

SETTLEMENT AGREEMENT

Carolyn Phillips et al. v. State of California et al.,
Fresno County Superior Court, Case No. 15CECG02201

This Settlement Agreement (“Agreement”) is entered into by the following parties: Carolyn Phillips (“Phillips”), Ruthina Estrada (“Estrada”) (together, “Plaintiffs”), and County of Fresno (“Defendant” or “County”) (collectively, the “Parties”).

RECITALS

A. WHEREAS, Plaintiffs and Defendant are parties to the case titled *Carolyn Phillips et al. v. State of California et al.*, currently pending in the Superior Court of the State of California, County of Fresno, Case Number 15CECG02201 (the “Action”).

B. WHEREAS, In the Action, Plaintiffs alleged in their complaint that the County was failing to adequately fund the Fresno County Public Defender’s Office, limiting the Public Defender’s Office’s ability to provide competent and effective representation on each case. Plaintiffs further alleged that as a result, the clients of the Public Defender’s Office were being denied their constitutional right to meaningful legal representation. Plaintiffs sought in their complaint declaratory and injunctive relief under California Code of Civil Procedure section 526a to protect the rights of indigent persons charged with crimes in Fresno.

C. WHEREAS, Defendant denies Plaintiffs’ allegations in this Action. Defendant specifically denies that the County has failed to carry out any constitutional or statutory duty whatsoever in relation to the claims and allegations asserted in this Action, and further denies that any act, omission, law, or policy of the County has caused or will cause any harm to Plaintiffs or those whose rights they claim to protect in this Action.

D. WHEREAS, Without any admission of fault or wrongdoing, and without conceding or otherwise expressing any position on any legal issue or argument previously raised in this Action, the Parties wish to settle the Action and all disputes arising therein as among them, in order to avoid the cost, difficulty, and uncertainty associated with further litigation.

E. WHEREAS, The Parties have negotiated in good faith and have agreed on the following terms in this Agreement in order to resolve this case short of trial and to ensure that indigent criminal defendants are sufficiently represented by the Fresno Public Defender’s Office. The Parties agree that the terms of this Agreement are in the public interest and that this Agreement is the most appropriate means of resolving this action.

AGREEMENT

Now, therefore, in view of the foregoing recitals, and in consideration of the mutual promises contained in this Agreement, the Parties covenant and agree as follows.

1. Term of Agreement: The Term of this Agreement shall commence on the date of final execution of this Agreement by all the parties (“Effective Date”) and continue for a period of four years (“Settlement Period”).

2. Operational Requirements of the Public Defender’s Office:

a. The County agrees to, at minimum, maintain the annual allocated amount of the Public Defender’s budget of at least twenty-three million, two hundred eighty-five thousand, six hundred sixty-two dollars (\$23,285,662) for fiscal year 2019-2020, and to increase the annual allocated amount of the Public Defender’s budget to at least twenty-three million, five hundred thousand dollars (\$23,500,000) for fiscal year 2020-2021, and to at least twenty-four million dollars (\$24,000,000) for the remainder of the Settlement Period;

b. The Public Defender shall maintain the level of existing services currently provided under the contract with Immigrant Legal Resource Center or another entity providing similar services;

c. The Public Defender will maintain its existing policy regarding Minimum Continuing Legal Education;

d. Supervising attorneys will have meetings with the attorneys they supervise a minimum of twice per year to discuss issues concerning the supervised attorneys’ practice area and workload;

e. The Public Defender will have a goal of one chief deputy public defender and one supervising attorney per office section; and

f. The Public Defender will maintain the Periodic Review process whereby supervising attorneys are required on a quarterly basis to review in detail a reasonable number of case files from their supervised attorneys (and in no event less than 6 case files in the major crimes department, 20 case files from the general felony department, 30 case files from the misdemeanors department, and 6 prison cases and mental health case files), and fill out the Periodic Review Form in substantially the format as the form attached as Exhibit A to this Agreement. The parties acknowledge that the number of case files to be reviewed in this manner will vary based on the size of the individual office section and the complexity of its assignments.

3. Policies and Procedures: Within 6 months of the Effective Date, the Public Defender’s Office will adopt the written policies set forth in this section to the extent it has not already done so and make them available to all affected employees in the Public Defender’s Office. Plaintiffs’ counsel will be given the opportunity to review and comment on said policies at least 30 days prior to their final adoption by the Public Defender’s Office. In addition, during the term of this Agreement, the Public Defender’s Office shall give Plaintiffs’ counsel the opportunity to review and comment on any changes to said policies or any new policies affecting the issues described in this section at least 30 days prior to their final adoption by the Public Defender’s Office. The Parties agree that references to any standards or guidelines promulgated by professional organizations that are listed in the proposed policies below are made for reference and informational purposes only, and that the Fresno County Public Defender’s Office

is under no obligation to adopt such professional organizations' standards or guidelines verbatim or in substance as part of this Agreement.

a. Policy regarding Periodic Review Process, including an explanation and instructions for completing the Periodic Review form, in substantially the same format as the sample form attached as Exhibit A to this Agreement;

b. Policy regarding the utilization of resources available to attorneys in the Public Defender's Office for assistance with immigration issues encountered in their representation of indigent clients. This policy shall include information about resources available under the Public Defender's contract with the Immigrant Legal Resources Center or any successor entity providing similar services under contract with the Public Defender's Office;

c. Policy regarding the monitoring by Public Defender management and supervisors of attorney workload describing the responsibilities of management, supervising attorneys, and frontline attorneys in identifying and redressing excessive attorney workload, informed by the ABA *Criminal Justice Standards for the Defense Function*, Standard 4-1.8 A;

d. Policy regarding utilization of nonlawyer staff, including social workers who are working at the direction of an attorney but whose professional license requires reporting that may be inconsistent with attorney responsibilities and client confidentiality, a policy informed by (1) the California Rules of Professional Responsibility, Rule 5.3 Responsibilities Regarding Nonlawyer Assistants; and (2) the NAPD Formal Ethics Opinion 14-1, *Social workers and other healthcare professionals may not report child or elder abuse without the express contemporaneous permission of the lawyer for whom they are doing their work*, found at: https://www.publicdefenders.us/files/NAPD_Formal_Ethics_Opinion_14-1.pdf;

e. Policy regarding performance guidelines for criminal defense representation at trial, informed by the NLADA *Performance Guidelines for Criminal Defense Representation* found at: <http://www.nlada.org/defender-standards/performance-guidelines>;

f. Policy regarding the use and maintenance of the Public Defender's case management system, currently "JCATS";

g. Policy regarding the Public Defender's training program;

h. Policy affirming the professional duty of client representation regardless of the ability of any client to pay fines or costs assessed by a court in accordance with State law, informed by the ABA *Ten Guidelines on Court Fines and Fees* (2018), found at: https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_ind_10_guidelines_court_fines.pdf; and

i. Policy regarding the standard of practice for representation of clients facing sentence of death, informed by (1) the ABA *Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases* (2003), found at: https://www.americanbar.org/groups/committees/death_penalty_representation/resources/aba_guidelines/2003-guidelines; and (2) the *Supplementary Guidelines for the Mitigation Function of*

Defense Teams in Death Penalty Cases (2008), found at:
<https://www.in.gov/ipdc/files/2008%20Supplemental%20Guidelines.pdf>.

4. **Monitoring:** The County will ensure the Public Defender's Office provides the following reports to Plaintiffs, beginning on April 1, 2020:

a. On a quarterly basis, periodic review reports to Plaintiffs providing (1) the name of the supervisor(s) conducting the review; (2) the number of cases reviewed; (3) the number of attorneys to whom feedback was provided; and (4) a general description of the feedback provided; and

b. On a semi-annual basis, JCATS reports or comparable data compilation to determine:

i. For each individual attorney, the trial rates by case type (misdemeanor, felony) and trial type (bench, jury);

ii. For all full and part-time supervisors, snapshots of caseloads (non-privileged information, next appearance, charge(s)), known as the Attorney Case Listing report; and

iii. On an office-wide basis,

1. by case type (misdemeanor, felony) the total open cases, new appointments, conflicts, conflicts based on excessive caseload, and closed cases during the previous six months (the "Reporting Period");
2. the total number of new (non-supervised release) cases assigned to the Public Defender's Office post-arraignment by case type (misdemeanor, felony, etc.) during the Reporting Period;
3. the JCATS Currently Open report;
4. the total number of Actions Request reports by type of case (misdemeanor, felony) during the Reporting Period;
5. the total number of expense authorizations by type of case (misdemeanor, felony) during the Reporting Period;
6. the total number of Penal Code Section 1538.5 motions filed by type of case (misdemeanor, felony) during the Reporting Period;
7. the total number of Penal Code 995 motions filed by type of case (misdemeanor, felony) during the Reporting Period;
8. the total number of sentencing memoranda filed during the Reporting Period;

9. the total number of cases plead out at arraignment by type of case (misdemeanor, felony) during the Reporting Period;
10. the total number of trials by type of case (misdemeanor, felony) and type of trial (bench, jury) during the Reporting Period;
11. for cases closed during the reporting period, the average length of time to resolution by case type (misdemeanor, felony); and
12. the total number of individual clients served during the Reporting Period.

c. The reports described in this section may be redacted for case names and numbers.

5. The Public Defender is an appointed, at-will department head of the County of Fresno. However, the County understands that the Public Defender's preeminent loyalty must be to the Office's clients. The County recognizes that circumstances may arise in which the Public Defender's reasonable professional judgment requires her to decline cases due to workloads in the Public Defender's Office. The County also recognizes that it is the Public Defender's ethical duty to advocate for departmental resources sufficient to ensure that clients' rights are protected.

6. Neither Party will make any public statement or announcement, or cause any third party to make a public statement or announcement, about this Agreement until it is fully executed, which Plaintiffs agree will be on January 9 or January 10, 2020.

7. In consideration of all the promises and performances by Defendant as set forth in this Agreement, Plaintiffs shall file with the court, within 15 days of receipt of the payment from the County required by Section 14 of this Agreement, and serve a dismissal, in writing, pursuant to Code of Civil Procedure section 581, subdivision (b)(1), requesting that the County be dismissed with prejudice from the Action, and that all claims and causes of action pled against the County in this Action be dismissed with prejudice in their entirety. In addition, Plaintiffs shall promptly take any further steps that may be necessary to cause the County and all claims and causes of action pled against the County to be dismissed with prejudice from the Action. The parties agree to cooperate on any extensions of deadlines or communications to the Court concerning this settlement as may be reasonably necessary to effectuate this Agreement and the dismissal of the Action as provided in this Section.

8. No Admission of Liability: This Agreement does not constitute, nor shall it be construed as, an admission or concession by any of the Parties for any purpose. By executing this Agreement, no Party admits liability or concedes any factual or legal allegation, claim, or contention asserted by any other Party in the Action.

9. Mutual Release of Claims:

a. General Release: Except for the obligations that are expressly set forth in this Agreement, Plaintiffs shall and hereby do release, compromise and forever discharge the County, its past or current board members, officers, employees, contractors, agents, successors and assigns, and all of them, as well as any and all persons acting or allegedly acting by, under, through or in concert with any of them (hereinafter "Released Parties"), against any and all claims, damages, actions, causes of action, liabilities, judgments, liens, contracts, agreements, rights, debts, suits, obligations, promises, acts, costs and expenses (including, but not limited to, attorneys' fees), damages and charges of whatsoever nature, whether known or unknown, suspected or unsuspected, foreseen or unforeseen, fixed or contingent, or ever filed or prosecuted (hereinafter, collectively referred to as "Claims") which Plaintiffs may now have, or claims to have, or any time heretofore had, or claimed to have had, against the Released Parties as a result of things undertaken, said, stated, done or admitted to be done up to and including the Effective Date of this Agreement.

b. Waiver of Unknown and Unanticipated Claims: It is understood and agreed that the releases as referred to herein are full and final releases by Plaintiffs of the Released Parties, and that such full and final releases include, without limitation, all unknown and unanticipated claims, injuries, debts, or damages, as well as those now known or disclosed. With respect to any claims by Plaintiffs against the Released Parties, Plaintiffs expressly waive the provisions of California Civil Code section 1542, which provides as follows:

"A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that if known by him or her must have materially affected his or her settlement with the debtor or released party."

In that connection, the Parties hereto, and each of them, understand and acknowledge that one or more of the Claims may include losses sustained by Plaintiffs on account of the Released Parties that are presently unknown or unsuspected, and that such losses as were sustained may give rise to additional losses and expenses in the future which are not now anticipated. Nevertheless, Plaintiffs acknowledge that this release has been negotiated and agreed upon, and that in consideration for the rights and benefits under this Agreement, Plaintiffs intend and hereby do release, acquit and forever discharge the Released Parties as set forth in Section 9.a, above.

10. Construction: This Agreement is the product of negotiation and preparation by and among the Parties and their respective attorneys. The Parties agree that this Agreement shall be construed and interpreted without regard to the identity of the party drafting this Agreement, as though all Parties hereto participated equally in the drafting of this Agreement.

11. Advice of Counsel: The Parties represent that they know and understand the contents of this Agreement, and that this Agreement has been executed voluntarily. The Parties each further represent that they have had an opportunity to consult with an attorney of their choosing and that they have been fully advised by the attorney with respect to their rights and

obligations under this Agreement. The Parties acknowledge that they have executed this Agreement after independent investigation and without fraud, duress or undue influence.

12. Entire Agreement: No promise, inducement, understanding, or agreement not expressly stated herein has been made by or on behalf of the Parties, and this Agreement contains the entire agreement of the Parties related to the subject matter of this Agreement.

13. Amendments in Writing: This Agreement may not be altered, amended, modified, or changed in any way except by a writing duly executed by all Parties hereto.

14. Attorneys' Fees and Costs: Not later than 45 days after the Effective Date, the County shall pay to Plaintiffs, as directed by Plaintiffs' counsel, the amount of \$400,000 in attorneys' fees.

15. Remedies: The Parties agree that the agreements and performances required in this Agreement have been specifically bargained for and that the damages for breach of this Agreement are difficult to calculate and may be inadequate to compensate for a failure of a party to fulfill its obligations under this Agreement. Therefore, the Parties agree that equitable relief or specific performance may be an appropriate remedy for a breach of this Agreement and to enforce the terms thereof. Nothing in this Section shall be interpreted to limit the remedies that may be available to a party for breach of this Agreement. The prevailing party in any action to enforce any term of this Agreement will be entitled to recover reasonably attorneys' fees.

16. Choice of Law and Jurisdiction: This Agreement shall be governed by the laws of the State of California. If any party to this Agreement brings a lawsuit to enforce or interpret this Agreement, the lawsuit shall be filed in the Superior Court for the County of Fresno, California.

17. Counterparts: This Agreement may be executed electronically in counterparts, each of which is deemed an original and all of which together shall constitute this Agreement.

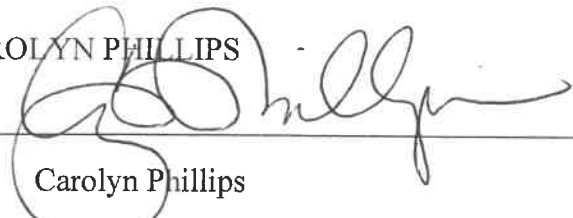
18. Severability: If any provision of this Agreement is adjudicated by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Agreement which can be given full force and effect without the invalid provision shall continue in full force and effect and shall in no way be impaired or invalidated.

19. Effective Date: This Agreement shall become effective (the "Effective Date") on the date on which the last counterpart of this Agreement is executed such that the Agreement is executed in full by all Parties hereto and signed by all Parties' respective attorneys.

20. Representation and Warranties of Authority: Each Party to this Agreement has the authority to execute this Agreement, and this Agreement as so executed will be binding upon each Party and upon its agents, employees, attorneys, affiliates, representatives, heirs, executors, conservators, successors, assigns, and those who they represent or whose rights they seek to protect in this Action. Each person signing this Agreement represents and warrants that they have the authority to sign and execute this Agreement on behalf of the Party for which they sign.

This Agreement consists of Recitals A – E and Paragraphs 1 – 20.

DATED: 1/9/2020

CAROLYN PHILLIPS
By 
Carolyn Phillips

DATED: _____

RUTHINA ESTRADA
By _____
Ruthina Estrada

DATED: _____

COUNTY OF FRESNO
By _____
Buddy Mendes, Chairman
County of Fresno Board of Supervisors

ATTEST: _____

Bernice E. Seidel
Clerk of the Board of Supervisors
County of Fresno, State of California

By _____

FOR ACCOUNTING USE ONLY:

Fund No: 0001
Subclass: 10000
ORG No.: 2540
Account No: 7295

DATED: _____

CAROLYN PHILLIPS

By _____

Carolyn Phillips

DATED: 1/8/2020

RUTHINA ESTRADA

By  _____

Ruthina Estrada

DATED: _____

COUNTY OF FRESNO

By _____

Buddy Mendes, Chairman
County of Fresno Board of Supervisors

ATTEST:

Bernice E. Seidel
Clerk of the Board of Supervisors
County of Fresno, State of California

By _____

FOR ACCOUNTING USE ONLY:

Fund No: 0001
Subclass: 10000
ORG No.: 2540
Account No: 7295

DATED: _____

CAROLYN PHILLIPS

By _____

Carolyn Phillips

DATED: _____

RUTHINA ESTRADA

By _____

Ruthina Estrada

DATED: January 8, 2020

COUNTY OF FRESNO

By 

Buddy Mendes, Chairman
County of Fresno Board of Supervisors

ATTEST:

Bernice E. Seidel
Clerk of the Board of Supervisors
County of Fresno, State of California

By 

FOR ACCOUNTING USE ONLY:

Fund No: 0001
Subclass: 10000
ORG No.: 2540
Account No: 7295

Approved as to Form:

American Civil Liberties Union
Foundation of Northern California, Inc.

By:  _____

Kathleen Guneratne
39 Drumm Street
San Francisco, CA 94111
(415) 621-2493
Attorneys for Plaintiffs Carolyn Phillips and Ruthina Estrada

Approved as to Form:

County Counsel
County of Fresno

By: _____

Daniel C. Cederborg
Fresno County Counsel
2220 Tulare Street, Suite 500
Fresno, CA 93721
(559) 600-3479
Attorneys for Defendant County of Fresno

Approved as to Form:

American Civil Liberties Union
Foundation of Northern California, Inc.

By: _____

Kathleen Guneratne
39 Drumm Street
San Francisco, CA 94111
(415) 621-2493
Attorneys for Plaintiffs Carolyn Phillips and Ruthina Estrada

Approved as to Form:

County Counsel
County of Fresno

By:  _____

Daniel C. Cederborg
Fresno County Counsel
2220 Tulare Street, Suite 500
Fresno, CA 93721
(559) 600-3479
Attorneys for Defendant County of Fresno

EXHIBIT A

Periodic Case Review

ATTORNEY:		SUPERVISOR:	
DATE:		REVIEW PERIOD:	
CASE NUMBER:		TYPE of REV:	TBD

1. File Review, Client Contact & Communication

	No/Low	Yes/High	N/A
Did the attorney complete an initial review of the file?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Did the attorney identify the exposure, location of commitment, percentage of commitment, strike vs non-strike, specific immigration collateral consequences if applicable and any other consequences?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Did the attorney complete the Police Report Summary (Yellow sheet)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Did the attorney have initial client contact prior to PPH?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Did the attorney ask the client for his/her citizenship status?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
If Client is not a U.S. citizen, did the attorney obtain relevant factual immigration information from the Client?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
If Client is not a U.S. citizen, did the attorney obtain relevant legal information from a qualified immigration specialist?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Did the attorney complete the client Interview sheet?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Did the attorney obtain client's criminal history, when applicable?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
During the course of the representation, does the file reflect ongoing attorney communication with the client, when applicable?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

2. Legal Analysis, Issue Spotting, Research, Motions Practice

	No/Low	Yes/High	N/A
To what extent were important issues and potential defenses accurately identified?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
To what extent does the file reflect analysis of, research on, and follow-up regarding identified issues?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
To what extent were appropriate motions explored and/or utilized?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

3. Preparation and Investigation

	No/ Low	Yes/High	N/A
Does the file reflect effective preparation prior to court dates and substantive hearings?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Does the file reflect effective use of available paralegal resources?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Does the file reflect effective use of available investigative resources?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

4. Negotiation and Advocacy

	No / Low	Yes/High	N/A
Does the file reflect communication by the attorney to the client regarding the status of offers/negotiations?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Does the file reflect incorporation of investigative efforts into advocacy and negotiations?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Did the attorney file a statement in mitigation prior to sentencing?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

5. Quality / Completeness of File Records and Notes

	No/Low	Yes/High	N/A
To what extent are file notes complete, such that any other attorney could readily ascertain what's going on with the file at any particular time?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
To what extent do the file notes and records accurately comport with court records regarding case disposition/fines/conditions?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Did the attorney complete the Closing Sheet?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Does the file reflect that additional conflict checks were completed, when applicable?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>