

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

MAURICE FLOURNOY, et al.,)	CIVIL ACTION
)	
Plaintiffs, on behalf of)	No. 2009CV178947
themselves and all persons)	
similarly situated,)	
)	NOTICE OF PROPOSED
v.)	
)	SETTLEMENT OF CLASS
THE STATE OF GEORGIA, et al.,)	ACTION LAWSUIT
)	
Defendants.)	

READ THIS CAREFULLY — IT MAY AFFECT YOUR LEGAL RIGHTS

Lawyers from the Southern Center for Human Rights and Bondurant, Mixson and Elmore, LLP, the Georgia Public Defender Standards Council (“GPDSC”), and the State of Georgia have negotiated a settlement in the above-captioned case. The case was brought as a class-action lawsuit on behalf of all indigent persons who have requested conflict-free counsel on appeal (“Class Members”). The Southern Center for Human Rights and Bondurant, Mixson & Elmore LLP (“Class Counsel”) represent the Class Members. The case is before Judge Jerry Baxter in the Superior Court of Fulton County in Atlanta, Georgia.

THE PURPOSE OF THIS NOTICE IS

TO INFORM YOU OF THE
PROPOSED SETTLEMENT OF THE SUIT

TO INFORM YOU OF YOUR RIGHTS WITH
RESPECT TO THE PROPOSED SETTLEMENT; AND

TO TELL YOU HOW TO FILE IN THE COURT
ANY OBJECTIONS YOU MAY HAVE TO THE SETTLEMENT

1. **The Class Definition.** The Court has certified a class pursuant to O.C.G.A. § 9-11-23(b)(2) comprised of “all indigent persons who (i) were or will be convicted in a Georgia court of a criminal offense carrying a term of incarceration; (ii) have provided or will provide notice to Defendants of their request for conflict-free appellate counsel to pursue a motion for new trial and/or first direct appeal; and (iii) have been denied or will be denied conflict-free counsel after giving such notice.” If you are included in the Class defined above, the proposed Consent Decree may affect your rights.

2. **Terms of the Proposed Settlement.** Subject to final approval of the Court, the proposed Consent Decree requires several significant programmatic and systemic changes to the manner in which the Appellate Division of the Georgia Public Defender Standards Council (“GPDSC”) provides counsel to Class Members. Of the more notable changes, the Consent Decree requires the hiring of additional staff attorneys in the Appellate Division and changes the terms by which contract attorneys are retained and paid. It also requires GPDSC evaluate and supervise the conflict-free appellate representation provided to Class Members. Among the measures agreed to by the parties, the Consent Decree:
 - a. Implements a revised conflict transfer procedure through which cases are preliminarily assessed to determine whether the assignment of new appellate counsel is required and/or is in the best interest of the Class Member, but which leaves the ultimate determination of whether new, conflict-free appellate counsel is requested to the Class Member;
 - b. Requires the GPDSC Appellate Division to hire seven additional qualified full-time staff attorneys to represent Class Members;
 - c. Implements a mandatory workload standard, including an assessment of case complexity, to ensure that lawyers representing Class Members are able to devote the necessary time and attention to each case;
 - d. Sets forth a rigorous hiring process and training requirements to ensure that lawyers representing Class Members are qualified, adequately trained, and supervised;
 - e. Imposes minimum qualifications for private attorneys retained by GPDSC to represent Class Members;
 - f. Increases compensation to contract attorneys, which includes payment of per-hour fees upon the completion of 40 hours of work;
 - g. Prohibits caps on the reimbursement of reasonable case expenses by appellate attorneys, including investigative, expert and travel-related expenses;

- h. Requires GPDSC to monitor contract attorneys;
- i. Mandates the collection of comprehensive data concerning the representation of Class Members to facilitate monitoring and supervision;
- j. Requires GPDSC to hire a full-time accountant/auditor to be responsible for ensuring that adequate data is collected concerning Class Members' cases;
- k. Requires quarterly and monthly reporting to Class Counsel; and
- l. Sets forth a process for recording and responding to complaints by Class Members.

The lawsuit did not seek money damages for the class. Therefore, regardless of whether the Consent Decree is approved or this case ultimately goes to trial, no class member will obtain money damages from the Defendants. Class members are also not responsible for any payment of fees to Class Counsel.

The Superior Court of Fulton County will maintain jurisdiction to enforce the provisions of the Consent Decree until March 1, 2014 or until Defendants have been in compliance with the Consent Decree for one year, whichever is later. If Class Counsel believe that the Consent Decree is being violated, they can – after trying to work out the disagreement in accordance with the terms of the Consent Decree – request that the Court enforce it.

This very brief and general summary of the Consent Decree does not include all of its terms and conditions. The only complete statement of the terms of the Consent Decree is found by reading the text of the Consent Decree itself. A copy of the Consent Decree is attached.

3. **Reasons for Settlement.** The lawyers for the Class believe that the Consent Decree provides the same or better relief as they would obtain at trial. Such relief will be in effect immediately upon approval of the Consent Decree by the Court. The lawyers for the Class believe the Consent Decree is fair, reasonable, adequate, and in the best interests of the Class. They have considered the immediate benefits of the settlement to persons who are awaiting the appointment of conflict-free counsel, the delay in relief that would result if the case were to go to trial and possibly be appealed, and the risk of an unfavorable outcome if the case went to trial. In any trial there is always the risk of an unfavorable outcome.

4. **Questions about the Proposed Consent Decree.** If you have questions about the proposed Consent Decree, you may contact the lawyers representing the Class by writing to:

Gerry Weber, Melanie Velez, Lauren Sudeall Lucas,
and Atteeyah Hollie
RE: *Flournoy* Consent Decree
Southern Center for Human Rights
83 Poplar Street, N.W.
Atlanta, Georgia 30303

5. **Binding Effect.** The proposed Consent Decree, if finally approved by the Court, will be binding on all members of the certified class.
6. **If the Proposed Consent Decree is Not Approved.** If the Proposed Consent Decree is not approved by the Court, the case will go to trial. However, if that happens, there is no assurance: (a) that the trial will take place while your case is still pending resolution on appeal; (b) that any decision at trial will be in favor of the Class Members; (c) that a favorable trial decision, if any, will be as favorable as the Consent Decree; or (d) that any such favorable trial decision would be upheld on appeal.
7. **If You Agree with the Proposed Consent Decree.** If you agree with the proposed Consent Decree, you do not have to do anything. The judge will hold a hearing to consider any objections to the Consent Decree and then decide whether to approve the Consent Decree. If the Judge approves the Consent Decree and signs it, it then becomes effective as a court order.
8. **If You Object to the Proposed Consent Decree.** If you believe that the Consent Decree should not be approved by the Judge for any reason, you may write to the Judge and provide your reason. To do this, you must send your objection by **February 27, 2012** in writing to: Clerk of Superior Court, Superior Court of Fulton County, 136 Pryor Street SW, C155, Atlanta, Georgia, 30303. You must also send a copy of your objection to:

Michael A. Caplan
Bondurant, Mixson & Elmore LLP
3900 One Atlantic Center
1201 West Peachtree Street, N.W.
Atlanta, Georgia 30309

DeBrae C. Kennedy
Office of the Attorney General
40 Capitol Square, SE
Atlanta, Georgia 30334

The objections must contain the following:

- (1) The case name and number: *Flournoy, et al. v. State of Georgia, et al.*, Case No. 2009-CV-178947, Superior Court of Fulton County, Georgia.
- (2) Your full name, address, and GDC number;
- (3) What you object to about the Consent Decree;
- (4) An explanation of why you object, including a detailed statement clearly setting forth the basis for the objections along with all supporting papers or evidence that you want the Court to consider;
- (5) Whether you intend to appear at the Fairness Hearing; and
- (6) A statement verifying that you meet all the conditions for membership in the Class.

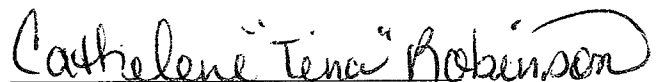
You must submit your objection by **February 27, 2012**. After receiving and reviewing any objections, the Judge will hold a hearing on **March 12, 2012**, to decide whether to approve the Consent Decree. If the Judge finds that the Consent Decree is fair, adequate and a reasonable resolution of this case and approves it, then the Consent Decree will become final.

9. **Clerk's Address.** The mailing address for the Clerk of the Court is:

Clerk of Superior Court
Superior Court of Fulton County
136 Pryor Street SW, C155
Atlanta, Georgia, 30303

Remember – you must put the name and number of the case on anything that you send the Clerk: *Flournoy, et al. v. State of Georgia, et al.*, No. 2009-CV-178947, Superior Court of Fulton County, Georgia.

This 6th day of January, 2012.


Cathelene Tena Robinson
Clerk of Superior Court
Superior Court of Fulton County