

**IN THE COURT OF COMMON PLEAS  
OF ALLEGHENY COUNTY, PENNSYLVANIA**

THOMAS DOYLE, et al.,	:	
	:	
Plaintiffs,	:	Civil Division
	:	
v.	:	Civil Action No. 96-13606
	:	
ALLEGHENY COUNTY SALARY	:	
BOARD, et al.,	:	
	:	
Defendants.	:	
	:	

**MOTION REQUESTING THAT DEFENDANTS EITHER BE DIRECTED  
TO COMPLY WITH THE TERMS OF THE CONSENT DECREE  
ISSUED IN THIS CASE OR BE HELD IN CONTEMPT**

**I. Introduction**

Although five years has passed since this Court issued a consent decree designed to change fundamentally the way the Allegheny Public Defender’s Office operates and delivers representation to its clients, Allegheny County and the Public Defender’s Office have failed to comply fully with its terms. Many public defender clients still do not have meaningful communications with their lawyers. They are still unable to obtain timely information about their cases. They are frequently confronted with plea agreements worked out by lawyers they have never met, and their right to a speedy trial is often waived without their consent. The charges against them are not investigated. Witnesses are not interviewed. Motions are neither prepared nor argued. Sentence mitigation possibilities are not explored.

It would be inaccurate to say that no positive changes have occurred in the Public

Defender's Office. A merit hiring system is in place. Fewer attorneys have private practices. Additional full-time attorneys, investigators and support staff have been hired. Most attorneys have computers. The Office has for the first time issued written practice standards. And it now provides some training.

However, serious practice problems that prompted the filing of this suit in 1996 persist. According to, among other things, Monitoring Reports produced by the Public Defender's Office in August 2002 and February 2003,<sup>1</sup> these problems can be traced to defendants' failure to:

- a. Model their written practice standards after national standards and design them to correct and preclude the development of deficiencies in the legal representation provided by the Public Defender's Office, as required by Consent Decree, ¶¶ 15-16.
- b. Require all attorneys to adhere to the practice standards, as required by Consent Decree, ¶¶ 15, 17-18.
- c. Implement a system of oversight and supervision that ensures that all attorneys and support staff adhere to the practice standards, as required by Consent Decree, ¶¶ 17-18.
- d. Ensure that all attorneys attend staff training programs on a regular and periodic basis, as required by Consent Decree, ¶¶ 21-22.
- e. Employ a sufficient number of full-time equivalent support staff, as required by Consent Decree, ¶¶ 2 and 3.
- f. Deploy attorneys to the various divisions throughout the Office in an equitable manner and provide attorneys with meaningful access to support staff, as required by Consent Decree, ¶¶ 5(B) and (C).
- g. Use investigators for traditional investigative services as opposed to determining the eligibility of potential clients for indigent defense services, as required by Consent Decree, ¶ 5(D).

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<sup>1</sup> These reports were produced pursuant to a Monitoring Stipulation signed by this Court on July 24, 2002.

Counsel for the plaintiffs have had numerous conversations with the Public Defender’s Office, the County Solicitor’s Office and the court-appointed mediator, W. Thomas McGough, in an effort to correct these deficiencies, but none has resulted in meaningful change. In light of this reality, intervention of the Court is needed to bring about full compliance with the decree in the areas outlined above, in either the form of a mandate that those provisions be complied with or a contempt citation.

## **II. Factual Underpinnings**

### **A. Failure to Conform Practice Standards to National Standards**

1. Paragraph 15 of the Consent Decree requires the Chief Public Defender to “develop written practice standards for attorneys and support staff in the Office to assist the Office in providing constitutionally and statutorily adequate representation to its clients.”

2. Paragraph 16 states that the standards shall be: “(A) modeled after national standards . . . ; and (B) designed to correct and preclude the development of deficiencies in the legal representation provided by the Public Defender’s Office in the full spectrum of its cases. . . .”

3. National standards governing the provision of indigent defense services emphasize (a) early substantive interviews with clients<sup>2</sup> and (b) early and thorough investigations into the charges against the clients.<sup>3</sup>

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<sup>2</sup> *National Legal and Defender Association Performance Guidelines for Criminal Defense Representation, Guideline 3.2* (“in preparing for the preliminary hearing, the attorney should become familiar with: . . . (3) the factual information which is available about probable cause”); *Guideline 3.2, commentary* (“[c]ounsel should learn as much as possible about the case as early as possible”)

<sup>3</sup> *NLADA Guideline 4.1* (“[t]he investigation should be conducted as promptly as possible”); *American Bar Association Standards for Criminal Justice, Prosecution and Defense Function, Standard 4-4.1* (“[d]efense counsel should conduct a prompt investigation . . . .”)

4. The national standards caution that a delay in the initial interview and the commencement of an investigation can hinder overall case preparation. Memories may fade. Witnesses may become unavailable for interviews. Valuable evidence or testimony may be lost.<sup>4</sup>

5. The Public Defender's Office practice standards, initially promulgated in late 2000 and later revised in 2002,<sup>5</sup> do not provide for early client interviews or investigations. Although the standards state that attorneys should interview clients "as soon as possible,"<sup>6</sup> they do not mandate such meetings or interviews prior to critical stages in a client's criminal proceeding. The initial attorney assigned to the case, a Pre-Trial Division Attorney, does not have to meet with clients prior to their probable cause (preliminary) hearing unless the clients are incarcerated and the Division's schedule permits.<sup>7</sup> After the probable cause hearing, the Pre-

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<sup>4</sup> *NLADA Guideline 2.2, commentary* ("[d]elay in the initial interview . . . can hinder overall case preparation, as memories fade, witnesses become unavailable for interviews, etc."); *NLADA Guideline 4.2, commentary* ("[d]elay in investigation may result in loss of potential evidence or testimony that would support a defense. . . . investigation may reveal information that could be utilized in plea negotiations, pretrial motions and motions concerning pretrial detention").

<sup>5</sup> Technically, the practice standards have yet to be finalized. The Public Defender's Office initially provided plaintiffs' counsel with draft standards in early 2000. By letter dated July 31, 2000, plaintiffs commented on those standards and by letter dated November 3, 2000, the Public Defender's Office provided plaintiffs' counsel with a "final" draft of the standards which incorporated many of plaintiffs' comments. With the August 2002 Monitoring Report, the Public Defender's Office produced standards that did not contain plaintiffs' requested modifications. When asked why it had amended the standards without prior notice to plaintiffs as required by paragraph 3 of the Side Agreement Between the Parties and the Union, dated May 14, 1998, the Public Defender's Office stated that it would review the August 2002 standards and report back to plaintiffs. Although the review was to have been completed in April 2003, plaintiffs have not been notified of the results. All drafts of the standards, however, fail to provide for meaningful client contact prior to critical stages and early investigations.

<sup>6</sup> Office of the Public Defender, Practice Standards, Aug. 15, 2002, Preamble, § IV (Streamlining and Simplifying Attorney Responsibilities) (attached as Exh. 1) at 2.

<sup>7</sup> Office of the Public Defender, Performance Guidelines for Criminal Defense Representation, Chapter 1, General Practice of Defense Representation (attached as Exh. 2), Guidelines 2.2 (B) and 2.2 (C) (Initial Interview).

Trial Attorney transfers the case to an Adult Trial Division Attorney who is not required to meet with the client until **after** the Pre-Trial Conference, the hearing which occurs between 60 and 80 days after arrest and at which a trial date is set and the client indicates whether he or she wants a jury.<sup>8</sup>

6. Although the practice standards state that pre-trial investigations are to begin “as promptly as possible,”<sup>9</sup> they substantially limit the scope of the investigation that may be conducted by the Pre-Trial Attorney during the first 60 to 80 days after arrest. Pre-Trial Attorneys may: (a) secure a general release from the client; (b) request investigative services for the retrieval of identified medical, education and employment records, 911 and video surveillance tapes, scene photographs, diagrams and maps; and (c) interview witnesses likely to be unavailable at trial.<sup>10</sup> They cannot explore the client’s mental and physical needs and capabilities, the client’s past criminal records, the client’s statements concerning the offense, and the client’s ties to the community, or begin to gather any of the other information necessary to develop an affirmative defense.<sup>11</sup> Such activities must await the assignment of an Adult Trial Attorney two to three months after the commencement of the case.

7. Repeated attempts by plaintiffs’ counsel to induce the Public Defender’s Office to amend its practice standards to eliminate these serious deficiencies have been unsuccessful.

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<sup>8</sup> Memo from Michael Machen to Adult Trial Division Attorneys, January 10, 2000 (attached as Exh. 3).

<sup>9</sup> Guideline 3.1 (A) (Investigation) Exh. 2 at 15.

<sup>10</sup> Guideline 3.1(B) (Investigation) Exh. 2 at 15.

<sup>11</sup> Guideline 3.1(C) (Investigation) Exh. 2 at 15; Guideline 3.2 (Formal and Informal Discovery) Exh. 2 at 17; Guideline 3.3 (Theory of the Case) Exh. 2 at 18.

**B. Failure to Adhere to Practice Standards Currently in Effect**

8. Paragraph 15 of the Consent Decree states that “[a]ll attorneys and support staff shall be expected to adhere to the practice standards for their positions.” The Public Defender’s Office is not taking the steps necessary to ensure that attorneys assigned to the Pre-Trial and Adult Trial Divisions follow the current, albeit defective, standards. In fact, anecdotal evidence suggests that these attorneys are not performing the basic tasks associated with the provision of constitutionally adequate legal representation.

9. During the past few months, plaintiffs’ counsel have been contacted by a number of public defender clients awaiting trial in the Allegheny County Jail. They report that:

- a. Neither Pre-Trial nor Adult Trial Attorneys interview their clients within the time periods (“as soon as possible”) or in the manner required by the standards’ Preamble and Guideline 2.2.<sup>12</sup> Instead, clients state that their initial meeting with their attorney is often immediately prior to a court hearing in the “bull pen” or outside the court room and lasts no more than a few minutes.
- b. Neither Pre-Trial nor Adult Trial Attorneys keep clients “reasonably informed about the status of a matter” or “promptly” comply with reasonable requests from clients for information as required by the standards’ Preamble and Guideline 1.1(B).<sup>13</sup> Clients report that attorneys ignore requests for information and that clients go for months without any contact.
- c. Pre-Trial Attorneys do not take necessary steps to ensure that Preliminary Hearings are conducted in a timely manner, as required by Guideline 2.3(A).<sup>14</sup> Clients relate that their attorneys often seek postponements because of the unavailability of court reporters.
- d. Pre-Trial Attorneys are not prepared to cross-examine or call witnesses at

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<sup>12</sup> Exh. 2 at 12.

<sup>13</sup> Exh. 2 at 10.

<sup>14</sup> Exh. 2 at 14.

Preliminary Hearings, as required by Guideline 2.3(F).<sup>15</sup>

- e. Adult Trial Attorneys do not develop overall defense strategies in consultation with clients prior to trial, as required by Guideline 6.5(A).<sup>16</sup> Instead, clients report, attorneys waive speedy trial rights, postpone trial dates, and enter into plea negotiations without first meeting and conferring with the client or obtaining the client's permission.
- f. Adult Trial Attorneys do not conduct investigations within the time period or in the manner required by Guideline 3.1.<sup>17</sup> Clients state that attorneys do not initiate an investigation into the charges against the client until a few days prior to the commencement of a trial. Some attorneys do away with the client interview altogether and simply send letters asking clients to outline a trial strategy.
- g. Adult Trial Attorneys do not seek the assistance of experts where experts are necessary to the preparation of the defense or to rebut the prosecution's case, as required by Guideline 3.1(C).<sup>18</sup> Experts are rarely used except in homicide cases.
- h. Pre-Trial Attorneys fail to interview clients accused of violating parole or probation prior to Gagnon I and Gagnon II hearings as required by Guideline 38.2.<sup>19</sup> Clients report that they languish in jail for weeks and months without any attorney contact. Interviews take place, if at all, immediately prior to the hearings in the courthouse.
- i. Pre-Trial Attorneys fail to prepare for hearings held in connection with parole or probation violation proceedings as required by Guidelines 41.1 and 41.2.<sup>20</sup> Clients state that attorneys are often unaware of the basic facts of their cases and do not pursue leads, witnesses or other mitigating evidence identified by the clients.
- j. Pre-Trial Attorneys fail to present their client's case during hearings held in

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<sup>15</sup> Exh. 2 at 15.

<sup>16</sup> Exh. 2 at 26.

<sup>17</sup> Exh. 2 at 15.

<sup>18</sup> Exh. 2 at 15.

<sup>19</sup> Chapter VI - Defense Attorney Principles in Probation and Parole Proceedings (as revised March, 2003) (attached as Exh. 4) at VI-2.

<sup>20</sup> Exh. 4 at VI-3 and VI-4.

connection with parole or probation violation proceedings as required by Guideline 41.3.<sup>21</sup>

10. During the last several years, plaintiffs' counsel have notified the Chief Public Defender, on a number of occasions, that attorneys in the Pre-Trial and Adult Trial Divisions were not adhering to the practice standards. Given that attorneys from the same divisions continue to ignore the standards, it appears that nothing has been done to ensure the necessary systemic reforms.

**C. Failure to Develop Appropriate Supervisory Mechanisms for Pre-Trial and Adult Trial Attorneys**

11. Paragraph 17 of the Consent Decree requires the Chief Public Defender to “develop and implement a system in which all supervisory personnel monitor, with an adequate degree of frequency, the job performance of the attorney and support staff under their supervision.” It further states that the “purpose of the monitoring system shall be to ensure that attorneys and support staff are adhering to the Office’s practice standards for their specific positions.”

12. Paragraph 18 states in relevant part that the “monitoring and evaluation process shall include: . . . (B) periodic and systematic monitoring of the job performance of all attorneys and support staff; and (C) annual written evaluations of attorneys and support staff. Among other things, performance monitoring shall consist of periodic review of case files (both prior to and after disposition), and review of the in-court performance of attorneys.” It further requires the Chief Public Defender to “take appropriate and timely action . . . to correct any deficiencies

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<sup>21</sup> Exh. 4 at VI-4.

in the performance of any attorney or support staff.”

13. The Adult Trial Division has yet to implement a supervisory system that includes “periodic and systemic monitoring of the job performance of all attorneys.” Consent Decree, ¶

18. Instead, the current system appears to be, at best, informal and *ad hoc*.

14. In response to plaintiffs’ request for a detailed description of that system, the Public Defender’s Office provided copies of a one-page File Review Form, a one-page In-Court Review Form, a comprehensive annual evaluation form and a two-page memo stating that Trial Supervisors are in the courthouse by 9:00 a.m. each day court is in session and available for consultation.<sup>22</sup> It did not set forth the frequency with which attorneys are observed and client files reviewed; or the manner in which supervisory observations and reviews are conveyed to individual attorneys.<sup>23</sup>

15. Reports from public defender clients that Adult Trial Attorneys are not adhering to practice standards suggest that these observations and reviews do not happen periodically or systemically and that no action is taken to correct deficiencies in performance.

16. Although plaintiffs have asked for additional information with respect to this supervisory system, the Public Defender’s Office has failed to provide any.

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<sup>22</sup> The Public Defender’s Office also provided copies of two forms used by Trial Division supervisors to request that individual attorneys contact clients, a form upon which attorney visits to the jail can be recorded, a weekly Employee Attendance Records, and a form for recording judges assigned to particular cases. These documents, plus those cited in the text, are attached hereto as Exh. 5.

<sup>23</sup> While the Public Defender’s Office did note that the Adult Trial Division holds division-wide meetings, those meetings are infrequent and sporadic, particularly when compared to the frequency with which other divisions meet (other divisions met once per month while the Adult Trial Division had two meetings in six months).

**D. Failure to Mandate Training**

17. Paragraph 22 of the Consent Decree requires the Public Defender’s Office to “provide to attorneys periodic and regular in-hour and/or outside training on subjects relevant to the Office’s practices.” It further states that “[a]ll attorneys shall be expected to attend” the training sessions. Despite these mandates, the Office does not require attorneys to attend its training programs. According to the Office’s Training Reports, five attorneys (slightly less than 10% of the attorney staff) attended no formal training program during calendar year 2002, other than periodic staff meetings. Four others attended only one formal training program.<sup>24</sup> Several attorneys who attended two or three training programs in 2002 received little or no training prior to 2002.

**E. Failure to Employ a Sufficient Number of Support Staff**

18. Paragraph 2 of the Consent Decree prohibits the County from permitting “the number of support staff employed by the Public Defender’s Office from falling below the levels set forth in Table A while the case remains on the Court’s active docket.” Table A requires that the Public Defender’s Office employ support personnel in the following numbers by the date

indicated:	July 1, 1998	22
	January 1, 1999	33.5
	January 1, 2000	41
	January 1, 2001	48.5
	January 1, 2002	55

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<sup>24</sup> See Public Defender’s Office Training Report, Document #1: Monitoring Stipulation Reporting Training Grid, January 1, 2002-July 31, 2002; Document #2: Preliminary Monitoring Stipulation Reporting Training Grid, August 1, 2002-December 20, 2002; and Document #3: Supplemental Training Summary, February 8, 2000-December 20, 2002 (attached as Exh. 6). Some of these attorneys attended periodic division-wide meetings.

19. The Public Defender's Office has consistently failed to employ the requisite number of support staff. As of January 1, 2002, the Public Defender's Office had 36 full-time equivalent support staff, 19 less than the required 55. As of June 1, 2002, it had 34, 21 less than the required 55, and as of December 28, 2002, it had 50, five less than the required 55. As of February 15, 2003, it had approximately 45 support staff, 10 less than the required 55.<sup>25</sup>

20. For at least the last 18 months, some of the vacant positions have been filled with temporary employees. The Consent Decree, however, specifically prohibits the use of temporary employees. Paragraph 3 requires that the attorneys and support staff "shall be employees of Allegheny County."

21. The failure of the Public Defender's Office to employ the requisite support personnel is not due to a lack of funding. In both FY 2000 and FY 2001, the Public Defender's Office underspent its budget by roughly \$250,000 to \$300,000.<sup>26</sup>

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**F. Failure to Deploy Attorneys Equitably and to Ensure Meaningful Access to Support Staff**

22. Paragraph 5 of the Consent Decree requires the Chief Public Defender to devise "a plan for the deployment of the attorneys and support staff who are added between January 1, 1999 and January 1, 2002." At a minimum, the plan must provide for "(B) The allocation of

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<sup>25</sup> See Staffing, Hiring and Deployment, (D) Employee Spreadsheet [sic] (1)(b)(c)(d), produced with Monitoring Report dated February 15, 2003 (attached as Exh. 7).

<sup>26</sup> In FY 2000, the Public Defender's Office had a budget of \$4,894,552 and actual expenditures of \$4,536,974. In FY 2001, it had a budget of \$5,739,269 and actual expenditures of \$5,361,979. In FY 2002, it had a budget of \$6,000,000 and actual expenditures of \$5,800,000. (Budget information attached as Exh. 8).

attorneys throughout the Office in an equitable fashion . . . ; [and] (C) The allocation of support staff . . . throughout the Office in such numbers that each attorney is provided with access to meaningful secretarial, clerical, investigative and para-professional assistance.”

23. Paragraph 5 further provides that the Public Defender’s Office must submit the plan to the court for approval and paragraph 7 requires the Public Defender’s Office to implement the plan only after it has been approved.

24. Although the Public Defender’s Office has developed a deployment plan, the plan was never provided to the Court for approval. By the time plaintiffs received an initial copy in August 2002 and a slightly revised copy in February 2003,<sup>27</sup> the plan had been implemented.

25. The plan does not provide for or result in the allocation of attorneys throughout the Office in an equitable fashion or of support staff in such numbers that each attorney has access to meaningful secretarial, clerical and non-investigative para-professional support.

26. Among other things, it assigns too few attorneys to the Pre-Trial Division. According to statistics produced with the February 2003 Monitoring Report, each Pre-Trial Attorney has an average annual caseload of more than 1,000 new matters, including approximately 670 misdemeanors and felonies (which they must handle from arrest until immediately prior to the pre-trial conference); 170 involuntary commitment proceedings, and 215 parole or probation revocation hearings.<sup>28</sup> In contrast, attorneys in the Trial Division have an

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<sup>27</sup> The February 2003 plan, with cover memo, is attached hereto as Exhibit 9. Plaintiffs received a reorganization plan in June 2000, but this plan did not have any of the required components of the Long-Term Deployment Plan set forth in the Consent Decree.

<sup>28</sup> The caseload numbers were obtained by dividing the total number of cases handled by the Division during a year, as reported in the August 2002 and February 2003 Monitoring Reports, by the total number of full-time equivalent attorneys assigned to the Division. While some Pre-Trial attorneys may handle

annual caseload of about 310 new felonies and/or misdemeanors (for which they are responsible from pre-trial conference to disposition). Attorneys in the Juvenile Division have an annual caseload of approximately 250 new juvenile matters and attorneys in the Post-Trial Division have annual caseloads of between 20 and 25 new appeals or post-conviction relief petitions. As reports from public defender clients demonstrate, this serious imbalance interferes with the ability of Pre-Trial Division attorneys to meet with their clients and prepare for hearings.

27. The deployment plan contains no explanation of why caseloads in the Pre-Trial Division are so much larger than the caseloads of other Divisions. When asked to provide an explanation, the Public Defender's Office responded, "The OPD [Public Defender's Office] is not required . . . to provide a methodology for its thought process or it [sic] execution of management prerogatives."<sup>29</sup>

28. The deployment plan does not provide each attorney with meaningful access to support services. Although the Adult Trial Division has by far the most attorneys, it has the fewest number of secretarial and clerical personnel per attorney. In addition, no attorney outside of the Juvenile Division has access to social work services.

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primarily involuntary commitment proceedings and others may handle primarily parole and probation revocation proceedings, the Public Defender's Office maintains that all attorneys in the Pre-Trial Division are trained to handle all types of cases assigned to that Division.

<sup>29</sup> Exh. 8, Memo at ¶ 2.

### Allocation of Support Staff

Division	Attorneys <sup>30</sup>	Secretarial/ Clerical Staff	Social Worker
Pre-Trial	25.75 (22 full-time and 5 part-time)	10	0
Adult Trial	26.75 (21 FT and 12 PT)	4	0
Juvenile Trial	11.25 (9 FT and 3 PT)	3	1
Post-Trial	10.75 (10 FT and 1 PT)	3	0

29. The Guidelines for Legal Defense Systems in the United States issued by the National Study Commission on Defense Services recommend one full-time legal secretary for every four full-time equivalent attorneys.<sup>31</sup> The Adult Trial Division has one full-time legal secretary for every 6.5 full-time equivalent attorneys, while the Pre-Trial Division has one for every 2.5 full-time equivalent attorneys and the Juvenile and Post-Trial Divisions have one for every 3.3 to 3.5 full-time equivalent attorneys. When asked to explain more fully its deployment of clerical staff, the Public Defender’s Office stated that it will “not address the assignment of clerical staff over the length of the decree,” and that it “can find little value” in doing so.<sup>32</sup>

30. The Guidelines for Legal Defense Systems also recommend one full-time social service caseworker for every 450 felony cases, or for every 600 juvenile cases or for every 1200

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<sup>30</sup> The numbers listed in this column are full-time equivalent attorneys. Under the terms of the Consent Decree, each attorney who maintains a private practice is counted as 3/4ths of a full-time equivalent.

<sup>31</sup> National Study Commission on Defense Services, *Guidelines for Legal Defense Systems in the United States, 1976*, 4.1, Task Allocation in the Trial Function: Specialists and Supporting Services.

<sup>32</sup> Exh. 8, Memo at ¶ 3.

misdemeanor cases.<sup>33</sup> Although the Consent Decree contemplates the deployment of multiple social workers,<sup>34</sup> the Office has only one. She is assigned to the Juvenile Trial Division and works exclusively with children who are the subject of both dependency and delinquency proceedings. She is not available to the Adult Trial Division, the Pre-Trial Division or Juvenile Trial Attorneys who represent juveniles who are not the subject of dependency proceedings.

31. According to the National Legal Aid and Defender Association, social workers are imperative to the functioning of any large indigent defense program. They have the training and experience to assist attorneys in fulfilling their ethical obligations with respect to sentencing by assessing client deficiencies and needs, referring clients to available community-based services and resources, and preparing dispositional plans.<sup>35</sup>

32. Although plaintiffs' counsel have repeatedly asked the Public Defender's Office to provide additional information about the number of support staff employed and the status of support staff hiring, the Office has failed to provide such information on any consistent basis.

**G. Failure to Limit Job Responsibilities of Investigators to Traditional Investigative Services**

33. Paragraph 5(D) of the Consent Decree prohibits the Public Defender's Office from using investigators to determine "the eligibility of potential clients for indigent defense

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<sup>33</sup> National Study Commission on Defense Services, *Guidelines for Legal Defense Systems in the United States, 1976*, 4.1, Task Allocation in the Trial Function: Specialist and Supporting Services.

<sup>34</sup> See Consent Decree ¶ 5(C).

<sup>35</sup> National Legal Aid & Defender Association, *Evaluation of the Public Defender Office, Clark County, Nevada*, Mar. 2003, at 44.

services.” The same paragraph mandates that investigators be used for “traditional investigative services, such as assessing crime scenes, serving subpoenas, and locating and interviewing witnesses.”

34. On information and belief, investigators are not used by Adult Trial or Juvenile Trial Attorneys for traditional investigative services except in homicide cases.

35. Instead, investigators report that, contrary to the mandates of the Consent Decree, they are required to determine the eligibility of potential clients. Specifically, they are required to conduct initial intake interviews to determine, among other things, whether the clients have any conflicts of interest that would preclude their representation by the Public Defender’s Office. While intake clerks have traditionally performed this function, there are currently an insufficient number of clerks to interview all persons seeking services.<sup>36</sup>

### **Conclusion**

The above-referenced practice deficiencies are among those that led to the filing of this lawsuit. The fact that they remain five years after the signing of the Settlement Agreement and Consent Decree represents a profound failure on the part of the Public Defender’s Office and Allegheny County to take the steps necessary to implement reforms mandated by the decree. Plaintiffs respectfully request that the Court either direct the County and the Chief Public

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<sup>36</sup> Although a memo from the Public Defender’s Office to investigators dated May 28, 2003 states that the interviews are part of the investigative function, the investigators themselves dispute this characterization. Moreover, the intake clerks have filed a grievance with their union protesting the assignment of the interviews to the investigators.

Defender to become compliant immediately with its terms or hold defendants in contempt.

Date: June 25, 2003

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that on June 25, 2003, copies of the foregoing were sent via Fedex, priority overnight delivery, to

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