

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,  
PENNSYLVANIA

THOMAS DOYLE, et al.

Plaintiffs,

v.

ALLEGHENY COUNTY SALARY  
BOARD, et al.,

Defendants.

CIVIL DIVISION

No. 96-13606

Code No. 011

SETTLEMENT AGREEMENT

I. BACKGROUND

In this class action lawsuit, Plaintiffs allege that severe understaffing, excessive caseloads, inadequate policies and procedures, and other systemic deficiencies in the operation of the Allegheny County Public Defender's Office ("Office") make it unlikely that the Office's clients will receive adequate representation in criminal, juvenile delinquency and involuntary civil commitment proceedings. Plaintiffs further allege that unless fundamental changes are made in the way the Office is staffed, structured and operated, significant numbers of indigent persons represented by the Office are in imminent danger of having their liberty taken in violation of the Sixth and Fourteenth Amendments to the United States Constitution and various provisions of Pennsylvania state law.

Since the inception of this lawsuit, Allegheny County and other defendants named in the Third Amended Complaint have categorically denied that there are systemic deficiencies in the operation of the Public Defender's Office and that the rights of class members are at immediate risk of being abridged.

Despite the deeply contested nature of this lawsuit and the parties' profoundly differing views of the merits of Plaintiffs' claims, the parties now believe that it is in their respective interests to resolve their dispute through a comprehensive settlement rather than through further, protracted litigation of the issues raised in the Third Amended Complaint. For that reason, and without admission or implication of liability on the part of any party, they have entered into this Settlement Agreement and Consent Decree, the terms of which are catalogued below.

## II. TERMS

### A. CONSENT DECREE

1. This Settlement Agreement and Consent Decree shall be presented promptly to the Honorable Robert Horgos of the Court of Common Pleas of Allegheny County, Pennsylvania, Civil Division (the "Court"), for approval pursuant to Pa.R.Civ. P. 1714. Once approved, the Settlement Agreement and Consent Decree shall remain on the Court's active docket until December 31, 2003, at which time it shall be placed on the inactive docket.

### B. Staffing

2. **Staffing Levels:** Allegheny County, through its Commissioners and Salary Board (collectively, the "County"), shall increase the number of attorneys and support staff employed by the Public Defender's Office to the levels and by the dates set forth in Table A. Although nothing in this Settlement Agreement and Consent Decree shall preclude the County from hiring more attorneys or support staff than prescribed by Table A, the County shall not permit the number of attorneys or support staff employed by the Public Defender's Office to fall below the levels set forth in Table A while the case remains on this Court's active docket.

**Table A**

<b>DATE</b>	<b>FULL-TIME EQUIVALENT ATTORNEYS</b>	<b>FULL-TIME EQUIVALENT SUPPORT STAFF</b>
By July 1, 1998	53	22
By January 1, 1999	57	33.5
By January 1, 2000	62 (see ¶10)	41
By January 1, 2001	69 (see ¶10)	48.5
By January 1, 2002	79 (see ¶10)	56

3. The attorneys and support staff of the Public Defender's Office -- with the exception of the investigator positions established under this Settlement Agreement and Consent Decree -- shall be employees of Allegheny County. The County may, at its discretion, retain independent contractors to fill the investigator positions contemplated herein. For purposes of this Settlement Agreement and Consent Decree, each full-time equivalent investigator position shall constitute a minimum of 40 hours of work each week for the Public Defender's Office. All independent contractors or outside agencies retained for this purpose shall be required to maintain a regular and frequent presence at the Public Defender's Office. Any individual performing investigative services for the Office, whether as an independent contractor or as an employee, shall be required to adhere to the practice standards for investigators promulgated pursuant to this Settlement Agreement and Consent Decree. In addition, the County and/or the Office shall provide investigators with the same training, supervision and monitoring whether they are independent contractors or County employees.

4. **Short-Term Deployment:** Attorneys and support staff added to the Public Defender's Office by January 1, 1999, shall be deployed as follows: **Table B**

<b>1998 DEPLOYMENT</b>	
<b>Position</b>	<b>Number of F.T.E. Additions</b>
Mental Health Attorneys	1
Trial Attorneys	3
Juvenile Attorneys	3
Probation/Parole Attorneys	1
Appeals Attorneys	1
Secretaries	1
Clerk Typists	2
Social Workers	1
Law Clerks	
Full Time	2
Part Time	.5
Investigators (full-time-equivalent)	3
Intake Clerks	2

5. **Long-Term Deployment Plan:** The Chief Public Defender, with the advice and assistance of the Consultant retained pursuant to this Settlement

Agreement and Consent Decree, shall devise a plan for the deployment of the attorneys and support staff who are added between January 1, 1999, and January 1, 2002. Within 180 days of the approval of this Settlement Agreement and Consent Decree, the Chief Public Defender shall file the plan with this Court. At a minimum, the plan shall provide for the following:

- (A) The appointment within each division (*e.g., Mental Health, Probation, Appeals, Juvenile, Trial, etc.*) of at least one supervisory attorney, who shall supervise all attorneys and support staff assigned to that division. The caseloads of the respective supervisors shall be adjusted downward in accordance with the magnitude of their supervisory responsibilities.
- (B) The allocation of attorneys throughout the Office in an equitable fashion that takes into account the particular needs of each division.
- (C) The allocation of support staff - consisting of secretaries, clerk typists, investigators, law clerks, intake clerks and social workers - throughout the Office in such numbers that each attorney is provided with access to meaningful secretarial, clerical, investigative and para-professional assistance. At a minimum, there shall be one (1) full-time equivalent investigator for every six (6) attorneys.
- (D) The delegation to the investigators of traditional investigative services such as assessing crime scenes, serving subpoenas, and locating and interviewing witnesses. The investigators shall not be responsible for determining the eligibility of potential clients for indigent defense services.

6. Within twenty (20) days of the filing of the plan, each party to the litigation, with the exception of the Chief Public Defender, shall file a response indicating its agreement or disagreement with the plan. If any party disagrees with the plan, its submission must set forth the reasons for its objections. The Court, at its election, may convene an evidentiary hearing to consider the objections, hear argument without receiving evidence, or take whatever other steps it believes are necessary to resolve the dispute. Thereafter, the Court shall enter an Order accepting, rejecting or amending the proposed deployments.

7. Once approved by the Court, the deployment plan, in its original or amended form, shall be implemented in accordance with its terms, absent further order of the court.

8. ***Private Practice:*** No attorney hired into the Public Defender's Office after December 31, 1998, shall be permitted to maintain a private legal practice or to engage in any practice of law outside of the Public Defender's Office. No attorney appointed to a supervisory position after December 31, 1998, shall be permitted to maintain a private legal practice or to engage in any practice of law outside of the Public Defender's Office.

9. Unless otherwise agreed pursuant to collective bargaining, attorneys employed by the Public Defender's Office as of December 31, 1998 shall be permitted to maintain a private legal practice or to engage in the practice of law outside of the Public Defender's Office as long as the practice does not conflict with work assignments made by the Public Defender's Office, reasonable schedules set by the Office or preclude timely and satisfactory completion of assignments given by the Office. The Chief Public Defender shall monitor the activities of such attorneys to determine whether they are complying with the terms of this provision and shall take

appropriate administrative action, not inconsistent with any collective bargaining agreement, to correct violations of this provision.

10. Any attorney with a private practice after December 31, 1999 shall be counted as 3/4ths of a position for purposes of calculating the full-time equivalent attorney positions required by this Settlement Agreement and Consent Decree.

11. The County shall not enter into any collective bargaining agreement inconsistent with the Consent Decree.

### **C. Policies and Procedures**

12. **Job Descriptions:** Within six (6) months of the Court's approval of this Settlement Agreement and Consent Decree, and for each category of personnel employed by the Office, the Chief Public Defender, with the advice and assistance of the Consultant, shall develop and post a written job description tailored to the Office's particular needs.

13. **Job Qualifications:** Within six (6) months of the Court's approval of this Settlement Agreement and Consent Decree, the Chief Public Defender, with the advice and assistance of the Consultant, shall develop and post written job qualifications for each category of personnel employed by the Office. The job qualifications shall be designed to enable the Office to hire, on a system-wide basis, qualified individuals for each available position. The Office shall not employ persons who do not meet the prescribed qualifications.

14. **Personnel Policies:** Within eighteen (18) months of the Court's approval of this Settlement Agreement and Consent Decree, the Chief Public Defender, with the advice and assistance of the Consultant, shall develop and implement written personnel policies for all attorney and support staff positions in the

Office. At a minimum the personnel policies shall contain the job descriptions developed pursuant to ¶12 above, and describe the program of supervision and monitoring developed pursuant to ¶17-18. The policies shall be distributed to all employees.

15. **Practice Standards:** Within eighteen (18) months of the Court's approval of this Settlement Agreement and Consent Decree, the Chief Public Defender, with the advice and assistance of the Consultant, shall 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. All attorneys and support staff shall be expected to adhere to the practice standards for their positions.

16. The standards shall be: (A) modeled after national standards, such as those set forth in the Performance Guidelines for Criminal Defense Representation adopted by the Board of Directors of the National Legal Aid and Defender Association in December 1994; 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, including, but not limited to, capital cases. The standards shall make clear that neither the Office nor individual public defenders shall accept workloads that, by reason of their excessive size, interfere with the provision of adequate legal representation or lead to the breach of professional obligations. If, in the exercise of his or her professional judgment, the Chief Public Defender concludes that the Office's workload or the workload of individual attorneys preclude the provision of adequate legal representation, the Office may petition the criminal court for permission to withdraw from pending cases or to cease appointing the Public Defender's Office as counsel of record in future cases until the workload decreases. Notwithstanding the above, the practice standards shall not require the County to



hire more staff than that contemplated by Tables A and B of this Settlement Agreement and Consent Decree, or require the County or the Public Defender's Office to adopt specific caseload limits.

17. **Supervision:** Within eighteen (18) months of the Court's approval of this Settlement Agreement and Consent Decree, the Chief Public Defender, with the advice and assistance of the Consultant, shall develop and implement a system in which all supervisory personnel monitor, with an adequate degree of frequency, the job performance of the attorneys and support staff under their supervision. 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

18. The monitoring and evaluation process shall include: (A) comprehensive supervision of new attorneys and support staff during the initial stages of their employment by the Office; (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 reviews of case files (both prior to and after disposition), and review of the in-court performance of attorneys. The Chief Public Defender shall take appropriate and timely action, not inconsistent with any collective bargaining agreement, to correct any deficiencies in the performance of any attorney or support staff member. Any disciplinary action taken against any employee covered by a collective bargaining agreement shall be subject to the grievance and arbitration provisions of that agreement.

#### **D. Training**

19. **General:** Within eighteen (18) months of the Court's approval of this Settlement Agreement and Consent Decree, the Chief Public Defender, with the

advice and assistance of the Consultant, shall develop and implement: (A) a comprehensive mandatory training program for new staff; (B) an orientation and training program for existing staff; and (C) a mandatory training program for attorneys who represent defendants in capital cases. The parties recommend that in designing the program, the Chief Public Defender and the Consultant review the Defender Training and Development Standards promulgated by the National Legal Aid and Defender Association in March 1997.

20. New Staff. At a minimum, the new staff training program shall include: (A) instruction on the Office's practice standards, recordkeeping systems and relevant aspects of practice and procedure in adult criminal proceedings, juvenile delinquency proceedings, parole and probation revocation proceedings and involuntary commitment proceedings; (B) a trial advocacy component for attorneys; and (C) a period of extensive on-the-job supervision following completion of the formal training program. No new attorney hired after December 31, 1999, regardless of his or her prior experience, shall be assigned to a case prior to receiving appropriate training by the Office.

21. Existing Staff. Within eighteen (18) months of the Court's approval of this Settlement Agreement and Consent Decree, all existing attorneys and support staff shall have attended an orientation program developed by the Chief Public Defender, with the advice and assistance of the Consultant. The orientation program shall provide attorneys and staff with a working knowledge of the policies, procedures and recordkeeping systems promulgated pursuant to this Settlement Agreement and Consent Decree.

22. After the completion of the orientation program, the Office shall provide training to the support staff on an as-needed basis. During each calendar year, the Office shall provide to attorneys periodic and regular in-house and/or outside

training on subjects relevant to the Office's practice. All attorneys shall be expected to attend.

23. **Capital Cases:** Within twelve (12) months of the Court's approval of this Settlement Agreement and Consent Decree, the Chief Public Defender, with the advice and assistance of the Consultant, shall design and implement an appropriate training program for attorneys who will handle capital cases. The training program shall address, among other things, effective communication with the client and his or her family, the development and preparation of a defense, the selection of a jury, the selection and utilization of witnesses, and the utilization of experts, including mitigation experts. After June 30, 1999, no attorney shall be assigned as lead counsel in either the liability or the penalty phase of a capital case unless he or she has completed this training program.

#### **E. Case Files and Record Keeping Systems**

24. Because accurate and detailed recordkeeping is critical to the Office's ability to provide constitutionally and statutorily adequate legal representation, the Chief Public Defender, with the advice and assistance of the Consultant, shall review the Office's current recordkeeping system and make any changes necessary to ensure that the Office, and each of its employees, maintains accurate and detailed records of client interactions, of work done on behalf of the clients, and of the status of cases as they proceed through the court system.

#### **F. Resources**

25. The County shall provide the Public Defender's Office with the physical facilities, equipment and supplies needed to perform its duties. By June 30, 2000, the facilities, equipment and supplies provided to the Office shall be reasonably comparable to those provided to the Allegheny County District Attorney's Office as

they exist on the date that this Settlement Agreement becomes effective. At a minimum, the County shall ensure that:

- (A) attorneys have the ability to meet and confer privately with clients in the Public Defender's Office and the various facilities in which they practice;
- (B) the office has an information management system that enables it to (1) determine conflicts of interest at the outset of any criminal or delinquency proceeding; (2) determine, manage, monitor and track the Office's caseload and the caseloads of individual attorneys; and (3) effectively access relevant information from computerized information systems maintained by the County, its agencies, and the courts. The system shall be computerized unless the Chief Public Defender, with the advice and assistance of the consultant, determines that certain components of the system may operate more efficiently if done manually; and
- (C) each division within the Public Defender's Office has sufficient access to fax machines, word processors, telephones, copiers, and the tools needed to conduct timely and efficient legal research (federal and state).

After June 30, 2000, the Allegheny County District Attorney's Office shall not be used as a point of reference in determining the adequacy of facilities, equipment and supplies provided to the Public Defender's Office.

26. The Chief Public Defender, with the advice and assistance of the Consultant, shall explore and determine the availability of alternative sources of funding for the Office (including, but not limited to, foundation and federal funding) and, where appropriate, take the steps necessary to obtain such funding.

### **G. Professional Services**

27. While this case remains on the Court's active docket, the County shall provide the Office with seventy-five thousand dollars (\$75,000) per year for purposes of securing professional services (e.g., consultants, experts, tests) determined to be necessary or advisable by the Chief Public Defender for the representation of the Office's clients. Funds that are not expended during any particular year shall be carried over into future years. The total amount budgeted for professional services for any given year, including amounts carried over, shall not exceed one hundred thousand dollars (\$100,000).

28. Should the Chief Public Defender or any of the parties determine, at some point, that the amount budgeted does not enable the Office to procure necessary or advisable professional services, the Chief Public Defender or any of the parties may file a petition with this Court seeking to increase the budgeted amount. Such a petition shall be accompanied by documentation or other evidence demonstrating why the budgeted amount is not sufficient.

### **H. Consultant**

29. The Court shall appoint a Consultant for a three-year term commencing ninety (90) days after its approval of this Settlement Agreement and Consent Decree. The County (or its insurer) shall pay the Consultant a maximum total fee of one hundred thousand dollars (\$100,000), payable as services are provided. Provided the Consultant operates within the established budget, the Consultant may form a team or hire additional experts to assist with the work contemplated by this Agreement and Decree.

30. The Consultant shall have a background in the administration of indigent defense programs and services. The Chief Public Defender, the County and

Plaintiffs' counsel shall attempt to agree on the Consultant and that Consultant's fee. If they do not agree within thirty (30) days of the Court's approval of this Settlement Agreement and Consent Decree, the Court shall select a Consultant from among names of candidates submitted by the Chief Public Defender, the County and Plaintiffs' counsel. In selecting the Consultant, the Court shall consider:

- (a) whether the candidate has worked in a public defender agency in which he or she was responsible for overseeing the day-to-day operations of the office, and the training and supervision of attorneys who were providing indigent defense services;
- (b) the candidate's familiarity with attorney practice standards; and
- (c) the candidate's prior experience in assessing, evaluating, providing technical assistance to, or studying the components of public defender programs or comparable court systems.

31. The Consultant shall address the issues and make the recommendations identified in the Settlement Agreement and Consent Decree and may address any other issues identified by the Chief Public Defender as requiring the Consultant's expertise and attention. In addition, the Consultant may call to the attention of the Chief Public Defender or the County any problems or deficiencies in the Office that he or she believes should be remedied. In performing the duties contemplated by this Settlement Agreement and Consent Decree, the Consultant shall be given reasonable access to relevant records, files and personnel of the Public Defender's Office and the County. Any access to such records by the Consultant shall be made with due regard for, and consistent with, any protections afforded by the attorney-client privilege.

32. Every six months during his or her three-year term, the Consultant shall file a written report with the Court. The report shall address matters relating to implementation of and compliance with the terms of the Settlement Agreement and Consent Decree. Upon motion of any party or counsel to any party, the Court shall determine the adequacy of implementation or compliance and enter any necessary orders. In making this determination, the Court may appoint a special master and assign to the special master any responsibilities it deems necessary or desirable.

### I. Jurisdiction Over the Consent Decree

33. This case shall remain on this Court's active docket and the Court shall retain continuing jurisdiction over it for all purposes relative to the implementation and enforcement of the Settlement Agreement and Consent Decree until December 31, 2003. At that time, the case shall be transferred to the Court's inactive docket.

34. After this case is transferred to this Court's inactive docket, the County shall have a continuing obligation under this Settlement Agreement and Consent Decree to: (A) employ a sufficient number of attorneys and appropriate support staff in the Public Defender's Office; (B) deploy the attorneys and support staff in an equitable manner among the Office's various divisions; (C) adequately supervise and monitor the attorneys and support staff; and (D) maintain adequate policies, procedures, training programs, funds for professional services and testing, facilities, equipment and supplies -- so that the Office is systematically able to provide constitutionally and statutorily adequate assistance of counsel to persons who are represented by it.

35. If the County fails to comply with the terms and conditions of the Settlement Agreement and Consent Decree, Plaintiffs' counsel may apply to the Court for a finding of contempt or other appropriate relief. Prior to making any such motion or application, however, Plaintiffs' counsel shall advise the County's counsel in writing of the alleged contemptuous conduct or inadequate condition(s), and the County shall have four weeks to provide a written response to Plaintiffs' counsel. After the County responds, the parties shall meet in an effort to resolve the dispute. If the dispute cannot be resolved within ten (10) days of the County's filing of its response, the parties shall submit the dispute to this Court for resolution. Further, in the event the Court finds the County in contempt for a violation of the terms of this Settlement Agreement and Consent Decree within a period of time running from January 1, 2003 to December 31, 2003, the Settlement Agreement and Consent Decree shall remain on the active docket for a period of twelve (12) months from the date of the contemptuous conduct.

36. Terms of this Settlement Agreement and Consent Decree shall be binding upon the parties hereto, their agents, their successors-in-interest and their assigns.

37. The terms of this Settlement Agreement and Consent Decree may not be enforced by individual members of the plaintiff class acting independently of counsel for the plaintiff class.

38. The terms of this Settlement Agreement and Consent Decree do not create substantive legal rights or causes of action for declaratory, injunctive or monetary relief independent from those that might otherwise exist under 42 U.S.C. § 1983 or other federal or state law.



39. **Severability:** If any provision of the Settlement Agreement and Consent Decree is declared void and/or unenforceable by any court of competent jurisdiction, for any reason, the remainder of the Settlement Agreement and Consent Decree shall remain in full force and effect.

ACCEPTED:

Counsel for Plaintiffs

By: Claudia Davidson  
Robin Dahlberg  
Claudia Davidson  
Jere Krakoff  
Witold J. Walczak

Counsel for Defendants

By: Eric N. Anderson  
Eric N. Anderson

Date: 5/14/98

Date: 5/15/98

Attest:

Mona M. Cannon  
Chief Clerk

County of Allegheny:

By: Mike Pounds

Board of County Commissioners

Approved As To Form:

[Signature]  
County Solicitor  
Michael McArthur  
Assistant County Solicitor