

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

FILED IN CLERK'S OFFICE
Atlanta

DEC 27 2005

LOTHER D. THOMAS, Clerk
Deputy Clerk

THE GEORGIA PUBLIC DEFENDER)
STANDARDS COUNCIL, ATLANTA)
CIRCUIT PUBLIC DEFENDER OFFICE)
FULTON COUNTY CONFLICT)
DEFENDER, INC. and)
JEREMIAH BATES,)
MARDONIO LOPEZ, inmates currently)
Incarcerated in the Fulton County Jail)

Plaintiffs,

VS.

MYRON FREEMAN, in his capacity)
As Sheriff of Fulton County, and)
Individually,)

Defendant.

CIVIL ACTION FILE
NUMBER

1 05 - CV 3286

MHS

DEFENDANT'S NOTICE OF REMOVAL

COMES NOW, Defendant Myron Freeman, by and through undersigned counsel, and pursuant to Fed.R. Civ. P. 81 (c), and 28 U.S.C. §§ 1441 and 1446 *et seq.*, to file this notice of removal from the Superior Court

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of Fulton County, State of Georgia of the above-styled action. Defendant Freeman shows the Court the following grounds for removal:

1.

Plaintiff filed this action in the Fulton County Superior Court on October 31, 2003. True and correct copy of the Complaint, and all other process and pleadings filed in this action as of December 27, 2005, are attached hereto as Exhibit "A".

2.

Defendant was notified of the complaint on December 20, 2005. Defendant's Counsel accepted service on December 22, 2005. A copy of the Wavier of Service is attached hereto as Exhibit "B."

3.

This Court has original jurisdiction of this case pursuant to 28 U.S.C § 1331 because the Plaintiff seeks relief against Defendant pursuant to the

“applicable provisions of federal ... laws.” *See, Harris v. Birmingham Board of Education*, 817 F.2d 1523 (11th Cir. 1987).

4.

Further, this Complaint contains issues and parties that are generated by allegations of unconstitutional conditions in the Fulton County Jail, which are already before the Court in case civil number 04-CV-1416-MHS that was filed on June 22, 2004.

5.

Accordingly, this action can be removed pursuant to 28 U.S.C. § 1441 (b), which provides that, “[a]ny action of which the district courts have original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States shall be removable regardless of the citizenship or residence of the parties.”

6.

Pursuant to 28 U.S.C. § 1441(c), where there are removable and non-removable (*i.e.*, state tort law claims) claims made in the same case originally filed in State Court, the Federal Court may assert pendant, jurisdiction over the state law claims.

7.

Plaintiff alleges claims under the laws of the State of Georgia. The Court has jurisdiction over the federal claims, and removal is proper, and the court has pendent jurisdiction over Plaintiff's state law claims.

8.

By consenting to Notice of Removal, Defendant does not waive any right to assert any defense as to service of process, the sufficiency of service of process, or personal jurisdiction.

9.

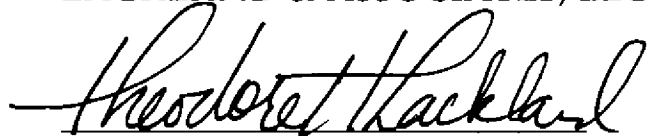
By reason of the foregoing, the Defendant is entitled to remove this action to this Court pursuant to 28 U.S.C. §§ 1441 and 1446.

WHEREFORE, the Defendant pray that this Notice of Removal be filed, that. this action be removed-to- proceed in this Court, and that no further proceedings be had in that case styled *The Georgia Public Defender Standards Council, et al v. Sheriff Myron Freeman and Myron Freeman individually*, Superior Court of Fulton County, State of Georgia, Civil Action File No. 2005-CV-110215.

Respectfully submitted, this 27th of December 2005.

Respectfully submitted by,

LACKLAND & ASSOCIATES, LLC

A handwritten signature in black ink, reading "Theodore H. Lackland". The signature is written in a cursive style with a horizontal line underlining the name.

Theodore H. Lackland
Georgia Bar No. 431055
Counsel for Defendant

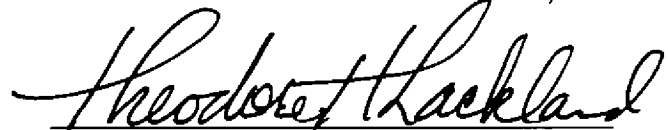
230 Peachtree Street, NW
Suite 1150
Atlanta, Georgia 30303
Telephone: (404) 522-8155
Facsimile: (404) 522-7355
Email: tlackland@e-lacklaw.com

CERTIFICATE OF COMPLIANCE

I, Theodore H. Lackland, do hereby certify that the foregoing document has been prepared in 14-point Book Antiqua font and complies with LR 5.1B.

Respectfully submitted by,

LACKLAND & ASSOCIATES, LLC

A handwritten signature in black ink, reading "Theodore H. Lackland", written over a horizontal line.

Theodore H. Lackland
Georgia Bar No. 431055
Counsel for Defendant

230 Peachtree Street, NW
Suite 1150
Atlanta, Georgia 30303
Telephone: (404) 522-8155
Facsimile (404) 522-7355
Email: *tlackland@e-lacklaw.com*

CERTIFICATE OF SERVICE

This is to certify that I have this day caused the within and foregoing Notice of Removal to be served on the opposing party by placing same in the U.S. Mail, proper postage affixed thereto, in an envelope addressed as follows:

Michael Mears, Esq.
Georgia Public Defendant Standards Council
104 Marietta, Street
Suite 200
Atlanta, Georgia 30303

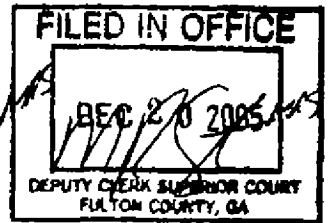
This 27th day of December 2005.

A handwritten signature in black ink, reading "Theodore H. Lackland". The signature is written in a cursive style with a large, stylized 'T' and 'L'.

Theodore H. Lackland

EXHIBIT A

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA



THE GEORGIA PUBLIC DEFENDER
STANDARDS COUNCIL, ATLANTA
CIRCUIT PUBLIC DEFENDER OFFICE,
FULTON COUNTY CONFLICT
DEFENDER, INC , and JEREMIAH
BATES , and
JEFFREY BAKER
Mardonio Lopez,
INMATES CURRENTLY INCARCERATED
IN THE FULTON COUNTY JAIL,

Plaintiffs,

v

MYRON FREEMAN, IN HIS CAPACITY
AS SHERIFF OF FULTON COUNTY
AND INDIVIDUALLY,

Defendant

CIVIL ACTION NUMBER

2005CV110215

*Filing fees
waived for
A. Lopez, J. Baker, J. Freeman
12-28-05*

**EQUITABLE COMPLAINT AND REQUEST FOR INJUNCTIVE RELIEF
TO PROHIBIT TRANSFER OF INMATES TO DISTANT LOCATIONS**

COME NOW THE ABOVE NAMED PLAINTIFFS, by and through counsel,
and hereby file this Complaint seeking equitable and injunctive relief to protect and
preserve their rights under the laws and Constitution of the United States, the laws
and Constitution of the State of Georgia, and other applicable provisions of
federal, state and international laws, statutes, treaties, customs, standards and
junsprudential authority recognizing and guaranteeing the rights of persons
charged with crimes to confer and consult with counsel, to be brought before the
court with all reasonable speed and to be free from punitive and harsh treatment

while confined without bail, showing in support thereof the following:

1

The Sheriff of Fulton County has summarily decided to transfer certain pre-trial detainees from the Fulton County Jail and house them for an indefinite and unknown period of time in jails in Mitchell County and Decatur County, Georgia, both of which are more than 200 miles and 4 hours travel time, one way, from Atlanta. Based upon statements made to undersigned Counsel, Sheriff Freeman has summarily moved at least eleven pre-trial inmates to Mitchell County, Georgia as of the date of the filing of this complaint. Based upon statements made to undersigned Counsel, Sheriff Freeman intends to move several hundred more inmates to Mitchell County and Decatur County Georgia in the coming days. Based upon statements made to undersigned Counsel, Sheriff Freeman and his staff have knowledge of the existence of available jail space in counties and penal facilities adjoining Fulton County and located within Fulton County. Based upon statements made to undersigned Counsel, Sheriff Freeman has not completed arrangements for telephone service to be made available to inmates.

If the Sheriff is allowed to take such action and move these pretrial detainees to such distant locations, these detainees will suffer irreparable harm, in that they will be denied meaningful and adequate access to their attorneys, they will be hindered in their ability to gather information, locate witnesses and otherwise prepare a defense to the charges now pending against them, they will be unable to seek prompt and speedy relief from the court, and they will be subjected to punitive and harsh conditions of confinement, all of which will be in

violation of the state and federal constitutional and statutory rights of the pretrial detainees, and in contravention of the customs, standards and practices of all civilized nations and existing international law.

Given the supreme importance of such rights, and the inestimable harm that will come if such rights are denied or abridged, the issues raised herein must be dealt with as soon as practicable.

2

The Plaintiffs named above are entitled to bring this action against the Sheriff by virtue of their statutory authority and/or their current confinement under the control and custody of the Sheriff. The General Assembly of Georgia created the Georgia Public Defender Standards Council for the express purpose of "assuring that adequate and effective legal representation is provided, independently of political considerations or private interests, to indigent persons who are entitled to representation" in criminal proceedings brought against such persons by the State of Georgia. See, the Indigent Defense Act of 2003. Fulfilling said duties and obligations, the GPDSC has created the Atlanta Circuit Public Defender Office and has contracted with the Fulton County Conflict Defender, both of which entities are charged with the responsibility of representing indigent defendants in criminal proceedings in Fulton County, Georgia. The named individual Plaintiffs are currently incarcerated in the Fulton County Jail awaiting trial and are represented by the Atlanta Circuit Public Defender Office and the Fulton County Conflict Defender.

3

Plaintiffs are entitled to temporary and permanent injunctive relief pursuant to the provisions of O C G.A Section 9-5-1 in order to restrain the Sheriff from committing acts which are "illegal or contrary to equity and good conscience and for which no adequate remedy is provided at law" Such relief is necessary in this case because, if the Sheriff is allowed to transfer pretrial detainees to distant locations as described above, the individual Plaintiffs who are being held will not only be denied their basic, fundamental and constitutional rights, the Sheriff will be violating the statutory provisions regarding the transfer of prisoners as set forth in O C G.A Section 42-4-4(a)(3), and 42-5-50(c)

4

The Plaintiffs will suffer immediate and irreparable harm and damage if the Sheriff of Fulton County is allowed to transfer pre-trial detainees from the confines of Fulton County Jail This immediate damage and harm includes, but is not limited to, the following

The individual Plaintiff pretrial detainees will no longer have physical or telephonic access to their attorneys and will not be reasonably available for consultations, conferences, or contacts with their attorneys in Fulton County Such loss of contact and communication will effectively sever the attorney-client relationship, and will forever prejudice the rights of the detainees to prepare and present a defense, to locate, interview and subpoena witnesses, and to be and appear before the court for speedy resolution of the charges against them

The individual Plaintiff pretrial detainees will further suffer irreparable harm,

in that, they will no longer have personal contact and communication with family members, they will risk greater personal and financial losses, they will face lengthier periods of detention and they will suffer other losses of human dignity, *thereby making their pretrial confinement unlawfully punitive and harsh.*

As for the Plaintiff attorneys, the transfer and keeping of pretrial detainees in distant locations will preclude the meaningful attorney-client contacts required by law, both under the standards adopted by the Georgia Public Defender Standards Council and by the Code of Professional Conduct of the State Bar of Georgia. Furthermore, the Plaintiff public defender offices will be irreparably damaged as a result of the removal of the individuals from the confines of the Fulton County Jail because there are no budgetary allowances for the extensive travel that would be required of the public defenders as they attempt to keep in contact with their clients, to locate and interview potential witnesses and to otherwise prepare their clients for court. In addition, the public defenders will be irreparably harmed and damaged, along with their other clientele, if they are required to travel the extensive distances between Fulton County and Mitchell County and Decatur County, as this would make the attorneys inaccessible to other clients and unavailable for other duties.

The Plaintiffs and the Plaintiff's clients will suffer immediate and irreparable harm if the defendant continues to transfer inmates out of the jurisdiction of the Atlanta metropolitan area. The Plaintiffs are seeking an immediate temporary restraining order directing that no indigent inmates be removed from the confines

of the Fulton County jail for the purpose of housing them in detention facilities in other counties in the State of Georgia

6

The Plaintiffs are also seeking a temporary and permanent injunction prohibiting the Sheriff from transferring indigent defendants to distant locations, and Plaintiffs therefore ask that a hearing be scheduled as soon as possible and that the Sheriff of Fulton County be directed to appear and show cause why injunctive relief should not be granted as requested herein

7

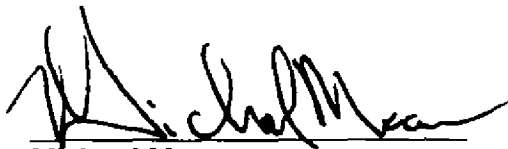
This complaint and request for injunctive relief is verified as required by law, and Plaintiffs specifically reserve the right to amend and supplement the matters set forth herein, including their request for a temporary and permanent injunction

8.

Prior to filing this complaint, Plaintiffs made reasonable efforts to advise the Sheriff of Fulton County, through the Fulton County Attorney's Office, that the within matter would be filed and presented to this Honorable Court. A telephone call was placed to the Office of Ms. Overtis Hicks Brantley by one of the attorneys for the Plaintiffs at 2 50 p.m. on December 14, 2005. A second call was made to the office of the County Attorney and to the defendant's personal attorney on the afternoon of December 19th, 2005. A specific message was left for the County Attorney advising her of the intention of the Plaintiffs to seek a temporary restraining order before the presiding judge of the Fulton County Superior Court on or about 11 00 to 12 00 a.m. December 20, 2005.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court issue a temporary restraining order directing the Sheriff of Fulton County, Georgia not to remove, for the purposes of housing, any indigent inmate from the confines of the Fulton County Jail, and that this Honorable Court direct the Sheriff of Fulton County, Georgia to appear and show cause why such temporary injunction should not continue in place.

Respectfully submitted this 20th day of December, 2005



Michael Mears
Counsel for Plaintiffs
Georgia Bar Number 500494
Georgia Public Defender Standards Council
104 Marietta Street, Suite 200
Atlanta, Georgia 30303
404 232 8900

Vernon Pitts
Counsel for Plaintiffs
Georgia Bar Number 581294
Atlanta Circuit Public Defenders Office
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404 730.5200

Karen S Wilkes

Counsel for Plaintiffs
Georgia Bar Number 759437
Rome Conflict Defender Office
P.O. Box 6274
Rome, Georgia 30161
770 608 1740

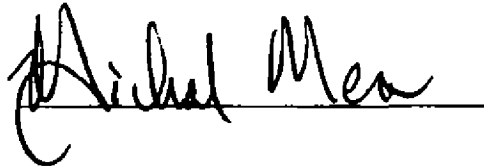
Janet Willy Hankins
Counsel for Plaintiffs
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404 614.0304

Carl Greenberg
Counsel for Plaintiffs
Georgia Bar Number 307725
Fulton County Conflict Defender, Inc
The Equitable Building
100 Peachtree Street, Suite 600
Atlanta, Georgia 30303
404 614.0304

Verification

Comes now the undersigned affiant and does hereby affirm the facts as alleged in this **EQUITABLE COMPLAINT AND REQUEST FOR INJUNCTIVE RELIEF TO PROHIBIT TRANSFER OF INMATES TO DISTANT LOCATIONS** are true and correct to the best of his knowledge and belief

This 20th day of December, 2005.

A handwritten signature in black ink, appearing to read "Michael Mea", is written over a horizontal line.

Sworn to before the undersigned
Notary Public this the ____ day of
December, 2005

NOTARY PUBLIC

My commission expires. _____

IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

The Georgia Public Defender
Standards Council et al

CIVIL ACTION
NUMBER

2005CV110215

PLAINTIFF

VS.

Sheriff Myron Freeman

DEFENDANT

SUMMONS

TO THE ABOVE NAMED DEFENDANT:

You are hereby summoned and required to file with the Clerk of said court and serve upon the Plaintiff's attorney, whose name and address is:

104 Marietta Street, suite 200
Atlanta, Ga 30303

an answer to the complaint which is herewith served upon you, within 30 days after the service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

This 20 day of Dec., 2005

Juanita Hicks
Clerk of Superior Court

By

[Signature]
Deputy Clerk

To Defendant upon whom this petition is served:

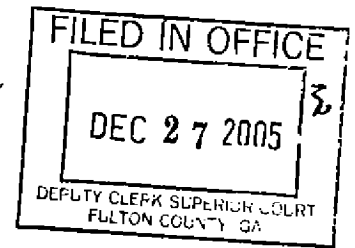
This copy of Complaint and Summons was served upon you _____ 20____.

Deputy Sheriff

Instructions: Attach addendum sheet for additional parties if needed, make notation on this sheet if addendum sheet is used

EXHIBIT B

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA



THE GEORGIA PUBLIC DEFENDER)
STANDARDS COUNCIL, ATLANTA)
CIRCUIT PUBLIC DEFENDER OFFICE)
FULTON COUNTY CONFLICT)
DEFENDER, INC. and)
JEREMIAH BATES,)
MARDONIO LOPEZ, inmates currently)
Incarcerated in the Fulton County Jail)

Plaintiffs,)

VS)

MYRON FREEMAN, in his capacity)
As Sheriff of Fulton County, and)
Individually,)

Defendant)

CIVIL ACTION FILE
NUMBER 2005-CV-110215

WAIVER OF SERVICE OF SUMMONS

To: MICHAEL MEARS I acknowledge receipt of your request that I waive service of a summons in the action of *The Georgia Public Defenders Standards Council, et al v Myron Freeman*, which is case number 2005-CV-110215 in the Superior Court of the State of Georgia in and for the County of Fulton. I have also received a copy of the complaint in the action. I agree to save the cost of service of a summons and an additional copy of the complaint in this lawsuit by not requiring that Sheriff Freeman be served with judicial process in the manner provided by the Georgia Rules of Civil Procedure

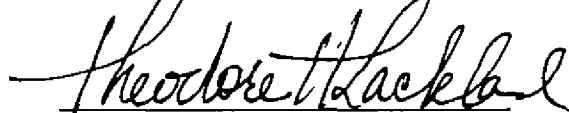
Sheriff Freeman will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for objections based on a defect in the summons or in the service of the summons

I understand that a judgment may be entered against Sheriff Freeman if an answer is not served upon you within 60 days after the date this waiver was sent or within 90 days after that date if the request for the waiver was sent outside the United States

This 22nd day of December, 2005.

Respectfully submitted by,

LACKLAND & ASSOCIATES, LLC

A handwritten signature in black ink, appearing to read "Theodore H. Lackland", written over a horizontal line.

Theodore H. Lackland
Georgia Bar No 431055
Counsel for Defendant

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Atlanta, Georgia 30303
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Facsimile (404) 522-7355
Email *tlackland@e-lacklaw.com*