

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, ALABAMA

LARRY J. BELIN, individually and on \*  
behalf of all others similarly situated,  
Plaintiff, \*

v.

THOMAS L. WHITE, JR., in his official \*  
capacity as Comptroller of the State of  
Alabama; and RICKY J. MCKINNEY, \*  
in his official capacity as Director of the  
Alabama Office of Indigent Defense \*  
Services;  
Defendants. \*

Case No. CV-2011-901488.00

**MEMORANDUM OF SETTLEMENT**

1. Background

This action was filed on November 17, 2011 against defendant Thomas L. White, Jr., and amended on March 28, 2012 to add defendant Ricky J. McKinney. As last amended, the complaint alleges that Defendant White has failed to adhere to Alabama statutory and case law governing payment for indigent representation by Alabama lawyers appointed as guardian ad litem ("GAL") and various domestic relations cases. The complaint also alleges that Defendant McKinney established a policy or rule setting certain deadlines for submitting a fee declaration by any lawyer appointed to represent an indigent in any case filed before June 14, 2011, but that this rule was not properly promulgated under the Alabama Administrative Procedure Act ("AAPA") as required by Act 2011-678, which established the Office of Indigent Defense Services. Copies of memorandums issued by each defendant were attached to the complaint as last amended.

The complaint seeks certification of two classes of Alabama lawyers subject to these actions of the defendants, as follows:

GAL Class: All Alabama lawyers who

- a. have been appointed by any judge as a Guardian Ad Litem ("GAL") in any Domestic Relations case, including Child Support, Paternity, Juvenile, Dependency, Delinquency, and Need of Supervision, in any Alabama state court at any time prior to the date of final judgment in this action; and
- b. who were previously denied payment by the Comptroller for services as such GAL after submission of a judicially-approved fee declaration, or
- c. who have not previously submitted a judicially-approved fee declaration for such services to the Comptroller, but who would be denied payment upon such submission under the Comptroller's policy stated in his Memorandum dated October 25, 2010 (copy attached as Exhibit A).

Pre-June 14, 2011 Class: All Alabama lawyers who

- a. have been appointed by any judge to represent any indigent person in any Alabama state court at any time before June 14, 2011; and
- b. who have provided legal services pursuant to such appointment for which payment would be due under Alabama statutory and case law; and
- c. who have been or would be denied payment upon submission of a judicially-approved fee declaration under the OIDS policy stated in the Memorandum dated January 17, 2012 (copy attached as Exhibit B).

Exclusions: Each of the two classes above excludes

- a. all lawyers who provided any such services as "contract counsel" under § 15-12-26, Code of Alabama or as "public defenders" under § 15-12-41, Code of Alabama; and
- b. all lawyers whose fees as GAL are ordered by the court to be taxed as costs to any party under Ala.R.Civ.P. 17(d).

The complaint as last amended seeks declaratory and injunctive relief on behalf of each lawyer in each class, essentially finding that the Defendants' actions are unlawful, and directing the Defendants to resume payment of fee declarations submitted by lawyers appointed to represent indigents in the manner such declarations were paid, or would have been paid, prior to adoption of the policies and issuance of the memoranda at issue.

The complaint also seeks interest, attorney's fees, and costs of the action.

The Defendants deny the material allegations of the complaint as last amended, but are

willing to resolve this action on the following terms to avoid further uncertainty, expense, and delay.

2. Relief Agreed To and Effective Date

The Defendants agree to the certification of the two classes described above pursuant to Ala.R.Civ.P. 23(b)(2) for purposes of this settlement.

The Effective Date of this Agreement shall be the latest date on which *all* of the following have occurred:

i) a final order has been entered by this Court approving this Settlement Agreement; *and*,  
ii) any post-judgment motions have been denied or otherwise disposed of so that the time period for filing a notice of appeal begins to run; *and*,

iii) the time for taking an appeal has expired without any notice of appeal being filed, *or* any appeal which is filed has been dismissed or else resulted in an order affirming the judgment approving the Settlement Agreement; *and*

iv) all other time periods for taking any further appeal have been exhausted; no further appeals are pending, and the trial court's order approving the Settlement Agreement has become non-appealable.

Defendants further agree that within 5 business days after the Effective Date of this Agreement they will take the following actions:

- a. Mr. White will issue a memorandum canceling the October 25, 2010 memorandum attached as Exhibit A to Plaintiff's Third Amended Complaint, and cause a copy of that memorandum to be sent to every district, circuit, family, and juvenile court judge, and every district and circuit court clerk in Alabama. Mr. White will also cause a copy of such memorandum to be posted on website of the Alabama Finance Department and the website of the Office of Indigent Defense Services.
- b. Mr. White will also direct his staff to pay all fee declarations submitted by any lawyer appointed as GAL in any Domestic Relations case, including Child Support, Paternity, Juvenile, Dependency, Delinquency, and Need of Supervision, which are regular in form and judicially approved as presently required, subject to the exclusions stated in ¶ 1 above.

- c. Mr. McKinney will issue a memorandum canceling the January 17, 2012 memorandum attached as Exhibit B to Plaintiff's Third Amended Complaint, and cause a copy of that memorandum to be sent to every district, circuit, family, and juvenile court judge, and every district and circuit court clerk in Alabama. Mr. McKinney will also cause a copy of such memorandum to be posted on website of the Alabama Finance Department and the website of the Office of Indigent Defense Services.
- d. Mr. White will also direct his staff to pay, or approve for payment by the Comptroller, all fee declarations submitted by any lawyer appointed to represent any indigent in any Alabama court prior to June 14, 2011 without imposing any deadline for submission, provided such declarations are otherwise regular in form and judicially approved as presently required, subject to the exclusions stated in ¶ 1 above.
- e. The Defendants will not thereafter change any appointed fee payment practices relating to fee declarations and/or overhead reimbursements for counsel appointed to represent any indigent, or appointed as GAL in any case, until and unless there is a change in the law effected by legislative act, binding appellate decision, and/or agency rule lawfully promulgated under the AAPA.
- f. The Defendants will give exercise their best efforts to pay all amounts due under this Agreement within 15 business days after receipt of a fee declaration, provided such declarations are regular in form and judicially approved as presently required.

3. Notices of Settlement and Hearing To Be Given

The Defendants agree that they will cooperate with Plaintiff's counsel in giving of all notices which the Court may direct to consider and implement this settlement. These notices are presently contemplated as follows:

- a. Settlement and hearing notice to be posted on the home page of the Comptroller's and OIDS websites, on the form attached as Exhibit C hereto;
- b. Short-form settlement notification email with link to Comptroller and OIDS website notices, to be sent by email from the Alabama State Bar to all Alabama lawyers, in the form attached as Exhibit D hereto; and
- c. Short-form settlement notice to be published once in *The Alabama Lawyer*, in the form attached as Exhibit E hereto.

4. Costs

The Defendants will reimburse Plaintiff's counsel for filing fees and publication costs in this action, not to exceed \$1,000.

5. Attorney's Fees

Plaintiff's counsel will apply to the Court for an award of attorney's fees, not to exceed 7% (seven percent) of all amounts paid to class members, to be deducted from all fee declarations paid to any class member pursuant to this settlement. The Defendants agree to deduct such attorney's fees as may be approved by the Court from all such payments and transmit such fees to Plaintiff's counsel at least monthly.

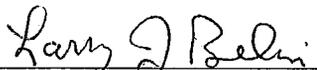
6. Joint Request for Preliminary Approval

Within seven (7) days after execution of this agreement, the parties will jointly submit a motion for preliminary approval of this settlement to the Court, which motion will request the Court's approval of the notices attached and an order directing the sending of notice.

7. No Admissions or Prejudice to Parties; Right to Withdraw from Agreement

All parties acknowledge that the execution of this agreement is not an admission of any matter contained herein; that nothing contained herein shall prejudice any party if this Agreement is not finally approved by the Court in substantially the same form as it is submitted for approval; and that any party shall have the right to withdraw from the agreement if the Court does not approve this Agreement in substantially the same form as it is submitted for approval, or if for any other reason a final judgment approving this Agreement is not entered.

IN WITNESS WHEREOF the parties have executed this Agreement and their respective counsel have approved it as to form as of this MAY 17, 2012.

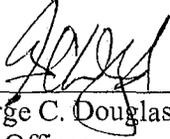
  
LARRY J. BELIN

  
THOMAS L. WHITE, JR.  
in his official capacity as Comptroller of  
the State of Alabama

  
RICKY J. MCKINNEY  
in his official capacity as Director of the

Office of Indigent Defense Services of the  
State of Alabama

Approved as to form:

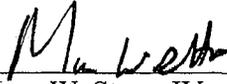


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George C. Douglas, Jr.  
Law Offices  
700 Century Park South  
Suite 223  
Birmingham, AL 35226  
(205) 824-4620 tel.  
(866) 383-7009 fax  
email: gcd@hiwaay.net

Attorney for Plaintiff Larry J. Belin and the  
putative classes in this action

Approved as to form:



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Mose W. Stuart IV  
Senior Associate Legal Counsel  
Alabama Department of Finance  
600 Dexter Ave., Room E-313  
Montgomery, AL 36130  
(334) 242-4516 tel.  
(334) 242-2008 fax  
email: mose.stuart@finance.alabama.gov

Attorney for Hon. Thomas L. White, Jr.  
and Hon. Ricky J. McKinney

**Exhibit A**  
**Comptroller Memorandum 10/25/10**



BOB RILEY  
Governor

BILL NEWTON  
Acting Director of Finance

STATE OF ALABAMA  
DEPARTMENT OF FINANCE  
OFFICE OF THE STATE COMPTROLLER

RSA UNION  
100 North Union Street, Suite 220  
Montgomery, Alabama 36130-2602  
Telephone (334) 242-7050  
FAX (334) 242-2440

THOMAS L. WHITE, JR.  
CPA (Inactive)  
State Comptroller

October 25, 2010

MEMORANDUM

**TO:** All District, Circuit and Appellate Court Judges

**FROM:** Mr. Thomas L. White, Jr.   
State Comptroller

**RE:** Payment of Guardian Ad Litem Fees from the Fair Trial Tax Fund

Recently, a question was posed to this office regarding whether the fee owed to a guardian ad litem in a domestic relations case could be paid from the Fair Trial Tax Fund, in the same manner as fees and expenses paid to attorneys appointed to represent either indigent criminal defendants or minors in juvenile cases, pursuant to § 15-12-21 of the Code of Alabama. In determining the answer to this question, the Comptroller's Office found that, over a period of some years, there have been instances where guardian ad litem fees have been approved by a judge, submitted to the Comptroller, and have been paid from the Fair Trial Tax Fund. The Legal Division of the Department of Finance advised me that there is no provision in either the Code of Alabama or the Alabama Rules of Civil Procedure that authorizes the payment of guardian ad litem fees by the State of Alabama in domestic relations cases.

Rule 17(d), Ala.R.Civ.P. states:

"In all cases in which a guardian ad litem is required, the court must ascertain a reasonable fee or compensation to be allowed and paid to such guardian ad litem for services rendered in such cause, to be taxed as a part of the costs in such action, and which is to be paid when collected as other costs in the action, to such guardian ad litem."

I understand that there are attorney fee declarations for guardian ad litem fees pending in my office. Those will be paid in accordance with the current practice. However, effective November 1, 2010, the Comptroller will no longer accept attorney fee declarations for payment of guardian ad litem fees in domestic relations cases. Guardian ad litem fees in domestic relations cases are considered as part of the costs of the case to be taxed by the trial court.

Contact Ellen Eggers at 334-242-7052 if you have any questions or need additional information concerning this matter.

**Exhibit B**  
**OIDS Memorandum 01/17/12**



STATE OF ALABAMA  
Department of Finance  
Office of Indigent Defense Services

100 N. Union Street, Suite 680  
Montgomery, Alabama 36130  
(334) 242-7059  
www.OIDS.alabama.gov



Robert Bentley  
Governor

Ricky J. McKinney  
Director

Marquita F. Davis, Ph.D.  
Director of Finance

MEMORANDUM

To: All District, Circuit, Appellate Court Judges and Attorneys

From: Ricky J. McKinney *RJM*  
Director of Indigent Defense Services

Date: January 17, 2012

Re: To establish a reasonable time for submission of fee declarations  
for concluded cases where attorney appointment was prior to June 14, 2011

Pursuant to Act No. 2011-678, a fee declaration for services rendered in cases with an attorney appointment date on or after June 14, 2011 must be submitted to the Office of Indigent Defense Services (OIDS) within a reasonable time after disposition, not to exceed ninety (90) days. To insure appropriate fiscal responsibility and accountability, it has been determined by OIDS that a reasonable time for submission of fee declarations for services rendered in cases with appointment dates prior to June 14, 2011 should be established. A fee declaration for services rendered in cases with an attorney appointment date prior to June 14, 2011 must be filed with OIDS on or before June 30, 2012 for those cases concluded on or before March 1, 2012. Cases concluded after March 1, 2012 shall be subject to the ninety (90) day rule. Failure to submit fee declarations within the specified time frames may result in nonpayment.

**Exhibit C To Belin v. White Settlement Agreement:**

Settlement and hearing notice to be posted on Comptroller's and OIDS websites.

***Important Notice Of Settlement Regarding Payment Of Guardian Ad Litem Fees In Appointed Cases, And Payment Of Pre-June 14, 2011 Appointed Fee Vouchers***

NOTICE TO ALABAMA LAWYERS PROVIDING INDIGENT REPRESENTATION:

1. If you were ever appointed as *guardian ad litem* ("GAL") in any Domestic Relations case where the fees were not taxed as costs to a party (i.e., to be paid by the State),
2. OR, if you were ever appointed to any indigent representation (criminal or otherwise) prior to June 14, 2011 (whether the case has been concluded or not),

the proposed settlement in *Belin v. White, et al.*, Montgomery Circuit Court No. CV 2011-901488 may affect your rights. The settlement in this action provides for payment of fees for indigent GAL representation in domestic relations cases and pre-June 14, 2011 indigent representation of any kind within the parameters of the action. If you are or may be affected by this settlement you should read the notice, complaint and settlement agreement.

**PAYMENTS TO LAWYERS UNDER THIS SETTLEMENT ARE NOT AUTOMATIC.**

The State does not have records of fee vouchers previously submitted and denied, or not yet submitted. Therefore you must submit a fee voucher in order to be paid under this proposed settlement.

Many Alabama lawyers may not have submitted fee declarations for payments to which they are entitled under this settlement, or submitted fee declarations which were returned unpaid.

You should also promptly re-submit all fee declarations previously returned or denied, and submit any previously unfiled declarations for any GAL representation and any criminal or other cases concluded prior to June 14, 2011.

*The Action*

On November 17, 2011 Larry Belin, Esq., an Alabama lawyer, filed a civil action in Montgomery Circuit Court alleging that Hon. Thomas L. White, Jr., in his capacity as the Alabama State Comptroller, was improperly denying (or would deny when submitted) payment of indigent representation fee declarations submitted by Alabama lawyers who were appointed as *guardians ad litem* in certain domestic relations cases. The complaint sought class relief on behalf of all Alabama lawyers who were or would be affected by this policy, described in the amended complaint as "the GAL Class".

On March 28, 2012 the complaint was amended to include further allegations that Hon. Ricky J. McKinney, in his official capacity as Director of the Alabama Office of Indigent Defense Services ["OIDS"], was improperly denying (or would deny when submitted) payment for fee declarations in cases where Alabama lawyers had been appointed to represent indigents in criminal and civil matters prior to June 14, 2011, if the

fee declaration was not submitted within certain time limits after the case was concluded. The complaint sought class relief on behalf of all Alabama lawyers who were or would be affected by this policy, described in the amended complaint as "the Pre-June 14, 2011 Class".

The complaint as amended sought declaratory and injunctive relief for the classes described above, along with attorney's fees, interest and costs. A copy of the amended complaint

*The Proposed Settlement*

The Comptroller and the Director of OIDS have agreed to settle the action by withdrawing the memoranda and policies described above, and

a) pay all indigent fee declarations for GAL appointments in domestic relations cases where such fees are not taxed as costs to a party, provided the declaration is regular in form and judicially approved as presently required; and

b) pay all fee declarations in all cases (criminal or otherwise) where the appointment was made prior to June 14, 2011 without imposing the 90-day time limit set by Act no. 2011-678 for cases with an appointment on or after June 14, 2011, provided the declaration is regular in form and judicially approved as presently required.

The Defendants have agreed to exercise their best efforts to pay all amounts due under the Settlement within 15 business days after receipt of a fee declaration, provided the declaration is regular in form and judicially approved as presently required. No interest will be paid.

Attorney's fees (if approved by the Court) will be deducted from payments to class members, but will not exceed 7% (seven percent) of all payments, and court costs not exceeding \$1,000 will be reimbursed.

The Settlement proposes to certify the classes described above under Rule 23(b)(2), Ala.R.Civ.P. This means that the certification is a mandatory class with all relief being ordered in favor of all members of both classes (i.e., there is no right to be excluded or "opt out" of the settlement).

*Copies of the Complaint and Settlement Agreement*

A copy of the settlement agreement can be viewed by clicking this link (INSERT LINK]. The two policies at issue are stated in the memorandums attached as Exhibits A and B to the amended complaint, which can be viewed by clicking this link [INSERT LINK].

*Hearing on Fairness and Final Approval*

The Montgomery Circuit Court, Hon. Eugene W. Reese, Circuit Judge, has preliminarily approved the settlement, and the Court has scheduled a fairness hearing on final \_\_\_\_\_ at \_\_\_\_\_ am/pm in Courtroom No. \_\_\_\_\_ at the Montgomery County Courthouse, 251 South Lawrence Street Montgomery, Alabama 36104.

*Comments, Objections and/or Appearances*

Any class member in the case may submit written comments or objections to the

Court, which must be received by the Circuit Clerk on or before \_\_\_\_\_, with a copy of such comments or objections to counsel for the parties at the addresses below. Further, any class member may appear at the hearing and be heard provided that notice of intent to appear must be received by the Circuit Clerk on or before \_\_\_\_\_, with a copy of such comments or objections to counsel for the parties at the addresses below.

*Further Information*

Please do not contact the Court. Any class member desiring more information about the case or the proposed settlement may contact Plaintiff's attorney by email, fax, phone or letter at the address below.

*By Order of Hon. Eugene W. Reese  
Circuit Judge, Montgomery Circuit Court*

Direct inquiries to:

George C. Douglas, Jr.  
Law Offices  
700 Century Park South  
Suite 223  
Birmingham, AL 35226  
(205) 824-4620 tel.  
(866) 383-7009 fax  
email: gcd@hiwaay.net

Attorney for Plaintiff Larry J. Belin and the putative classes in this action

Mose W. Stuart IV  
Senior Associate Legal Counsel  
Alabama Department of Finance  
600 Dexter Ave., Room E-313  
Montgomery, AL 36130  
(334) 242-4516 tel.  
(334) 242-2008 fax  
email: mose.stuart@finance.alabama.gov

Attorney for Hon. Thomas L. White, Jr. and Hon. Ricky J. McKinney

**Exhibit D To Belin v. White Settlement Agreement:**

Short-form settlement notification email with link to Comptroller and OIDS website notices, to be sent by email from the Alabama State Bar to all Alabama lawyers.

Emails will be sent to: All Alabama lawyers and judges

Subject line of emails: Important Notice Of Class Action For Alabama Lawyers Affecting Fees For Indigent Representation

Email message body: This is a one-time official notice concerning the proposed settlement of a class action affecting some Alabama lawyers who provide indigent representation. This notice has been approved by the Circuit Court of Montgomery County, Hon. Eugene W. Reese, Circuit Judge, and sent with the cooperation of the Alabama State Bar.

If you are an Alabama lawyer (a) who was appointed as guardian ad litem ("GAL") for an indigent in any domestic relations case where your fee will not be taxed as costs to a party, OR, (b) if you were appointed to represent any indigent person in any case (criminal or otherwise) prior to June 14, 2011, your right to payment of fees in either type of case may be affected by a proposed settlement in an action styled *Belin v. White*, Montgomery Circuit Court, No. CV 2011-901488. The Circuit Court of Montgomery County, Hon. Eugene W. Reese, Circuit Judge, has approved this notice.

The settlement in this action provides for payment of fees for indigent GAL representation and pre-June 14, 2011 indigent representation of any kind within the parameters of the action. However, *PAYMENTS TO LAWYERS UNDER THE PROPOSED SETTLEMENT ARE NOT AUTOMATIC. The State does not have records of fee vouchers previously submitted and denied, or not yet submitted. Therefore you must submit a fee voucher for each affected case in order to be paid under this proposed settlement.*

Many Alabama lawyers may not have submitted fee declarations for payments to which they are entitled under this settlement, or submitted fee declarations which were returned unpaid. You should promptly re-submit all fee declarations previously returned or denied, and submit any previously unfiled declarations for GAL representation and any criminal or other cases concluded prior to June 14, 2011.

You can read the full official court notice on the website of the Alabama State Comptroller by directing your web browser to this URL

web address: [INSERT FULL URL], or on the website of the Office of Indigent Defense Services by directing your web browser to this URL web address: [INSERT FULL URL].

Copies of the complete notice, amended complaint and proposed settlement may be accessed through either of the above web addresses, which also contain contact information for Plaintiff's counsel if more information is desired. Please do not contact the Court.

If you would like to be placed on an email list for further updates on the action, including final approval date, etc., please send an email with your name and contact information as it appears on the AlaBar.org website directory to Plaintiff's counsel:

GEORGE DOUGLAS  
Law Offices  
700 Century Park South, Suite 223  
Birmingham, Alabama 35226  
(205) 824-4620 office  
(866) 383-7009 fax  
(205) 492-4007 cell  
e-mail: [gcd@hiwaay.net](mailto:gcd@hiwaay.net)

**Exhibit E To Belin v. White Settlement Agreement:**

Short-form settlement notice to be published once in *The Alabama Lawyer*.

**Important Notice Of Class Action For Alabama Lawyers  
Affecting Fees For Indigent Representation**

This is an official notice concerning a proposed settlement in an action affecting some Alabama lawyers. If you are an Alabama lawyer (a) who was appointed as guardian ad litem ("GAL") for an indigent in any domestic relations case where your fee will not be taxed as costs to a party, OR, (b) if you were appointed to represent any indigent person in any case (criminal or otherwise) prior to June 14, 2011, your right to payment of fees in either type of case may be affected by a proposed settlement in an action styled *Belin v. White*, Montgomery Circuit Court, No. CV 2011-901488. The Circuit Court of Montgomery County, Hon. Eugene W. Reese, Circuit Judge, has approved this notice.

The settlement in this action provides for payment of fees for indigent GAL representation and pre-June 14, 2011 indigent representation of any kind within the parameters of the action. However, *PAYMENTS TO LAWYERS UNDER THE PROPOSED SETTLEMENT ARE NOT AUTOMATIC. The State does not have records of fee vouchers previously submitted and denied, or not yet submitted. Therefore you must submit a fee voucher for each affected case in order to be paid under this proposed settlement.*

Many Alabama lawyers may not have submitted fee declarations for payments to which they are entitled under this settlement, or submitted fee declarations which were returned unpaid. You should promptly re-submit all fee declarations previously returned or denied, and submit any previously unfiled declarations for GAL representation and any criminal or other cases concluded prior to June 14, 2011.

You can read the full official court notice on the website of the Alabama State Comptroller by directing your web browser to this URL web address: [INSERT FULL URL], or on the website of the Office of Indigent Defense Services by directing your web browser to this URL web address: [INSERT FULL URL].

Copies of the complete notice, amended complaint and proposed settlement may be accessed through either of the above web addresses, which also contain contact information for Plaintiff's counsel if more information is desired. Please do not contact the Court.