg rescheduled 10/02. AMNT filed.	9/4/2008
330	Randall, Sheila	99-CR-1382		Lamb	Muscogee	Pullen	Brief of Appellant filed Sep 30, 2009	3/6/2008
331	Reed, Christopher	09CR0065	1X1	In House	Jackson	Barrie	Pending MNT, Tscript ord 9/23/09	10/02/09
332	Reese, William	08CR4670	Bur	In House	Fulton	Barrie	Pending MNT	10/20/09
333	Reynolds, Shareef	07SC58554		In House	Fulton	Overstreet	Pending MNT	05/07/09
334	Rhodes, Earnest	2008-RCCR-0591		Johnson	Richmond	Overstreet	Htg MNT 8/31/09	5/20/2008
335	Richardson, Corey	08R110	Chi Mol	Wolinski (FY2010)	Grady	Cato	Pending MNT	08/25/09
336	Riles, Kim Leroy	09CR56A		conflict)	Emanuel	Palmer	Pending MNT, Tscript rec'd 10/08/09	9/2/09
337	Rivers, Dannie	06SC41532		Little	Richmond	Lane	EoA 9/19/08; Pending MNT	4/29/2008
338	Roberts, Paul	2008SUCR871M	Burglary	In House	Henry	McGarly	call 678-610-6624 Scott Key when appt	11/12/09
339	Robertson, Antonio	06CR935J		Rodgers	Hall	Oliver	Order granting OOT 10/02/09	6/26/2008
340	Robertson, David	05SC29666	Rape	In House	Fulton	Glanville	Pending MNT (Tscript ordered 7/21/09)	09/09/09
341	Robinson, Carlos	A	VGCSA	Lane (FY2010)	Henry	Amero	Pending MNT	02/26/09
342	Rolland, Maynard	06SC39647		Rodgers	Fulton	Brasher	Pending order	5/15/2008
343	Roper, Shelbert	08RCCR1224		Cliett (FY2010)	Richmond	Annis	Pending MNT	08/10/09
344	Roscoe, Maurice	2007-RCCR-0591	Murder	Johnson (FY2010)	Richmond	Annis	Pending MNT	10/16/08
345	Ross, Tony	07SC62599		In House	Fulton	Shoob	See CTF	1/22/2009
346	Rouse, Steven	SU07CR545		In House	Muscogee	Peters	Pending MNT	
347	Royal, Arthur	09CR046	VGCSA	Walinski (FY2010)	Decatur	Cato	Pending MNT	05/19/09
348	Rozier, Aljarreau	2007CR175	VGCSA	Lane (FY2010)	Putnam	Wingfield	Pending MNT	06/02/09
349	Russell, Andre	08SC64072	Hij MV; Arm Rob	In House	Fulton	Johnson	Mot Cont filed 2/12/09	02/26/09
350	Russell, Gregory John	18782	Murder	In House	Gordon		Pending MNT	12/22/08

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351	Sanders, Richard	07SC63028	Mal Mur	In House	Fulton	Adams	Pending MNT	07/31/09
352	Sanford, Otis	05SC32269		Frier	Fulton	Manis	Picked up TS	5/7/2008
353	Saxon, Adam	05SC37311		Frier	Fulton	Goger	Atlanta CPD office; Picked up TS;	1/4/2008
354	Scales, Donald	07SC57759		Frier	Fulton	Arrington	Picked up TS	3/24/2008
355	Scarborough, Jimmy	08RCCR1305	Exploitation Childr	Johnson (FY2010)	Richmond	Brown	Pending MNT	07/06/09
356	Schneider, John	07-R-11653	Terr Tht	Rodgers	Liberty	Rose	EoA 08/26/09 pending docketing @ COA	08/6/09
357	Scott, Mark	JFL002		Trishmann	Floyd	Matthews	CoA 9/10/09 brief to be filed; MNT hrg	4/22/2008
358	Scott, Mica	2005CR029		Edwards	Tift	McCorvey	MNT held 1/15/09, Mot hrg 2/26/09	5/13/2008
359	Scott, Thomas	SU04CR2298		Lamb	Muscogee	Pullen	Pending ruling on MNT	
360	Sealey, Vernard	06SC45606		Frier	Fulton	Schwall	Viewed PD's file; Contacted CR order TS	6/11/2008
361	Searcy, All	08CR1661-2	Burglary	(conflict)	DeKalb	Hancock	Pending MNT	10/27/09
362	Sharpe, Theodore	08-RCCR-1087		Johnson (FY2010)	Richmond	Blanchard	Pending MNT	1/28/2009
363	Shindorf, James	07CR294		Rodgers	Bartow	Smith	Pending order	5/22/2008
364	Shivers, Tony	06CR2892-5	Felony Murder	Rodgers (Huggins)	DeKalb	Adams	GA Sup Ct brief filed 07/16/09	04/02/09
365	Shuler, Jarnario	07CR126		Edwards	Decatur	Cato	defreq transcripts. Rec'd dis and mot	7/7/2008
366	Simmons, Artez	07SC70151	Murder	In House	Fulton	Goger	Pending MNT	07/31/09
367	Simmons, Joseph	01-R-153		Edwards	Grady	Cato	Appeal pending. All briefs filed	9/11/2008
368	Sims, Rico	06SC42029	Murder	In House	Fulton	Manis	Pending MNT	05/11/09
369	Singleton, Alajuwon	2008RCCR1337	Arm Rob	In House	Richmond	Blanchard	days	10/23/09
370	Smallis, Shaheem	W	Arm Rob	Lane (FY2010)	Henry	Crumbly	NOA filed	04/15/09
371	Smith, Akeem	07CR4194-4		Trishmann	DeKalb	Flake	MNT hrg 06/19/09	4/16/2008
372	Smith, Antoine	09SC77856	Rape	In House	Fulton	Adams	Pending MNT	07/31/09
373	Smith, Dewayne	07-RCCR-1796	Child Mol	Johnson (FY2010)	Richmond	Annis	Pending MNT	10/27/08
374	Smith, Donald Frank	06SC47810		Rodgers	Fulton	Goger	03/09/09	9/9/2008
375	Smith, Luther	08SC74172	Fel Mrd	In House	Fulton	(Campbell)	Pending MNT	08/10/09
376	Smith, Lyjuan	07RCCR1371	Arm Rob	Clett (FY2010)	Richmond	Annis	Pending MNT	08/10/09
377	Smith, Robert Frank	07CR-270	VGSCA	In House	Ben Hill	Chasteen	9/8/09	07/16/09
378	Smith, Shirlene	07CR37904		Wang	DeKalb	Flake	NOA filed. Awaiting docketing	2/11/2008
379	Smith, William	2006SUC3115195	Burglary	In House	Dougherty	Marshall	Pending MNT	10/26/09
380	Souder, Jacques	06SC48480		Frier	Fulton	Russell	Hearing set 11/13/08	7/2/2008
381	Sparks, William	07SC55644		Frier	Fulton	Roberts	Hearing set 01/05/09	8/25/2008
382	Spencer, Gary	06SC51197		Frier	Fulton	Manis	Picked up TS	7/2/2008
383	Starling, Alfred	2008CR177		Wolinski (FY2010)	Randolph	Bishop	Pending MNT	08/24/09
384	Steed, Gary	17183		Trishmann	Gordon	Nelson	NOA 5/29/09	5/19/2008
385	Stephens, Steven	07SC63192	Child Mol	In House	Fulton	Adams	Pending MNT, T'script here 4 vol.	09/25/09
386	Stewart, Corsen	07-SC-55883	Rape	In House	Fulton	Arrington	Pending MNT	07/27/09
387	Stewart, Dontavia (juv)	A09A2158	D W	Rodgers	DeKalb	Peagler		07/15/09
388	Stincell, James	06R141	Child Mol	Wolinski (FY2010)	Dougherty	Marshall	T'script read	07/29/09
389	Stratacos, Steve	SU07CR0842		Horsley	Clarke	Sweat	Hearing 4/08/09	3/31/2008

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390	Strowbridge, Jacodi	054-2007-JR-113	Lane	Evans	Brinson	Pending MNT	4/10/2008
391	Sirozier, Darryl	95-R-3447	Rodgers	Coweta	Keeble	MNT pending filing	10/29/2007
392	Stibbs, Derrick	08CR0020 & 21	In House	McDuffie	Dunaway	Pending MNT	10/14/09
393	Sumlin, James	08SC73643	In House	Fulton	Arrington	Pending MNT, T'script here 9/23/09	1/22/2009
394	Swindle, Bernard	03SC09474	In House	Fulton	(Long)	Pending MNT (t'script here)	09/09/09
395	Tabb, James	2007CR286B	Horsley	Hall	Gosselin	Client ltr w/MWGP 08/27/08	7/2/2008
396	Taylor, Courtney	2008-CR-132	Arson	Tift	Johnson	Pending MNT	08/28/09
397	Taylor, Curtis	07-R-11513	Child Mol	Liberty	Stewart	chambers to req t'script ;NOA filed	08/12/09
398	Teasley, Emory	05CR1404X	Mal Murder	Barrow	Motes	Pending MNT	04/20/09
399	Terrell, Fernando	SU07CR2057	In House	Clarke	Stephens	Pending MNT	
400	Terry, Fredrick	08SC69183	Murder	Fulton	Russell	Pending MNT	04/07/09
401	Testamack, Sherard	07C-53655	In House	Fulton	Arrington	Pending MNT	1/22/2009
402	Thomas, Arthur	07SC63397	Arm Rob	Fulton	In	Pending MNT	
403	Thomas, Chris	SU07CR030	Johnson	Efingham	Peed	MNT 11/18/08. Order pending	4/9/2008
404	Thomas, Marco	07SC55564	Frier	Fulton	Bedford	file	
405	Thomas, Marcus	08RCR70	Arm Rob	Richmond	Brown	Pending MNT; Mot Cont 9/22/09	10/14/09
406	Thompson, Jimmie	08CR578-10	Burglary	Dekalb	Barrie	Pending MNT	08/13/09
407	Thompson, Michael	2008-SU-CR-515	In House	Catoosa	Wood	Pending MNT	08/10/09
408	Thornton, Courtney	2008CR797-1	In House	Newton	Benton	Pending AMNT hrg	06/24/09
409	Thornton, Robert	2008R318	Lamb	Troup	Keeble	Brief filed 6/29/09	9/5/2008
410	Thrasher, Larry	07CR570	Horsley	Floyd	Bovett	09/17/08 hearing continued pending	7/8/2008
411	Tidwell, Billy Joe	07CR02041	Wang	Floyd	Goger	AMNT file ; MNT hrg 1/09/09	9/3/2008
412	Talbert, Ricky	06SC45628	Back to CPD	Fulton	Crumbley	MNT granted 15Oct09	6/19/2008
413	Tookes, Charles	05SC36729	Arm Rob	Henry	Bedford	Hrg reset for Jan 6, 2010 @ 9; NOA filed	04/15/09
414	Toro, Elizier	08SC74820	Frier	Fulton	Glanville	Picked up TS; Viewed Clerk's file	8/18/2008
415	Trammel, James	2005CR7435	Rodgers	Fulton	Oliver	Interlocutory Appeal; brief filed	05/11/09
416	Truelove, Paul	07-CR-401	McCann	Hall		Pending MNT	9/4/2008
417	Turner, Daniel Lee	08RCR0109	In House	Meriwether		Pending MNT	06/02/09
418	Turner, Marcus	08RCR0109	Bur, Agg Asit	Richmond	Brown	Pending MNT; Mot Cont 9/14/09	10/14/09
419	Tye, Cortez	08SC65845	In House	Fulton	Johnson	Pending MNT (t'script ordered CG)	09/09/09
420	Usher, Terry	08-CR-221	Arm Rob	Jefferson	Reeves	Briefing order 6/2/09 due in 21 days	06/09/09
421	Valladares, Jorge	08RCR1683	In House	Richmond	Blanchard	Hrg set 11/17/09	10/07/09
422	Vanstavern, Joseph	07CR1217	Wang	Carroll	Duffey	Pending MNT. Trial t'script reviewed.	
423	Vaughn, Danatavious	04SC21602	Hibbert (FY2010)	Fulton	Lane	Pending MNT	06/08/09
424	Vaughn, Terry	07CR3176-7	Bonner	Dekalb	Coursey		
425	Vazquez, Antonio	07CR22052	Lane	Jones	Parrott	Pending MNT reset for Mar 5, 2009	1/28/2009
426	Walker, Rico	108CR015B	Cifert (FY2010)	Jenkins	Peed	Pending MNT	
427	Walker, Zerrick	04SC13673	In House	Fulton	Brasher	Pending MNT	08/21/09
428	Wallace, Corey	05SC33651	Wang	Fulton	Brasher	Pending MNT (T'script rev in process)	03/26/08

Appeals Active Cases
as of 11/23/2009

429	Waller, Jeremiah	A09A0358	Bonner	Decatur	Cato	Appellant's Brief filed 09/18/08 set for Nov. 2, 2009 in Dade County	09/26/08
430	Walfin, Grady	07CR00295	Triesmann (FY2010)	Dade	Connelly	Hrg 7/30/09. Awaiting ruling on MNT.	12/13/2007
431	Walters, Lamont	2006R-265-B	Wang	Spalding	English	Brief filed 10/13/09	1/28/2008
432	Ward, Lavalis	07-CR-1685	Rodgers	Whitfield	Bovett	Pending AMNT	4/23/2008
433	Ward, Maurice	07SC53381	In House	Fulton	Newkirk	Pending MNT	10/07/09
434	Ware, Gregory	06SC50266	In House (CG file)	Fulton	Downs	Pending MNT	04/23/09
435	Washington, Kenneth	2007-SU-1449-3	In House	Newton	Ozburn	Pending MNT	
436	Watkins, Derrick	07CR00704A	9/2009)	Floyd	Matthews	Pending MNT	
437	Watkins, Billy	08CR17792	In House	Chattooga	Connolly	Pending MNT	04/07/09
438	Watkins, Derrick	06CR2244-6	In House	DeKalb	Becker	(Greenberg)	10/20/09
439	Watson, Christopher	Z93954	In House	Fulton	Dempsey	Pending MNT	08/21/09
440	Watson, Derrick	07CR-1067-2	In House	Walton	Ott	Pending MNT	07/13/09
441	Watson, Matrix	05SC30805	Frier	Fulton	Baxter	Viewed Clerk's file; Picked up TS	11/6/2007
442	Watts, Eugene	05SC36432	Frier	Fulton	Lane	Picked up TS; Hearing set for 12/05/08	
443	Wesby, Tyrone	06RCCR1338	Johnson	Richmond	Overstreet	CoA A09A223 docketed 7/22/09	4/23/2008
444	Westbrook, Mario	SU08CR0072	In House	Clarke	Stephens	Pending hearing 05/15/09	02/12/09
445	Wheeler, Gregory	09CR00007	In House	Floyd	Durham	Pending MNT (t'script here)	09/09/09
446	Wheeler, Martin	07R-50	Edwards	Grady	Cato	Pending MNT	1/28/2009
447	White, Adrian	04SC23382	Wang	Fulton	Adams	Pending MNT. Trial t'script reviewed.	5/7/2008
448	White, Bobby	07CR4915-4	In House	DeKalb	Flake	picked up)	09/1/09
449	White, Cornelius	05CR4732-9	(Dominguez)	DeKalb	Scott	to move on MNT; Pending MNT	2/26/2008
450	White, Darryl	07SC55775)	In House	Fulton	Russell	Pending MNT; Case file rec'd 10/20/09	03/16/09
451	White, Darryl	08-R-058	Edwards	Mitchell	Cato	transcript and order	
452	White, Joseph	05SC35769	Frier	Fulton	Baxter	Viewed Clerk's file; Picked up TS	6/2/2008
453	White, Michael	07CR-1067-2	In House	Walton	Ott	Pending MNT	09/10/09
454	Wilcher, Travis (Tavaris)	2007-RCCR-933	Johnson	Richmond	Blanchard	MNT 8/1/09	1/8/2008
455	Wilder, James Glenn	05CR3630	Wang	Paulding	Beavers	Pending MNT	
456	Wilkinson, Wallace	07CR117	Johnson (FY2010)	Candler	Reeves	Pending MNT	05/12/09
457	Williams, Diego	05SC36715	Hibbert	Fulton	Baxter	AMNT	2/6/2008
458	Williams, Adam	08CR-1003	Wolinski (FY2010)	Lowndes	Altman	Brief filed	06/22/09
459	Williams, Anthony	08-1680	In House	Barlow	Smith	asked to file direct appeal. Later raised	10/16/09
460	Williams, Gregory	07CR234	Wolinski (FY2010)	Decatur	Cato	07/15/09	07/15/09
461	Williams, Gregory	2007CR090	Wolinski (FY2010)	Miller	Lane	Pending MNT	08/21/09
462	Williams, Oliver	05CRR246	Lamb	Coweta	Blackmon	Brief of Appellant filed Sep 18, 2009	9/5/2008
463	Williams, Sr., Arthur C.	08CR745	In House	Columbia		Pending MNT (Case file rec'd 9/15/09)	09/11/09
464	Willis, Derrick D.	06RCCR749	In House	Richmond	Jolly	TS ordered 11/02/09, Pending MNT	11/13/09
465	Wilson, Anthony	07CR22062	In House	Fulton	Goger	Pending MNT	1/13/2009
466	Wilson, Ernest	05CR10-290	Lane	Jasper	Parrott	clerk. GCIC, ordered clerk's file, email to	3/31/2008
467	Wilson, Ramsey	2005-CR-320	Lane (FY2010)	Tift	Simpson	Pending MNT	04/28/09

Appeals Active Cases
as of 11/23/2009

468	Wilson, Richard	07CR22062	Burglary	Lane	Jones	Wingfield	Pending MNT	
469	Woods, Stanley	05SC34723		Frier	Fulton	Baxter	Viewed Clerk's file; Picked up TS	
470	Works, Robert	06CR4934-8		Frier	DeKalb	Hunter	Picked up TS; Viewed Clerk's file	5/1/2008
471	Wright, Darnell (Kourtney)	04SC15283	Arm Rob	In House	Fulton	(Campbell)	Pending MNT	08/20/09
472	Wright, Japhus	08CR00100B		Rodgers	Floyd	Matthews	Pending order	8/13/2008
473	Wyatt, Michael	07SC57870	Rape	In House	Fulton	Shoob	Pending MNT, T'script here	3/31/2008
474	Young, Brandon	1B06CR365B-P	Agg Asit	Johnson (FY2010)	Bulloch	Peed	Pending MNT	04/24/09
475	Young, Delvin Demise	98-CR-374-A		Rodgers	Heil	Fuller	On hold pending cert issue	
476	Young, Kambj	2008CR1204	Murder	In House	Columbia	Blanchard	cert mail on 10/06/09	09/18/09

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Appellate Division Report – December 2008

As of December 31, 2008, the Division had a total of 249 cases.¹ The following is a summarized breakdown of information regarding those cases for the month of December:

- At the close of the month, outside contract attorneys were handling 109 active cases.
- The remaining 140 cases are being actively handled by our 2.5 in-house attorneys (and one paralegal) or are being monitored as a part of our backlog.
- There were 75 cases in the Division's backlog.
- During December, in-house attorneys represented clients at five separate hearings on motions for new trial and one hearing on the status of clients who had not been assigned counsel to actively work on their cases.

I have several notable observations regarding the appeals handled by this Division between July 1, 2008 (the start of the fiscal year) and December 31, 2008:

- As of the end of the first six months of this fiscal year, the Appellate Division has handled over 135% of the total conflict appeals identified in JCATS in all of the 12 months of 2007.
- Within those six months, the Division has received a total of 263 cases, and closed 17 of those cases. The appellate process generally takes anywhere from six months to two years.
- Despite initial hopes, many attorneys across the state were unwilling to accept appellate appointments from us because of the time and efforts inherent in handling appellate cases, and the limited compensation the Agency was able to pay.
- As indicated in the November report, the deluge of cases pouring in under *Garland v. State* has created the predicted crisis. Despite the best efforts of our attorneys to handle more than the contemplated 25 "paper appeals"² we are receiving significant backlash from both local judges and clients, further complicating the management of an impossible case load.

As an example of the backlash we receive from judges, I was summoned to a show cause hearing in Judge Russell's courtroom in the Fulton Superior Court on December 18th, where I, along with Jim Bonner of this office and Assistant Attorney General DeBrae Kennedy, appeared. During the hearing, Judge Russell berated me as the representative of GPDSC for the agency's failure to promptly appoint attorneys to actively work on every client's case. She also vented her frustration with the ongoing failure of convicted defendants to receive attorneys immediately after being declared a conflict client. She notified me that from the date of the hearing, she would subpoena me to her court each time a post-conviction conflict defendant appeared without counsel, something that will become a full-time job as, I expect, more frustrated judges throughout the State follow this same path.

Our clients are also raising grievances regarding the delay in representation and our limited ability to investigate many of the *Garland* ineffective assistance claims. The Division consistently receives cases of the most difficult clients with the most serious offenses who are frustrated with their trial attorneys. The inability to move immediately on the client's case as soon as it is received in our Division aggravates the already explosive situation.

We appreciate any assistance you can provide in requesting Superior Court judges bear with this us during this tumultuous time for everyone involved in the justice system.

¹ A detailed breakdown of the cases is attached.

² Ethically and practically, national standards contemplate that a lawyer can effectively handle only 25 appeals during a year. That number is based on handling only appeals where—as is *not* the case in Georgia-- there is no further investigative work to be done and the only actions necessary are to review the fixed record of the proceedings, research the law and file a brief at the appellate court.

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**GPDSC APPELLATE ADVOCACY DIVISION
2008 ANNUAL REPORT**

The Appellate Advocacy Division (“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. Additionally the Division has primary responsibility for appellate litigation and legal research across the state.

The case load of the Division has exploded since *Garland v. State* was decided on February 25, 2008 and created an automatic right to new counsel when a defendant raises a claim of ineffective assistance of counsel. As a result of this explosion and of the issues explained below, the indigent appellate process in general and our Division in particular have logjammed. The tremendous impact of *Garland* becomes obvious when we note that in 2007, there were 181 new indigent conflict appeals reported statewide. In 2008, the Appellate Division alone received 266 cases of these cases, an increase of over 135% of the 2007 total.

The rate of cases sent to the Division under *Garland* has rapidly increased while the resources to handle those cases did not. In March, the Division had 75 cases distributed among five attorneys. By the end of October, it had 205 felony conflict appeals divided among a reduced staff of two full-time attorneys, one part-time consultant, one paralegal and eight contract attorneys. At the end of November, the Division was responsible for 235 cases. On December 31st, the Division had a total of 249 cases.

The Division has contracted with attorneys from across the State to assist in handling these cases and reducing the cost of travel.¹ Three of our contract attorneys have contracts for 20 pending cases and are located in the metro-Atlanta area. Each of those contracts was filled by the end of 2008. The other five attorneys are spread throughout the remainder of the state and have contracts for 15 pending cases. Of those five attorneys, only two had slots still available at the end of the year in their contracts to take up to two non-complex cases in their local area. The entirety of the remaining cases transferred to the Division is handled by its 2.5 attorneys.

The cases we handle vary in complexity as well as geography. Almost one-half of our cases involve murder or assault and roughly one-fifth involve rape or child molestation. The remaining cases range from mortgage fraud to illegal possession of drugs to aggravated stalking.

¹ Despite initial hopes, many attorneys across the state were unwilling to accept appellate contracts from us because of the time and effort inherent in handling appellate cases, and the limited compensation available from the Agency.

These cases are pending before courts throughout six of Georgia's 10 judicial districts. The widespread location of our cases creates significant problems for us in scheduling hearings, investigating cases, and responding to frustrated judges, frustrated clients and frustrated citizens.

Ethically and practically, national standards contemplate that a lawyer can effectively handle only 25 appeals during a year. This 25-appeals standard is deceptive, however, because it encompasses "paper" cases that entail only reading the record, researching the law, and writing a brief. In Georgia, however, most appeals begin with a motion for a new trial and Georgia requires ineffective assistance of counsel claims - the very sort which *Garland* involves - to be raised during this stage. Virtually every appeal we get requires a fact-intensive investigation, travel, and an evidentiary hearing. We have no investigative arm, however, requiring our few lawyers to divert to tasks which non-professionals could do.

As a result of these factors, our Division has passed the crisis point and has a backlog of over 70 cases whose clients have no active appellate counsel. In December, the Division Director was subpoenaed to court to explain the lack of counsel for three defendants. The court ultimately issued an order in two of those cases finding that the State had denied the defendants their right to counsel. With the limited current resources, we expect to see more of these orders.

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Appellate Division Status

Overview:

Under *Garland*, new ineffective assistance of counsel cases have exploded.

In March, the Division had 75 cases distributed among five attorneys. By the end of October, it had 205 felony conflict appeals divided among a reduced staff of two full-time attorneys and one part-time consultant. As of November 30th, the Division was responsible for 235 cases, not counting four which were resolved that month. Eight contract attorneys are handling 109 of these, leaving 126 for the staff.¹ Each week, we receive three to four new cases and the number is growing. The tremendous impact of *Garland* is even more obvious when we note that JCATS reflected a total of 181 new conflict appeals filed in 2007. We have not reached the end of this year and our Division alone is handling 130% of last year's overall filings.

As a result of this explosion and of the issues explained below, our Division in particular has passed the crisis point. We have begun, justifiably, to receive backlash from both local judges and clients frustrated with inevitable delay.

Contract cases:

Under the current fiscal year budget reductions, we only filled eight of the intended ten contract positions. Our contract caseloads are weighted by case complexity. Thus, an 8-volume murder case will be weighted as 2 cases for contract purposes. Three of our contract attorneys have contracts for 20 pending cases and are located in the metro Atlanta area. Each of those contracts is full. The other five attorneys are spread throughout the remainder of the state and have contracts for 15 pending cases. Of those five attorneys, only two have space on their contracts to take up to two non-complex cases each arising in their geographical areas.

In-house cases:

The remaining 126 cases are handled by me [the Director], one full-time attorney and one part-time attorney. 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. This 25-appeals standard is deceptive, however, because it encompasses "paper" cases that proceed on fixed records and entail only reading the record, researching the law, and writing a brief. In Georgia, by contrast, most appeals begin with a motion for a new trial and Georgia requires IAC (ineffective assistance) claims—the very sort which "conflicts" cases to our Division—to be raised during this stage. Virtually every appeal we get thus requires a fact-intensive investigation, travel, and often an evidentiary hearing in addition to reading the record, researching the law, and writing a brief.

Source of cases:

There are several reasons for the rapid increase in *Garland* case numbers. First, many clients naturally raise IAC claims when they are convicted because they are disappointed and feel their attorneys' failure to obtain an acquittal *ipso facto* was ineffective representation. Under *Garland*, these clients automatically receive new counsel without any regard for whether they actually state an IAC claim as a matter of law or fact. Another reason, however, is that the conflicts policy which *Garland* imposed has become a caseload-management tool for overloaded

¹ A detailed breakdown of the cases is attached.

front-line lawyers, for difficult clients, and for cases containing no viable issues. Many lawyers in fact encourage their clients to raise IAC claims not because they believe that there is such a claim but because it means that the appeal will go elsewhere. These cases must come to our Division, and they often come with unsustainable client expectations about IAC claims which result in client relations problems.

Geographical distribution of in-house cases:

The cases handled by our staff attorneys are far flung throughout the state, representing six of the 10 judicial districts. For example, our in-house cases include a juvenile case in Whitfield County, a kidnapping and rape case pending in Effingham County and a murder case in Terrell County.

The widespread nature of our cases creates significant problems for us in scheduling hearings, investigating cases, and responding to frustrated judges and to frustrated clients, their families and their trial counsel. We have no investigative arm, requiring our few lawyers to divert to tasks which non-professionals could do. Just recently, I was subpoenaed to be in Hall County Superior Court to testify as a witness as Director of the Appellate Division on the same date that I had a hearing for another client in Fayette County – almost 81 miles away. I was able to resolve this conflict with some scrambling but I know that this type of situation will arise again with increasing frequency. While this Division must consider the management of cases on a statewide bases, the courts in each jurisdiction are rightfully focused on their caseloads and are not pleased when advised that we can not get to their cases first.

Complexity of cases:

The Division attorneys consistently receive the most difficult clients with the most serious offenses. In October, 39% of our cases involved murder or assault and 14% involved rape or child molestation. At the end of November, 42% of our cases involved murder or assault and 16% involve rape or child molestation. The complicated nature of these cases and the necessity to evaluate the claims of IAC require a significant commitment of time and investigation, often in inconvenient venues. With only two and one-half staff attorneys and one paralegal, we are severely limited in our ability to adequately investigate these cases. Our efforts to obtain investigative help from local PD offices have been mainly futile as the investigators are already overburdened with ongoing trial investigations.

Possible solutions:

Until our budget allows for increased staff attorneys or contract positions, we would revive a prior suggestion that circuit PD offices swap *Garland* cases among adjacent offices where feasible. This measure will not eliminate the cases coming to this office (or resolve our existing caseload) but it might reduce the growth of our backlog by removing the “caseload-management” incentives which now are artificially driving up the number of cases transferred here. It would also direct these cases to where the lawyers are. We are eager to work with the CPD offices to facilitate this switch pending a real solution to this problem. Any other practical solutions are welcome, as well.