IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

KENNY A., by his next friend LINDA WINN, et. al.,	)	
Plaintiffs,	)	CIVIL ACTION NO 1:02-CV-1686-MHS
v.	)	
SONNY PERDUE, et al.	)	
Defendants.	)	

MEMORANDUM IN SUPPORT OF CONSENT MOTION TO TERMINATE MODIFIED CONSENT DECREE WITH DEFENDANT FULTON COUNTY AND FOR APPROVAL OF NEGOTIATED ATTORNEYS' FEES AND EXPENSES

Plaintiffs and Defendant Fulton County, by their undersigned counsel, hereby jointly request that this Court enter an Order: (1) finding Defendant Fulton County in compliance with the Modified Consent Decree as required by its terms; (2) approving the Parties' negotiated agreement regarding Plaintiffs' reasonable attorneys' fees and expenses for the monitoring and enforcement of the Fulton County Consent Decree; and (3) terminating jurisdiction over and dismissing this action as it pertains to Defendant Fulton County and the Modified Consent Decree.

INTRODUCTION

Over eight years ago, on June 6, 2002, Plaintiffs filed this civil rights lawsuit alleging, with respect to Defendant Fulton County, that the County was violating the civil rights of children in foster care by failing to provide them with adequate, effective and zealous legal representation at all stages of juvenile court involvement. At the time the lawsuit was filed, Fulton County employed only four Child Attorneys ("CAs")[1] to represent the approximately 2,000 children in foster care in Fulton County (the "Class Member Children" or "Plaintiff Class"). As a result of the workloads of the CAs, Plaintiffs alleged that these lawyers were routinely unable to consult with their clients prior to court appearances, or to carry out the basic legal tasks necessary to provide minimally adequate, effective and zealous representation. (Amended Complaint (Dkt. No. 141) ¶¶ 99-103.)

On February 13, 2006, Plaintiffs and Fulton County entered into a comprehensive Consent Decree which was approved by this Court on May 16,

[1] At the time that the parties settled this lawsuit the attorneys representing foster children were called "Child Advocate Attorneys." During the course of the reform period, their title changed to "Child Attorneys." Pursuant to the Settlement Agreement, Fulton County was required to establish an independent "Fulton County Child Advocate Office." (Consent Decree (Dkt. No. 530) ¶ 4.) The name of that office has since changed to the "Office of the Child Attorney." To minimize confusion, the attorneys are referred to as "Child Attorneys" and their office is referred to as "Office of the Child Attorney" or the "Office" throughout this memorandum.

2006. (Dkt. No. 530.) In May 2009, the parties jointly moved for a Modification to the Consent Decree (the "Modified Consent Decree," attached hereto as Ex. 1) (Dkt. No. 607-3), which was approved by this Court in May 2009. (Order (Dkt. 609) dated May 19, 2009.)

Pursuant to the Consent Decree, Fulton County agreed to: (1) establish an independent office to employ Fulton County CAs; (2) implement standards for the workloads of CAs established by an independent workload study; (3) employ a sufficient number of trained CAs to ensure all Plaintiff Class Members receive adequate, effective and zealous legal representation throughout their experience with the Fulton County Juvenile Court; and (4) ensure all CAs adopt and abide by specific guidelines and responsibilities established in the Modified Consent Decree and relating to all major aspects of their legal representation of Class Member Children. (Ex. 1 §§ 3-6; Appendix A.)[2]

Since the Consent Decree was entered, Fulton County has met its obligation to establish an independent Office of the Child Attorney, which is currently staffed

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[2] These provisions were unchanged by the Modified Consent Decree. *See infra* at 8-9 for a summary of the terms of the Modified Consent Decree.

with a dramatically expanded number of trained and qualified CAs. The Office[3] currently employs a Director, two case-carrying supervisors, 14 full-time CAs, two full-time contract attorneys, four administrative staff members, four investigators, a social worker, an educational advocate and a host of legal and social work interns. Staffing now exceeds the attorney caseload requirements established pursuant to the Consent Decree, and has vastly improved the quality of representation provided to Fulton County's foster children. The court-appointed Accountability Agent, charged with assessing the County's performance under the Consent Decree, stated in a recent compliance report filed with this Court in November 2010:

> While the progress of the [Office] was first reported to be "slow but steady," the Third *Kenny A.* Report described the [Office] as having arrived at a "higher level of *Kenny A.* compliance." During this Fourth Reporting Period, advances made during the Third Reporting Period have not only continued but have been enhanced with new programs and increased support. During this Fourth Reporting Period, the [Office] has demonstrated the standards set by the *Kenny A.* Consent Decree are implemented and adopted as the standards of practice for the Fulton Child Attorneys.

[3] The Office of the Child Attorney is located within the Fulton County's Manager's Office, but oversight is provided by an independent five-member Child Attorney Board. The Board must be comprised of at least two licensed attorneys with expertise in the area of child advocacy and two professionals with expertise in the juvenile justice system. Oversight by this external Board ensures that the Office of the Child Attorney remains independent from both the court and the County administration. *See* Office of the Child Attorney, http://www.fultoncountyga.gov/home-oca (last visited April 8, 2011).

(Fourth *Kenny A.* Report for Fulton County (Dkt. No. 664) at 114.)

In light of the County's substantial compliance with all of the provisions of the Modified Consent Decree for a continuous eighteen-month period, and in light of the enormous strides the County has made in improving the quality of representation provided to the Class Member Children, Plaintiffs and Defendant Fulton County hereby jointly move this Court, pursuant to § 9.B of the Modified Consent Decree, for an Order finding Defendant Fulton County in compliance with the Modified Consent Decree as required by its terms.

Plaintiffs and Defendant Fulton County also request that this Court approve the Parties' negotiated agreement regarding Plaintiffs' reasonable attorneys' fees and expenses for the agreed-upon amount of $145,000 for the monitoring and enforcement of the Fulton County Consent Decree, performed on behalf of the Plaintiff Class. As application of the notice and hearing requirements of Rule 23(h) of the Federal Rules of Civil Procedure has been found inapplicable in cases such as this, in which a court is reviewing fees and expenses in connection with post-judgment monitoring and enforcement of a remedial order, the Parties request that this Court find the Rule 23(h) notice is neither required nor an appropriate use of the Parties' resources. Finally, in light of the above, Plaintiffs and Fulton County jointly move this Court, pursuant to § 9.B of the Modified Consent Decree,

to issue an Order terminating jurisdiction over and dismissing this action as it pertains to Defendants Fulton County and the Modified Consent Decree.

I. Procedural History

This class action lawsuit began with the filing of a complaint on June 6, 2002, in the Superior Court of Fulton County, and was quickly removed to the United States District Court for the Northern District of Georgia. An Amended Complaint ("Am. Comp.") (Dkt. No. 141) was filed on January 3, 2003. Generally, Plaintiffs alleged that Defendants – Fulton County, DeKalb County, and state officials responsible for the operation of the child welfare system in Fulton and DeKalb Counties – were violating the constitutional and statutory rights of Class Member Children. Specifically, with respect to Fulton County, Plaintiffs alleged that Fulton County was depriving Plaintiff Children of adequate, effective and zealous legal representation in violation of their constitutional and statutory rights.[4] (*Id.* ¶¶ 99-103.)

In July 2002, Fulton County answered the Complaint in which it asserted a number of defenses and denied that it violated the statutory or constitutional rights

[4] The Amended Complaint also alleged nuisance claims against Fulton County arising from its operation of an emergency shelter housing foster children. (Am. Compl. ¶¶ 40-56.) Upon the closing of the shelter in 2003, this Court found those claims moot. (Order (Dkt. No. 193) dated August 18, 2003 at 44-45.)

of any Class Member. (Dkt. No. 16-1.) In August 2003, the Court granted Plaintiffs' motion to certify the Plaintiff Class.[5] (Dkt. No. 193.) During the course of discovery, Plaintiffs obtained deposition and documentary evidence demonstrating that CAs in Fulton County had caseloads equating to over 400 children per attorney, and that those high caseloads, coupled with chronic resource shortages and structural problems in the supervision of CAs precluded those attorneys from undertaking the most basic legal responsibilities on behalf of their clients necessary to provide minimally effective legal representation. (Plaintiffs' Consolidated Brief in Opposition to County Defendants' Motions for Summary Judgment (Dkt. No. 260).) In February 2005, the Court denied Fulton County's Motion for Summary Judgment. (Order (Dkt. No. 426) dated February 8, 2005.) Specifically, this Court held that Plaintiff Class Members have a statutory as well as constitutional right to counsel during all phases of termination of parental rights and deprivation proceedings, and that their right was not just to the appointment of an attorney, but to *effective* counsel. (*Id*. at 19, 16) (emphasis in original) (holding

[5] This Court certified a Plaintiff Class consisting of "all children who have been, or will be alleged or adjudicated deprived who (1) are or will be in the custody of any of the State Defendants; and (2) have or will have an open case in Fulton County DFCS or DeKalb County DFCS." This Court also certified a subclass of "all children in the Class who are African-American and who have had, or are subject to the risk of having, their adoption delayed or denied on the basis of their race or color." (Order (Dkt. No. 193) dated August 18, 2003 at 51-52.)

that "the private liberty interests at stake support a due process right to counsel in deprivation and TPR proceedings" and that "[t]he right to counsel, of course, means the right to *effective* counsel.")

Following the denial of Fulton County's Motion for Summary Judgment, the parties entered into settlement negotiations. While Fulton County maintained its denial of any violations of Class Member Children's rights, the parties entered into a Consent Decree in order to compromise the legal claims pending between Plaintiffs and the County and to avoid the time, expense, risks, delays and uncertainties of a trial. This Court granted preliminary approval, and after approved notice was sent to the class and a period for objections, final briefing and a public fairness hearing, this Court approved and entered that Consent Decree as a Court Order on May 16, 2006. (Dkt. No. 531.)

The Consent Decree provided that the County could request termination of this Court's jurisdiction once it met and sustained compliance with all of its obligations under the Consent Decree for at least eighteen consecutive months following the establishment of caseload standards by the workload study, directed by Karen Baynes and the Carl Vinson Institute of Government at the University of Georgia. (Ex. 1 §§ 6.C, 9.A, 9.B.) Former Juvenile Court Judge William Jones of Charlotte, North Carolina was selected by the parties and appointed by the Court to

serve as the independent Accountability Agent, to provide objective reports on Fulton County's performance under the terms of the Consent Decree (Ex. 1 §7.A). In the course of carrying out his monitoring responsibilities, the Accountability Agent has submitted to this Court four full reports and three interim reports regarding the County's performance with regard to its obligations under the Consent Decree. (Dkt. Nos. 563, 581, 606, 618, 642, 664 and 692.)

In August 2008, following two years of monitoring by the Accountability Agent, the County filed a motion requesting an order directing that the Accountability Agent create a new tool for assessing Defendants' performance under the terms of the Fulton County Consent Decree. (Dkt. No. 585.) This Court denied that motion in September of that same year, but urged the parties to resolve the issue informally. (Dkt. No. 587.) After several months of negotiations and an in-person meeting, the parties reached agreement with respect to a revised performance assessment tool in December 2008. The parties also negotiated and agreed upon a modification of the Consent Decree to reflect the adoption of a client-directed model of representation by the Fulton County Office of the Child Attorney. In May 2009, upon a Joint Motion by the parties, this Court approved these modifications of the Consent Decree. (Order (Dkt. No. 609) dated May 19, 2009.)

II. Fulton County Has Been in Substantial Compliance with the Terms of the Modified Consent Decree for Eighteen Consecutive Months

A. Fulton County's Compliance with the Caseload Standards Established by the Workload Study[6]

As required under § 6.C of the Consent Decree, the Carl Vinson Institute of Government, under the direction of Karen Baynes, undertook a comprehensive review of the Office of the Child Attorney (then known as the Fulton County Child Advocate's Office) to determine an appropriate method for measuring caseloads and to recommend caseload standards. The Child Advocate Attorney Representation and Workload Study ("Workload Study") (Dkt. No. 561) was issued and filed with this Court on June 25, 2007. The Workload Study recommended that Fulton County CAs be responsible for no more than 80 child cases unless various reforms were made. If specified reforms were made to the internal functioning of the Office, then CA caseloads could be as high as 100. If, in addition to internal reforms, specified reforms were undertaken by the Georgia Department of Family and Children Services as well as the Juvenile Court, then CA caseloads could be as high as 120 children per attorney. (Workload Study at 152.) Neither party objected to the findings of the Workload Study, and the

[6] The quality of legal representation is discussed in the next section.

caseload standards it established became a binding obligation under the Consent Decree. (Ex. 1 § 6.D.)

In the First *Kenny A.* Report for Fulton County, covering the period July through December 2007, the Accountability Agent found that the Office had not undertaken the internal reforms recommended by the Workload Study, and that the County was not in compliance with the established caseload standards. During that monitoring period, the Office had a staff of one managing attorney, two case-carrying CA supervisors and 14 CAs. (First *Kenny A.* Report for Fulton County at 28-29.) Of these 16 case-carrying attorneys, 12 had caseloads of more than 120 cases. (*Id*. at 40-42.)

According to the Accountability Agent's Second *Kenny A.* Report for Fulton County, covering the period January to June 2008, Fulton County was again not in compliance with the established caseload standards. (Second *Kenny A.* Report for Fulton County (Dkt. No. 581) at 53-56.) The Accountability Agent found that the Office had a total of 15 case-carrying CAs, all but one of whom was carrying a caseload in excess of 100 child clients, and that not all recommended internal reforms to the Office had been implemented. The single CA with a caseload of fewer than 100 cases had a caseload of 98 child clients. (*Id.* at 55-56.)

The Accountability Agent submitted an Interim Third *Kenny A*. Report for Fulton County to this Court in March 2009 which only addressed the County's compliance with the caseload requirements of the Decree, and did not report on the quality of legal representation. (Dkt. No. 606.) In that report the Accountability Agent found that as of March 2009, caseloads for CAs had dropped to a range of 47 to 91 children per attorney. The Accountability Agent further reported that the Office staff had increased to include a director, sixteen full-time CAs, a social worker, four investigators and four office support personnel. (*Id*. at 2.) In addition, the Accountability Agent found that "over the proceeding fifteen months, Fulton County has seen numerous internal changes in the [Office], and some external changes by DFCS and by the Fulton County Juvenile Court." (Second *Kenny A.* Report for Fulton County at 7.) These reforms were in response to recommendations made by the Workload Study. (*Id.*)

In October 2009, the Accountability Agent submitted the Third *Kenny A.* Report for Fulton County, which was a comprehensive analysis of the County's performance under all measures of the Decree, including caseload and quality requirements, for the period July 2008 through June 2009. (Dkt. No. 618.) In that report, the Accountability Agent reported that "[b]ased on the Workload Study[,] the [Office] recommended caseload per CA falls somewhere in the middle of 80

and 100 cases per CA[,]" and that "[b]eginning in December 2008, the CA case counts were consistently below 100 and therefore within the parameters set by the Workload study recommendations[.]" As of June 2009, all but four CAs had caseloads below eighty cases. (*Id.* at 18-19.)

In April 2010 the Accountability Agent submitted another interim report focused on the County's compliance with the caseload standards of the Modified Consent Decree. (Dkt. No. 642.) The Accountability Agent reported that as of the end of March 2010, no CA was responsible for more than eighty cases, and that some CAs were representing as few as 33 children. (*Id.*)

The April 2010 interim report was followed by the Fourth *Kenny A.* Report for Fulton County which was submitted by the Accountability Agent to this Court in November 2010. (Dkt. No. 664.) That report, covering the period July 2009 through June 2010, reflected the County's performance with respect to all aspects of the Consent Decree, including caseload requirements and requirements regarding the quality of attorney representation. The Accountability Agent found the following.

> During the Fourth Reporting Period, the reforms and progress documented during the Third Reporting Period have continued, particularly the internal improvements of the [Office]… Based on the Workload Study, the recommended caseload per attorney for the [Office] falls somewhere in the middle of 80 and 100 cases per CA.

> Since December 2008, the Fulton County [CA] case counts have been consistently below 100 cases per CA.

(*Id.* at 4.) The report included a graph demonstrating that the *highest* case counts for Child Attorneys in the first reporting period was 272, and by the fourth reporting period it had dropped to 91. (*Id.* at 26.)

As reported by the Accountability Agent,

> [t]he improved practices by the Fulton [Office of the Child Attorney] and the support of the Fulton County Board of Commissioners, the Child Attorney Board and other county administrative agencies … have resulted in a continued trend of lower monthly case counts for the CAs. These lower caseloads have permitted the Fulton CAs to expand the advocacy for Fulton County's foster children[.]

(*Id.*) At the end of the fourth reporting period, Fulton County had been in compliance with the caseload standards established by the Workload Study and incorporated as an enforceable component of the Consent Decree for more than 18 consecutive months. As found by the Accountability Agent, and further discussed below, the sustained lower caseloads have directly resulted in significantly improved representation of Class Member Children.

B. Fulton County's Compliance With The Attorney Training and Performance Requirements of the Modified Consent Decree

In addition to setting caseload standards, the Consent Decree explicitly requires that the CAs be provided with annual training, details each CA's client-related responsibilities, and sets forth guidelines by which the attorneys are

required to abide. By way of example, the Modified Consent Decree requires that each CA establish and remain in contact with his or her child client (Ex. 1 § 3.3; Appendix A § III.A.5), adequately prepare for and attend all court appearances (Ex. 1 § 3.1; § Appendix A III.B.1), file necessary legal papers (Ex. 1 § 3.2; Appendix A § III.B.3), and stay informed of the child client's needs and status while in foster care. (Ex. 1 § 3.7; Appendix A § III.B.5.)

The Accountability Agent found in his first full compliance report that the training requirements of the Consent Decree were being met (First *Kenny A.* Report for Fulton County at 28-35), and that Fulton County was making some progress towards improving attorney performance. According to the report, "[c]ourt observations over time revealed that the [CAs] are improving the quality of representation, the vigor of their advocacy, and their compliance with dictates of *Kenny A*." (*Id*. at 61.) However, the report also outlined a number of areas of deficient attorney performance, which included the failure to adequately address the permanency and educational needs of Class Member Children and the failure to adequately maintain client case files. (*Id.* at 63, 49.)

In the Second *Kenny A.* Report for Fulton County, the Accountability Agent again found that the County had made some progress in the quality of legal representation it provided Class Member Children. (Second *Kenny A.* Report for

Fulton County at 25.) The report highlighted improved continuity of CAs' legal representation of their clients and improved documentation of all aspects of children's cases. (*Id*. at 29, 246-247.) The report also identified areas in which improvements were lagging, including the failure by attorneys to adequately address multiple requests for continuances of court hearings, and the failure to clearly convey a child client's position in court. (*Id.* at 248, 250.) The Accountability Agent found that although CAs were being provided with required training, additional targeted training was needed on specific performance deficits. (*Id.* at 50.)

In the Third *Kenny A.* Report for Fulton County, the Accountability Agent found that Fulton County had made enormous strides in meeting all of the quality-of-representation requirements of the Decree. According to the report, "while the progress of the Fulton [County Office of the Child Attorney] was previously characterized as slow but steady, the advances made during the preceding 15 months have catapulted the [Office] within the parameters of *Kenny A.* compliance." (Third *Kenny A.* Report for Fulton County at 95.) The Accountability Agent found that in all aspects of both the file and court observations of CAs used to evaluate their performance under the terms of the

Modified Consent Decree, performance met or exceeded the requirements of the Decree. (*Id.* at 14-15, 78-93.)

In the Fourth *Kenny A.* Report for Fulton County, the Accountability Agent again found that the County's performance had met the requirements of the Decree. The Accountability Agent stated,

> [d]uring the Fourth Reporting Period, advances made during the Third Reporting Period have not only continued but have been enhanced with new programs and increased support. During this Fourth Reporting Period, the Fulton [Office of the Child Attorney] has demonstrated the standards set by the *Kenny A*. Consent Decree are implemented and embraced as the standards of practice for the [Office]."

(Fourth *Kenny A.* Report for Fulton County at 10.) The Accountability Agent highlighted the following improvements that had occurred in the Fulton County Office of the Child Attorney under the leadership of the Director, Willie J. Lovett, Jr.

- CAs achieved higher scores on court observation and file reviews;
- CAs attended more trainings and investigated more cases;
- an educational advocate was hired to address the academic needs of the Plaintiff Class;
- a social worker was hired and social work interns brought in to support the CAs in meeting the needs of the Plaintiff Class; and,
- the technological capacity of the Office was upgraded to enhance efficiency.

(*Id*. at 107.) As found by the Accountability Agent, Fulton County "met and exceeded the [requirements] of the 2009 Modified Consent Decree." (*Id.* at 114.)

This marked more than 18 consecutive months of sustained compliance with the Decree.

III. The Parties' Negotiated Agreement Regarding Attorneys' Fees and Expenses is Reasonable

During the course of the reform period, Plaintiffs have incurred additional reasonable legal fees and expenses in connection with efforts to monitor, enforce and otherwise ensure that Class Member Children receive the benefits obtained by the Modified Consent Decree. Class Counsel's monitoring activities have included review of Fulton County performance data and reports submitted by the Accountability Agent for each review period, ongoing and regular communication between Class Counsel and the Accountability Agent regarding compliance reporting, communications with the Accountability Agent and Defendants concerning compliance efforts, and meeting with Class Member Children and child welfare stakeholders to assess whether Class Members were receiving the benefits of the Modified Consent Decree. Class Counsel also expended a significant amount of time working both with the County and the Accountability Agent to negotiate revised case file and court observation protocols used to assess County performance.

The Parties have engaged in extensive, arm's length and good faith negotiations concerning Plaintiffs' claim of additional reasonable attorneys' fees

and expenses beyond those provided for in the Consent Decree ¶ 12. Those negotiations began in February 2010 when Plaintiffs provided Defendants with both fee and expense summaries and contemporaneous billing records.[7] Defendants have objected to certain fee and expense entries, and the parties have negotiated an agreed upon sum representing the maximum appropriate and reasonable attorneys' fees and expenses to be paid for all of Class Counsel's monitoring and enforcement work. The Parties submit that the agreed upon amount of $145,000 for the more than four years of active monitoring activity is fair and reasonable.

As a further matter, the Parties seek award of the fees and expenses for their monitoring and enforcement activities without the expense of additional class notice, since this award of fees and expenses has no impact or effect on the class members. Rule 23(h) of the Federal Rules of Civil Procedure[8] is silent with

[7] The detailed fee and expense billings that Class Counsel provided to Defendants and upon which the fee agreement was reached, are attached to the affirmation of Shirim Nothenberg, appended as Ex. 2.

[8] Rule 23(h). Attorney's Fees and Nontaxable Costs. In a certified class action, the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement. The following procedures apply:

(1) A claim for an award must be made by motion under Rule 54(d)(2), subject to the provisions of this subdivision (h), at a time the court sets. Notice of the motion must be served on all parties and, for motions by class counsel, directed to class members in a reasonable manner.

respect to whether the notice requirement is meant to apply to an application for additional attorneys' fees and expenses for post-judgment enforcement and monitoring of a consent decree. Several federal district courts elsewhere have concluded that the notice requirement does not apply under similar circumstances where there has been no monetary gain to class members that would be impacted by an application for additional fees. For example, in *Brian A. v. Bredesen*, Dkt. No. 241, No. 3:00-cv-0445 (M.D. Tenn. Feb. 4, 2005) the district court found:

> [I]n a case such as this where Plaintiffs periodically submit, and the Court reviews, requests for fees and expenses concerning post-judgment monitoring and enforcement of a consent decree pursuant to 42 U.S.C. § 1988, application of Rule 23(h) should not require approval of notice, publication and a hearing on each such periodic request.

(Order granting plaintiffs' motion for attorneys' fees and expenses at 2.) The District Court reasoned that "[p]roviding notice to the class is likely to be burdensome and costly, especially to Defendants who bear the burden of notifying all children in custody . . . and [who] may ultimately be responsible for the 'fees

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(2) A class member, or a party from whom payment is sought, may object to the motion.
(3) The court may hold a hearing and must find the facts and state its legal conclusions under Rule 52(a). (continued on p. 20)
(4) (continued from p. 19) The court may refer issues related to the amount of the award to a special master or a magistrate judge, as provided in Rule 54(d)(2)(D).

on fees' incurred by Plaintiffs in connection with the preparation and dissemination of notice and attendance at any hearing held in connection with such notice." *Id.*; *accord Jeanine B. v. Doyle*, Dkt. No. 531, No. 93-C-547 at 1 (E.D. Wis. May 23, 2005 (Order granting motion for attorneys' fees and expenses) (". . .[f]urther notice to the Class of periodic fee applications for subsequent monitoring and/or enforcement work by Plaintiffs' Attorneys would be unduly burdensome and is not necessary under Rule 23(h)," where notice of first motion for attorneys' fees and expenses had previously been made); *LaShawn A. v. Williams*, Dkt. No. 816, No. 89-CV-1754 (TFH) at 2 (D.D.C. Nov. 2, 2004) (Order granting motion for attorneys' fees and expenses) ("Rule 23(h) does not apply in [a] longstanding case . . . in which there has been periodic submission and review of requests for fees, expenses and costs in connection with post-judgment monitoring and enforcement of a remedial order. To require strict application of Rule 23(h) in this case would be unduly burdensome."); *Juan F. v. Rell*, Dkt. No. 475, No. H89-859 (AHN) at 1 (D. Conn. Oct. 7, 2004) (Order granting attorneys' fees and expenses) (same); *cf. G. L. v. Stangler*, Dkt. No. 295, No. 77-0242-CV-W-1 at 1 (W.D. Mo. Aug. 20, 2004) (Order finding procedure adopted before enactment of Rule 23(h) sufficient) ("Because this case is an adjudicated class action, and because strict application of

the new rule [23(h)] would be unduly burdensome, the Court finds that the procedure established in its July 15th [1996] Order comports with Rule 23(h).").[9]

Based on the sound reasoning of the district courts in the above cases, and the associated costs of providing notice, the Parties request that this Court hold that further notice of this motion for monitoring fees is unnecessary under Rule 23(h) and would be unduly burdensome.

CONCLUSION

The Fulton County Office of the Child Attorney has sustained compliance with the terms of the Modified Consent Decree for eighteen consecutive months. Specifically, it has sustained compliance with §§ 4, 5 and 6 of the Modified Consent Decree for the requisite time, as evidenced by the Compliance Reports on file with this Court. Therefore, in view of the above, and in accordance with § 9 of the Modified Consent Decree, Plaintiffs and Defendant Fulton County jointly request that this Court enter an immediate Order: (1) finding Defendant Fulton County in compliance with the Modified Consent Decree as required by its terms, (2) approving Parties' negotiated agreement regarding Plaintiffs' reasonable attorneys' fees and expenses for the monitoring and enforcement of the Fulton County Consent Decree without further notice to the class; and (3) terminating

[9] Copies of the orders in *Brian A.*, *Jeanine B.*, *LaShawn A.*, *Juan F.*, and *G.L.* are

jurisdiction over and dismissing this action as it pertains to Defendants Fulton County and the Modified Consent Decree.

Respectfully submitted this 12th day of April, 2011.

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appended as Exs. 3- 7, respectively.

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CERTIFICATION PURSUANT TO LOCAL RULE 7.1D

I hereby certify that the foregoing brief has been prepared in 14-point Times New Roman, one of the typeface and point-size selections approved by the Court in Local Rule 5.1C.

/s/ Michael A. Caplan
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CERTIFICATE OF SERVICE

I hereby certify that on this date, I electronically filed the foregoing Memorandum in Support of Consent Motion To Terminate Modified Consent Decree with Defendant Fulton County and For Approval of Negotiated Attorneys' Fees and Expenses with the Clerk of Court using the CM/ECF system, which will automatically send email notification of such filing to the following attorneys of record:

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This 12th day of April, 2011.

/s/ Michael A. Caplan
Michael A. Caplan