

Kenny A. v. Perdue (Right-to-Counsel Claims)

No. 1:02-CV-1686

U.S. District Court

Northern District of Georgia

Date lawsuit filed: June 6, 2002, in the Superior Court of Fulton County, later removed by Defendants to the United States District Court for the Northern District of Georgia.

Status: Separate settlement agreements were reached with Fulton and DeKalb Counties in the spring of 2006, requiring each County to provide adequate and effective legal representation to all abused and neglected children coming under the jurisdiction of the counties' juvenile courts. A neutral, court-appointed monitor was appointed for each county to measure progress with the terms of the agreement and issue periodic public compliance reports. DeKalb County successfully exited the settlement agreement with Children's Rights in October of 2008, having met its obligation to significantly reduce attorneys' caseloads and improve the quality of legal representation for children in the juvenile courts. Fulton County, which is still operating under the settlement agreement, has greatly increased the number of attorneys who represent the county's foster children and created an independent office for Child Advocate Attorneys, as required. According to the monitor's most recent report covering the twelve-month period ending June 30, 2009, Fulton County has made significant progress toward meeting required workload limits and improving the quality of children's legal representation.

Reason for filing right-to-counsel claims: At the time the suit was brought, foster children in Fulton and DeKalb Counties (metropolitan Atlanta), the two largest counties in Georgia, received inadequate legal representation in juvenile court. Evidence gathered in the suit showed that "child advocate attorneys" assigned to represent abused and neglected children in Fulton and DeKalb Counties had caseloads of between 400 and 500 children assigned per lawyer. Because of these excessive caseloads, which often resulted in children never meeting the lawyer assigned to them, the children were being deprived of adequate and effective legal representation.

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Defendants: Fulton County, DeKalb County.

Judge: Hon. Marvin H. Shoob, Senior U.S. District Judge.

Brief history of the Case:

June 2002: Complaint filed.

August 2003: Court rules that the case would proceed to trial as a class action on behalf of all 3,000 foster children in Fulton and DeKalb Counties.

December 2003: Plaintiffs take the deposition of Marvin Ventrell, Executive Director of the National Association of Counsel for Children, concerning national caseload standards for lawyers representing children.

February-March 2004: Defendant Counties file motions for summary judgment; Plaintiffs oppose.

February 2005: Court denies Fulton and DeKalb Counties' motions for summary judgment on claims of inadequate legal representation in juvenile court proceedings, clearing the way for a trial. This landmark ruling finds, for the first time in the nation, that abused children have a constitutional and statutory right to an attorney, and to adequate legal representation, at every major stage of their experience in state custody.

January 2005-January 2006: Parties engage in settlement negotiations.

February 2006: Parties reach a settlement with Fulton County officials on the right-to-counsel claim.

March 2006: Parties reach a settlement with DeKalb County officials on the right-to-counsel claim.

May 2006: Court conducts public fairness hearing on the proposed right-to-counsel Consent Decrees with Fulton and DeKalb Counties. Court grants final approval of those settlements, making all terms binding and enforceable. Court appoints retired North Carolina Juvenile Court Judge William Jones as monitor under the Fulton settlement, and Georgia attorney Karyn Baynes as monitor under the DeKalb settlement.

August-October 2006: Independent monitors for each of the County cases issue initial, brief updates to the Court on caseload and staffing requirements.

June 2007: As required under the Fulton County Consent Decree, the Carl Vinson Institute of Government issues its Workload Study, which defines the appropriate method for measuring the workload of Fulton County child advocate attorneys and establishes staffing requirements for the Fulton County Child Advocate Attorney's Office. The Workload Study established that Fulton County Child Advocate Attorneys should not be responsible for more than 80 child cases unless various reforms were made. If specified reforms were made to the functioning of the Fulton County Child Advocate Attorney Office, then, according to the Study, Child Advocate Attorney caseloads could be as high as 100. If, in addition to Child Advocate Attorney Office reforms, specified reforms were undertaken by the Division of Family and Children Services as well as the Juvenile Court, then Fulton County Child Advocate Attorney caseloads could be as high as 120 children per attorney. Just prior to the filing of the Workload Study, the Fulton County Monitor issues an interim monitoring report detailing the status of Fulton County's efforts to comply with the management, staffing and case practice requirements of the Consent Decree.

- August 2007: DeKalb County Monitor issues the first *DeKalb County Child Advocacy Center Compliance Report*. The Monitor finds that DeKalb County has "made significant strides" towards fulfilling the requirements of the DeKalb County Consent Decree, but that some barriers still exist to providing effective representation for children in juvenile courts. The Monitor also finds that DeKalb County successfully lowered Child Advocate Attorney caseloads even beyond the terms of the Decree, with all 11 Child Advocate Attorneys carrying caseloads of no more than 90 children.
- December 2007: DeKalb County Monitor issues the second *DeKalb County Child Advocacy Center Compliance Report*, in which she finds that DeKalb County has made significant progress towards lowering the caseloads of Child Advocate Attorneys and improving the quality of legal representation of DeKalb County foster children. Monitor also reports that caseloads of all Child Advocate Attorneys remain below 90 cases per attorney, below that required by the Decree, and that the management, administration, training and supervision of Child Advocate Attorneys have markedly improved.
- January 2008: Fulton County Monitor issues *First Fulton County Kenny A. Report*. Monitor finds that Fulton County is making only incremental progress toward improving legal representation of foster children. The Monitor reports that 11 out of 16 Child Advocate Attorneys are representing more than 120 child clients, well in excess of the limit of 80 child clients per attorney established by the Fulton County Consent Decree and Workload Study. Monitor also reports that based on courtroom observation of 45 attorney performance measures, Fulton County Child Advocate Attorneys performed at a satisfactory level in only 9 areas.
- July 2008: DeKalb County Monitor issues third *DeKalb County Child Advocacy Center Compliance Report*. The Monitor reports that DeKalb County has exceeded the requirements for reducing the number of cases handled by individual Child Advocate Attorneys and improved the quality of the legal representation provided to DeKalb County foster children in juvenile court proceedings. Among the improvements the Monitor highlights is that DeKalb County Child Advocate Attorneys now routinely meet with their child clients in their foster homes and schools, as well as in the courtroom and provide age-appropriate explanations of court proceedings.
- August 2008: Fulton County Monitor issues *Second Fulton County Kenny A. Report*. Monitor finds that Fulton County has made limited progress in improving the quality of legal representation of children and that Fulton County Child Advocate Attorneys continue to carry caseloads well in excess of the caseload cap established under the terms of the Decree. The Monitor reports that 11 out of 15 Fulton County Child Advocate Attorneys are carrying caseloads of 120 children or more. The Monitor further reports that based on court observation, in 14 out of 32 measures of performance, including clearly conveying the child client's position to the court, more than half of the Child Advocate Attorneys reviewed performed below satisfactory level.

- October 2008: DeKalb County successfully exits the settlement agreement with Children's Rights, ending two years of federal court oversight, after meeting or exceeding all court-ordered requirements for improving children's legal representation.
- January 2009: Children's Rights and Fulton County meet with the Monitor to discuss modifications to the Monitor's methodology for assessing the county's compliance with the attorney performance requirements of the Fulton County Consent Decree.
- May 2009: Children's Rights and Fulton County jointly move to modify the Consent Decree to adopt the County's adoption of a client-directed model of representation, in which the child's expressed interests drive the attorney's representation (as compared to the "best interest" model where the child's attorney advocates for the best interest of the child).
- October 2009: Fulton County Monitor issues the *Third Kenny A. Report for Fulton County*. The monitor reports that Fulton County has made significant strides over the year ending June 30, 2009, to reduce caseloads for lawyers and to improve the quality of legal representation for foster children. Some areas requiring attention are noted, such as the need to better address timelines imposed by state and federal law for quickly moving children out of custody, either through reunification with their families or through another permanent home, such as adoption.

How Children's Rights has changed the system:

- The lawsuit resulted in the landmark decision that abused and neglected children in Georgia have a constitutional right to legal representation at every stage of their experience in state custody.
- Under the terms of the Fulton County right-to-counsel Consent Decree, Fulton County was compelled, as an initial step, to employ at least twelve full-time Child Advocate Attorneys, two full-time investigators and three full-time staff members to assist the Child Advocate Attorneys. In addition, as required by the Fulton County settlement, in June 2007 an independent expert completed a "workload study" to determine appropriate caseload standards for Fulton County lawyers representing children. Fulton County has also created a Child Advocate Attorney office that is independent from the Fulton County Juvenile Court, as required by the Consent Decree. As of June of 2009, Fulton County was staffed with a managing attorney, 2 supervising attorneys, 14 full-time Child Advocate Attorneys, plus investigators, social workers and administrative staff to assist the Child Advocate Attorneys. All Child Advocate Attorneys were assigned below 100 children each. At the time the right-to-counsel claim was brought, Fulton County had just four full-time Child Advocate Attorneys with caseloads of over 500 children per attorney.
- The DeKalb County right-to-counsel Consent Decree prohibits individual Child Advocate Attorneys from representing more than 130 child clients at any one time. At the time the suit was brought, the County only employed two Child Advocate attorneys, with caseloads of over 400 children per attorney. As of March of 2008, DeKalb County had a director and a staff of eleven full-time

lawyers representing abused and neglected children and the caseloads for those lawyers remained well below 130 cases per lawyer. In October of 2008, DeKalb County had met all of its obligations under the reform lawsuit, lowering caseloads and significantly improving the actual quality of legal representation provided to children, and successfully terminated the case.

- Both the DeKalb and Fulton Consent Decrees spell out in detail the responsibilities the Child Advocate Attorneys are required to undertake on behalf of their child clients, including establishing contact with the child, attending court appearances, filing necessary legal papers, advocating for the child's service needs, and staying informed of the child's needs and status in foster care.

Children's Rights remains in a watchdog role to ensure that Fulton County meets all of its court-ordered obligations to improve the legal representation of foster children.