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4 October 2021

Ms. Omotayo Alli, Director
Georgia Public Defender Council
270 Washington Street, #6079
Atlanta, GA 30334

Submitted via email to: OAlli@gapubdef.org

Dear Director Alli,

Greetings! I hope this letter finds you well. GACDL would like to know if there are ways it can support the GPDC in securing adequate funding for ancillary services, including expert witnesses, for use by pro bono counsel when they represent indigent people accused of crimes. I am sure that you would agree with me that pro bono counsel should not be in a worse position than appointed counsel when it comes to procuring expert services necessary to provide effective assistance of counsel, otherwise there will be a fundamental failure in the system.

As I understand it, based on recent testimony¹ by your general counsel, Natalie Glaser, the GPDC's current policy is to deny all requests to contract for expert funding submitted by private, pro bono counsel on behalf of an indigent accused client. If that is GPDC's policy it would directly contravene the Georgia Supreme Court's unequivocal decision in *Duke v. State*² requiring that state-funded ancillary defense services, including expert funding, be provided in such cases. In his opinion, then Chief Justice Melton concluded that "the IDA provides a mechanism for pro bono counsel representing an indigent defendant to access public funding for ancillary defense services: by entering into a contractual relationship with either the circuit public defender or directly with the GPDC."³ In his concurrence on behalf of Justices Boggs and Warren, Justice Peterson emphasized that "the GPDC would be most unwise to decline to contract with Duke's counsel on remand."⁴

¹ Offered in Fulton County Case Number 20CP192155 on September 15, 2021.

² 856 S.E.2d 250 (Ga. 2021)

³ *Id.* at 256.

⁴ *Id.* at 259.

GACDL is encouraged by the potential this decision offers for even more of our members to engage in meaningful pro bono representation that would directly support the work of GPDC. GACDL agrees with Chief Justice Melton's recognition that "the State's asserted fiscal interests are actually advanced by the ability of the GPDC and the circuit public defenders to contract with pro bono counsel representing indigent defendants."⁵ The Chief Justice also underscored GPDC's expert funding requirement in such cases by highlighting the reality that, in such scenarios, "the GPDC retains oversight of the competence and cost of ancillary services while avoiding the expenditure of additional public funds to provide counsel because pro bono counsel need not be compensated for the work." Naturally, pro bono counsel cannot provide effective assistance of counsel without the funds necessary to hire experts.

The *Duke* Court laid plain that the "text and structure of the IDA...indicate that the GPDC and its director will support attorneys who represent indigent defendants but are not in a circuit public defender office."⁶ GACDL does not envision this as a one-way street; however, successful partnership between the private criminal defense bar and the GPDC in such representation requires that ancillary funding be made available to private attorneys. The *Duke* opinion offers a powerful tool for appropriations advocacy given that compliance with the decision requires adequate funding. GACDL stands ready to join you in such advocacy to the degree it can be helpful to the GPDC.

If there are ways GACDL can assist you in ensuring adequate ancillary funding is available to every indigent person in our state facing criminal prosecution, please let me know. If there are specific procedures the private bar should follow in seeking to contract with the GPDC, please send those along to me and I'll ensure they are distributed to our membership. Of course, I welcome any conversation you might desire and you can reach me by phone (404-230-9155) or email (dymecki@bellsouth.net) at your convenience.

Sincerely,



Kimberly A. Dymecki
President

cc: Georgia Public Defender Council Members:

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⁵ *Id.* at 258.

⁶ *Id.* at 256.