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June 16, 2010

The Honorable Michael J. Bowers
Chair, Judicial Nominations Commission
30 Ivan Allen Jr. Boulevard, N.W., Suite 700
Atlanta, GA 30308
Via e-mail to bwatson@balch.com.

Re: Robert Mallory “Mack” Crawford
Griffin Judicial Circuit

Dear Mr. Bowers and Members of the Commission:

I write with regard to Robert Mallory “Mack” Crawford, an attorney who seeks one of the vacant judgeships in the Griffin Judicial Circuit.

For the past three years, Mr. Crawford has been the director of the Public Defender Standards Council (GPDSC). His tenure has been an unmitigated disaster. He has neglected his duties and mismanaged the agency, leaving hundreds, if not thousands of clients without representation, leaving others without representation for inordinate periods of time, and still others with inconsistent, token or subpar representation. He has taken precipitous, irresponsible and totally uninformed actions, such as firing the entire Metro Conflict Defender Office (with a staff of 21, including 17 attorneys who were representing 1,836 clients) on June 6, 2008 — effective June 30, 2008 — without consulting others, such as the judges, the district attorney, public defender and other knowledgeable people in the affected circuits and *without making any arrangement for how the clients would be represented.* (After it happened, Fulton

Superior Court Judge Jerry Baxter called it a “slap in the face” and District Attorney Paul Howard called it “a disaster.” Complete chaos was avoided only because Mr. Crawford backed off most of the attorney firings once a lawsuit was filed seeking to enjoin his actions. Mr. Crawford’s actions significantly weakened, but did not completely destroy the Metro Conflict Defender office.)

Mr. Crawford has repeatedly taken positions against the interests of the clients that the program is supposed to serve. For example, he has pressured public defenders to represent defendants with conflicting interests despite the legal and ethical prohibitions of doing so.¹ Many lawyers will no longer represent indigent defendants because, under Mr. Crawford’s direction, the GPDSC has developed such a bad reputation for arbitrarily cutting payments to lawyers,²

1. See *Holloway v. Arkansas*, 435 U.S. 475 (1978) (representation of defendants with conflicting interests by the same lawyers violated the Sixth Amendment right to counsel), *Glasser v. United States*, 315 U.S. 60 (1942) (same); Ga. Rule Prof’l Conduct 1.7 (a); see also Comment [7] to Rule 1.7 (“ . . . The potential for conflict of interest in representing multiple defendants in a criminal case is so grave that ordinarily a lawyers should decline to represent more than one co-defendant”); *Reynolds v. Chapman*, 253 F.3d 1337, 1344 (11th Cir 2001) (no distinction between public defender office and law firm for conflict purposes). Georgia Bar Formal Advisory Opinion Board, *Formal Advisory Opinion 10-1* (April 23, 2010) (Lawyers employed in the circuit public defender office in the same judicial circuit may not represent co-defendants when a single lawyer would have an impermissible conflict of interest in doing so.) In almost every criminal case involving co-defendants, one option which must at least be considered is the possibility of one defendant offering to testify against the other(s) in exchange for a dismissal or reduction of the charges.

2. Lawrence Schneider, director of conflicts and compliance at the GPDSC, repeatedly used the word “arbitrary” in explaining to a legislative committee, with Mr. Crawford present, how he cut the amounts paid to lawyers who represented clients pursuant to agreements with GPDSC, even though he had no reason to question the time the lawyers spent on the cases and the lawyers were being paid only \$45 an hour for out-of-court work and \$60 for in-court representation. Some lawyers had their bills slashed by as much as 70%. (See accompanying e-mail from Don Oliver to Sen. Eric Johnson, dated March 30, 2009, in which Mr. Oliver expresses his strong disapproval of this practice). Mr. Crawford hired Mr. Schneider as director of conflicts and compliance after trying unsuccessfully for several months to fire him as public defender for the Stone Mountain Judicial Circuit.

delaying payments for long periods of time and, on occasion, not paying at all.³ The Georgia Association of Criminal Defense Lawyers recently had a session at one of its seminars titled, “How to collect your fee from GPDSC.” Mr. Crawford has gone so far as to retain counsel at \$180 per hour – almost twice the \$95 per hour the Council pays lawyers for representing clients in capital cases – to represent him and GPDSC in seeking to avoid paying counsel for representation they provided to indigent defendants.⁴ He has lobbied in the legislature for positions that have been contrary to those of the Public Defender Standards Council, while denying that he was doing so. (See the accompanying e-mail from Walker County Attorney and Council member Don Oliver to Sen. Eric Johnson, dated March 30, 2009 regarding betrayal of him and others by Mr. Crawford in the 2008 legislature.) In 2009, he even lobbied for abolition of the Council despite being directed by the chair of the Council not to do so.

Despite creating one crisis after another, but being unwilling to delegate responsibility to others to resolve them, Mr. Crawford has been available on a very limited and selective basis, refusing for the most part to return telephone calls or answer e-mails or letters or have anyone else respond for him. A universal complaint of lawyers representing indigent defendants is that Mr. Crawford and GPDSC will not return their calls and e-mails. While requiring that all private lawyers assigned to capital cases sign a contract with GPDSC in order to be paid, Mr. Crawford has steadfastly refused to sign a contract with the lawyers

3. One of many examples is the case of Stacy Sims, who was arrested in 2005. The prosecution announced its intention to seek the death penalty. Two lawyers were appointed to represent Sims, but they moved to withdraw a year and a half later because they had not been paid. They were allowed to withdraw. Two new lawyers were assigned to represent Sims. A year and a half later, they also moved to withdraw because they also had not been paid. The Court allowed them to withdraw as well. *Sims v. State*, Tift Superior Court No. 2006-CR-91, Hearing of Dec. 22, 2008.

4. See *Georgia Public Defender Standards Council v. State*, 285 Ga. 169, 675 S.E.2d 25 (2009) (over \$40,000 spend in attorney fees in a futile effort to avoid paying lawyers \$69,000 for representing an indigent defendant in a capital trial); *Weis v. Crawford*, Fulton Superior Ct No. CAFN: 2008-CV-162217 (in mandamus action against Mr. Crawford seeking payment for lawyers who had not been paid for eight months in a capital case, Mr. Crawford retained lawyer Judson H. Turner at \$180 per hour).

representing Jamie Ryan Weis in *Weis v. State*, a capital case pending in Pike Superior Court. He has never explained why. For months, Mr. Crawford refused to return the calls and e-mails from Weis' lawyers, but he would not allow the interim capital defender or anyone else to deal with them on critical issues regarding whether *any* funds were available for the defense. At one point, he asked Interim Capital Defender to contact the lawyers to find out what mitigating evidence there was in the case, but denied that he was engaging in unauthorized plea negotiations with the District Attorney. He never did explain why he needed to know what mitigating evidence existed in the case. The case went for two full years without any funding and without Mr. Crawford providing any indications of whether, when and in what amounts funding might at some time be available. Finally, just six weeks before a scheduled trial date, he appeared in court and announced that he had suddenly come up with about 40% of the amount that the Interim Capital Defender and GPDSC's chief of staff had decided over a year before was a reasonable budget for the case.

Mr. Crawford has neglected completely the two most critical areas needed to build a strong public defender program – recruitment and training. In the first two years after the circuit public defender offices opened their doors on January 1, 2005, outstanding law students from the Georgia law schools and from throughout the country were recruited for the program and put through a rigorous training program, known as the “honors program,” with supplemental quarterly trainings. Mr. Crawford expressed his disdain for such training at a meeting of the Council, telling the story of how a judge told a “little girl” (a lawyer) who tried to put into practice what she had learned at a training program, “we don't do it that way here.” Of course, the purpose of the public defender program was to implement the constitutions and the laws of Georgia and the United States, not perpetuate the good old boy, “go along to get along” system that led to the creation of the public defender system. But that has not been Mr. Crawford's purpose.

Many of the problems that have occurred on his watch have been the result of the failure of Mr. Crawford to learn basic right to counsel law, which is essential for any person directing an agency responsible for providing lawyers to people accused of crimes. Mr. Crawford made no effort to learn the complex body of Sixth Amendment law regarding the appointment of counsel, continuity of counsel, the right to conflict free counsel, the right to counsel on appeals and other

intricacies of the right to counsel that have developed in Supreme Court caselaw, in standards adopted by the American Bar Association and other organizations, including the Public Defender Standards Council, and in scholarly writings. No attempt was made to learn from the examples of states like Florida, which has had a public defender system in each of its judicial circuits since 1963, or other states which have far more experience than Georgia in operating public defender offices,⁵ complying with legal and ethical requirements and providing competent and cost effective representation. The Attorney General of the United States hosted a Symposium on Indigent Defense on February 18-19, 2010, which brought together the directors of public defender programs, as well as judges, prosecutors, experts on the delivery of defense services, academics and others from all fifty states. Mr. Crawford and another person from GPDSC were invited and offered transportation, lodging and meals for the two-day program in Washington – all courtesy of the Department of Justice. Although Mr. Crawford was listed as an attendee, not only did Mr. Crawford not attend, he did not send anyone else from Georgia to take advantage of the two free, expense-paid positions at the Symposium. No state could have benefitted more from the Symposium than Georgia.

His problems are also attributable to his absurdly haphazard hiring practices, through which he has hired people who have contributed to the problems or, on occasion, have known even less about indigent defense than Mr. Crawford does. Mr. Crawford has never announced that a position is open, sought applicants from throughout the country – or even the state – and then considered resumes, writing samples and work product and conducted interviews to hire the most qualified candidate. Instead, it appears that people were hired on whim. In one instance, Mr. Crawford spent a significant amount of time trying to fire Lawrence Schneider and, upon failing to do so, hired him as director of conflicts and compliance. Later it was announced that Mr. Schneider was only director of compliance, and then, last April, that he was leaving altogether.

5. See accompanying e-mail from Don Oliver to Sen. Eric Johnson, dated March 30, 2009, stating: “We instructed Mack to look at all the states around us, compare [GPDSC’s] minimum budget to theirs, and if we were well below everyone else then to prepare an alternative proposed budget that would put us in the middle of the pack. Mack refused to or was incapable of producing any budget whatsoever.]”

As problems have come to light, Mr. Crawford has refused to take responsibility for them, claiming ignorance or blaming someone else. Because the contracts were not renewed for lawyers who handled conflict cases in the Northern Judicial Circuit, *hundreds of people with pending felony charges* were not provided lawyers from September 2008 until sometime after a lawsuit was filed in April 2009. The circuit public defender notified GPDSC that people were not being represented as soon as the problem arose and an article about the lack of lawyers appeared in the *Atlanta Journal-Constitution* in January 2009.⁶ Nevertheless, Mr. Crawford testified at a deposition on November 3, 2009, that he was not aware that people were not being represented until a reporter called him about the lawsuit on or about April 7, 2009⁷ – that is, for eight months, he was unaware of hundreds of people were going through the legal system without lawyers in violation of *Gideon v. Wainwright*.

Hundreds of people were also not provided lawyers after conviction for representation for motions for new trial and/or direct appeal. After a lawsuit was filed regarding the long delay in providing lawyers, Mr. Crawford attempted to moot it by hurriedly signing contracts with ten attorneys to take on a number of cases for a fixed fee, which averaged \$1,200 to \$1,500 per case. It was estimated that each appeal would require approximately 140 hours of attorney time, meaning the contract attorneys would be working for \$8.57 to \$10.71 per hour. But this was an uninformed guess because at the time the contracts were signed neither Mr. Crawford nor the lawyers who signed the contracts knew the nature or complexity of the cases to be assigned. Nevertheless, the contracts provided for no more than \$150 in travel costs and no more than \$150 for reimbursements for expert witnesses and other costs for each case. The lawyers agreed to these absurdly low limits without even knowing whether they would be handling murder cases or

6. Bill Rankin, *Public defender council says it will pay lawyers*, ATLANTA J-CONSTITUTION, Jan. 23, 2009 (quoting Northern Circuit Superior Court Judge John H. Bailey Jr. saying he had allowed lawyers to withdraw from cases – one lawyer from 150 – because “I can’t force somebody to work for free,” and, as a result, “[w]e’ve got people sitting in jail without representation,” and expressing surprise that a lawsuit had not been filed to correct the problem.)

7. Deposition of Mack Crawford at 52-53, *Cantwell v. Crawford*, Elbert County Superior Court Superior Court No. 09-EV-275M (Nov. 3, 2009). Crawford later said that he did not read the *Journal-Constitution*. *Id.* at 124-25.

burglaries or how far it was to the prisons where their clients were being held. In signing such contracts in this and in other situations where he has returned to fixed-fee contracts, such as 175 cases for \$50,000 in the Northern Circuit, Mr. Crawford has been willing to settle for token representation for the people for whom GPDSC is responsible.⁸ To be sure, this is not all Mr. Crawford's fault. The legislature has not given him sufficient funds to do the job. But for him, cost savings has trumped every other consideration.

Mr. Crawford's departure from the Standards Council would clearly be a very positive development for indigent defense in Georgia. But the best way of accomplishing that is not by making him a judge. His very casual relationship with the truth and his complete mismanagement of the Public Defender Standards Council disqualify him from judicial office.

Mr. Crawford has repeatedly made contradictory statements to different people with equal conviction when both cannot be true. After firing the Metro Conflict Defenders with an effective date of June 30 and no plan for providing representation to the clients of the fired lawyers, he insisted that there was a plan, then insisted that he was going to work out a plan with Judge Downs, and then repeated over and over that no defendant's representation would suffer as if saying it repeatedly would somehow make it so. This was patently absurd for some of the defendants had trials scheduled for early July which could not possibly be conducted if their lawyers were fired on June 30. In fact, the trial of one such defendant, who was in jail and whose trial had been repeatedly continued, had to be continued again because his lawyer left to take another job after being fired by Mr. Crawford on June 6.

Don Oliver's e-mail describes his betrayal of Mr. Oliver and others in the 2008 legislature and in the 2009 session Mr. Crawford tried to have the Council abolished by the legislature while denying that he was doing so. A judge should be a person of the highest integrity; someone who speaks plainly and honestly, not

8. The trial court refused to find that the case involving lawyers for motions for new trial and appeals was moot and ordered GPDSC to provide counsel with 30 days of a defendant's request for counsel for a motion for new trial or appeal. *Flournoy v. State*, Fulton Superior Court No. 2009-CV-178947 (Order of Feb. 23, 2010).

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someone who speaks out of both sides of his mouth and uses a barrage of words to obfuscate the simplest point.

Mr. Crawford's failure to master the one area of the law for which he has been responsible for the last three years is not a positive indicator of his potential as a judge. He appears to lack the interest to explore and understand new areas of the law. His background has been as a mule trader, auctioneer and timber lawyer. His interest appears to be limited to these areas. He has apparently remained active in the mule business while director of GPDSC and has talked a great deal about it, occasionally speaking of "breaking" lawyers just as he "breaks" mules. As a Superior Court judge, he would be called upon to make determinations in many areas of the law. There is no reason to believe that when a case presents new legal issues, he will do the thorough research and analysis that a judge should do.

His tendency to take precipitous and uninformed actions as director of GPDSC is reason to be concerned that he will act with equal recklessness as a judge. His mismanagement of GPDSC leaves no doubt that he cannot handle the important administrative responsibilities of a judge. Finally, Mr. Crawford has throughout his three years as director of the Public Defender Standards Council has not only exercised spectacularly bad judgement, but also engaged in avoidance behavior, refused to take responsibility, and simply denied reality on occasion. He does not belong on the bench.

I hope that this information and the accompanying e-mail from Don Oliver to Sen. Johnson, which was made public at the time it was sent, is helpful to the Commission. Knowing the number of nominees and the time constraints on the Commission, I have taken the liberty of highlighting some of the pertinent parts of Mr. Oliver's e-mail in **bold**.

Sincerely,

/s/ Stephen B. Bright

cc: Mack Crawford

From: Don Oliver [mailto:d.oliver@walkerga.us]
Sent: Monday, March 30, 2009 6:46 PM
To: Eric.Johnson@senate.ga.gov
Cc: Wilson DuBose
Subject: FW: Please Oppose SB 42, as well as the House committee substitute

Eric:

I regret feeling the necessity to respond to your e-mail, but the constant flow of incorrect information relating to the GPDSC has left me where I feel that if I am to uphold my oath of office, I have no choice.

Almost two years ago the Director of the GPDSC stepped down, shortly before the Speaker appointed me to the Council. In the best of times, being director of this agency would be a very difficult and technical position. Of course those were not the best of times, as it was a new state agency trying to get its footing, the Agency was already under funded for the year and being asked to take additional cuts because the state was out of money (this is before the crash), the Nichols case was being mishandled by the judge and the DA with our Agency getting most of the blame, and relations with the General Assembly were poor at best.

Good business practice should have dictated a methodical nationwide search for the best possible candidate to fill this position. However, it appears the Council deferred to the wishes of the Governor and some legislative leaders by accepting what amounted to their recommendation for a political appointment for their hand picked director who had almost no experience in the field of criminal defense, much less indigent criminal defense. He also had no experience in running any state agency, much less a new one of this magnitude. However, as he was coming with the promise of using his legislative experience and the Governor's support to improve the Agency's relations with both the legislative and executive branches, the Council hired him.

As would have been the case with any new statewide agency starting with no history of operation, no guidelines, no set business practices, no years of vetting out the things that don't work and keeping those that do, the GPDSC naturally made a few minor mistakes and had a few missteps in those early months. It is remarkable that there were not more mistakes and of a more serious nature in this adaptation phase. By the time Mack Crawford came on board, most of those problems had been resolved. Unfortunately, a few legislators – and one senator in particular – seemed more interested in using the Agency's few mistakes for their political gain than they did in building on past success to strengthen the Agency into something that could be held up as a success and a national model. Mack's promise was to institute new business practices which would eliminate any remaining inefficiencies, provide more effective tracking of cases, provide more accurate reports, and provide a clear picture of what was the minimum level of services required to meet the statutory and constitutional responsibilities that we were required to satisfy. He pledged to quickly accomplish these tasks, then use that information to develop a proposed budget to meet that minimum. He pledged to work with legislators and the Governor's office to restore the full confidence of each in the Agency.

With the possible exception of one member, the Council gave Mack 100% support to carry out these tasks. A blue ribbon panel of legislators and citizens from around the state was appointed by the General Assembly to look at all aspects of the system and make recommendations as to actions which might improve the Agency. Collectively the Council donated thousands of hours working with Mack, the panel, ACCG, legislators, and the CPDs to create an amendment which would smooth out the remaining wrinkles and cure the last of the growing pains. I personally invested hundreds of hours working on the legislative package, including testimony at the committee hearings during the session. A majority of the Council did not oppose the switch to the Executive branch, as Mack assured us the Governor would now fight harder to see that we were finally, for the first time, adequately funded. A majority also did not fight removing the judicial appointments, leaving the Governor, Lt. Governor, and the Speaker with the only appointments to the Council. The other changes in the legislative package received virtually unanimous support in the Council, including the appointment of the county commissioners. We agreed to not seek what we all knew would be necessary for an adequate FY '08 budget, to help the state balance the budget, with Mack's promise that in the 2009 session he would fight for full funding of the necessities in both the supplemental '09 and in the 2010 budgets, when he had more information and reports for proof of needs. Each department head agreed to do without needed and necessary funds, cut services below required levels on a temporary basis, temporarily push up to or even chance crossing the line on issues such as conflicts, and take all other necessary temporary actions to get us to the 2009 session, whereupon Mack promised to have all the necessary reports, reforms, and politicking required to justify on paper the financial needs the staff already reported was necessary to survive and pay our already overdue bills. With the exception of one vote, the Council agreed to temporarily move forward with this budget request which we all knew was unsustainable beyond April or May of this year, robbing from Peter to pay Paul, and putting full faith in Mack to "work his magic" with the legislature to save the day in the supplemental budget process of this year's session. **That faith in Mack was rewarded on the last day of the 2008 session when his work with the conference committee resulted in them ignoring the thousands of hours donated by the Council and the thousands of hours donated collectively by citizens from all around the state who served on the Blue Ribbon Panel, when fundamental changes were made to the bill amending the public defender laws, which changes – such as making the Director totally independent of the supervision and oversight of the Council – were made in the last hour of the sine die day.**

Despite the fact that those of us who had befriended and trusted Mack felt totally betrayed, we began to work with Mack to achieve the needed reforms and to be ready to present a proposed 2009 supplemental budget and a 2010 budget that was constitutionally sufficient. Over the following 6 month period, **despite the fact that the Council gave Mack essentially full authority to move forward with plans for Agency changes, virtually nothing happened.** The Council began to asked and then later insisted that Mack come forward with actual plans for change. We ask for examples from other jurisdictions. **We asked him to have a proposed budget by September 1st.** We wanted a proposed budget well ahead of the session so we could have open and frank discussions with the Governor and legislative leaders about the funds needed to meet the requirements of the system. **When he produced nothing, we then ordered and insisted that Mack prepare a proposed budget.** We instructed Mack to prepare a proposed budget in the form satisfactory to OPB, and also in the ZBB form requested by the Senate. We instructed Mack to prepare a proposed budget based on what he the staff

professionals considered the bare minimum necessary to meet only the required duties of the Agency. **We instructed Mack to look at all the states around us, compare that minimum budget to theirs, and if we were well below everyone else then to prepare an alternative proposed budget that would put us in the middle of the pack. Mack refused to or was incapable of producing any budget whatsoever.** He refused to order and it appears to even to allow the staff to produce the proposed budget. As the session was approaching the Governor announced his proposed budget. Yet we had still failed to even have any proposal to present to him or the General Assembly. At that time our most knowledgeable staff member was returning from maternity leave and we felt we had no choice but to ask that she be directly assigned to work for the Council, as we were by this point confident that Mack would order her not to prepare the budget as we requested, and that if she did so upon our insistence he would fire her. However, we reached a compromise with Mack that he would allow her to do the tasks we requested after the session had already started. As you can see, the last minute 2008 legislation making the director independent was proving to be totally unworkable, as any reasonable person might have anticipated. One senator has chosen to consistently characterize our last minute attempt to gain some independent staff member who would prepare the proposed budget as we requested as an attempt by the Council to hire a second director. That is just one of many examples of the disinformation we have had to fight against.

Mack then finally allowed the Council to request from his staff an estimate from each department of the bare minimum level of services needed to meet constitutional and statutory standards, and to calculate – based on the Agency's 3 years of experience – the bare minimum for which those services could be contracted. Within three working days, the returning staff member had prepared the first draft of a proposed budget. We immediately held a budget hearing at which each and every member of Mack's staff testified on the record (recorded by a court reporter) that while it would be a close call if challenged in court, that if they did not have to meet any unexpected contingencies, their budget requests were only bare bones what was required but could meet bare minimum constitutional standards. The only exception to this was from the [Circuit Public Defender]s, who everyone has agreed are doing a great job, who asked that their salaries be brought back in line with the words and intent of the original legislation, to bring them within 90% of the state salaries of the DAs, which is where they started in 2004. They now receive less than 80% of the DA's state salary. (Most DAs also receive a county supplement whereas most [Circuit Public Defender]s do not.) We felt compelled to include this in the budget request, hoping it would be funded if there was sufficient money in the fund that was specifically created to cash flow the Agency, understanding that it would certainly be redlined if not. However, the ever widening disparity needed to be brought to legislative attention. No legislator has chosen to address the disparity, much less offer any regrets for being unable to rectify it at this time. Many have chosen to vilify the Council for asking for "pay increases" for our employees. I have heard no suggestion that the DAs help the budget crisis by having their pay reduced back to only 111% of the [Circuit Public Defender]s! I make no apologies for arguing for those whose care is placed in my charge. I took an oath to this office and I will either uphold that oath or I will resign. I will not be cowed into not doing my job merely because it is among the most politically unpopular of any in state government. I was in the legislature for two terms and we clearly understood not only the right but the responsibility of department heads and boards to argue their budgetary needs in the full light of day, and our responsibility to balance those needs given the available resources.

Finally, allow me to directly address the constant flow of disinformation regarding the Agency's budget needs. No one worked any harder or was more involved than I when the legislature first passed the bill creating the system in 2003, so I know whereof I speak. At that time, the state was appropriating about \$10 million general fund tax dollars to help the counties with indigent defense. When the new system was created, virtually everyone who was being serious and honest about the costs estimated that it would take at least \$200 million per year to run the system state wide, across all the courts, including misdemeanors as required by a then recent supreme court case. The legislature did not fund the system in the 2003 session; it decided it would come back in special session and set up a system of fines and fees to fund the system, and cut out the \$10 million tax funds and rolled them back into the general fund. It turned out that the Indigent Defense Fund (IDF) was estimated to only create about \$44 million the first few years. The legislature asked for an estimate of what courts could be covered by that amount of money, and the answer was part of juvenile and part of superior courts (about 40% of total costs), with the counties providing the other funding. Of course the counties and cities were to be left with the burden of 100% of the remaining courts, to the tune of at least an additional \$100 million per year. With the promise of a working partner in the state and the proceeds of the IDF being used to fund the system, the counties supported the legislation and the system was created. In one of those infamous last day deals, the guarantee of 90% parity for [Circuit Public Defender]s with DAs salaries was cut out of the legislation, and a requirement was added that after the third year the Council could not ask for more in a budget request for an upcoming year than was collected by the fund the year before. The first two years the Council was allowed to operate off projected collections. The state began to collect the IDF fund 4 months into FY '04. For that 2/3 year the IDF only collected \$27.8 million in FY '04. The [Circuit Public Defender] offices were to open between 7/1/04 and 10/1/04 with the [Circuit Public Defender] and one administrative assistant, and start the hiring process for full operations to begin on 1/1/05. The [Circuit Public Defender] offices were to operate on an estimated budget until January, then submit a supplemental budget which calculated the money already spent and estimating the needs for the remainder of FY '05. All of FY '04 was paid from the old \$10 million general appropriation. The Agency also had to submit a proposed budget for FY '06. At this point of course the Agency's department budgets were necessarily still very speculative, but the Council recommended a very conservative FY '06 budget of \$44 million. Only \$22 million was appropriated. Later in the supplemental budget, this was increased to only 29.8 million, with the inaccurate legislative complaints beginning that the Agency could not stick to its budget. During the 2006 session, when setting the FY '07 budget, Even though budget needs were estimated at \$42 million, the Council could no longer use estimated collections, and was told its budget was therefore limited to the last completed fiscal year's projections, which were for only 8 months and therefore only \$27.8 million. The Council was told to front load as necessary and hold bills where it could, and it would be covered in the FY '07 supplemental. However, during the 2007 session some senators acted as if no such discussions had ever taken place, and so continued the vilification of the Council as a rogue agency which could not live within its budget. In this atmosphere only some of the needed money was appropriated for the remainder of FY 07 (\$36.3 million) and a severely under funded FY 08 budget was passed, partly because the Agency did not yet have enough history and reporting to prepare the ZBB being requested by the Senate. Again, senators vilified the GPDSC for being uncooperative in the budget process. The GPDSC was instructed to beef up its reporting, come in with a ZBB request and any additional budgetary needs would be addressed in the next year's supplemental appropriation if the need could be

proven. By the time of the 2008 session, the reports were in fact coming and it was apparent that the conservative estimates on conflicts combined with the huge increase in death penalty cases was leaving the Agency well short of its already underfunded budget. All the while, the Agency is carrying over expenses from the previous fiscal year just trying to survive. According to then Director Mack Crawford, constantly playing this catch up and lacking full reports on cases in the pipe line (many cases will go on for 2 years or more) prevented him from submitting a ZBB in that session in a form that satisfied some senators, and the Agency went into FY 08 with the same under funded budget, while being constantly vilified for not being able to hold to its budget. Somehow the Council, instead of its handpicked Director, still received the blame for being uncooperative in the budget process. During the 2008 session, the Council fully cooperated with the new, less than friendly legislation and agreed to move forward with what everyone knew was a severely underfunded budget, carrying over all possible expenses, and agreeing to just "hold on" until the supplemental budget process of the 2009 session. **I have explained above how the now independent director has not only failed to assist, but in fact hindered or prevented presentation of a proper budget in both the 2008 and 2009 sessions.**

The IDF was specifically created to fund the Agency. As estimated by the Director's own staff, the existing fund is insufficient to meet the 40% level of funding the state committed for just the two courts. For some to stand back now and say the Council is wrong to seek adequate funding from the IDF, and to be or act surprised and upset because the Council has taken the attitude that it should have first priority to the fund is itself an incredible act of mismanagement. One senator in particular has constantly misstated that the Council has demanded all of the IDF, whether we really needed it or not. We have stated that a lack of revenue should not be used as an excuse to not adequately fund the Agency when the IDF fund has not been exhausted. I certainly make no apology for that stand. We realize the fund is not constitutionally dedicated and the Council is not legally entitled to it as a matter of right. But, as a moral issue the fund should first be used to satisfy the need for which it was created, then if there is any left over, it should certainly be applied the the most pressing needs of the state in the short run. In the long run, the fees and charges upon which it is based should be reduced so the fund matches the need, as counties and cities must do as a matter of law. These funds were created in trust and the legislature is the trustee, just as it is with other funds that actually have the word "trust" in the title, such as the Solid Waste Trust Fund. As an attorney, if I misappropriated one dime of client trust funds I hold, I would be summarily disbarred and probably prosecuted. These funds are created for and produce hundreds of millions of dollars for fund specific purposes and needs. Citizens support the creation of these funds which they themselves have to pay for, because they believe in the need and believe that is how their money will be spent. Anyone who persists in the fiction that just because they are commingled in the General Fund and say there is no difference between them and general tax dollars as to how they are to be treated or appropriated, is being totally disingenuous. Anyone who does that and then stands up and says they have never voted for a tax increase is being downright dishonest.

One last big lie that I want to clear up. It is being consistently said that we ordered our staff to spend all of our existing money just so we could come to the General Assembly and blackmail it for more money. Just before the session **we found out our director had approved the arbitrary cut of approximately 70% on each of the bills submitted by the conflict attorneys who had been contracted to handle cases at already steeply discounted rates.** As I told staff,

I have no problem in working the market for the best price. If staff can hire competent attorneys at \$10 per hour, please do so. However, when you contract with someone for a case at \$40 per hour and then at the end of the service arbitrarily cut it to \$10/hour, I have a huge problem. That is not what honest, law abiding, moral persons do in our society, and I for one had no intention of tolerating it in a state agency that was to uphold both the legal and moral high ground on behalf of itself and the state. I am certain you would not tolerate an arbitrary 70% cut in a fee you had negotiated with the state and then in good faith performed your contracted obligations to a high standard. This money is not being denied to silk stocking Atlanta firms. It was and still is being denied to working moms and dads in every community in this state. **Director Crawford has chosen to ignore our directive to pay the bills, and has apparently ordered staff not to pay.** After our Council vote ordering staff to pay our bills, one young single mother called me to thank me for ordering her long overdue bill to be paid, as she was currently out of work because of cancer treatments. I received a call today from her partner informing me the bill has still not been paid. Without even considering the legal problems such non-payments are already bringing upon the state, it is shocking to me that any person, much less any member of our General Assembly, could be anything but pleased that we ordered staff to pay the bills which we were legally and morally obligated to pay.

At the end of April, I will be in Savannah donating my time to teach county commissioners. I will likely be staying with the Ramee's. Perhaps we can get together for more pleasant conversations at that time.

Don Oliver

Hunter-Imbert, Frances

From: Maguire, Matt

Sent: Wednesday, June 16, 2010 1:47 PM

To: Hunter-Imbert, Frances

Subject: New File

Client: SoutheasTrans, Inc.

Contact: Benjie Alexander (in my contacts already)

Adverse: State of Georgia, LogistiCare Solutions, LLC

Assist client with NET procurement

MJB - \$650

JMM - \$425

No retainer

Thanks.