

ATTACHMENT 1

THE SHELBY COUNTY PUBLIC DEFENDER

SINCE 1917



BLUEPRINT TO ACHIEVE COMPLIANCE IN JUVENILE DEFENDER SERVICES

**STEPHEN BUSH
SHELBY COUNTY PUBLIC DEFENDER
AUGUST 15, 2016**



THE LAW OFFICES OF
THE SHELBY COUNTY PUBLIC DEFENDER

August 15, 2016

Sandra Simkins, Director
Children's Justice Clinic
Rutgers School of Law
217 N. 5th Street
Camden, NJ 08102-1203

Dear Ms. Simkins:

Please accept this *Blueprint to Achieve Compliance in Juvenile Defender Services* as a key step toward a comprehensive plan to realize a system of juvenile defender services as required under the Memorandum of Agreement.¹ The solutions set forth in this progress report propose a course of action to achieve and sustain all juvenile defender obligations by August 31, 2018.

This report is submitted in response to your request for advisory recommendations for achievable local solutions, including timelines for implementation.² At your direction the report is solution-oriented and recommends meaningful improvements that can be undertaken immediately. Each recommendation falls within the authority of the Mayor's Administration.

There are two critical elements: the Administration must take active steps to achieve a minimum level of independence for Public Defender services, and the Public Defender must increase service capacity to provide all non-conflict delinquency services.

Please note the focus on local solutions does not rule out options for either state solutions or a future opportunity to amend the Shelby County Charter, though local efforts to achieve compliance are not dependent on them.

If the recommendations can be realized under the proposed timelines, the Public Defender's juvenile defender unit will be able to provide all direct representation in delinquency petitions and detention hearings by January 15, 2017.

¹ The Memorandum of Agreement regarding the Juvenile Court of Memphis and Shelby County with the United States Department of Justice Civil Rights Division (hereafter "Agreement") was entered December 17, 2012, and provides agreed upon measures to remedy findings pursuant to the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. section 14141.

² Sandra Simkins, Compliance Report #7, June 16, 2016, page 5.

Background

The preferred structure for both direct and conflict defender services required in the Agreement is a single-agency defender model operating under a properly structured independent commission. David Carroll reported to you in September 2015 that efforts to establish a single-agency, independent commission approach to defender services in Shelby County were unsuccessful, concluding that Tennessee Supreme Court Rule 13 prohibits the necessary step of creating a single-agency model.³ Further, the County Charter precludes establishing an independent commission.

During the October 2015 site visit in a meeting with you, Winsome Gayle, and Richard Goemann, Ross Dyer affirmed these conclusions and reported that Shelby County had exhausted all local options to make further improvements in the area of defender independence. After a period of review Mayor Luttrell assigned to me a responsibility to coordinate local efforts to advance compliance in the area of defender services.

In January of 2016, the Mayor endorsed the following guiding principles:

1. Increase capacity of specialized Public Defender juvenile defender unit to provide representation for 100% of all juvenile delinquency cases where there is no ethical conflict of interest.
2. Identify achievable local solutions to enhance Public Defender independence.
3. Remain in regular dialogue with due process monitor and DOJ to invite input and test ideas under consideration toward achieving compliance.

Before, during, and after your April 2016 site visit, you were consulted regarding these priorities and endorsed them in your compliance report. I appreciate your input during this process, and also that of Ms. Gayle, Mr. Goemann, and Helam Gebremariam, Senior Counsel for the Office for Access to Justice.

In particular I wish to express gratitude to Judge Dan Michael and Chief Legal Advisor Garland Ergüden for their early endorsement of the need to increase Public Defender capacity to provide for all non-conflict representation. Interim County Attorney Marcy Ingram has provided useful guidance during this process, and Chief Administrative Officer Harvey Kennedy is continuing efforts to secure additional state funding to assure sustainability. I am grateful for the assistance of Director of Community Services Martha Lott and Cecil C. Humphreys School of Law Dean Peter Letsou in seeking approvals to extend the federal grants that support the new Children's Defense Clinic.⁴

Each of the recommendations that follow represents a deliberate, if imperfect, step toward one or more of the American Bar Association's (ABA) *Ten Principles of a Public Defense Delivery System*, which will continue to guide all efforts toward realizing a comprehensive plan for juvenile defender services in Shelby County. Establishing a

³ Letter from David Carroll to Sandra Simkins, September 24, 2015.

⁴ The Bureau of Justice Assistance approved our request and extended the terms of Justice Assistance Grants 2013-DJ-BX-0333 and 2014-DJ-BX-0559 for the purpose of funding the Children's Defense Clinic through June 30, 2018.

minimum level of independence is a necessary precondition to our ability to meet the *Ten Principles*, which form the fundamental elements of the Agreement's defender requirements. The DOJ has made it clear that establishing independence of the defense function is "essential to achieving substantial compliance with the Agreement."⁵

RECOMMENDATIONS

I. Establish Adequate Protections for Chief Public Defender

For local solutions to be effective, Shelby County must take steps to create job protections that ensure the Chief Public Defender is able to act ethically at all times *despite the prospect of removal* whenever public defense priorities are in tension with political or judicial objectives. The DOJ has made it clear that "more needs to be done to ensure that the appointment and removal of the Chief Public Defender is shielded from political influence."⁶ Adequate safeguards are essential to balance the authority the County Charter grants to the Mayor to dismiss the Chief Public Defender at any time, for any reason.⁷

Independent commissions commonly use contractual arrangements to provide a designated term of service that permits termination only for just cause and that grants the Chief the right to hire and remove staff and the authority to set standards. These protections serve as important safeguards against undue political or judicial influence.

The County should take steps to implement comparable assurances. Ultimately the County should endeavor to set the term of service at eight years to align with those for district attorneys general, district public defenders, and state judges in Tennessee. To avoid undue political influence and to encourage merit-based selection of the Chief Public Defender a regular full term of service should begin two years following a mayoral election, on September 1st. Compensation should be based on an objective standard that is not subject to modification by the elected appointing authority.⁸

☒ **Solution:** Because the next full term Mayor will take office September 1, 2018, the Administration should establish job protections, which include an initial four-year term of service for the Chief Public Defender, through August 31, 2020.⁹

⁵ Email from Ms. Gayle to Ross Dyer, February 5, 2016, and letter from Ms. Gayle to Judge Michael, October 30, 2014.

⁶ Because the position remains under the control of the Mayor, the Civil Rights Division has highlighted the need to ensure the appointment and removal of the Chief Public Defender is shielded from political influence. Letter from Ms. Gayle to Mr. Dyer and Larry Scroggs, May 21, 2015.

⁷ According to Mr. Carroll, "the current public defender lacks any protection to ensure his ability to act with independence" and "the most pressing need in the reformation of the juvenile right to counsel is addressing the wholesale lack of independence in defender services." When workload exceeds the capacity of defender services the Public Defender must have adequate independence to be able to refuse further appointments without being dismissed. See generally, ABA *Eight Guidelines of Public Defense Related to Excessive Workloads* (2009).

⁸ Tenn. Code Ann. § 8-7-201 sets compensation of district public defenders in Tennessee and is an example of an objective standard that would remove the issue of compensation from local political influence.

⁹ An initial four year term of service permits the next full term Mayor to select the first Chief Public Defender to serve a full eight year term, while also minimizing risk that efforts to reach full compliance will be subject to further delays due to changes in leadership.

II. Establish Operational Independence for Public Defender

As a general policy the Administration should assure the professional independence of the public defense function whenever doing so is not restricted by the County Charter or local legislation. The following solutions enhance independence in key areas and will improve the integrity of public defense governance. Importantly, because the Public Defender must operate under the ethical obligations that govern all lawyers and law firms, the following solutions will ensure the public defense function can meet all ethical requirements when depending on essential supports from other County agencies.¹⁰ Because the Public Defender functions as a government law firm it should be exempt from non-essential administrative requirements.

- ☑ **Solution:** Ensure the Public Defender can advocate for funding and participate fully in state and local budget proceedings independently of political or judicial controls.
- ☑ **Solution:** Reorganize the Division of Defender Services to create structures for service delivery and supervision consistent with the *ABA Ten Principles*.
- ☑ **Solution:** Establish business rules that govern the administration of revenue sources that support public defense.
- ☑ **Solution:** Ensure the Public Defender can manage all operations and business functions in a manner that meets ethical obligations at all times.

III. Increasing Public Defender Capacity: Making the Panel Problem Smaller

By January 2016 there was a clear consensus that Rule 13 is not adequate to support a system of independent defender services. During your April 2016 site visit you endorsed our strategy to increase Public Defender capacity to provide representation in all delinquency proceedings except where there is a conflict of interest, noting that doing so would significantly increase the number of youth represented by lawyers with adequate resources, training, and supervision.

At the time the Administration had requested increased state funding to cover the juvenile defender capacity gap in the amount of \$1.1 million. Unfortunately there was no increase in state funding for juvenile defender services for the fiscal year that began July 1, 2016. The Public Defender did receive a local funding increase for FY2017 in the amount of \$500,000 that has been allocated to support efforts to increase capacity.¹¹

¹⁰ By implementing these solutions the Administration Shelby County can affirmatively meet the constitutional obligation to ensure that the “public defender is not amenable to administrative direction in the same sense as other state employees.” See *Polk County v. Dodson*, 454 U.S. 312 (1981).

¹¹ Tennessee state law requires local government to balance any increase in new local funding to the District Attorney General by requiring the public defender funding baseline be increased by 75% of the increase to the prosecution.

To address the remaining gap the Administration has affirmed a plan to add supplemental capacity by appointing attorneys from the private bar to serve as part-time Assistant Public Defenders. Efforts underway to recruit and train additional staff will enable the Public Defender to provide representation for all children in delinquency petitions and detention hearings where there is not a conflict of interest by January 15, 2017.¹²

Panel Structure

You have raised specific concerns about the fundamental lack of independence in the present panel coordinator structure. At this time the panel is not “overseen by an independent body” as required by the Agreement, and it is clear that the Court cannot be responsible for fixing the problems without exerting undue judicial influence. Efforts underway to increase Public Defender capacity will make the scope of the panel problem as small as possible. As this milestone is reached it may become possible, subject to Court approval, to modify the Panel Coordinator function in a manner that continues to meet the needs of the Court, does not conflict with Rule 13, and is more closely aligned with national standards.

Sustainability

Sustainability of the defender reforms underway and those proposed in this report have been considered throughout the planning process. The DOJ has said clearly “sustainability requires us to create a structure that ensures independence over time.”¹³ In some areas sustainability cannot be achieved until compliance is reached. This is true in matters that affect independence or require recurring funds. Efforts to achieve compliance in service quality, capacity, and structure must continue even if the sources of sustainability are uncertain at this time.

Comprehensive Plan for Defender Services

In each of your last three compliance reviews you have addressed the foundational issue of independence as essential to a comprehensive plan for defender services capable of delivering and sustaining the juvenile defender services required under the Agreement.¹⁴ Likewise, the Civil Rights Division has affirmed the need for a comprehensive plan that outlines how the requirements of public defender independence, reasonable workload controls, and adherence to juvenile defender

¹² It is an ambitious undertaking for the Public Defender to add capacity in this manner and volume, and to implement systems for supervision and oversight required to meet NJDC/NLADA *Ten Core Principles for Providing Quality Delinquency Representation through Public Defense Delivery Systems*, October 2012, and the *Tennessee Juvenile Defense Standards*. You and Mr. Carroll have each expressed reservations concerning the adequacy of the proposed rate of compensation. Your continued evaluation will help determine the degree to which this strategy is successful, and how to best modify the service plan as we learn from it.

¹³ Letter of Ms. Gayle to Judge Michael, October 30, 2014.

¹⁴ June 2016, November 2015, and June 2015.

practice standards can be achieved, noting they are essential to reaching and sustaining compliance with the Agreement.¹⁵

The solutions proposed in this *Blueprint* address your concerns directly in the threshold area of independence. It is my belief that once implemented the cumulative effect of the improvements will achieve a level of independence that is satisfactory to both you and to the Civil Rights Division. Having this foundational element in place is essential for Shelby County to achieve and sustain full compliance in the area of juvenile defender services before the end of Mayor Luttrell's term on August 31, 2018.

As requested timelines proposed for these solution are:

CHIEF DEFENDER INDEPENDENCE	Area	Date
Job Protections	Legal	September 15

OPERATIONAL INDEPENDENCE	Area	Date
State and Local Budget Assurances	CAO	September 15
Reorganize PD Structure	HR	October 1
Establish Business Rules	CAO	October 15
Business Systems Protocols	IT	November 1
Minimize Mandatory Requirements	CAO	November 1

SUPPLEMENTAL CAPACITY	Area	Date
Job Description and Compensation	HR	September 1
Assigned Counsel Unit – Review	Legal	September 15
Structure for Assigned Counsel Unit	PD	September 15
Recruit Attorneys from Private Bar	PD	October 1
Revised Delinquency Volume Projections	PD	November 1
Assigned Counsel Unit – Limited Services Start	PD	October 15
Assigned Counsel Unit – Staggered Recruitment Complete	PD	December 1
Assigned Counsel Unit – Orientation Trainings Complete	PD	January 1
Panel Coordinator Recommendations	PD	January 15

¹⁵ "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.*" Letter from Ms. Gayle to Judge Michael, October 30, 2014.

The solutions proposed in this *Blueprint* identify critical areas in which Shelby County must act to secure an adequate level of operational independence to meet obligations that are foundational to the Agreement. However, unless a minimum acceptable level of public defender independence can be established, it will not be possible for Shelby County to either achieve or sustain the juvenile defender services required in the Agreement.

I look forward to your feedback on the *Blueprint to Achieve Compliance in Juvenile Defender Services* and ask that you correct any misunderstandings or misinterpretations reflected in this report likely to impede our ability to achieve compliance, or cause further unnecessary delay. It is imperative that the Administration has your assurance that the solutions proposed in this report are a necessary and proper course of action toward full compliance by August 31, 2018.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen Bush", written in a cursive style.

Stephen Bush
Shelby County Public Defender

cc: Mark H. Luttrell, Jr., Mayor, Shelby County
Marcy Ingram, Interim Shelby County Attorney
The Honorable Dan Michael, Judge, Juvenile Court of Memphis & Shelby County
Bill Powell, Settlement Coordinator
Winsome Gayle, Juvenile Counsel, Special Litigation Section, USDOJ

**THE LAW OFFICES OF
THE SHELBY COUNTY PUBLIC DEFENDER**

201 POPLAR, 2ND FLOOR MEMPHIS, TN 38103 T: 901.222.2800 F: 901.222.2801

ATTACHMENT 2

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:

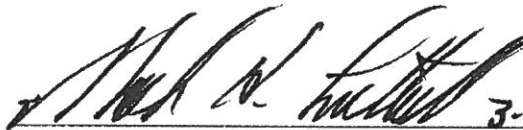
1. It shall be, and hereby is, the policy of Shelby County to take all necessary and appropriate steps, within the law and the County Charter, to establish and affirm the office of the Shelby County Public Defender to provide independent, ethical, and zealous representation to all accused people in Shelby 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. 3-23-17
Mayor of Shelby County Date

ATTACHMENT 3

**DELINQUENT COMPLAINTS WITH A JUVENILE DEFENDER OR PUBLIC DEFENDER ASSIGNED
 BASED ON COMPLAINT DATE - COUNTING DISTINCT COMPLAINTS
 Accepted and Reassigned Cases Only and Omit Inactive Assignments**

		2017
JUVENILE DEFENDER	JAN	79
	FEB	71
	MAR	48
	APR	53
	MAY	48
	JUN	57
	JUL	56
	AUG	49
	SEP	34
	OCT	51
	NOV	40
	Total	586
PUBLIC DEFENDER	JAN	88
	FEB	94
	MAR	95
	APR	86
	MAY	92
	JUN	97
	JUL	87
	AUG	86
	SEP	71
	OCT	74
	NOV	63
	Total	933
Total		1,518

	2017
JUVENILE DEFENDER	586 39%
PUBLIC DEFENDER	933 61%
Total Distinct Complaints	1,518 100%

NOTE: This report is counting distinct complaints based on attorney assignments. If a juvenile is assigned more than one attorney on the same complaint the attorney assignment will be counted once in each category (attorney type and month) but only one time in the overall total.

		2017
JUVENILE DEFENDER	NANCE, LARRY	62
	JONES, SAMUEL	60
	KREHER, DAVID	58
	RENFROE, SHEILA	46
	WILLIAMS, EVAN	45
	KHUMALO, LINDA PARSON	42
	FRANKLIN, JAMES EDWARD	39
	WASHINGTON, ALICIA	34
	CHASTAIN, AUTUMN B.	31
	MELONI, KIM	30
	BYNUM, RANDLE B.	29
	GURKIN, J WHITTEN	27
	SHELTON, REGINALD E.	27
	GILLARD, VICTORIA W.	25
	ALEXANDER, CONSTANCE WOOD	22
	PERKINS, SAMUEL	4
	CORMAN, JOSHUA	3
	SETTLE, DEWUN R.	2
	MILLER, DOROTHY INGRAM	1
	Total	586
PUBLIC DEFENDER	RARDIN, KEVIN	141
	MCKEITHEN, CARNITA	138
	RATTON, KATIE	138
	RUSSELL, STEPHANIE	107
	MARTIN, CHRISTOPHER	72
	DERNOCOEUR, MELODY	66
	HALL, JACINTA	59
	DEANS, BARBARA	53
	HALE, JAMES	43
	TURNER, KAMILAH ELAINE	43

NOTE: This report is counting distinct complaints based on attorney assignments. If a juvenile is assigned more than one attorney on the same complaint the attorney assignment will be counted once in each category (attorney type and month) but only one time in the overall total.

		2017
PUBLIC DEFENDER	RAYFORD, JAMES	39
	EDWARDS, ELBERT	22
	ARMSTARD, DONNA	12
	CASE, JENNIFER	11
	SHELTON, REGINALD E.	4
	SANSBURY, LAURIE	3
	Total	933
Total		1,518

NOTE: This report is counting distinct complaints based on attorney assignments. If a juvenile is assigned more than one attorney on the same complaint the attorney assignment will be counted once in each category (attorney type and month) but only one time in the overall total.

ATTACHMENT 4

SUMMARY

I. Description of Item

Shelby County Public Defender's Office is requesting approval of a contract with the University of Memphis School of Law for the provision of professional services to operate a specialized juvenile delinquency law clinic to support efforts of meeting juvenile defender obligations required under the Department of Justice MOA. This item requires the expenditure of FY2015 Federal Grant Funds.

II. Source and Amount of Funding

Public Defender – JAG Fund (Juvenile Defender Unit)

Item	Start-up Cost FY15	Year 1 FY16	Year 2 FY17	Total Cost
	Account 191-708002-6665	Account 191-708002-6665	Account 193-708002-6678	
U of M Law School Personnel Services	\$15,420	\$185,000	\$185,000	\$385,420
Other Operating Expense	\$830	\$10,000	\$10,000	\$20,830
TOTAL COST	\$16,250	\$195,000	\$195,000	\$406,250

All costs are reimbursed by the grantor; there is no cost associated with this resolution for which Shelby County is responsible.

III. Communicate How the Resolution Affects:

- A. Subawards – N/A
- B. Personnel – N/A
- C. Equipment – N/A
- D. Contracts – The contract covers May 1, 2015 through June 30, 2017 for an amount not to exceed \$406,250.00, with an option to renew for two (2) additional one year terms subject to the adoption of the corresponding fiscal year's Operating Budget by the Board of County Commission.

IV. Other Relevant Information

- A. Administration recommends approval of this Resolution.
- B. This agreement will implement a specialized juvenile delinquency clinic housed at the University of Memphis School of Law. The clinic program will address complex cases and expand juvenile defender capacity in priority areas including: pre-petition representation, post-dispositional advocacy for youth in secure custody, transfer cases, appeals, and cases

where youth face revocation while under supervised release. The clinic will also support positive system reform by training a new generation of juvenile defenders, promoting best practices in zealous, client-directed advocacy. The academic partnership will supplement defender services in areas of unmet capacity of the public defender and private bar. This is a critical component of an infrastructure to support juvenile defenders and a key strategy toward substantial compliance with the DOJ MOA.

Item #: _____

Moved by: _____

Seconded by: _____

Prepared by: Donna Weeams

Approved by: Lee Hopson

RESOLUTION TO APPROVE A CONTRACT BETWEEN SHELBY COUNTY GOVERNMENT ON BEHALF OF THE PUBLIC DEFENDER'S OFFICE AND THE UNIVERSITY OF MEMPHIS ON BEHALF OF ITS LAW SCHOOL FOR THE PROVISION OF PROFESSIONAL SERVICES TO OPERATE A SPECIALIZED JUVENILE DELINQUENCY LAW CLINIC IN AN AMOUNT NOT TO EXCEED \$406,250.00 FOR THE PERIOD OF MAY 1, 2015 THROUGH JUNE 30, 2017. THIS ITEM REQUIRES THE EXPENDITURE OF FEDERAL GRANT FUNDS IN AN ANNUAL AMOUNT NOT TO EXCEED \$195,000.00. SPONSORED BY COMMISSIONER EDDIE JONES.

WHEREAS, The Shelby County Public Defender's Office (COUNTY) has the need for the provision of professional services to operate a specialized juvenile delinquency law clinic to support efforts of meeting juvenile defender obligations required under the Department of Justice MOA; and

WHEREAS, The University of Memphis School of Law (CONTRACTOR) has the knowledge and expertise to provide such services; and

WHEREAS, The CONTRACTOR was approved as a Sole Source Provider on March 24, 2015 because they are the only provider in Shelby County accredited to administer a law school clinic program; and

WHEREAS, The parties are desirous of entering into a contract setting forth the terms and conditions under which the CONTRACTOR will provide said services for the period of May 1, 2015 through June 30, 2017 for a fee not to exceed \$406,250.00 with

an option to renew for two (2) additional one year terms subject to the adoption of the corresponding fiscal year's Operating Budget by the Board of County Commission; and

WHEREAS, Funds are available in the FY2015 Operating Budget and have been included in the FY2016 Proposed Budget for the Public Defender's Office in account number 191-708002-6665.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF SHELBY COUNTY, TENNESSEE, That the Contract for the provision of professional services to operate a specialized juvenile delinquency law clinic, as per Exhibit A, which is attached hereto and incorporated herein by reference, is hereby approved.

BE IT FURTHER RESOLVED, That the County Mayor is hereby authorized to execute any and all documents on behalf of Shelby County Government, necessary to comply with the purposes and intent of this Resolution, executed copies of which shall be filed with the Contract Administration Department.

BE IT FURTHER RESOLVED, That the options to renew for two (2) additional one year periods are hereby approved and will be budgeted and appropriated subject to the approval of the future corresponding Fiscal Years' budgets by the Board of County Commissioners.

BE IT FURTHER RESOLVED, That the County Mayor and the Director of Administration and Finance are authorized to issue their warrant or warrants in an annual amount not to exceed \$195,000.00 to the CONTRACTOR, for the purpose contained in this resolution and to take proper credit in their accounting therefor.

BE IT FURTHER RESOLVED, That this Resolution shall become effective in accordance with the Shelby County Charter, Article II, Section 2.06(B).

Mark H. Luttrell, Jr.
Shelby County Mayor

Date: _____

ATTEST:

Clerk of County Commission

ADOPTED: _____

CONTRACT

This contract (the "Contract") entered into this _____ day of _____, 2015, and between SHELBY COUNTY GOVERNMENT, hereinafter referred to as "COUNTY" and THE UNIVERSITY OF MEMPHIS through its Cecil C. Humphreys School of Law, hereinafter referred to as "CONTRACTOR".

WITNESSETH

WHEREAS, the COUNTY has the need for the provision of professional services to establish a juvenile defender clinic program to support juvenile defender reforms; and

WHEREAS, COUNTY has approved CONSULTANT'S/ CONTRACTOR'S single source designation by letter dated March 23, 2015.

WHEREAS, the CONTRACTOR has the knowledge and expertise to provide such services; and

WHEREAS, the parties are desirous of entering into a contract setting forth the terms and conditions under which the CONSULTANT will provide said services.

NOW THEREFORE, for and in consideration of mutual promises and covenants herein contained, the parties hereto agree as follows:

I. SCOPE OF WORK

1. The CONTRACTOR shall provide the services as outlined within the Scope of Work which is attached hereto as Exhibit "A" and incorporated herein by reference as if stated verbatim (the "Services").

II. TERM AND COMPENSATION

1. The term of this Contract (the "Term") will commence on May 1, 2015 and continue through June 30, 2017, with the option to renew for two (2) additional one-year periods, upon mutual written consent of both parties, with the same terms and conditions.
2. The COUNTY agrees to compensate the CONTRACTOR for the provision of the Services the sum total not to exceed four hundred six thousand two hundred fifty AND 00/100(\$406,250.00) Dollars (the "Fee") during the term of this Contract which shall include all reimbursable expenses.

3. The Fee shall be paid in accordance with the cost proposal on the attached Exhibit B.
4. The CONTRACTOR shall submit invoices to the COUNTY on CONTRACTOR's letterhead on a monthly basis for Services performed during the preceding month. Invoices shall be submitted in duplicate to the address set forth in Paragraph 32 of this Contract to the attention of Donna Weeams. The COUNTY shall pay such invoices within thirty (30) days of its receipt and approval of said invoices. The COUNTY is not obligated to pay, and will withhold from payment, any amounts the COUNTY has in dispute with the CONTRACTOR based on CONTRACTOR'S non-performance or negligent performance of any of the Services under this Contract.
5. **CONTRACTOR shall not be permitted or authorized to incur fees beyond the extent that purchase orders have been issued on approved contracts and/or purchases prior to the commencement date, during the term of the contract, and/or subsequent to the termination date of County contracts or purchases without prior, expressly written, appropriate authorization pursuant to County purchasing procedures and rules and regulations. County is not obligated to pay nor shall CONTRACTOR be entitled to receive payments for contract fees and expenses incurred in violation of this provision.**

III. GENERAL CONDITIONS

The parties further agree as follows:

1. **CONTROL**

All Services by the CONTRACTOR will be performed in a manner satisfactory to the COUNTY, and in accordance with the generally accepted business practices and procedures of the COUNTY.
2. **CONTRACTOR'S PERSONNEL**

The CONTRACTOR certifies that it presently has or will have adequate qualified personnel to perform all Services required under this Contract. All work performed during the Term of this Contract will be supervised by the CONTRACTOR. The CONTRACTOR further certifies that all of its employees assigned to serve the COUNTY have such knowledge and experience as required to perform the duties assigned to them. Any employee of the CONTRACTOR who, in the opinion of the COUNTY, is incompetent, or whose conduct becomes detrimental to the work, shall immediately be removed from association with the Services under this Contract.
3. **INDEPENDENT STATUS**
 - a. Nothing in this Contract shall be deemed to represent that the CONTRACTOR, or any of the CONTRACTOR's employees or agents, are the agents, representatives, or

employees of the COUNTY. The CONTRACTOR will be an independent CONTRACTOR over the details and means for performing the Services under this Contract. Anything in this Contract which may appear to give the COUNTY the right to direct the CONTRACTOR as to the details of the performance of the Services under this Contract or to exercise a measure of control over the CONTRACTOR is solely for purposes of compliance with local, state and federal regulations and means that the CONTRACTOR will follow the desires of the COUNTY only as to the intended results of the scope of this Contract.

- b. It is further expressly agreed and understood by CONTRACTOR that neither it nor its employees or agents are entitled to any benefits which normally accrue to employees of the COUNTY; that CONTRACTOR has been retained by the COUNTY to perform the Services specified herein (not hired) and that the remuneration specified herein is considered fees for the Services performed (not wages).

4. REPORTS

CONTRACTOR shall prepare and submit quarterly reports of its activities, funded under this Contract, to the originating department and the Contract Administration Department of the COUNTY. The reports shall be inclusive of specific Services delivered. Any such reports provided to the COUNTY shall be prepared with the understanding that the COUNTY may make such reports available to the public. The quarterly reports and Services-related documents specific to the work performed in accordance with this Contract may be subject to audit by the Director of the Division of Administration and Finance of the COUNTY for the purpose of verifying that the work was performed as outlined in Exhibit A. Financial records are not subject to audit as this Contract is a fixed fee agreement. The COUNTY shall have the right to withhold future disbursement of funds under this Contract until this provision has been met.

5. TERMINATION OR ABANDONMENT

- a. It shall be cause for the immediate termination of this Contract if, after its execution, the COUNTY determines that:
 - i) Either the CONTRACTOR or any of its principals, partners or corporate officers, if a corporation, including the corporation itself, has pled nolo contendere, or has pled or been found guilty of a criminal violation, whether state or federal, involving, but not limited to, governmental sales or purchases, including but not limited to the rigging of bids, price fixing, or any other collusive and illegal activity pertaining to bidding and governmental contracting; or
 - ii) CONTRACTOR has subcontracted, assigned, delegated, transferred its rights, obligations or interests under this Contract without the COUNTY's consent or approval; or

- iii) CONTRACTOR has filed bankruptcy, become insolvent or made an assignment for the benefit of creditors, or a receiver, or similar officer has been appointed to take charge of all or part of CONTRACTOR assets.
- b. The COUNTY may terminate the Contract upon five (5) days written notice by the COUNTY or its authorized agent to the CONTRACTOR for CONTRACTOR's failure to provide the Services specified under this Contract.
- c. This Contract may be terminated by either party by giving thirty (30) days written notice to the other, before the effective date of termination (the "Termination Date"). In the event of such termination, the CONTRACTOR shall be paid for all Services rendered prior to the Termination Date, provided the CONTRACTOR shall have delivered to COUNTY such statements, accounts, reports and other materials as required under this Contract; however, CONTRACTOR shall not be compensated for any anticipatory profits that have not been earned as of the date of the Termination Date. All Services completed by CONTRACTOR prior to the Termination Date shall be documented and tangible work documents shall be transferred to and become the sole property of the COUNTY prior to payment for the Services rendered.
- d. Notwithstanding the above or any section herein to the contrary, CONTRACTOR shall not be relieved of liability to the COUNTY for damages sustained by the COUNTY by virtue of any breach of the Contract by CONTRACTOR.

6. COMPENSATION FOR CORRECTIONS

No compensation shall be due or payable to CONTRACTOR pursuant to this Contract for any CONTRACTOR's Services performed by the CONTRACTOR in connection with effecting of corrections to the design of the Services, when such corrections are required as a direct result of negligence by the CONTRACTOR to properly fulfill any of his obligations as set forth in this Contract.

7. SUBCONTRACTING, ASSIGNMENT OR TRANSFER

- a. Any subcontracting, assignment, delegation or transfer of all or part of the rights, responsibilities, or interest of either party to this Contract is prohibited unless by written consent of the other party. No subcontracting, assignment, delegation or transfer shall relieve the CONTRACTOR from performance of the Services under this Contract. The COUNTY shall not be responsible for the fulfillment of the CONTRACTOR's obligations to its transferors or subcontractors.
- b. Upon the request of the other party, the subcontracting, assigning, delegating or transferring party shall provide all documents evidencing the subcontract, assignment, delegation or transfer.

8. CONFLICT OF INTEREST

The CONTRACTOR covenants that it has no public or private interest, and will not acquire directly or indirectly any interest which would conflict in any manner with the performance of the Services. The CONTRACTOR warrants that no part of the total Contract Fee shall be paid directly or indirectly to any officer or employee of the COUNTY as wages, compensation, or gifts in exchange for acting as officer, agent, employee, subcontractor or contractor to the CONTRACTOR in connection with any work contemplated or performed relative to this Contract.

9. CONTINGENT FEES

The CONTRACTOR warrants that it has not employed or retained any company or person other than a bona fide employee working solely for the CONTRACTOR, to solicit or secure this Contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONTRACTOR any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, the COUNTY will have the right to recover the full amount of such fee, commission, percentage, brokerage fee, gift, or other consideration.

10. EMPLOYMENT OF COUNTY WORKERS

The CONTRACTOR will not engage, on a full, part-time, or any other basis during the Term of the Contract, any professional or technical personnel who are or have been at any time during the Term of the Contract in the employ of the COUNTY for the work to be performed under this Contract.

11. ACCESS TO RECORDS

During all phases of the work and Services to be provided hereunder, CONTRACTOR agrees to permit duly authorized agents and employees of the COUNTY to enter CONTRACTOR's offices for the purpose of inspections, reviews and audits during normal working hours of Services-related work documents. Financial records are not subject to audit. Reviews may also be accomplished at meetings that are arranged at mutually agreeable times and places. The CONTRACTOR will maintain all Services-related documents and other evidence pertaining to the Fee paid under this Contract and make such materials available at their offices at all reasonable times during the Term of this Contract and for three (3) years from the date of final payment under this Contract for inspection by the COUNTY or by any other governmental entity or agency participating in the funding of this Contract, or any authorized agents thereof. Copies of said records shall be furnished to the COUNTY upon request.

12. ARBITRATION

Any dispute concerning a question of fact in connection with the work not disposed of by agreement between the CONTRACTOR and the COUNTY will be referred to the Shelby County Contract Administrator or its duly authorized representative. No decision reached by the arbitrator will be binding unless approved by the Tennessee Attorney General.

13. RESPONSIBILITIES FOR CLAIMS AND LIABILITIES

- a. Each party shall be solely liable for payment of its portion of all claims, liability, costs, expenses, demands, settlements, or judgments resulting from negligence, actions or omissions of itself or those for whom it is legally responsible relating to or arising under this Agreement. Any and all monetary claims against the State of Tennessee, its officers, agents, and employees in performing any responsibility specifically required under the terms of this Agreement shall be submitted to the Board of Claims or the Claims Commission of the State of Tennessee and shall be limited to those provided for in T.C.A. § 9-8-307.
- b. The COUNTY has no obligation to provide legal counsel or defense to CONTRACTOR or its subcontractors in the event that a suit, claim or action of any character is brought by any person not a party to this agreement against CONTRACTOR as a result of or relating to performance of the Services under this Contract.
- c. Except as expressly provided herein, the COUNTY has no obligation for the payment of any judgment or the settlement of any claims against CONTRACTOR as a result of or relating to performance of the Services under this Contract.
- d. CONTRACTOR shall immediately notify the COUNTY of any claim or suit made or filed against CONTRACTOR or its subcontractors regarding any matter resulting from or relating to CONTRACTOR's performance of the Services under this Contract and will cooperate, assist and consult with the COUNTY in the defense or investigation thereof.

14. GENERAL COMPLIANCE WITH LAWS

- a. The CONTRACTOR certifies that it is qualified or will take steps necessary to qualify to do business in the State of Tennessee and that it will take such action as, from time to time, may be necessary to remain so qualified and it shall obtain, at its expense all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of the Services under this Contract.

- b. The CONTRACTOR is assumed to be familiar with and agrees that at all times it will observe and comply with all federal, state, and local laws, ordinances, and regulations in any manner affecting the performance of the Services. The preceding shall include, but is not limited to, compliance with all Equal Employment Opportunity laws, the Fair Labor Standards Act, Occupational Safety and Health Administration (OSHA) requirements, and the Americans with Disabilities Act (ADA).
- c. This Contract will be interpreted in accordance with the laws of the State of Tennessee. By execution of this Contract, the CONTRACTOR agrees that all actions, whether sounding in contract or in tort, relating to the validity, construction, interpretation and enforcement of this Contract will be instituted and litigated in the courts of the State of Tennessee, located in Shelby County, Tennessee, and in no other. In accordance herewith, the parties to this Contract submit to the jurisdiction of the courts of the State of Tennessee located in Shelby County, Tennessee.

15. NON-DISCRIMINATION

The CONTRACTOR hereby agrees, warrants, and assures compliance with the provisions of Title VI and VII of the Civil Rights Act of 1964 and all other federal statutory laws which provide in whole or in part that no person shall be excluded from participation or be denied benefits of or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the CONTRACTOR on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal, Tennessee State Constitutional or statutory law. The CONTRACTOR shall upon request show proof of such non-discrimination and shall post in conspicuous places available to all employees and applicants notices of non-discrimination.

16. ENTIRE AGREEMENT

This Contract represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations or agreements, whether oral or written.

17. AMENDMENT

This Contract may be modified or amended only by written instrument signed by both parties.

18. SEVERABILITY

If any provision of this Contract is held to be unlawful, invalid or unenforceable under any present or future laws, such provision shall be fully severable; and this Contract shall then be construed and enforced as if such unlawful, invalid or unenforceable provision had not been a part hereof. The remaining provisions of this Contract shall remain in full force and effect

and shall not be affected by such unlawful, invalid or unenforceable provision or by its severance here from. Furthermore, in lieu of such unlawful, invalid, or unenforceable provision, there shall be added automatically as a part of this Contract a legal, valid and enforceable provision as similar in terms to such unlawful, invalid or unenforceable provision as possible.

19. NO WAIVER OF CONTRACTUAL RIGHT

No waiver of any term, condition, default, or breach of this Contract, or of any document executed pursuant hereto, shall be effective unless in writing and executed by the party making such waiver; and no such waiver shall operate as a waiver of either (a) such term, condition, default, or breach on any other occasion or (b) any other term, condition, default, or breach of this Contract or of such document. No delay or failure to enforce any provision in this Contract or in any document executed pursuant hereto shall operate as a waiver of such provision or any other provision herein or in any document related hereto. The enforcement by any party of any right or remedy it may have under this Contract or applicable law shall not be deemed an election of remedies or otherwise prevent such party from enforcement of one or more other remedies at any time.

20. MATTERS TO BE DISREGARDED

The titles of the several sections, subsections, and paragraphs set forth in this contract are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of the provisions of this Contract.

21. SUBJECT TO FUNDING

This Contract is subject to annual appropriations of funds by the Shelby County Government. In the event sufficient funds for this Contract are not appropriated by Shelby County Government for any of its fiscal period during the Term hereof, then this Contract will be terminated. In the event of such termination, the CONTRACTOR shall be entitled to receive just and equitable compensation for any satisfactory work performed as of the Termination Date.

22. TRAVEL EXPENSES

All travel expenses payable under this Contract shall be in accordance with the County Travel Policy and Procedures. This includes advance written travel authorization, submission of travel claims, documentation requirements, and reimbursement rates. No travel advances will be made by the County.

23. PERFORMANCE AND LABOR AND MATERIALS BONDS

This paragraph has been intentionally deleted.

24. NON-LIABILITY FOR CONTRACTOR EMPLOYEE TAXES

Neither CONTRACTOR nor its personnel are COUNTY's employees, and COUNTY shall not take any action or provide CONTRACTOR's personnel with any benefits and shall have no liability for the following:

- a. Withholding FICA (Social Security) from CONTRACTOR's payments;
- b. Making state or federal unemployment insurance contributions on behalf of CONTRACTOR or its personnel;
- c. Withholding state and federal income tax from payment to CONTRACTOR;
- d. Making disability insurance contributions on behalf of CONTRACTOR;
- e. Obtaining workers' compensation insurance on behalf of CONTRACTOR or CONTRACTOR's personnel.

25. INCORPORATION OF OTHER DOCUMENTS

- a. CONTRACTOR shall provide Services pursuant to this Contract in accordance with the terms and conditions set forth within the Shelby County Request for Proposals/Bids as well as the Response of CONTRACTOR thereto, all of which are maintained on file within the Shelby County Purchasing Department and incorporated herein by reference.
- b. It is understood and agreed between the parties that in the event of a variance between the terms and conditions of this Contract and any amendment thereto and the terms and conditions contained either within the Request for Proposals/Bids or the Response thereto, the terms and conditions of this Contract as well as any amendment shall take precedence and control the relationship and understanding of the parties.

26. CONTRACTING WITH LOCALLY OWNED SMALL BUSINESSES

The CONTRACTOR shall take affirmative action to assure that Locally Owned Small Businesses that have been certified by the COUNTY are utilized when possible as sources of supplies and equipment, construction and services.

27. RIGHT TO REQUEST REMOVAL OF CONTRACTOR'S EMPLOYEES

The COUNTY may interview the personnel CONTRACTOR assigns to COUNTY's work. COUNTY shall have the right, at any time, to request removal of any employee(s) of CONTRACTOR, whom COUNTY deems to be unsatisfactory for any reason. Upon such request, CONTRACTOR shall consider all reasonable requests to promptly replace such employee(s) with substitute employee(s) having appropriate skills and training.

28. INCORPORATION OF WHEREAS CLAUSES

The foregoing whereas clauses are hereby incorporated into this Contract and made a part hereof.

29. DISCLOSURE OF REPORTS, DATA OR OTHER INFORMATION

Notwithstanding anything to the contrary contained herein or within any other document supplied to COUNTY by CONTRACTOR, CONTRACTOR understands and acknowledges that COUNTY is a governmental entity subject to the laws of the State of Tennessee and that any reports, data or other information supplied to COUNTY by CONTRACTOR due to Services performed pursuant to this Contract is subject to being disclosed as a public record in accordance with the laws of the State of Tennessee.

30. ORGANIZATION STATUS AND AUTHORITY

- a. CONTRACTOR represents and warrants that it is a corporation, limited liability company, partnership, or other entity duly organized, validly existing and in good standing under the laws of the state of Tennessee; it has the power and authority to own its properties and assets and is duly qualified to carry on its business in every jurisdiction wherein such qualification is necessary.
- b. The execution, delivery and performance of this Contract by the CONTRACTOR has been duly authorized by all requisite action and will not violate any provision of law, any order of any court or other agency of government, the organizational documents of CONTRACTOR, any provision of any indenture, agreement or other instrument to which CONTRACTOR is a party, or by which CONTRACTOR's respective properties or assets are bound, or be in conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under any such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets.

31. INSURANCE REQUIREMENTS

CONTRACTOR is self-insured through the State of Tennessee. A copy of said Self-

Insurance Certificate will be provided to the COUNTY.

32. NOTICE

Any notices required or permitted to be given under the provisions of this Contract shall be effective only if in writing and delivered either in person to the COUNTY's authorized agent or by First Class or U.S. Mail or courier service to the addresses set forth below, or to such other person or address as either party may designate in writing and deliver as herein provided:

COUNTY: Shelby County Public Defender
160 N. Main Street
Memphis, Tennessee 38103
Attn.: Donna Weams

and

Shelby County Government
Contract Administration
160 N. Main St., Suite 550
Memphis, Tennessee 38103

VENDOR: If to CONTRACTOR with respect to all non-technical matters:

Research Support Services
The University of Memphis
Attn: Richard D. Chotard
315 Administration Building
Memphis, TN 38152
(901) 678-3056
rdchtard@memphis.edu

If to University with respect to technical questions:

The University of Memphis School of Law
Attn: Peter V. Letsou, Dean
1 N. Front St.
Memphis, TN 38103
(901) 678-4588
pvletsou@memphis.edu

IN WITNESS WHEREOF, the parties hereto have set their signatures for the purposes contained herein, on the day and date first above written.

APPROVED AS TO FORM
AND LEGALITY:

SHELBY COUNTY GOVERNMENT

Assistant Contract Administrator
Assistant County Attorney

Mark H. Luttrell, Jr. Mayor

UNIVERSITY OF MEMPHIS

BY: 

TITLE: Dr. Andrew Meyers, Interim Vice President for Research


CORPORATE ACKNOWLEDGMENT

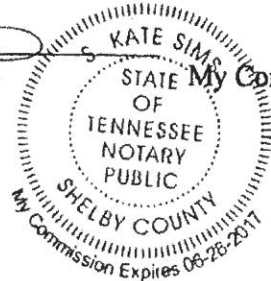
STATE OF Tennessee

COUNTY OF Shelby

Before me, the undersigned Notary Public, in and for the State and County aforesaid, personally appeared Andrew Meyers, with whom I am personally acquainted or proved to me on the basis of satisfactory evidence, and who, upon oath, acknowledged himself/herself to be president or other officer authorized by appropriate Corporate action and/or Resolution to execute the preceding instrument of the University of Memphis, the within named bargainor, a corporation, and that he as such authorized signatory, executed the foregoing instrument for the purpose therein contained, by signing the name of the corporation by himself/herself as Interim Vice President for Research.

WITNESS my hand and official seal at office this 14th day of April, 2015.


Notary Public



My Commission Expires: 06-28-2017

Exhibit A

Scope of Services

The University of Memphis will provide educational and court services to enhance indigent juvenile defender service quality and capacity by implementing a specialized juvenile delinquency defender clinic housed at the University of Memphis School of Law ("Clinic"). The Clinic will support efforts of the Public Defender to institutionalize juvenile defender reform in Shelby County.

The Clinic will provide legal representation to youth who are charged in delinquency proceedings in Shelby County Juvenile Court, and will address cases in priority areas of delinquency practice. It will offer a curriculum designed to enhance the vital lawyering skills Clinic students will use in their casework and expose Clinic students to the complex legal, policy, social, and economic issues that arise in the juvenile justice setting. The Clinic will emphasize team practice and collaboration, building and seizing on interdisciplinary partnerships to provide broadly focused, multi-systemic advocacy for clinic clients.

Students will provide advocacy in priority areas, such as: (1) Pre-Petition, (2) Post-Disposition, (3) School Disciplinary Hearings, (4) Appeals, and (5) Systemic Reform through Policy Advocacy. Under the supervision of the Faculty Clinic Director, Clinic students will engage in all aspects of casework, including interviewing clients and witnesses; fact investigations; and development of pre- and post-trial strategies. Students will draft motions, briefs, memoranda, and pleadings in trial and appellate courts, and in administrative settings. Pursuant to applicable student practice rules, students will argue motions, negotiate with opposing counsel, and represent clients at trial. Students may also present oral argument before appellate courts and testimony before legislative bodies.

The Clinic's core will be holistic advocacy for youth who are charged in delinquency proceedings in the Juvenile Court of Memphis and Shelby County. Students will advocate across the range of systems that affect at-risk youth, working toward strong legal outcomes and positive life outcomes for their clients by responding to the causes and consequences of arrest. Students will defend their clients in court while fighting for their rights, helping them connect to behavioral health services and vocational training opportunities, and advocating for them to receive housing and educational benefits as well as other public supports.

The Clinic program will benefit from and incorporate national technical assistance, and the academic partnership will support efforts to provide continuous and ongoing training, for all juvenile defenders: students, public defenders, and members of the private bar. The academic partnership is a critical component of an infrastructure to support juvenile defenders, and a key strategy toward substantial compliance.

Exhibit B

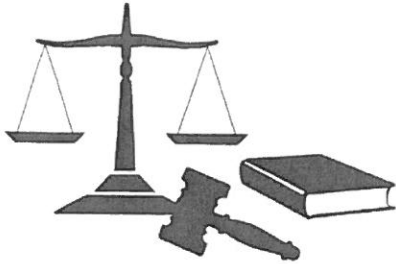
Budget

The total budget needed to fund this project through June 30, 2017 is \$406,250. Below is a break-down of estimated costs:

Item	Start-up Cost	Annual Cost	2Year Total
U of M Law School Personnel Services	\$15,420	\$185,000	\$385,420
Other Operating Expenses	\$830	\$10,000	\$20,830
TOTAL COST	\$16,250	\$195,000	\$406,250

Resources for this academic partnership are provided by the Edward Byrne Memorial Justice Assistance Grant (JAG) program, which are available to provide contracted services and technical assistance to support education programs and court programs to enhance indigent defense services.

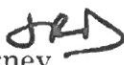
ATTACHMENT 5



Shelby County Attorney's Office

Memorandum

To: Sandra Simkins
Due Process Monitor

From: J. Ross Dyer 
County Attorney

Honorable Dan Michael
Presiding Judge, Memphis-Shelby County Juvenile Court

Date: December 16, 2015

Subject: Written Comments Concerning November 2015 Due Process Report

The purpose of this memorandum is to serve as the written comments / response from the Shelby County Administration (Shelby County) and the Juvenile Court for Memphis and Shelby County (Juvenile Court). While the parties are pleased with the overall results, there are a few items with which we have concerns and/or take issue.

I. Items Not Included in the MOA:

First, while you acknowledge that your concern about access to education and dental care at a Tennessee Department of Child Services facility in middle Tennessee is outside the MOA, the County is concerned that this issue is covered at such great length in your report. As you noted in your report and as Judge Michael discussed with you during your visit, the Court is aware of this issue and has taken steps to address it as best it can on the local level. While we appreciate your acknowledgement that one magistrate took great strides to resolve the issue, we would also appreciate, if you are to keep this section in your report, that you acknowledge the conversation you had with Judge Michael during your visit in which he informed you and the Department that the Court is aware of the issue and is doing everything in its power to keep "our kids locally" and "ensure that they get the resources they need."

However, as you know, Juvenile Court only has so much control over where children placed in DCS custody are placed. And, while you and Juvenile Court may both acknowledge that this is a State issue and not one which is covered by the MOA or under the control of Juvenile Court, our concern is that Juvenile Court and the County will be "judged" based on a State level problem and will, therefore, be unable to reach substantial compliance until the State addresses the issue.

II. Status of Comprehensive Plan:

On page 4 of your report, you conclude that "requests to engage in meaningful and productive stakeholder collaboration have not been realized in an effective manner" and that "the Public Defender is being underutilized in this important process area." While Shelby County and Juvenile Court disagree with your assessment of our attempt to reach consensus among the stakeholders within the County and the State of Tennessee, we are committed to looking at this issue and to conducting a large stakeholders meeting prior to your April 2016 visit. Moreover, because you have raised questions about the level of involvement of the Public Defender's Office, the County has asked the Public Defender to take the lead in planning this meeting.

While on the topic of the Public Defender, I reached out to him twice prior to filing this response in hopes that he would provide some feedback on issues you raised that directly relate to his office and on the independence issue overall. As of the date of this memo, the only response I have received from the Public Defender is that he likes to respond to your reports "informally." However, because he has been placed in charge of the stakeholders meeting, I have asked that he provide me and Juvenile Court with his thoughts, in writing, of any ideas on how the County can further address the independence of the defender panel as well as his office. I have asked that those be provided by January 8, 2016.

Our concern with the conclusions in your report, as well as an email from the Department on October 13, 2015 (see attached), is that for the first time the Department and the monitor appear to be dictating and micromanaging the process. Prior to the October 2015 visit, Shelby County had been told on several occasions that it was up to us to create the process and engage the expertise we felt necessary to fully review and vet ideas for a comprehensive plan concerning defender independence. However, after we engaged in a process which included hiring a subject matter expert, meetings with stakeholders, and seeking the guidance of a former justice of the Tennessee Supreme Court, and a former director of the Administrative Office of the Courts and after that process revealed that our plan could not be accomplished under the Shelby County Charter and Tennessee Supreme Court Rule 13, both you and the Department now appear to want to

dictate the process as well as dictate the result regardless of our understanding of its legality.

Again, while we are willing to take your suggestions on process and conduct further "think tank" stakeholder meetings, our concern is that if the result of those meetings is the same, which we believe will be the outcome, then another new process will be suggested / required. In short, it is our fear that the local stakeholders will be continually be asked to resolve what we believe is a state-level and not a local issue and the County and Juvenile Court will be unable to achieve substantial compliance until the State resolves the issue.

While on the topic of the comprehensive plan, I would like to quickly address the panel coordinator position. As you know, Tom Coupe had been the acting coordinator since the untimely death of Ms. Sturdivant. Since your visit, Juvenile Court has hired Scott Bearup to assume that role permanently. After he gets settled in, we will follow up with a more detailed resume and an outline of his current and future training. Mr. Bearup has experience with juvenile court as his past employment has consisted of stops with the District Attorney General's office and the Department of Children's Services.

III. Probable Cause Determinations:

On pages 12-13 of your report, you again raise questions about the sufficiency of affidavits of complaints and question the Magistrate's decision based on those affidavits. As we stated in our last response to you in June 2014, we believe it is not the monitor's place to second guess the decision of the Court. It is the monitor's responsibility to ensure that the child's due process rights were protected -- to make sure that he was provided with counsel; informed of the charges against him; advised of his rights; to make sure a hearing was conducted within the proper time-frame; and provided with an avenue of appeal. All of those things were accomplished in this matter. It is the purview of the Juvenile Court Judge or the appellate courts to review and determine whether the Magistrate's determinations were correct. We believe that it is not the place of the monitor to second-guess judicial determinations so long as the policies and the law were followed.

IV. Miscellaneous Items:

Finally, on pages 7-8 of your report, you discuss the issues regarding attorneys having trouble obtaining timely orders for the Juvenile Court Clerk's office. Please know that Juvenile Court is well aware of this issue and hopes to be implementing some policies and procedures to address this issue. As those policies are introduced and enacted, we will share them with you. Our hope is to have this issue resolved by your April 2016 visit.

V. Conclusion

We feel that tremendous strides have been made by the Court especially during this last compliance period. We appreciate you allowing us to respond to your report as well as your continuing assistance and input.

Shoaf, Jina

From: Gayle, Winsome (CRT) <Winsome.Gayle@usdoj.gov>
Sent: Tuesday, October 13, 2015 4:40 PM
To: Dyer, Ross
Cc: Goemann, Richard (CRT); 'Sandra Simkins'; Kennedy, Harvey; Scroggs, Larry; Skelton, Pamela; Bush, Stephen; Powell, Bill; 'David Carroll'; Shoaf, Jina
Subject: Shelby: Counsel Independence Follow-up

Good afternoon Ross, as a follow-up to last week's meeting on counsel independence and on our closing session with the Judge, we would like to discuss the proposed letter and gathering you mentioned. As a reminder, you and Judge Michael noted that you would send an invitation letter to stakeholders requesting that they join you to discuss the issue of counsel independence; it is my understanding that the letter would be signed by Mayor Luttrell and Judge Michael. Here are our recommendations to frame the discussion and to avoid further delays in compliance:

- (1) It is our recommendation that the invitation letter be shared with the Due Process Monitor, Sandra Simkins, before it is sent to the invitees. Professor Simkins will be able to provide any necessary feedback about how the invitation frames the issue, which will save your and the participants' time in avoiding any misunderstandings or misinterpretations of what she will be assessing for compliance.
- (2) We, DOJ, would also like a copy of the invitation so as to provide any necessary input into how the questions are framed to the stakeholders. We also recommend that the invitation letter provide a copy of our letters regarding this issue; *see* letters dated October 30, 2014, December 23, 2014, and May 21, 2015. We also recommend providing a copy of Professor Simkins' letter on the same issue, dated January 23, 2015.
- (3) We recommend that the Public Defender's Office be required to suggest stakeholders/invitees to the discussion. It is our understanding that the Public Defender has given much thought to the independence issues and may have some suggestions as to local stakeholders who may be able to offer guidance to the group. Such stakeholders should be included in the discussion.
- (4) We repeat our recommendation, noted in our December 23, 2014 letter, that a facilitator should be used to help guide the discussion and set realistic goals. We appreciate that a subject matter expert has been employed and understand that the expense of a facilitator may be burdensome. As such, we recommend that you consider tasking Bill Powell, the Compliance Coordinator, with this role. Mr. Powell has participated in many discussions regarding this issue over the course of the Agreement, has demonstrated a skill at getting different local actors to work cooperatively (as reflected in the summons program), and understands the need to reach compliance on this issue.
- (5) We also recommend inviting a representative from the Countywide Juvenile Justice Consortium to participate in the discussion. That representative can provide meaningful input as to the community perspective on some of the challenges to defender independence.

Please feel free to share these recommendations with Judge Michael and Mayor Luttrell.

We are available to discuss these recommendations with you further. Just let us know what times work for you this week.

Best regards,

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