

August 18, 2022

Via Email

Omotayo B. Alli, Executive Director
Georgia Public Defender Council
270 Washington Street, Suite 6079
Atlanta, GA 30334
oalli@gapubdef.org

Re: Failure to provide C-3 conflict counsel

Dear Director Alli,

We write to notify you of our concern that the Georgia Public Defender Council (GPDC) is failing to provide C-3 conflict counsel to potentially hundreds of accused persons across Georgia, in violation of their right to counsel under the United States and Georgia Constitutions and Georgia's Indigent Defense Act. Under GPDC's present system, accused persons can wait years to receive an attorney, impairing their right to a fair and speedy trial, while those who cannot afford bond suffer the additional harm of indeterminate pretrial incarceration. We accordingly ask that you take immediate steps to correct this systemic problem by retaining and adequately compensating qualified attorneys for conflict cases.

As you are aware, accused persons in Georgia are entitled to effective, conflict-free counsel at the government's expense if they cannot afford to hire their own attorney. *See* U.S. Const. amend. VI; Ga. Const. art. I, § 1, ¶ XIV; *Gideon v. Wainwright*, 372 U.S. 335 (1963); *Wood v. Georgia*, 450 U.S. 261, 271 (1981); *Edwards v. Lewis*, 283 Ga. 345, 348 (2008). Under Georgia law, GPDC is responsible for fulfilling this constitutional mandate by "assuring that adequate and effective legal representation . . . is provided to indigent persons" in criminal proceedings. O.C.G.A. § 17-12-1(c). GPDC is also responsible for "establish[ing] 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).¹ This includes "identifying conflicts of interest at the earliest possible opportunity," and contracting with attorneys who "have such experience or training in the defense of criminal cases as is necessary in light of the complexity of the case to which he or she is appointed." O.C.G.A. § 17-12-22(a)-(c).

GPDC is in breach of its clear and mandatory statutory responsibility with respect to potentially hundreds of indigent persons accused of crimes in multi-defendant cases across Georgia. For instance, dozens of individuals named in a massive Richmond County RICO indictment involving conspiracy to commit murder and trafficking charges are still awaiting

¹ *See also In re Formal Advisory Opinion 10-1*, 293 Ga. 397, 399 (2013) (public defender's office cannot represent co-defendants who have a conflict of interest).

the appointment of C-3 counsel over a year after their arrests in July 2021. And in Fulton County, dozens of individuals indicted under Georgia's RICO and Gang Acts have been languishing in jail for months, or sometimes years, because of the lack of C-3 representation; some are facing murder charges carrying a minimum sentence of life in prison. In many of these cases, public records show a pattern of C-3 counsel serially entering appearances and withdrawing over a period of years, leaving the accused effectively unrepresented in cases that could result in sentences as severe as life without parole. Indeed, the gravity of this situation recently prompted a Fulton County judge to contact the Fulton County Public Defender after "hearing horror stories about unrepresented defendants whose C 3 attorneys have been relieved or not replaced."²

The dysfunction of GPDC's conflict representation is also apparent from your agency's own public records. In March, our office sent GPDC an open records request that asked for, among other things, the names of all C-3 attorneys in the Atlanta Judicial Circuit, their assigned courtrooms, their caseloads, and a copy of their contracts. Although we received several hundred pages of documents in response, your office produced only *three* signed C-3 contracts. We did not receive even a list of C-3 attorneys, let alone information about their caseloads. We did, however, receive copies of numerous emails describing untenable caseloads in the Metro Conflict Defender Office and the alarming scarcity of C-3 attorneys.

The dearth of qualified attorneys willing to accept C-3 appointments in Georgia is unsurprising given the paltry compensation offered by your office. In a recent email asking private attorneys to represent dozens of individuals in a multi-defendant RICO case, GPDC offered fees up to \$5,100, with a \$1,000 bonus if the case goes to trial. Given the hundreds of hours required to effectively investigate and defend a complex RICO case, a private attorney appointed to one of these cases would likely lose money or, at best, earn minimum wage.

GPDC cannot reasonably expect to retain competent attorneys—and perform its mandatory statutory responsibility to provide effective, conflict-free counsel—with its current compensation scheme. Indeed, in *Flournoy v. State*, a lawsuit filed to compel GPDC to provide effective, conflict-free appellate representation, the court explicitly told your office that "financial arrangement[s] . . . that create[] an economic disincentive" for lawyers to investigate and adequately prepare their cases "raise[] the presumption of ineffectiveness." No. 2009-cv-178947, slip op. 32 (Fulton Cnty. Super. Ct. Feb. 23, 2010) (citation and quotation omitted). And a year before that, your office faced another lawsuit, *People Accused of Crimes and Their Counsel v. Crawford*,³ after it announced a plan to dismantle the Metro Conflict Defender Office and thereby deprive hundreds of clients of conflict-free counsel.⁴

² This was noted in an email your office produced pursuant to our March Open Records Act request.

³ No. 2008-cv-151884 (Fulton Cnty. Super. Ct. June 11, 2008).

⁴ This litigation preserved the Metro Conflict Defender Office.

Ltr. to O. Alli
August 18, 2022

The parallels between these cases and the present C-3 crisis are obvious, and they leave your agency vulnerable, once again, to litigation.

As the Georgia Supreme Court has observed, “the professional responsibility of lawyers to avoid even imputed conflicts of interest in criminal cases [] imposes real costs on Georgia’s indigent defense system, which continually struggles to obtain the resources needed to provide effective representation of poor defendants as the Constitution requires.” *In re Formal Advisory Opinion 10-1*, 293 Ga. 397, 400 (2013) (citation omitted). Nonetheless, “the problem of adequately funding indigent defense cannot be solved by compromising the promise of *Gideon*.” *Id.* at 401 (citation omitted). **GPDC must therefore remedy this constitutional crisis by taking immediate steps to retain and adequately compensate enough qualified C-3 attorneys to represent all accused persons who cannot be represented by their circuit defender due to a conflict of interest.**

To ensure that adequate steps are being taken to address this crisis, we ask that you do the following by close of business on August 25, 2022: (1) Provide us with a complete list of all individuals in need of C-3 counsel as of the date of this letter;⁵ and (2) provide us with your availability for a meeting sometime in the next three weeks to discuss a resolution. We look forward to your response.

Sincerely,

/s/*Christina Wilson Remlin*
Christina Wilson Remlin
Director, Impact Litigation Unit

/s/*Vanessa Carroll*
Vanessa Carroll
Senior Attorney

cc. Atlanta Judicial Circuit Superior Court Judges
Augusta Judicial Circuit Superior Court Judges

⁵ This request is made pursuant to the Georgia Open Records Act, O.C.G.A. § 50-18-70, *et seq.*