TO: Mark Billingsley
   Chairman Pro Tempore
   Shelby County Board of Commissioners

   Winsome Gayle
   Civil Rights Division

   Honorable Dan Michael
   Presiding Judge, Memphis-Shelby Juvenile Court

   Honorable Lee Harris
   Mayor, Shelby County, Tennessee

FROM: Sandra Simkins
   Due Process Monitor

DATE: December 10, 2018

RE: Final Report (Compliance Report #12 - October 2018)

Despite the duration of the Memorandum of Agreement (MOA) and the notable progress in many areas, the structure of the Juvenile Court of Memphis and Shelby County remains deeply flawed enabling a culture of intimidation that undermines due process.

The abrupt termination of oversight by the United States Department of Justice, Civil Rights Division (DOJ) on October 19, 2018 failed to recognize that Juvenile Court has actively resisted compliance with the word and the spirit of the Agreement and is likely to result in the Court reverting to prior practices. Two remaining due process issues prevent any type of “successful” closure to the Agreement and African American youth in juvenile court will continue to be harmed until these serious issues are addressed. The first issue concerns the judicially controlled panel attorney structure that prevents access to independent counsel—an area of persistent non-compliance since the Agreement was signed in 2012. The second issue concerns blatantly unfair transfer hearing practices.

I appreciate the invitation to complete and report findings from the most recent site visit conducted October 8-12, 2018.¹ This report provides updates on important areas of non-compliance that were not considered before the Agreement was terminated and includes recommendations concerning the need for continued oversight in addition to steps that should be taken to sustain progress achieved since 2012.

¹ This report was completed in response to a request from Mark Billingsley, Chairman Pro Tempore of the Shelby County Board of Commissioners, which also recently passed a Resolution, sponsored by Chairman Van D. Turner, proclaiming No Confidence in the DOJ’s decision to terminate the Memorandum of Agreement. Commissioner Billingsley’s letter and the Resolution are attached as Appendix A.
Format of Final Report

A. Due Process Concerns that Prevent Successful Closure
   1. Lack of Independent Conflict Counsel: Resistance and Delay Result in Non-Compliance on Foundational Issue
   2. Unfair Transfer Hearing Practices
   3. More Unresolved Due Process Issues that Create Barriers to Youth Representation

B. Actions Required to Sustain Achievements
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   2. Maintain Court Oversight through County Commission

C. Compliance Report Ratings

A. Due Process Concerns that Prevent Successful Closure

Though the original Agreement had 56 due process compliance measures, these compliance points were never of equal value. Without question, the Agreement’s most important due process component was access to independent counsel. Access to independent quality counsel is the vehicle that protects all other rights. A fair system is built on access to independent counsel; without it, not only are individual children affected, the entire system is degraded. The fundamental lack of independence was central to the DOJ’s original investigation and to the Agreement. The DOJ’s findings from April 2012 stated that Shelby County’s structure of appointing panel attorneys “creates an apparent conflict of interest, as a juvenile defender must balance the duty of representing the child client with the inherent duty of loyalty to his or her employer.”

1. Lack of Independent Conflict Counsel: Resistance and Delay Result in Non-Compliance on Foundational Issue

Since 2012 Shelby County has been and remains non-compliant in creating an independent conflict attorney panel. As a consequence, several hundred children a year continue to be represented by attorneys who practice under the direct control of the Juvenile Court Judge. This practice fails to meet the threshold requirement of independence that is fundamental to ethical defense practice and carries forward the deeply flawed structure that was in place at the time of the DOJ’s original investigation.

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2 This evidence was extensively detailed in the original 2012 Department of Justice findings and an entire section of the findings was dedicated to the issues of lack of independence, lack of zealous advocacy and “role confusion” on the part of the panel, including the failure to ask for discovery, file motions or take appeals. See U.S. DEPARTMENT OF JUSTICE, INVESTIGATION REGARDING THE JUVENILE COURT OF MEMPHIS & SHELBY COUNTY (APR. 2012), available at https://www.justice.gov/sites/default/files/crt/legacy/2012/04/26/shelbycountviuv_findingsrpt_4-26-12.pdf. Excerpts from 46-50.

3 The Agreement required the Court to establish a panel system overseen by an independent body to handle delinquency cases that pose a conflict of interest for the Public Defender. Recent documents provided by Juvenile Court indicate that 61% of Shelby youth have access to independent counsel (those youth represented by the Public Defender), the remaining 39% (represented by the panel attorneys) do not. It remains clear that an unacceptable number of children continue to be represented by the very system deemed fundamentally flawed from the outset.
A Lack of Good Faith

Despite repeated guidance by DOJ that establishing a minimum level of defendant independence was essential to reaching substantial compliance with the Agreement, the conflict panel in use today remains identical to its pre-MOA structure. Since 2015, the Juvenile Court and the County Attorney’s office deliberately resisted efforts to engage in meaningful problem-solving and in my opinion failed to act in good faith. Instead of engaging local stakeholders to seek solutions, a pattern unfolded where individuals were chosen to create an appearance of collaboration, while other important stakeholders were routinely ignored or excluded. Over time it became clear this was part of a coordinated effort to preserve the status quo, while termination of the Agreement was pursued through political channels. This course of action resulted in a series of “obstacles” that delayed progress toward compliance until a political solution could be realized. Unfortunately for the youth of Shelby County, this strategy was rewarded when the Agreement was abruptly and prematurely terminated by the Department of Justice.

Lack of Panel Independence Fosters a Culture of Intimidation

In many previous reports I discussed the inherent conflicts and potential problems that are created when panel attorneys are assigned cases from an employee of the Court. Until now the discussion has been largely academic. However, Court emails recently obtained reveal a concrete example of the Court exercising inappropriate influence through the Panel Coordinator to intimidate and discredit a panel attorney when the panel attorney’s actions displeased the Court.

In January of 2016, the University of Memphis School of Law announced the creation of a Children’s Defense Clinic. The concept of a clinic was mentioned in the original Agreement and the launch in the Fall of 2016 was celebrated by many community stakeholders. The celebration was short-lived. One year later, after a July 27, 2017 airing of a podcast where the Clinic Director expressed concerns about conditions of confinement in the juvenile detention center, the Court responded by instructing the Panel Coordinator to stop assigning all cases to the

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4 See DOJ letter dated October 30, 2014, DOJ letter dated December 23, 2014 and DOJ email dated March 5, 2015. Appendix B.
5 The DOJ repeatedly encouraged Shelby County leadership to seek local solutions that were supported by the broadest stakeholder collaboration possible. For example, “While your proposal seeks to address the elements of the Agreement, it falls short of this goal in several important ways. In particular, the proposal undercuts the independence of the appointed attorneys in (a) the manner in which the Committee is structured, (b) the Court’s option to expand the Committee at will, and (c) by providing the Court with sole authority to remove attorneys from the panel.” Letter from DOJ to Court, October 30, 2014. Appendix B.
6 For example, the Public Defender (the organization with the most subject matter expertise in this area) was repeatedly excluded, when there were clear opportunities to address remaining areas of non-compliance.
7 Shortly after the Agreement was signed, former Juvenile Court Judge Curtis Person transferred the Panel Coordinator position to the Mayor’s Administration in October 2013, a step toward making the conflict panel more independent. However, this action was reversed shortly after the election, and the County Administration returned the Panel Coordinator position to the Court’s direct control on November 11, 2014. The Court then immediately fired the Panel Coordinator on November 18, 2014, even though I had recently reported significant progress the Panel Coordinator was making with panel attorneys. The original Settlement Coordinator, Mr. Powell, later resigned in protest after the first letter requesting Agreement termination was sent in 2017. See Compliance Reports from 2013-2018.
Since the clinic curriculum is built upon direct representation of clients, the Law School quickly attempted to resolve the issue prior to the start of the semester. The Law School emphasized the importance of clinic and attorney independence in meetings and emails; however, the Court refused to allow the Panel Coordinator to assign cases. On September 5, 2017, when the Law School’s response proved unsatisfactory, the Court ratcheted up the issue and email copied the President of the University of Memphis, who oversees the Dean of the Law School. The Court’s email to the Dean of the Law School and the President of the University stated that since the Court had “no input” into who was hired for the clinical position and because the law school failed to “discipline its staff” the Court’s decision to stop assigning cases was final.9

The Court’s action of ordering the Panel Coordinator to stop assigning all cases to a panel attorney sends a very strong and clear message to all other Shelby County juvenile defense attorneys: if your statements displease the Court, your livelihood is at risk. Not surprisingly, this event and the ensuing attacks from the Court to her supervisors influenced the decision of the Clinic Director to seek other employment.10 This type of Court intimidation against a panel attorney is a perfect example of why case assignments coming through an employee of the Court jeopardizes due process and degrades an entire system. Unfortunately, the Law School has now discontinued the clinic program.

David Carroll, Executive Director of the 6th Amendment Center puts it this way,

And so, it does not take a judge to say overtly: “Do not file motions in my courtroom.” Defense attorneys will bring into their calculations what they think they need to do to garner favor with a judge in order to get the next appointment of contract. When public defense attorneys take into consideration what must be done to please the judge to get their next appointment or contract, by definition they are not advocating solely in the interests of a client, as is their ethical duty. Therefore all of the MOA terms related to caseload control, attorney performance, etc. cannot be met under a system that experiences judicial interference. [Oct 2, 2015 David Carroll Letter to Monitor Simkins, p.7]

The County Attorney has continued to assert that the Panel Coordinator randomly selects panel attorneys for case assignments by using a software system11 adopted from the United States District Court for the Western District of Tennessee. However emails reveal an enmeshed and subordinate relationship between the Panel Coordinator and the Court. When the Clinic

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8 Email chain of July 31, 2017 to August 24, 2017, Appendix C.
9 Email from September 5, 2017. The first case of the semester was eventually assigned on September 25, 2017, more than 6 weeks into the 14 week semester and one week prior to the DOJ’s scheduled compliance visit. See email of September 25, 2017, Appendix C.
10 It should be noted that the Clinic Director sought other employment despite the fact that her contract was renewed and has filed a judicial ethics complaint.
11 A May 22, 2018 letter from John Marshall Jones described “[S]oftware that selects, based upon current caseloads and expertise, a private lawyer for conflict appointment. The Court’s Panel Coordinator hits a button on the computer, contacts the private lawyer whose name the software generates to determine whether he/she is available to take the appointment, and if the lawyer accepts the appointment, prepares a case package for him/her. Simply put, there is no evidence that the present process of appointment of conflict counsel has impinged on the due process rights of a single child.” Appendix D.
Director repeatedly emailed the Panel Coordinator concerning case assignments, the Panel Coordinator contacted the Court for instructions. Emails reveal a culture where the Panel Coordinator and Magistrates are part of the same “club” and feel free to joke among themselves and make derogatory comments about defense attorneys (for example, referring to one defense attorney as “trailer park trash”).

Over the course of the Agreement there have been other examples of Court intimidation toward juvenile defense attorneys. In Compliance Report #10, I described “the Disturbing trend of Direct Judicial Control over Defense Bar” and discussed three recent ethics complaints filed by the Court against Shelby juvenile defenders. The report noted that bar complaints filed against lawyers by judges are extremely rare, and even though each of the complaints was dismissed by the Board of Professional Responsibility, this practice had “a direct negative effect on fledgling defense bar” causing a number of juvenile defenders to seek employment elsewhere.

The independence of the broader defense bar is critical to due process. This culture of intimidation leads to diminished representation and damages the due process rights of youth. Unfortunately, the prior County Administration and Court have refused to explore options to create independence and have taken the position that “it can’t be done.” This is simply untrue. There are viable options to remedy longstanding non-compliance concerning Panel Attorney Independence, including one proposed in *Toward a Comprehensive Plan for Juvenile Defender Services* that I mentioned in my last compliance report. The utter lack of effort to explore options or even discuss these important issues with the Public Defender is a disgrace.

Given the abrupt termination of the Agreement, which did not take into account the position of the newly elected County Commission and Administration, it is imperative that leaders concerned about fairness for children in Juvenile Court step forward to solve this persistent area of non-compliance. Given the loss of meaningful oversight resulting from the DOJ’s termination, it now falls to local leadership to take action to fix this problem. I again recommend that leadership consider one of two options.

i. Create an independent juvenile conflict defender office. This obvious solution has been available to the County since the Agreement was entered in 2012.

ii. Follow the proposal in *Toward a Comprehensive Plan for Juvenile Defender Services* which can be achieved with existing resources.

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12 Email of Thursday, January 11, 2018, Appendix C. *See also* email chain of January 11, 2017, Appendix C.
14 This report was submitted by Shelby County Public Defender Stephen Bush on March 2, 2018.
15 The County could simply open a local conflict office (a solution considered in 2013 when the Mayor was exploring options to meet the County’s obligation to ensure that all children represented by juvenile defenders have sufficient resources to provide zealous and ethical representation).
16 See Compliance Report #11, p. 6. *“Toward a Comprehensive Plan for Juvenile Defender Service”* proposes a viable option that addresses previous concerns about Rule 13 and the County Charter. It envisions a single agency system that operates alongside of the existing structure. As I understand it, under the Plan the Public Defender, as reorganized, could oversee two separate divisions (the existing Public Defender and Conflict Counsel). Under this proposal the Court’s Rule 13 panel of lawyers can still exist as a vehicle for Court appointments as needed.*
2. *Unfair Transfer Hearing Practices*

The second egregious due process violation involves the constellation of practices surrounding transfer of Shelby youth to adult criminal court. The combination of prosecutorial gamesmanship and the prosecutor's refusal to provide discovery (in contrast to all other Tennessee Counties), is a toxic combination for African-American youth. I have detailed my transfer concerns in every report since my appointment as monitor. From the beginning this was and continues to be an obvious due process issue since Shelby transfers 3x times more youth than any other county in Tennessee.\(^\text{17}\) Data provided by the Shelby County Juvenile Court show that transfer numbers declined for 7 consecutive years until a low of 47 in 2015. After the 2014 election, however, the previous steady decline in youth transfers reversed, with 92 children transferred in 2017.\(^\text{18}\)

*Prosecutor Gamesmanship Harms African American Youth*

\(^\text{17}\) See Appendix E  
\(^\text{18}\)

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*Data provided by JCMSC

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Given the enormous life-altering stakes of transfer to criminal court, one would hope that prosecutors would thoughtfully evaluate cases before filing notice of transfer. Rather, it appears the Prosecutor of Shelby County routinely files notice of transfer on ALL possible cases without conducting meaningful review. A key indicator of this disturbing practice is data that shows the prosecutor withdrew notice of transfer 50.6% of the time during 2018.19

Someone inexperienced with prosecutorial strategy might wonder why this matters. If notice of transfer is withdrawn, where is the harm? The filing and withdrawing of a notice of transfer is a tactic that deeply disadvantages youth for the following reasons. First, prosecutors know that this Court will not require discovery to be turned over to defense counsel when notice of transfer is filed. By filing notice of transfer, the defense attorney’s knowledge of the case is limited. Second, the prosecutor knows that filing notice of transfer changes the venue and automatically places the case on the “major crimes” docket, thereby increasing the stakes of the case. 20 Third, filing notice of transfer drastically increases the amount of leverage the prosecutor has to obtain a plea. The risk of going to adult court is so frightening for families and youth that any plea deal to remain in juvenile court looks appealing.

I am well aware that the prosecutor was not a signatory of the Agreement and that the Court has no control over the prosecutor’s policies. However, the Court does have control over whether or not to order the prosecutor to provide defense attorney discovery in transfer hearings. When as a matter of policy, the Court refuses to ensure that defense attorneys have adequate discovery, the Court becomes complicit in the prosecutor’s tactics and due process suffers.

**Shelby Stands Alone: Denying Discovery at Critical Transfer Hearing is Blatantly Unfair**

As I have reported before, I have found no other jurisdiction in Tennessee that denies defense attorneys discovery in transfer matters. For transfer proceedings to be fair, juvenile defendants must have access to adequate information about the charges in order to meet their ethical obligations to the children they represent. Other juvenile courts throughout Tennessee ensure that attorneys have meaningful discovery at this key stage. But the Juvenile Court in Shelby County does not.

When defense attorneys request discovery, the Court replies, “Show me where you are entitled to discovery at this stage?” While full discovery may not be complete at this key stage, fundamental fairness required for due process is supported by recently promulgated court rules in Tennessee that permit the Court to require the prosecutor to provide adequate discovery at this key decision point. 21

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19. See chart in footnote #18.
20. When Notice of Transfer is filed, the case is placed on the “major crimes” docket, assigned to the Juvenile Court Judge or an appointed Special Judge. A child is entitled to a re-hearing before the Judge if their case is heard by a magistrate. Since magistrates do not hear cases on this “major crimes” docket, children are denied the opportunity for a re-hearing before the Juvenile Court Judge.
21. Tennessee law empowers judges to use their discretion in providing discovery for transfer hearings. The official comment to Rule 206 of the Tennessee Rules of Juvenile Practice and Procedure explains: “Please note that some discovery may be critical in a transfer hearing. The Court should use its discretion in granting access to information necessary to defend or prosecute a transfer case.” Tennessee state law hinges on judicial discretion, not the prosecutor’s preference. See Compliance Report #10 available at https://www.justice.gov/crt/page/file/1025371/download pp 6-8. See Compliance Report #9, pp. 6-7. “Because of the issues at play in transfer hearings, and because of the extraordinary gravity of the consequences, I believe that considerations of fundamental fairness and the necessities of adequately preparing a defense mean that Shelby youth should be provided full
Unlike other juvenile courts across the state where discovery is routinely made available, the Court interprets the rules to say it cannot act to require disclosure of discovery at this stage. One would hope that a Court, striving to be fair, would order discovery to be provided given the obvious importance of the hearing and the awareness that the prosecutor files notice of transfer on nearly every eligible case. Panel Attorneys who work in neighboring counties are acutely aware of this unfair practice and can see the difference it makes in the representation of youth.

**Denial of Psychological Evaluations Belies Claims of a “Trauma Informed Court”**

In addition to the denial of discovery, the Court has now resumed a prior practice of denying youth psychological evaluations prior to transfer— a patently unfair practice that disproportionately impacts African-American youth because African-American youth are disproportionately noticed for transfer. In my previous reports, I have repeatedly stressed the importance of psychological evaluations in transfer cases as a tool that provides critical evidence about factors relevant to the court’s determination of whether or not the child is amenable to treatment in the juvenile system.\(^{22}\)

The Court has been known to make comments regarding the benefits of a “trauma informed court.” The fact that a “trauma informed court” would deny requested psychological evaluations simply mocks the intent of trauma training. One would hope that a Court that understands the complex impact of trauma would be particularly cautious before transferring a youth to adult court and would welcome all information about prior trauma.

3. **More Unresolved Due Process Issues that Create Barriers to Youth Representation**

I continue to be baffled that simple issues, such as obtaining court orders after the conclusion of a juvenile court hearing, have remained such entrenched obstacles to basic defense practice. While seemingly small, when unresolved, an obstacle such as the inability to obtain a court order creates an atmosphere of frustration and discouragement. One cannot be an effective advocate for youth when running around the building trying to obtain the court order. The court order is the basis for motions practice, appellate practice and post-disposition practice. On my last visit I was told that it can take months before a court order is placed into the system by the Juvenile Court Clerk and made available to the attorney.

In a functional system, despite the adversary nature of the court proceeding, attorneys on both sides, the Court and various departments work together to solve issues. The lack of a functional system was evident in the chaos that followed the Court’s unilateral decision to stop

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calling the names of youth scheduled for hearings, preferring to write the names of youth on
white-boards instead and imposing a new intrusive “trauma screen” at probation conferences.
I continue to be concerned by a “silo-mentality” where the Court unilaterally changes process
without input from either practitioners or other stakeholders.

B. Actions Required to Sustain Achievements

In addition to the continuing concerns about Panel independence, considerable effort has
gone into addressing problems with Public Defender independence as well. An adequate level of
operational independence was achieved by combining a number of components and has been
demonstrated through various actions of the Public Defender. In April 2018 I reported for the
first time that actions undertaken by the County to assure the Public Defender could act with
sufficient independence had been successful, despite barriers in the County Charter. I am pleased
to report the efforts to improve Public Defender independence remain in place and were
unaffected by the recent change in County leadership.

1. Sustain Public Defender Independence

Shelby County pieced together local assurances in this important area of compliance, and
present leadership should take steps to ensure the measures now in place are carried forward. I
remain concerned that the previous mayor’s Executive Order that assures these protections may
be changed or rescinded at any time by a future mayor. At a minimum, the assurances now in
place should be made permanent to ensure that improvements in this key area are not undone.

2. Maintain Court Oversight through County Commission

There are egregious due process issues yet to be addressed and the commitment of the
County Commission and the community is needed to resolve them and to hold the Court
accountable. I have seen how resistance and delay tactics have allowed the original problematic
structures, which harm youth, to remain in place. Without a strong commitment from the

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23 This change means that once a case is called, defense counsel must step outside the courtroom and locate the child and their family, then return to the courtroom once they are located. Sometimes family cannot be easily located in the large, crowded building, and miss the case on the docket even though they are present in the courthouse.

24 See compliance ratings in this report for more detail.

25 As noted in Compliance Report #11, the following actions corroborate that the Public Defender is now able to act with adequate independence: 1) Independent Hiring and Restructuring. After the signing of the Executive Order, the Public Defender has been able to restructure his office to enhance service delivery. 2) Public Defender Appeals. Since the Mayor’s Executive Order the Shelby County Public Defender has appealed several cases that demonstrate independence from juvenile court and political pressure. 3) Creation of Central Administrative Office. During my compliance visit I was able to tour a new space being renovated by the County for use by the Shelby County Public Defender that is in a separate building from Public Defender staff. Available at https://www.justice.gov/er/case-document/file/1077561/download pages 3-8.

26 For reference Mayor Luttrell’s Executive Order is included as Appendix F.

27 In order to maintain this achievement, the following components must remain in effect: a) Fall Back Provision. In the event the Chief Public Defender is removed from the position, he or she has the right to fall back into any open and vacant appointed position for which he or she qualifies; b) The Public Defender holds the office in a de jure capacity. In order to be replaced, the Mayor must name a new Public Defender appointee and that appointee must be approved by a majority of the Board of Commissioners before assuming office; c) Dual method of appointment applies across mayoral terms. The Public Defender who holds the position at the end of the current Mayor’s term will continue to hold it until a new appointee is named and approved by a majority of the Board of Commissioners before assuming office; d) Compensation. The salary of the Public Defender is now tied to an objective standard that is not subject to modification by the elected appointing authority.
Commission to ensure progress and transparency, I believe the current culture, which has allowed intimidation and blatantly unfair practices, will only worsen now that the Agreement has been terminated. In the past six months, between April and October, I have witnessed again the Court's unilateral approach to problems which creates negative collateral consequences disrupts practice, such as the "white boards" and the new "trauma screen". 28

Effective Commission oversight will require the Commission to identify and/or establish specific metrics so that meaningful data can be analyzed so that performance and progress can be measured. I encourage the Commission to exercise oversight and create an independent Juvenile Court Task Force to stay focused on the critical and unmet issues that strike at independent and equal justice for all Shelby County children.

28 See Appendix G for partial copy of new "trauma screen." I believe it would be helpful if there was forum where all juvenile justice stakeholders had a seat at the table to discuss practice related issues. For example in New Jersey there are local and statewide juvenile court improvement committees where issues can be discussed. Prior to the termination of Marilyn Hobbs by the Court, this type of stakeholder group had been formed and was beginning to serve this function.
C. Compliance Report Ratings

Methodology

The information for this compliance report was obtained using the same methods as the previous compliance reports. I have relied on information from a variety of Juvenile Court stakeholders. I requested and reviewed numerous documents before and during the site visit.

During the three-day site visit, I observed delinquency hearings, detention/probable cause hearings, and the major crimes docket. I had meetings with the following: Juvenile Court staff, Public Defenders from the juvenile unit, the juvenile defender panel attorney coordinator, the Public Defender, and others. All of the above provided useful information about current Juvenile Court operations, the progress that has been made toward compliance with the Agreement, and the areas where continued attention is needed.

The Agreement does not conceptualize or require specific compliance levels; however, experience in other jurisdictions suggests that the following levels are useful in evaluation. Note, “significant period” of time means longer than one year.

Substantial Compliance means that Juvenile Court has drafted the relevant policies and procedures, has trained the staff responsible for implementation, has sufficient staff to implement the required reform; has demonstrated the ability to properly implement the procedures over a significant period of time and has ascertained that the procedures accomplish the outcome envisioned by the provision.

Partial Compliance means that Juvenile Court has drafted policies and procedures and has trained staff responsible for implementation. While progress has been made toward implementing the policy, it has not yet been sustained for a significant period of time.

Beginning Compliance means that the Juvenile Court has made initial efforts to implement the required reform and achieve the outcome envisioned by the provision, but significant work remains. Policies may need to be revised, staff may need to be trained, procedures may need continued implementation to accomplish outcome envisioned by the Agreement.

Non–Compliance means that Juvenile Court has made no notable compliance on any of the key components of the provision.

Insufficient Information/pending means that it is not possible to assess compliance at this moment.
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<td>55</td>
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* I have divided two compliance measures into two parts given nature of progress.

**Protections Against Self-incrimination**

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<td>PC/SC</td>
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**Comments**

I was pleased to learn that since my April 2018 visit, all juveniles now have access to attorneys at the probation conferences. The Public Defender has continued the pilot program which was initiated in March 2018 and has been assigned to 829 probation conferences. In addition, the Court was able to secure funding so that Panel attorneys who represent youth at probation conferences can receive compensation. This is a significant improvement and if continued, this meets substantial compliance under the original Agreement. It has been reported that since March of 2018, 949 probation conferences have been scheduled. Of those, 829 were represented by the Public Defender Juvenile Unit and 120 were assigned to Panel Attorneys.

Since my last visit there has also been a change in the policies and practices of probation conferences and juveniles are no longer required to admit to charges in order to have their cases diverted. While these changes are positive, it is unclear if there has been any training as to how these changes will impact the role of counsel at the hearing.
I am also concerned about the imposition of a new “trauma screen” that has been implemented at probation conferences. This trauma screen asks parents and youth many intrusive questions that could have far ranging negative consequences for Shelby citizens. For example, youth and parents are asked to report about physical abuse in the home or inappropriate sexual touching in the home. The form is unclear as to who will use this information. Will it be going to law enforcement/department of human services/schools? Will it remain in the child’s file to be used at a disposition? These are important issues that need to be resolved.

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<tr>
<th>Juvenile Defenders</th>
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<td>N/A</td>
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<tr>
<td>Within 1 year insure independent, zealous advocacy by juvenile defenders. This shall include:</td>
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<td>a. Creation of specialized unit for juvenile defense within Office of the Public Defender</td>
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<td>b. Insure Juvenile Public Defender has appropriate administrative support, reasonable workloads &amp; sufficient resources. Representation shall cover all stages of case as long as juvenile Court has jurisdiction</td>
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<td>Within 1 year insure independent advocacy including:</td>
</tr>
<tr>
<td>a. Appoint juvenile defender to represent children at detention hearings &amp; probable cause determinations as soon as possible</td>
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<td>b. Establish Panel System Overseen by independent body to handle conflicts</td>
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<td>c. Support attorney practice standards for juvenile defenders including training and evaluation.</td>
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** SC for timely appointment, NC because not independent, **unclear if Panel Coordinator can enforce defense standards due to structure

Comments

See “Due Process Concerns that Prevent Successful Closure” above.

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29 See Appendix G
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<td>Children, through their attorney, are provided opportunity to present evidence on their own behalf</td>
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<tr>
<td>Children, through attorney, provided opportunity to confront evidence &amp; witnesses</td>
<td>NC</td>
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<td>PC</td>
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*See “Due Process Concerns that Prevent Successful Closure.” Lack of discovery curtails the youth’s lawyer ability to provide representation and impacts due process.

Comments

See “Due Process Concerns that Prevent Successful Closure” above.
COMPLIANCE REPORT # 12

APPENDIX

A. Letter Requesting Report, Chairman Pro Tempore, Mark Billingsley and No Confidence Resolution, Sponsored by Chairman Van D. Turner, FN #1.


E. Transfer Statistics from Tennessee Council of Juvenile and Family Court Judges, FN#17.

F. Mayor Luttrell’s Executive Order, FN#26.

G. Excerpts from New Trauma Screen used by Court, FN #28.
Appendix A

Letter Requesting Report, Chairman Pro Tempore, Mark Billingsley and No Confidence Resolution, Sponsored by Chairman Van D. Turner, FN #1
November 5, 2018

Sandra Simkins
Due Process Monitor
ssimkins@camden.rutgers.edu

Mike Leiber
Equal Protection Monitor
mleiber@usf.edu

Re: Closing of Memorandum of Agreement between the Department of Justice and Shelby County, Tennessee

Good morning,

As the legislative and funding body for the Shelby County Juvenile Court, I believe we are entitled to receive the final reports from the monitors, based on their findings from the October visit.

Therefore, I am requesting that they be forwarded to us as soon as possible.

Thank you.

Sincerely,

[Signature]

Mark E. Billingsley
Chairman Pro Tempore
SUBSTITUTION – 10.24.18 AND AMENDED 10.24.18

Item #

Moved by: ____________________________ Prepared by: Julian T. Bolton

Seconded by: ____________________________ Reviewed by: Marcy Ingram

RESOLUTION PROCLAIMING A VOTE OF NO CONFIDENCE IN THE UNITED STATES JUSTICE DEPARTMENT'S DECISION TO TERMINATE THE MEMORANDUM OF AGREEMENT REGARDING THE MEMPHIS SHELBY COUNTY JUVENILE COURT'S FAILURE TO PROTECT THE CONSTITUTIONAL RIGHTS OF THE CHILDREN OF SHELBY COUNTY. SPONSORED BY CHAIRMAN VAN D. TURNER, JR. AND CO-SPONSORED BY COMMISSIONER TAMIA SAWYER AND COMMISSIONER REGINALD MILTON.

WHEREAS, on June 29, 2018, the Shelby County Attorney’s Office, unilaterally, and without the advice or the consent of the Shelby County Commission, sent to the United States Department of Justice a second request to amend the Memorandum of Agreement regarding mandated juvenile reforms, executed between the County of Shelby and the United States Department of Justice; and

WHEREAS, within the request, the Shelby County Attorney’s Office stated that certain subparts of the findings by the Department of Justice had reached substantial compliance and thus the entire Memorandum of Agreement should be terminated; and

WHEREAS, The citizens of Memphis and Shelby County have long complained, and continue to complain about the treatment of parents and juveniles by the Juvenile Court, the lack of due process, and disparity of treatment of African American children and children of other ethnicities; and
WHEREAS, On August 11, 2009, the United States Department of Justice notified the Juvenile Court of Memphis and Shelby County to investigate the court’s administration of juvenile justice and conditions of confinement; and

WHEREAS, On April 26, 2012, the United States Department of Justice issued a Report of Findings which concluded there was reasonable cause to believe that the Juvenile Court of Memphis Shelby County failed to protect the constitutional rights of the children appearing before it on delinquency matters by failing to provide constitutional due process, administer justice in a non-discriminatory manner, and provide reasonably safe conditions of confinement; and

WHEREAS, In a letter dated June 9, 2017, Shelby County officials, Mayor Mark Luttrell, Sheriff Bill Oldham, and Juvenile Court Judge Dan Michael, after citing substantial progress in meeting the standards for improvement set by the Department of Justice in 2012 Memorandum of Agreement, unilaterally, without the advice or consent of the Shelby County Commission, requested that federal oversight be ended in its entirety as to the Memphis and Shelby County Juvenile Court; and

WHEREAS, In a letter dated on June 29, 2018, Shelby County officials, Mayor Mark Luttrell, Sheriff Bill Oldham, and Juvenile Court Judge Dan Michael, again in support of their second request cited substantial progress in meeting the standards for improvement set by the Department of Justice in the 2012 Memorandum of Agreement, unilaterally, without the advice or consent of the Shelby County Commission, and, again requested that federal oversight be ended in its entirety as to the Memphis and Shelby County Juvenile Court; and
WHEREAS, While there has been improvement, it is the position of the Board of Commissioners of Shelby County that the Juvenile Court has not fully complied with the word and the spirit of the Memorandum of Agreement; and

WHEREAS, The Board of Commissioners of Shelby County believe that the Juvenile Court may revert to old practices absent the continued monitoring and reporting requirements which were brought about by the Memorandum of Agreement; and

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF SHELBY COUNTY, TENNESSEE, That the Shelby County Commissioners respectfully proclaim a vote of no confidence in the Justice Department’s decision to terminate the Memorandum of Agreement on October 19, 2018 as the decision did not take into account the position of the newly elected County Commission and Administration and may not have taken into account the most recent observations by the due process and equal protection monitors (monitors) as the County has not been provided a copy of the federal monitors’ findings made during the October 2018 observation of Juvenile Court operations.

BE IT FURTHER RESOLVED, That the newly elected County Commission and Administration request that the Justice Department reconsider its decision to terminate the Memorandum of Agreement after hearing from all three branches of Shelby County Government and that the Memorandum of Agreement be reinstated until such time as all sections and subsections of the Department of Justice report are found to be in compliance.

BE IT FURTHER RESOLVED, That the Shelby County Board of Commissioners submit its’ official correspondence to the Department of Justice, Civil Rights Division stating the body’s position that monitoring continue.
BE IT FURTHER RESOLVED, That this Resolution shall take effect in accordance with the Shelby County Charter, Article II, Section 2.06(B).

Lee Harris  
Shelby County Mayor

Date: ______________________

ATTEST:

__________________________  
Clerk of County Commission

ADOPTED: ____________________
Appendix B

DOJ letters dated October 30, 2014, December 23, 2014 and DOJ email dated March 5, 2015, FN #4
October 30, 2014

Via Electronic and U.S. Mail

The Honorable Dan H. Michael
Juvenile Court of Memphis and Shelby County
616 Adams Avenue
Memphis, TN 38105

Re: Proposal to Reform the Juvenile Defender Panel

Dear Judge Michael:

As promised, we are writing in response to Your Honor’s October 21, 2014 letter and proposal for restructuring the panel attorney process. Your proposal seeks to address the terms of our Memorandum of Agreement (“Agreement”) regarding our findings pursuant to the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. §14141. Based on our discussions with you, it is our understanding that this is an interim plan and that a final proposal will be submitted once you have conferred with local stakeholders. To assist in your review and revision of the proposal, we offer the following observations.

You should know that we share your desire to improve the panel attorney selection, appointment, and removal process in a manner that ensures that the children represented by panel attorneys receive the benefits of the zealous advocacy to which they are entitled. A main component of our Report of Findings (April 2012) concerned the “[m]isunderstandings about the role of defense counsel” and the panel defender office’s lack of independence. id. at 46, 50. Your sense of urgency and expressed need for focusing on this issue is very much appreciated and understood.

To frame our observations of your proposal, we would like to draw your attention to several key elements of the Agreement respecting the right to counsel. One foundational element is the requirement to establish an “independent, ethical, and zealous” defense function in the Shelby County Public Defender’s Office and the appointed panel defender system.
See Agreement Section A.1.(e)(i) and (ii) at 14, 15. The independence of the defense function and individual defense counsel is necessary to the provision of ethical and zealous juvenile advocacy, a hallmark of a fair and reliable justice system, and essential to achieving substantial compliance with the Agreement. National standards recognize the imperative of maintaining an independent defender function. See e.g. Am. Bar Ass'n, Standing Comm. on Legal Aid and Indigent Defendants, ABA Ten Principles of a Public Defense Delivery System ("ABA Ten Principles") at 2 (2002) (Principle 1); ABA, STANDARDS FOR CRIMINAL JUSTICE, PROSECUTION AND DEFENSE FUNCTION (1993)(Standard 5-1.3).

"Independence" in this context means that the defense function is "independent from political influence and subject to judicial supervision only in the same manner and to the same extent as retained counsel." ABA Ten Principles, Principle 1, Commentary.

Another foundational element of the Agreement is the requirement to maintain reasonable defender workloads. Id. Section A.1.(e)(ii)(c) and (ii)(b) at 15. You have expressed a commitment to ensuring that the individual attorneys assigned to the panel provide quality representation to their clients. We share this commitment. We also note that, as with independence, workload controls, which include the attorney’s caseload adjusted by other factors such as the complexity of the cases and the attorney’s other duties, promote quality representation. See ABA Ten Principles at 2 (Principle 5); Am. Bar Ass’n, Standing Comm. on Legal Aid and Indigent Defendants, ABA Eight Guidelines of Public Defense Related to Excessive Workloads (ABA Eight Workload Guidelines) (2009). See also ABA Standing Committee on Ethics and Professional Responsibility, Formal Opinion 06-441 (May 13, 2006)(Ethical Obligations of Lawyers Who Represent Indigent Criminal Defendants When Excessive Caseloads Interfere with Competent and Diligent Representation)\(^1\).

The final foundational element of the Agreement that we would like to note regarding the panel system is that the panel be "overseen by an independent body.” Id. Section A.1.(e)(ii)(b) at 15. We understand that Tennessee Supreme Court’s Rule 13 requires the Court to maintain a roster of attorneys for appointments. However, Rule 13 does not prohibit the Court from authorizing an independent body to oversee the selection, qualification, supervision, and removal of the panel members. We recognize that your proposal seeks to place some authority in the Panel Selection Committee ("Committee"). However, the process that you have described for the selection and appointment of members to the Committee does not distance the Committee from the Court sufficiently to allow for actual and perceived independence, both of which are crucial to creating and maintaining the integrity of the panel.

\(^1\) Available at

http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/l3_sclaid_def_ethics_opinion_defender_caseloads_06_441.authcheckdam.pdf
While your proposal seeks to address the elements of the Agreement, it falls short of this goal in several important ways. In particular, the proposal undercuts the independence of the appointed attorneys in (a) the manner in which the Committee is structured, (b) the Court's option to expand the Committee at will, and (c) by providing the Court with the sole authority to remove attorneys from the panel.

As currently proposed, the Committee will consist of several members who will be beholden directly to the Court for their position. While we do not endorse a particular system for selecting Committee members, a system that satisfies national standards is likely to require that a diverse array of appointing authorities contribute selections to the Committee. See, e.g., Report of the National Right to Counsel Committee, Justice Denied: America's Continuing Neglect of Our Constitutional Right to Counsel (April 2009) at 185 (Recommendation 2 - "The members of the Board or Commission of the agency should be appointed by leaders of the executive, judicial, and legislative branches of government, as well as by officials of bar associations, and Board or Commission members should bear no obligations to the persons, department of government, or bar associations responsible for their appointments."). There are several systems where either the judiciary or the executive establishes an independent oversight body constituted of members selected by diverse authorities. See e.g. Kentucky's Public Advocacy Commission and Massachusetts' Committee for Public Counsel Services.²

The proposal's removal provision also undercuts the independence of the panel. The proposal provides no mechanism for ensuring that attorneys are removed for the appropriate reasons. While you have assured us that you will abide by the limitations of focusing on neglect, malfeasance, or professional conduct violations, an appropriate structure that secures independence cannot be dependent on the passion and understanding that you personally embody, but must create a structure that ensures independence over time, without any of us knowing who, in the future will take the bench or what his or her sensitivities will be toward the right to zealous counsel for juveniles. In addition, even while we may accept Your Honor's good judgment on these matters, the Court's absolute power of removal sends the clear message to the private bar that their livelihood is dependent upon staying in the Court's favor, rather than aggressively advocating for their clients. One example of a more secure removal process would require the Committee to hear complaints against attorneys, find facts, and decide on a sanction, which the Court would have the authority to review and modify for good cause. As it stands, the Court's absolute authority to remove an attorney undermines the independence requirement.

² Although these are state systems, they can provide some insight into how members of such bodies are appointed.

3
Finally, the proposal creates serious workload concerns and is focused too heavily on criminal practice as opposed to the specialized practice of juvenile defense. The proposal’s limited number of panel attorneys – twenty – will create an immediate workload crisis for both the panel and the public defender service. According to the court’s most recent annual report (2012), the court handled 8,995 delinquency cases in 2012. The court’s list of 2013 Top Ten Offenses, includes over 12,000 charges (the actual number of cases is unclear). Requiring twenty panel attorneys and eight public defenders (the current number of attorneys in the juvenile unit) to handle this many matters would immediately breach suggested caseload maximums and would create overwhelming and unmanageable workloads (which include factors other than the raw number of cases). See American Council of Chief Defenders Statement on Caseloads and Workloads (2007). Additionally, the proposal’s focus on criminal experience as the basis for attorneys’ qualifications to serve on the major offenses and transfer docket overlooks the importance of specialized juvenile training and practice. See e.g. National Juvenile Defense Standards, Standard 1.3, Specialized Training Requirements for Juvenile Defense (2013); National Juvenile Defender Center and National Legal Aid & Defender Association, Ten Core Principles for Providing Quality Delinquency Representation Through Public Defense Delivery Systems, Principle 7, Comment A (“The public defense delivery system recognizes juvenile delinquency defense as a specialty that requires continuous training in unique areas of the law.”).

We hope that these observations will be helpful in your revision of the proposal. We appreciate and share your concern for improving the quality of the panel attorneys. We recommend that you work with others in the county to develop a panel system that is independent, ethical, and supports zealous advocacy on behalf of the children appearing on delinquency proceedings.

Sincerely,

Winsome G. Gayle
Special Counsel

cc: Mark H. Luttrell Jr.
Mayor of Shelby County
Vasco A. Smith, Jr. County Administration Building

160 North Main Street
Memphis, TN 38103

Sandra Simkins
Director Children's Justice Clinic
Clinical Professor
Rutgers School of Law - Camden
217 N. 5th Street, Camden, NJ 08102

Bill Powell
Settlement Agreement Coordinator
201 Poplar Avenue, Second Floor
Memphis, TN 38103

Stephen Bush
Shelby County Public Defender
201 Poplar Avenue, Second Floor
Memphis, TN 38103

Marilyn Hobbs
Panel Attorney Coordinator
Juvenile Court of Memphis and Shelby County
616 Adams Avenue
Memphis, TN 38105

Jina C. Shoaf
Assistant County Attorney
Shelby County Attorney's Office
160 N. Main Street, Suite 950
Memphis, TN 38103
Via Electronic and U.S. Mail

Ross Dyer
County Attorney
Shelby County Attorney's Office
160 N. Main Street, Suite 950
Memphis, Tennessee 38103

Larry K. Scroggs
Chief Administrative Officer and Chief Counsel
Juvenile Court of Memphis and Shelby County
616 Adams Avenue
Memphis, TN 38105

Re: Reforming Juvenile Defense Services

Dear Mr. Dyer and Mr. Scroggs:

We are writing to address the necessary next steps to meeting the requirements of the Memorandum of Agreement ("Agreement") to "ensure independent, ethical, and zealous advocacy" to children appearing in delinquency matters. See Agreement Section A.1.(e)(i) and (ii) at 14, 15.

First, we want to thank you for your engagement in last week's meeting on defender independence. As you know, our meeting occurred on the second anniversary of the Agreement, which was finalized on December 17, 2012 and provides agreed upon measures to remedy our findings pursuant to the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. §14141. We truly appreciated the insights of Judge Michael and his leadership team, the Mayor's Chief Administrative Officer, the Public Defender's Office, the Memphis Bar Association President, and the County Attorney's Office. The discussion helped create a common understanding of the County’s challenges and the resources that you will need to draw upon to achieve the level of independence required by the Agreement. Most importantly, our meeting highlighted the Juvenile Court and the County leadership's dedication to developing solutions to these challenges and commitment to making concrete changes.

Second, as we discussed in our meeting, the primary parameters of independence include protection from political and judicial interference. Appointed counsel should be subject to judicial oversight only to the same extent and in the same manner as is retained counsel, thereby practicing with the freedom to provide their clients with ethical and zealous advocacy. As we
noted in our October 30, 2014 letter to Judge Michael, this level of independence is an essential feature of a fair juvenile justice system and a necessary component of the Agreement. As we discussed, independence is foundational, a necessary precondition for a public defense system’s ability to meet the ABA Ten Principles. See e.g. Am. Bar Ass’n, Standing Comm. on Legal Aid and Indigent Defendants, ABA Ten Principles of a Public Defense Delivery System ("ABA Ten Principles") at 2 (2002) (Principle 1); ABA, STANDARDS FOR CRIMINAL JUSTICE, PROSECUTION AND DEFENSE FUNCTION (1993)(Standard 5-1.3); see also Ferri v. Ackerman, 444 U.S. 193 (1979) (noting that appointed counsel’s duty to client parallels that of retained counsel).

Third, we recognize that there are obstacles to overcome that will likely require complex solutions and the participation of stakeholders who were not present in our discussion last week. We heard your concerns about the funding limitations of Tennessee Supreme Court’s Rule 13 and the local barriers to independence. We also acknowledge and appreciate that you began formulating some solutions that are achievable and that may ultimately lead to removing these barriers. For example, you discussed the creation of an independent board overseeing both the public defender service and appointed counsel. You also discussed the importance of local non-profit support in supplementing the baseline funds provided by Rule 13.

To achieve the public defense independence requirements of the Agreement, it is important for the court and county’s juvenile justice system leadership to continue the work of Wednesday’s meeting. At a minimum, we believe it critically important for you to promptly engage in the following steps:

(A) Judge Michael, the Mayor’s Office, and the Offices of the County Attorney and the Public Defender should continue last Wednesday’s collaborative discussion of the elements necessary to reform the juvenile justice system’s public defense function in accordance with the Agreement. This leadership team may need to invite other stakeholders as required by Shelby County’s unique dynamics, culture, and circumstances.

(B) Seek technical assistance from a substantive expert who has engaged in defense reform work and from a skilled facilitator to help structure and guide your discussion and set goals and a realistic schedule for dialogue and decision making.

(C) Develop a comprehensive plan that outlines how the Agreement’s requirements of public defense independence, reasonable workloads, adherence to juvenile defender standards, and oversight by an independent body will be achieved. This plan should be submitted to us and the Due Process Monitor by March 16, 2015. The plan should outline steps toward accomplishing the reforms and the timelines for achieving each step. The reform efforts should begin by no later than April 15, 2015. We have discussed this request with the Monitor and she is in agreement.

We share your commitment to reforming the defender function so that Shelby County’s juvenile justice system will become the national model to which you aspire. We are truly appreciative of the due process achievements you have made thus far, including the creation of a
juvenile defender office within the Public Defender’s Office. We now look forward to your
development of a comprehensive plan that will secure that office’s independence as well as the
independence of the appointed counsel process.

Independent, ethical, and zealous advocacy on behalf of children is critical for the proper
functioning of the adversarial system that In re Gault and its progeny envision for our juvenile
courts. We look forward to reviewing your plan and know that much success will follow as you
collaborate as a team to complete this important work.

Sincerely,

Winsome G. Gayle
Special Counsel

cc: Mark H. Luttrell Jr.
Mayor of Shelby County
Vasco A. Smith, Jr. County Administration Building
160 North Main Street
Memphis, TN 38103

The Honorable Dan H. Michael
Juvenile Court of Memphis and Shelby County
616 Adams Avenue
Memphis, TN 38105

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201 Poplar Avenue, Second Floor
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Marcy Ingram  
Deputy County Attorney  
Shelby County Attorney's Office  
160 N. Main Street, Suite 950  
Memphis, Tennessee 38103

Jina C. Shoaf  
Assistant County Attorney  
Shelby County Attorney's Office  
160 N. Main Street, Suite 950  
Memphis, Tennessee 38103
On Mar 5, 2015, at 11:45 AM, Gayle, Winsome (CRT) <Winsome.Gayle@usdoj.gov> wrote:

Good day Mr. Kennedy, I hope you are doing well considering this weather.

As you know, during our December 17, 2013 stakeholder meeting, followed up by our letter of December 23, we urged that the court and county leadership work together to develop a comprehensive plan for providing children with counsel. We have recently learned that the Shelby County Juvenile Court has developed an indigent defense plan that is not comprehensive and without collaboration among at least some of Shelby's juvenile justice stakeholders.

The due process practices that we found in juvenile court in 2012 undoubtedly developed and were embedded in local practice over the course of many years. The change that we are seeking may take time to develop, but we want to ensure that the improvements will be substantial and lasting. Experience in a wide variety of jurisdictions shows that change of this magnitude depends upon the ability of justice system co-leaders to work together. One party, no matter how well-intentioned, may create a quick fix, but without full buy-in and commitment across the system, it is all too likely that over time, the system will revert to its historical attitudes, practices, and deficiencies. We are committed to supporting long-term improvements of juvenile court’s due process practices.

The information that we have received from Committee A minutes and our continuing interviews and meetings with stakeholders indicates that there is little on-going collaboration and that come March 23, the court and county will not be providing us with a comprehensive plan. At best, we expect to receive two distinct and separate plans for providing indigent defense.

Until recently, the county has worked cooperatively to meet the requirements of the MOA. We are concerned that the failure to continue along this vein will result in noncompliance on an essential component of the MOA, the provision of “independent, ethical, and zealous advocacy” to children appearing in delinquency matters. See Agreement Section A.1.(e)(i) and (ii) at 14, 15. We would like to avert such a result.

We are available to discuss this matter with you as soon as possible. We would like to learn more about the steps being taken to ensure that the key county stakeholders are engaging in the development of the plan - for example, the mayor or his designee, the public defender, and the local bar.

Thank you as always for your attention to this matter.

Winsome G. Gayle
Special Litigation Counsel (Juvenile Rights)
U.S. Department of Justice
Civil Rights Division
Special Litigation Section
202-305-4164
Winsome.Gayle@usdoj.gov
Appendix C

Hi Scot -

I haven't heard back from you. I want to make sure you got the email I sent in Monday about cases for the fall Clinic students.

Lisa

Sent from my iPhone

Begin forwarded message:

From: lgeis@memphis.edu
Date: July 31, 2017 at 3:06:27 PM EDT
To: Scot Bearup <scot.bearup@shelbycountytn.gov>
Subject: Cases for Clinic

Good afternoon, Scot -

Hope you're doing well & have been able to get away for some summertime R & R.

I'm gearing up for the fall semester. Six students are enrolled in the clinic. We'll be ready to start appearing court by the week of August 28th.

I'm not sure how far out new assignment court dates but I imagine their getting close to that week. Just let me know when you have some folders ready for me to come down & grab.

Thanks.
Lisa

Sent from my iPhone
Archive.Auditor

From: Skelton, Pamela <Pamela.Skelton@shelbycountystn.gov>
Sent: Thursday, August 24, 2017 10:28 AM
To: 'Lisa Geis (lgeis)'
Cc: 'pvleisou@memphis.edu'; 'dschffzn@memphis.edu'
Subject: FW: U of M Clinic Cases

Lisa,

Yes.

Thank you.

Pam

Pamela Skelton
(901) 222-0781

From: Bearup, Scot
Sent: Wednesday, August 23, 2017 3:48 PM
To: Skelton, Pamela
Subject: FW: U of M Clinic Cases

From: Lisa Geis (lgeis) [mailto:lgeis@memphis.edu]
Sent: Wednesday, August 23, 2017 3:46 PM
To: Bearup, Scot
Cc: Daniel Schaffzin (dschffzn)
Subject: U of M Clinic Cases

Scot -

It is my understanding that Judge Michael has informed Dean Letsou that your office will no longer assign delinquency cases to the Children's Defense Clinic.

Is my understanding correct?

Lisa

Lisa M. Geis
Visiting Assistant Professor of Law
Director, Children's Defense Clinic
Cecil C. Humphreys School of Law
lgeis@memphis.edu
Hello Peter,

I am in receipt of your letter. I have made my decision and stand by it. The solution is straightforward. You employed someone who, in my humble opinion, is not competent to practice in the jurisdiction. I had no input into that decision. Her actions have violated the Tennessee Code of Professional Ethics and frankly good manners. Last year she assaulted a student. She called the court a Kangaroo Court and she maligned me directly on a podcast and tweet in direct violation of her Ethics Code.

The school's inability to discipline its staff is mystifying. Because of her actions and the lack of the school's response my decision is final.

Dan

Judge Dan H Michael
901-212-6559

On Sep 5, 2017, at 4:27 PM, Peter V Letsou (pvletsou) <pvletsou@memphis.edu> wrote:

Dear Judge,

I hope you enjoyed the holiday weekend. I was hoping to discuss the letter I sent last week.

I'm looking forward to hearing from you.

Thank you.

Peter V. Letsou
Dean | Professor of Law
Cecil C. Humphreys School of Law

The University of Memphis
1 North Front St.
Memphis, TN 38103

901.678.4588 | memphis.edu/law
I received a call from the Judge okaying case assignments. About 10 minutes later Danny called advising that he had spoken to Judge. I am ready to send the first case over. For JCS purposes we had Lisa Geis listed as "Court Appointed Counsel." I am going to ask Shannon to do the same with Danny so we will be able to track appointments and court dates. Let me know if you want to handle this differently.

Scot

From: Bearup, Scot
Sent: Monday, September 25, 2017 11:33 AM
To: 'Daniel Schaffzin (dschaffzn@memphis.edu)'
Cc: Skelton, Pamela
Subject: U of M Legal Clinic

It was nice speaking with you last Friday. It is my understanding that you are to contact Judge Michael directly to discuss the details of having cases assigned to the clinic. He can be reached at 901-222-0640.

Scot A. Bearup
Juvenile Defender Panel Coordinator
Juvenile Court of Memphis and Shelby County
616 Adams Avenue, Room 247
Memphis TN 38105
901-222-0794 (phone)
901-222-0798 (fax)
You are too kind to her.

From: Erguden, Garland
Sent: Thursday, January 11, 2018 1:40 PM
To: Bearup, Scot
Subject: RE: U of M Clinic Students & Staff - Spring 2018

I actually think that Jennifer is going to be extra nice until the August election.

Did you bother to point out to Lisa Geis that lawyers MUST be introduced to the courts before they practice? I was introduced in all of the civil, criminal and appellate courts, plus federal court. She really is trailer park trash.

From: Bearup, Scot
Sent: Wednesday, January 10, 2018 4:12 PM
To: Erguden, Garland
Subject: RE: U of M Clinic Students & Staff - Spring 2018

I wonder who else will throw their name into the hat during the election.

From: Erguden, Garland
Sent: Wednesday, January 10, 2018 3:43 PM
To: Bearup, Scot
Subject: RE: U of M Clinic Students & Staff - Spring 2018

Think Dean would be a petty tyrant. The other Jennifer would be a nightmare for prosecutors and victims. She has already said she is going to run against Nichols in August.

From: Bearup, Scot
Sent: Wednesday, January 10, 2018 1:19 PM
To: Erguden, Garland
Subject: RE: U of M Clinic Students & Staff - Spring 2018

No big surprise. I suspect she will be like Bobby - an equal opportunity jerk to all who come before the bench.

From: Erguden, Garland
Sent: Wednesday, January 10, 2018 1:19 PM
To: Bearup, Scot
Subject: RE: U of M Clinic Students & Staff - Spring 2018

Jennifer Nichols got Beasley’s seat.
I was thinking more Mommy Dearest.

From: Erguden, Garland
Sent: Wednesday, January 10, 2018 1:17 PM
To: Skelton, Pamela; Michael, Dan; Walker, David
Cc: Bearup, Scot
Subject: RE: U of M Clinic Students & Staff - Spring 2018

Did she spend her Christmas break with the Stepford Wives? I may bar!!

From: Skelton, Pamela
Sent: Wednesday, January 10, 2018 12:51 PM
To: Michael, Dan; Erguden, Garland; Walker, David
Cc: Bearup, Scot
Subject: FW: U of M Clinic Students & Staff - Spring 2018

I have asked Professor Geis if she will be introducing these students or if Scot needs to do it...thank you!

Pam

Pamela Skelton
(901) 222-0781

From: Lisa Marie Geis (lgeis) [mailto:lgeis@memphis.edu]
Sent: Wednesday, January 10, 2018 12:16 PM
To: Skelton, Pamela
Cc: Bearup, Scot
Subject: U of M Clinic Students & Staff - Spring 2018

Hi Pam -

Happy New Year! Hope you had an enjoyable holiday season.

Here's the list of students who will be in court this semester:

Rachel Wilson DeFazio
Tammy Wells Oliver
Mollie Wildmann
Victoria Cooper

Clinic Graduate Fellow: Lucas Cameron-Vaughn, Esq.

The semester started for us yesterday so the students should be court-watching & entering appearances soon.

Lisa

Lisa M. Geis
Visiting Assistant Professor of Law
Director, Children's Defense Clinic
Cecil C. Humphreys School of Law
lgeis@memphis.edu
Appendix D

May 22, 2018 letter from John Marshall Jones, FN #11
VIA EMAIL & U.S. MAIL
Ms. Sandra Simkins, Due Process Monitor
School of Law—Camden
Rutgers, The State University of New Jersey
217 North 5th Street
Camden, NJ 08102

Re: Memorandum of Agreement Regarding the Juvenile Court of Memphis and Shelby County, December 17, 2012

Dear Monitor Simkins:

Pursuant to the Memorandum of Agreement, Shelby County, Tennessee responds as follows to the issues of concern related to the Juvenile Court of Memphis and Shelby County, as discussed in Draft Due Process Compliance Report #11, dated April 20, 2018:

INDEPENDENCE ISSUES

A. Shelby County Public Defender¹

While the Draft Report (at 3) lauds the significant “assurances of [Public Defender] independence[,]” it seems to demand much more than substantial compliance with the Memorandum of Agreement (see Draft Report at 4 (emphasis added)): “None of these assurances constitutes an ideal solution . . . .”

The Court has certainly demonstrated its commitment to the implementation of best practices within the boundaries of the controlling law, but the MOA standard is substantial compliance. In that regard, the Draft Report (at 5)

¹ The Draft Report (at 3 (emphasis added)) states that “Public Defender independence . . . has been one of the most difficult [MOA subjects] to address given the County’s interpretation of the limitations of the County Charter and Rule 13.” Thus, this Draft Report once again lays at the feet of the Court responsibility for the controlling law.
“determin[es] that the Shelby County Public Defender is presently able to act with sufficient independence.”

B. Conflict Counsel

The Shelby County Charter precludes the establishment of an independent commission to oversee the provision of indigent defense representation by the Public Defender. This limitation under existing law must be analyzed in tandem with the restrictions of Tennessee Supreme Court Rule 13, which provides for the appointment, qualifications, and payment of lawyers in cases not handled by the Public Defender by putting those matters squarely in control of the trial judge. The County and the Court have no control over the Tennessee Supreme Court, which has “original and exclusive jurisdiction to promulgate [its] own rules” and to govern the practice of both lawyers and the judiciary. Petition of Tenn. Bar Ass’n, 539 S.W.2d 805, 810 (Tenn. 1976).

The Draft Report suggests that the Public Defender create a “central administrative office” to accommodate the operation of a “single agency model,” which would take control over the vast majority of conflict appointments, despite the dictates of Rule 13 against such an arrangement and the conflict-of-interest provisions of the Tennessee Rules of Professional Conduct and the Shelby County Charter. The Draft Report touts the single agency model as a purported remedy “for noncompliance” based on a presumed – although undemonstrated – lack of independence of the Conflicts Panel lawyers. Thus, the Draft Report deems noncompliant a process the Juvenile Court adopted from (and which is still utilized by) the United States District Court for the Western District of Tennessee. As previously explained, the process uses software that selects, based upon current caseloads and expertise, a private lawyer for a conflict appointment. The Court’s Panel Coordinator hits a button on a computer, contacts the private lawyer whose name the software generates to determine whether he/she is available to take the appointment, and, if the lawyer accepts the appointment, prepares a case package

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2 By way of reminder, the option of attempting to change the Charter to allow the Chief Public Defender to run for office was communicated three years ago to the Department of Justice attorneys and the Chief Public Defender, all of whom declined the proposal.

3 The Draft Report discusses extensively the State of Delaware’s recent restructuring of its indigent defense delivery system, but provides no analysis of whether or not Delaware’s new system could be utilized in Shelby County within the dictates of the Charter and Supreme Court Rule 13. The County and the Court therefore respectfully request that the discussion of the new Delaware system, the implication of which discussion is that the implementation of such a change in Shelby County would solve the conflict lawyers’ purported lack of independence, be omitted from the final version of the Report.
for him/her. Simply put, there is no evidence that the present process for the appointment of conflict counsel has impinged on the due process rights of a single juvenile.

The Draft Report further takes the position that, under the single agency model, the Public Defender’s Office, in each instance in which it determined that a conflict of interest existed (generally because of the Office’s current or prior representation of a co-defendant, witness, or victim), would then choose the conflict lawyer. The Draft Report does not explain how such a mechanism would exist and operate without running afoul of Rules 1.7—1.10 of the Tennessee Rules of Professional Conduct. See, e.g., Rule 1.10 Imputation of Conflicts of Interest: General Rule, “(a) While lawyers associated are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by RPCs 1.7, 1.9, or 2.2 . . . .” As to conflict issues that exist despite the use of a screening mechanism, see Clinarv v. Blackwood, 46 S.W.3d 177 (Tenn. 2001), in which the law firm involved was disqualified because of the serious appearance of impropriety.

Furthermore (setting aside for a moment any ethical issue), the Draft Report provides no explanation as to how allowing the Public Defender to control conflict appointments would enhance or further the independence of conflict lawyers. Under Rule 13, the Juvenile Court Judge would still have to sign appointment (and withdrawal) orders for both Public Defenders and lawyers appointed in conflict-of-interest situations.

ATTORNEYS AT PROBATION CONFERENCES

With respect to the presence of attorneys at probation conferences, the Draft Report (at 7-8 (footnote omitted)) correctly acknowledges as follows:

It was reported by the pilot project attorney that since March 1, 2018, 80 youth have had probation conferences scheduled under the pilot [that is, with an attorney present]. The current plan is to take this pilot to scale by July 1, 2018. I believe this pilot project, if taken to scale, would meet the requirements of the Agreement. The Department of Justice also submitted an email to Shelby County and the Settlement Coordinator on April 10, [2018] which advised, “It is our position that once implemented, the Public Defender’s provision of counsel at the probation conferences will constitute substantial compliance with the Agreement, Protection against Self-Incrimination provision III.A.1([d])(ii) and (iv).”
TRANSFER ISSUES

With respect to transfers of minors by the Juvenile Court to the Criminal Court to be tried as adults, it is critical to acknowledge the historical compliance ratings on the two remaining issues: (1) children provided opportunity to present evidence on their own behalf; and (2) children provided opportunity to confront evidence and witnesses. As to the first, the Monitor found substantial compliance during the period covering the October 2015 and April 2016 reviews. As to the second, the monitor found substantial compliance during the period covering the April 2015, October 2015, and April 2016 visits.

Although nothing changed in the Court's process or procedure, the Monitor, in December 2016, lowered the ratings to partial compliance, to which the County and Court strongly objected and have continued to so object. The current Draft Report continues to assert that the ratings drop was made because of concerns "about inconsistent discovery practices and that attorney discovery was inadequate to represent youth at transfer hearings."

A. Discovery

The Monitor is well aware of the position of the County and the Court regarding discovery in transfer hearings. That position was discussed in detail in, for example, the December 7, 2017 Memorandum in response to Draft Due Process Compliance Report #10, in particular at pages 5-6, 8-9, and 13-14; there is no need to reiterate it in detail here. Suffice it to say that the two determinative components of the County and the Court's stance on discovery in transfer hearings remain completely unrefuted: (1) The MOA does not, either directly or by implication, require open discovery in transfer hearings; and (2) State v. Willoughby, 594 S.W.2d 388 (Tenn. 1980), is the controlling law in Tennessee.

Recently, the DOJ has in essence acknowledged the County and the Court's long-stated position. In her April 10, 2018 email, General Winsome Gayle stated that District Attorney General Amy Weirich had represented that her office provides all items subject to disclosure by Brady v. Maryland, 373 U.S. 83 (1963), and Giglio v. United States, 405 U.S. 150 (1972). Ms. Gayle continued (emphasis added): "It is our position that the Agreement, Transfer Hearing provision III.A.1(c)(i)(d)[+] requires only disclosure of Brady and Giglio materials for transfer hearings."

4 It appears this reference to the MOA should read "III.A.1(c)(i), (d)."
The Draft Report responds by disagreeing with the DOJ, but restoring the applicable ratings to substantial compliance:

I completely disagree with the DOJ’s opinion and maintain that full discovery is necessary to adequately represent youth at this critical stage. However, in light of the DOJ’s opinion . . . I have changed my rating to substantial compliance, which must be maintained for at least a year to meet the terms of the Agreement.

We respectfully submit that the Court is not required to maintain substantial compliance for another year before those terms of the MOA may be terminated. Instead, the Court reached substantial compliance in both areas in 2016, and has been in substantial compliance continuously since that time (far longer than the year alluded to in the Draft Report). The final Report should so reflect.5

B. Number of Transfers

The Draft Report notes that the “numbers of youth facing transfer continued to climb to above 2013 levels,” thus maintaining its long-standing criticism of the number of juveniles transferred in Shelby County and the apparent position that due process is inherently denied because of the transfer request decisions made by the District Attorney General. These matters, however, remain unrefuted: (1) The District Attorney General, an official of the State of Tennessee, is not a party to the MOA; (2) all charging decisions and transfer requests fall within the DAG’s sole authority as the elected official; and (3) the law requires that the Court provide a transfer hearing upon the DAG’s request.

The Draft Report cites 221 transfer requests made by the State in 2017. Of that number, the State withdrew 80 requests as the cases progressed (either settling the case under juvenile jurisdiction or dismissing the charges altogether), leaving 141 cases. Of that number, the Juvenile Court actually conducted only 44 transfer hearings (requests for transfer may overlap the calendar year period); the

5 Text omitted from the above quotation also demands a response. Although changing the ratings to substantial compliance, the Draft Report references (emphasis added) “the fact that during this past compliance visit [the Monitor] did not receive any reports that Brady materials were being withheld.” The inference to be drawn is that the Monitor received prior reports of Brady violations. If the implication is unintended, we respectfully request that the final version of the Report be revised to remove this language. On the other hand, if such a complaint were made to the Due Process Monitor previously, why did the Monitor fail bring such critical information to the attention of the Juvenile Court (so it could ensure due process was being provided), and/or the Tennessee Board of Professional Responsibility, and/or the Tennessee Court of the Judiciary?
Court declined to transfer 25 of those 44 juveniles. Forty-eight cases were waived by the child and his/her lawyer, with 39 of those being straight waivers of transfer hearing and an additional 9 being waivers based upon "information" (bypassing Grand Jury straight to Criminal Court) offers from the State. The Court's only participation in cases in which there is a waiver by the child is to make certain the waiver is knowing and voluntary, that is, is an arm's-length decision made with proper legal advice and assistance. ⁶

After declining for several years (71 transferred/waived in 2016), the number rose to 92 in 2017, unfortunately reflecting a rise in violent crime by juveniles. The County and the Court remain at a complete loss as to how the number of transfer requests made by the District Attorney General, and/or the number of waivers to adult court by children represented by counsel, reflect any issue with due process, much less an issue over which the Court has control.

C. Psychological Evaluations

The substantive text of the Draft Report concludes as follows (emphasis added):

Finally, I want to express concerns that in 2018 there have been eight documented cases where attorneys made requests for psychological evaluations prior to the transfer hearing and the request was denied. In addition, there was a case where the Court refused to wait for the evaluation to be completed and proceeded to have the child's transfer hearing when a psychological evaluation was pending. It is unclear why these evaluation requests are being denied, but I encourage the Court and defense counsel to ensure decisions are not being made arbitrarily.

Thus, the Draft Report does not assert that any decision by the Court in fact was arbitrary; instead, it implies that conclusion. Further, the Draft Report's statement that "it is unclear why these evaluation requests are being denied" seems to imply that all the decisions referenced were made for the same reason. The Court of course has always made tapes of all transfer proceedings available to the Monitor for review. In this instance, the tapes would have demonstrated one or more of the following entirely appropriate reasons for denial of a psychological evaluation: (1) the parent or the lawyer for the child acknowledged that the child took no

⁶ The child's waiver is generally in exchange of an immediate pre-indictment offer by the State, or because the charge is eligible for diversion in the adult system, or to link up charges pending or expected for a package offer by the State.
psychotropic drugs; (2) the child had never been diagnosed or treated for any mental illness; (3) the child had never been hospitalized for any type of mental illness; (4) the child was not mentally impaired; and/or (5) the child fully understood his counsel, his parent, and the Court. Thus, the Court made each decision on the facts of the case presented, not on any blanket (improper) ground.

Furthermore, in each instance, the “basis” provided for the proposed examination was either the mere fact that the person before the Court was a juvenile, the “seriousness of the charge” without more supporting facts, or both. The Tennessee Rules of Juvenile Procedure require that matters involving incarcerated youth be dealt with, and resolved, within 30 days (45 days for non-incarcerated youth), unless good cause is found. A psychological examination takes an additional 30 to 60 days. The Court uniformly follows its announced policy of granting such requests upon any reasonable basis. However, the Court cannot entertain prolonged incarceration of children upon pro forma requests for psychological evaluations, particularly when all the records from prior treatments under court order, the schools, the Dept. of Children’s Services, or private medical providers are available to the defense. Additionally, the result of a competency test is available within one week if either the lawyer, or the Court sua sponte, sees such a need, and such a request is invariably granted.

Under the circumstances, the Court and the County respectfully request that this paragraph be removed from the final version of the Report.

*

We appreciate your consideration of the above requests regarding final Due Process Compliance Report #11, and look forward to receiving the final version.

Best regards,

John Marshall Jones
Assistant County Attorney

/JMJ
Ms. Sandra Simkins  
Due Process Monitor  
May 22, 2018  
Page 8 of 8

cc: Winsome G. Gayle, Esq. (VIA EMAIL)  
Richard C. Goemann, Esq. (VIA EMAIL)  
Emily Keller, Esq. (VIA EMAIL)  
Judge Paul Summers, Settlement Agreement Coordinator (VIA EMAIL)  
D. Michael Dunavant, Esq., United States Attorney, W.D. Tenn. (VIA EMAIL)  
Mark H. Luttrell, Jr., Mayor, Shelby County (VIA EMAIL)  
Harvey Kennedy, CAO, Shelby County (VIA EMAIL)  
Judge Dan E. Michael, Juvenile Court (VIA EMAIL)  
Magistrate Garland Erguden, Juvenile Court (VIA EMAIL)  
Pamela Skelton, Esq., CAO, Juvenile Court (VIA EMAIL)  
Stephen C. Bush, Esq., Chief Public Defender (VIA EMAIL)  
Kathryn W. Pascover, Esq., Shelby County Attorney (VIA EMAIL)
Appendix E

Transfer Statistics from Tennessee Council of Juvenile and Family Court Judges, FN#17.
## 2014 TENNESSEE JUVENILE COURT STATISTICAL DATA

**Cases Transferred to Adult Court**  
(by Court)

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Appendix F:

Mayor Luttrell's Executive Order, FN#26
SHELBY COUNTY, TENNESSEE

EXECUTIVE ORDER
OF
SHELBY COUNTY MAYOR, MARK H. LUTTRELL, JR.

MARCH 23, 2017

AN ORDER RECOGNIZING, APPROVING, AND AFFIRMING
THE PUBLIC DEFENDER OFFICE FOR SHELBY COUNTY,
TENNESSEE AS AN INDEPENDENT, ETHICAL, AND ZEALOUS
PROVIDER OF DEFENDER SERVICES IN SHELBY COUNTY

WHEREAS, the United States Constitution and the Constitution of the State
of Tennessee guarantee to every accused person the right to defense representation;
and

WHEREAS, when an accused person in Shelby County cannot afford to
retain counsel, the State of Tennessee and Shelby County share in an obligation to
provide that person with government-funded public defense services; and

WHEREAS, “Public defense services” means independent, ethical, and
zealous legal defense advocacy, at the pretrial, trial, appellate, and post-conviction
stages, on behalf of all people who cannot afford counsel and who are accused of
municipal, criminal and/or delinquency offenses in Shelby County; and

WHEREAS, the people of Shelby County and its Government deeply value
the fundamental fairness that is embodied in the guarantee of counsel to all accused
people, as is evidenced by Shelby County’s early creation of a public defender
office that is one of the oldest in the nation; and

WHEREAS, the Shelby County Public Defender is the official charged by
state law with providing, supervising, overseeing, and administering public defense
services in Shelby County;

WHEREAS, the office of the Shelby County Public Defender operates
independently as a special office of Shelby County Government to fulfill essential
public defense services as required by the United States Constitution, the Tennessee Constitution, and federal and state law; and

WHEREAS, the State provides statutorily-mandated funds for the Shelby County Public Defender, and it is critical that Shelby County comply with state law ensuring that state-mandated funds are expended exclusively for the purposes for which they are allocated; and

WHEREAS, state law requires that Shelby County provide, at a minimum, a specific allocation of funds each year for public defense services in Shelby County, and compliance with state law requires that Shelby County ensure that all such funds are allocated to, and spent exclusively for public defense services; and

WHEREAS, Shelby County has agreed, in a Memorandum of Agreement with the federal government, to ensure that the Shelby County Public Defender provide independent, ethical, and zealous representation to the Public Defender Office clients; and

WHEREAS, the Shelby County Public Defender Office, in order to comply with constitutional, statutory, and ethical rules, must be able to provide every client with representation that meets the highest standards for independence, ethics and zeal; and

WHEREAS, independence of public defense services means that the selection, funding, payment, operation, and supervision of defense counsel for people who cannot afford counsel is not subject to political or judicial influence any more than for people who have retained counsel; and

WHEREAS, ethical public defense services can be provided only by a public defender office that is free to manage its operations in a way that complies with all of the ethical, professional responsibility, and legal mandates that are incumbent upon attorneys rendering defense services in the state of Tennessee; and

WHEREAS, the Mayor of Shelby County is empowered, under Section 3.06 of the Shelby County Charter, to assign “any function or duty” to any major division of county government, including the office of the Shelby County Public Defender, except as otherwise set forth; and
WHEREAS, the Public Defender is the official who is best-positioned to exercise ethical and professional judgment to determine the most effective and efficient structure and operations for public defense in Shelby County;

NOW THEREFORE, I, Mark H. Luttrell, Jr., by virtue of the authority granted to me by the Charter and ordinances of Shelby County and by the laws of the State of Tennessee, do hereby declare, direct, and order the following:

1. It shall be, and hereby is, the policy of Shelby County to take all necessary and appropriate steps, within the law and the County Charter, to establish and affirm the office of the Shelby County Public Defender to provide independent, ethical, and zealous representation to all accused people in Shelby County who cannot afford counsel in their own defense.

2. It shall be, and hereby is, the policy of Shelby County to take all necessary and appropriate steps, within the law and the County Charter, to ensure that the office of the Shelby County Public Defender is independent of, and not subject to undue political or judicial influence, including that office’s selection, funding, payment, operation, and supervision of defense counsel.

3. It is the intention of this Administration to provide the Shelby County Public Defender with adequate assurances to ensure the management, supervision, and organization of public defense services is independent of undue political interference.

4. As permitted by law and the Shelby County Charter, the Public Defender is hereby permitted to take all actions necessary for providing independent defense services with the understanding that no powers reserved to the County Commission or the Mayor are hereby abridged by this provision. The authority to act as contemplated by this provision includes:

   a. The obligation and prerogative to advocate for funding, and to participate fully in State and Shelby County budget proceedings, independently of undue political or judicial controls, and to seek, solicit, and advocate for funds for the operation of public defense serves from any legal source whatsoever, public or private;

   b. At the Public Defender’s discretion, subject to any applicable local, state, or federal law, to recruit, retain, employ, supervise, evaluate,
and if necessary to remove staff who deliver public defense services in Shelby County, as appropriate;

c. The power, authority, and prerogative to determine the structures and systems of delivery for public defense services in Shelby County;

d. The power, authority, and prerogative to develop, promulgate, and ensure compliance with guidelines, policies, and standards of practice for the administration of public defense services;

e. The power, authority, and prerogative to engage necessary services within the limits of budget resources, subject to applicable local, state, and federal law, as necessary for fulfilling the Public Defender’s obligation to comply with all constitutional imperatives, state statutes and ordinances, and ethical rules governing the practice of law in Tennessee.

5. As permitted by the Shelby County Charter, the Public Defender is authorized to develop operating rules and procedures including procedures governing the financial operations of the office of the Shelby County Public Defender, with the assistance of the Administrator of the Shelby County Finance Department, that clarify:

a. The independence of the Public Defender to seek, solicit, and advocate independently for funds for the operation of the office of the Shelby County Public Defender from any legal source, public or private, including the Shelby County Commission and the Tennessee Legislature;

b. The process by which the Public Defender may develop independently the budget for the office of the Shelby County Public Defender and may submit that budget to the Mayor for inclusion in the consolidated Countywide Budget that is presented annually to the Shelby County Commission for approval;

c. The process by which Shelby County assures adherence with applicable law mandating state and local funding for public defense services;
6. In the event the Public Defender is removed from the position, he or she has the right to fall back to any open and vacant appointed position for which he or she qualifies.

7. All directors of all divisions of Shelby County Government and all applicable government staff are hereby directed to assist the Public Defender in affecting any administrative and operational changes appropriate to the fulfillment of the letter and spirit of this Order to the extent that it is within their capacity and authority to do so.

IN WITNESS WHEREOF, I have subscribed my signature and caused the Great Seal of the County of Shelby to be affixed this ___ th day of March, 2017.

Mark H. Luttrell, Jr. Date
Mayor of Shelby County
Appendix G

Excerpts from New Trauma Screen used by Court, FN #28.
Stressful or scary events happen to many kids. Below is a list of stressful and scary events that sometimes happen. Please answer to the best of your knowledge. Mark YES if it happened to your child. Mark No if it didn’t happen to your child.

1. Serious natural disaster like a flood, tornado, hurricane, earthquake, or fire. □ Yes □ No
2. Serious accident or injury like a car/bike crash, dog bite, sports injury. □ Yes □ No
3. Robbed by threat, force or weapon. □ Yes □ No
4. Slapped, punched, or beat up in your family. □ Yes □ No
5. Slapped, punched, or beat up by someone not in the family. □ Yes □ No
6. Seeing someone in the family slapped, punched or beat up. □ Yes □ No
7. Seeing someone in the community slapped, punched or beaten up. □ Yes □ No
8. Someone older touching your child’s private parts when they shouldn’t. □ Yes □ No
9. Someone forcing or pressuring sex, or when your child couldn’t say no. □ Yes □ No
10. Someone close to your child dying suddenly or violently. □ Yes □ No
11. Attacked, stabbed, shot at or hurt badly. □ Yes □ No
12. Seeing someone attacked, stabbed, shot at, hurt badly or killed. □ Yes □ No
13. Stressful or scary medical procedure. □ Yes □ No
14. Being around war. □ Yes □ No
15. Other stressful or scary event? Describe: ____________________________________________ □ Yes □ No
Which one is bothering your child the most now? _________________________________________

If you answered NO to all of the above questions, STOP.
If you answered YES to any of the above questions, please complete the rest of this form.

What were your child’s feelings when the event happened?
Afraid s/he would die or be hurt badly. □ Yes □ No
Afraid someone else would die or be hurt badly. □ Yes □ No
Helpless to do anything. □ Yes □ No
Ashamed or disgusted. □ Yes □ No

Please complete both sides of this document if you answered YES to 1-15.

Trauma Screen + CPSS

Name__________________________ Date________________

Stressful or scary events happen to many kids. Below is a list of stressful and scary events that sometimes happen. Mark YES if it happened to you. Mark NO if it didn’t happen to you.

1. Serious natural disaster like a flood, tornado, hurricane, earthquake, or fire.
   □ Yes □ No

2. Serious accident or injury like a car/bike crash, dog bite, sports injury.
   □ Yes □ No

3. Robbed by threat, force or weapon.
   □ Yes □ No

4. Slapped, punched, or beat up in your family.
   □ Yes □ No

5. Slapped, punched, or beat up by someone not in your family.
   □ Yes □ No

6. Seeing someone in your family get slapped, punched or beat up.
   □ Yes □ No

7. Seeing someone in the community get slapped, punched or beat up.
   □ Yes □ No

8. Someone older touching your private parts when they shouldn’t.
   □ Yes □ No

9. Someone forcing or pressuring sex, or when you couldn’t say no.
   □ Yes □ No

10. Someone close to you dying suddenly or violently.
    □ Yes □ No

11. Attacked, stabbed, shot at or hurt badly.
    □ Yes □ No

12. Seeing someone attacked, stabbed, shot at, hurt badly or killed.
    □ Yes □ No

13. Stressful or scary medical procedure.
    □ Yes □ No

    □ Yes □ No

15. Other stressful or scary event?
    Describe:_____________________________________________
    □ Yes □ No

Which one is bothering you the most now? _______________________

If you answered NO to all of the above questions, STOP
If you answered YES to any of the above questions, please complete the rest of this form.

When the event happened what were your feelings?

Afraid I would die or be hurt badly.
   □ Yes □ No

Afraid someone else would die or be hurt badly.
   □ Yes □ No

Helpless to do anything.
   □ Yes □ No

Ashamed or disgusted.
   □ Yes □ No

CPSS Foa, Johnson, Feeny, and Treadwell (2001)