

APPEAL NO. 18-13699

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

CHRISTINA BRINSON, and all other persons similarly situated,

Appellant/Plaintiff,

vs.

PROVIDENCE COMMUNITY CORRECTIONS,

Appellee/Defendant.

**APPEAL FROM FINAL JUDGMENT OF THE U.S. DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
Civil Action File No. 2:15-CV-00099-LGW-RS**

APPELLANT’S MOTION TO CERTIFY QUESTIONS OF
STATE LAW TO THE SUPREME COURT OF GEORGIA

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**CERTIFICATE OF INTERESTED PERSONS
PURSUANT TO RULE 26.1-1**

Pursuant to Rule 26.1-1 of the United States Court of Appeals for the Eleventh Circuit, the undersigned counsel for Appellant Christina Brinson hereby certifies that the following persons and entities have an interest in the outcome of this case:

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Wood, The Honorable Lisa G., U.S. District Judge

Respectfully submitted,

s/ John C. Bell, Jr.
John C. Bell, Jr.
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Counsel for Appellant

COME NOW the Appellant/Plaintiff, CHRISTINA BRINSON, and all other persons similarly situated (“Appellant”) pursuant to Ga. Code Ann. § 15-2-9 and pursuant to Rule 46 of the Rules of the Supreme Court of the State of Georgia, and move this Court to certify the following questions of Georgia law to the Supreme Court of Georgia:

1. Does Georgia law condone probation officers with systemic financial conflicts of interest?

In *Sentinel Offender Serv., LLC v. Glover*, 296 Ga. 315, 326, 766, S.E.2d 456, 467 (2014), the court expressly declined to address the *as applied* challenge to the constitutionality under the Georgia Constitution of contracts that impose the entire cost of probation upon probationers, with the revenue received by the private, for-profit company tied to how long the probationer can be kept on probation and how many other services the probationer can be required to pay. It would appear that Georgia law would prohibit such an arrangement. *Montgomery v. City of Atlanta*, 162 Ga. 534, 546, 134 S.E. 152, 157 (1926); 1984 Ga. Op. Atty. Gen. 248 (1984).

The issue of whether such systemic conflicts of interest offend the due process clause of the Georgia Constitution is an issue best addressed by the Supreme Court of Georgia.

2. Is the establishment of standard supervision fees that a probationer must

pay a legislative function that must be addressed by the Georgia legislature rather than *ad hoc* by each trial court that adjudicates misdemeanor cases?

Decisions of the Georgia appellate courts and the United States District Court for the Middle District of Georgia would support a conclusion that the setting of these fees is a matter for the Georgia legislature. *Jones v. Grady County*, 2014 WL 3965955 (M.D. Ga.); *Dempsey v. State*, 279 Ga. 546, 549, 615 S.E.2d 522, 526 (2005); *Hill v. State*, 53 Ga. 125, 127 (1874), cited with approval in *Knight v. State*, 243 Ga. 770, 771, 257 S.E.2d 182, 183 (1979); *Wood v. State*, 219 Ga. 509, 514, 134 S.E.2d 8, 11 (1963).

This is a critical issue of Georgia constitutional law best addressed by the Supreme Court of Georgia.

3. Does offender-funded private probation as applied under the contract between Providence Community Corrections and Wayne County and its state court impair rights conferred by the Constitution of the State of Georgia?

This issue is tied to issue one, *supra*, and would be best addressed by the Supreme Court of Georgia.

4. Are the fees that probationers are required to pay to a private company a civil debt for which one cannot be imprisoned for failure to pay because of Georgia's constitutional prohibition of imprisonment for debt?

The district court below and the district court in *Keen* held that probation supervision fees set by contract with a private company are civil debts and not punishment. Doc. 14, p. 26; *Keen v. Judicial Alternatives of Ga., Inc.*, 124 F.Supp.3d 1334, 1340 (S.D. Ga. 2015), vacated 637 Fed. Appx. 546 (11th Cir. 2015), petition for *writ of certiorari* pending. *Glover* seems to hold that the fees are punishment. *Glover*, 296 Ga. at 326, 766 S.E.2d at 468.

This is an important issue with implications as to the liberty of tens of thousands of Georgians that should be addressed by the Supreme Court of Georgia because Providence and other private for-profit corporations routinely use the county jails to force payment of these fees by indigent probationers.

5. As a matter of Georgia law, must a contract for private probation “be attached to the approval by the governing authority of the county,” as commanded by Ga. Code Ann. § 42-8-101(a)(1), in order to form a valid contract?

Georgia law requires that there be strict compliance with statutory requirements for a contract with a governmental entity to be valid. *Glover*, 296 Ga. at 333, 766 S.E.2d at 471; *City of Baldwin v. Woodward & Curan, Inc.*, 293 Ga. 19, 27-29, 743 S.E.2d 381 (2013).

This is an issue of Georgia law best addressed by the Supreme Court of Georgia.

6. Is Providence's contract to provide probation officers a personal services contract that terminated upon the death of Judge Gordon, the judge who entered into the contract?

Under Georgia law, personal services contracts terminate upon the death of any party to the contract. *Wallis v. B&A Const. Co., Inc.*, 273 Ga.App. 68, 71, 614 S.E.2d 193, 197 (2005); *Mail & Media, Inc. v. Rotenberry*, 213 Ga.App. 826, 446 S.E.2d 517 (1994).

The resolution of this issue could have a massive impact upon the courts of Georgia that adjudicate misdemeanor cases. It is a matter best resolved by the Supreme Court of Georgia.

7. Does Georgia require a pre-suit demand for a suit asserting a claim for money had and received?

A number of decisions and a Georgia statute hold that a pre-suit demand is not required. Ga. Code Ann. § 9-2-6; *Jennings v. Stewart*, 106 Ga.App. 689, 690, 127 S.E.2d 842, 843 (1962) ("No demand is necessary before commencing the suit. Code § 3-106"); *Morgan v. Hutcheson*, 61 Ga.App. 763, 772, 7 S.E.2d 691, 696 (1940) ("In an action for money had and received it is not necessary to allege a demand for and refusal of payment. ... Code § 3-106."); *Jasper School Dist., v. Gormley*, 57 Ga.App.

537, 544, 196 S.E. 232, 237 (1938) (holding that no demand is necessary and citing and quoting Code § 3-106); *Bank of Oglethorpe v. Brooks*, 33 Ga.App. 84, 125 S.E. 600, 601 (1924) (holding that no pre-suit demand is necessary, citing Civil Code of 1910 § 5512); *Farmers' & Merchants' Bank v. Bennett Co.*, 120 Ga. 1012, 48 S.E. 398 (1904) (no pre-suit demand required, citing Civil Code of 1895 § 4935). Ga. Code Ann. § 9-2-6 was previously codified at Ga. Code Ann. § 3-106 in 1933, as § 5512 of the Civil Code of 1910, and as § 4935 of the Civil Code of 1895.

Appellee cites *City of Atlanta v. Hotels.com*, 289 Ga. 323, 710 S.E.2d 766 (2011) for the proposition that a pre-suit demand is necessary.

The *City of Atlanta* decision conflicts not only with the above-cited cases and statute, but also with decisions that hold:

“The common-law rule is still of force and effect in this State, except where it has been changed by express statutory enactment or by necessary implication.” *Robeson v. Intl. Indem. Co.*, 248 Ga. 306, 307(1), 282 S.E.2d 896 (1981).

Anderson v. Sentinel Offender Services, LLC, 298 Ga. 854, 858, 784 S.E.2d 791, 794 (2016). *Accord, Bragg v. Oxford Const. Co.*, 285 Ga. 98, 100, 674 S.E.2d 268, 270 (2009); *Fortner v. Town of Register*, 278 Ga. 625, 626, 604 S.E.2d 175, 177 (2004).

This is an issue of Georgia best resolved by the Georgia Supreme Court.

Respectfully submitted,

s/ John C. Bell, Jr.

John C. Bell, Jr.

Georgia State Bar No. 048600

Counsel for Appellant

CERTIFICATE OF COMPLIANCE

Pursuant to 11th Cir. R. 28-1(m) and Fed. R. App. P. 32(a)(7), I certify that this brief was prepared in a proportionally spaced typeface using Times New Roman 14-point font, that it contains 1104 words, as indicated by the word processing program used to prepare the brief, and that it therefore complies with the type-volume limitation of Fed. R. App. P. 32(a)(7).

s/ John C. Bell, Jr.
John C. Bell Jr.

CERTIFICATE OF SERVICE

This is to certify that the foregoing was filed with the Clerk of Court of the Eleventh Circuit Court of Appeals in accordance with ECF rules using the CM/ECF system and was served electronically upon counsel for the other parties and by placing a copy of same in the United States Mail with adequate postage thereon, properly addressed to:

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This 31st day of May, 2019.

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