

**JOHN ANDERSON, ROBIN  
LEBLANC, MICHAEL** : **NO. C545852 SECTION 24**  
**GUILLORY, TIMOTHY QUEEN,  
RAMON LEBLANC, AND**  
**CARL RICHARD, SR.,** : **19<sup>TH</sup> JUDICIAL DISTRICT COURT**  
  
**ON BEHALF** : **PARISH OF EAST BATON ROUGE**  
**OF THEMSELVES AND ALL**  
**OTHERS SIMILARLY SITUATED** : **STATE OF LOUISIANA**

**VS.**

**THE STATE OF LOUISIANA,  
BOBBY JINDAL, IN HIS  
OFFICIAL CAPACITY AS THE  
GOVERNOR OF THE STATE  
OF LOUISIANA, AND THE  
LOUISIANA STATE LEGISLATURE**

**AMENDED CLASS ACTION COMPLAINT**

**INTRODUCTION**

1. This is a civil rights class action seeking to remedy fundamental defects in the system for providing lawyers to indigent criminal defendants in Calcasieu Parish, Louisiana. These deficiencies undermine rights guaranteed to indigent criminal defendants by the Sixth and Fourteenth Amendments to the United States Constitution, and Article I, Sections 2 and 13 of the Louisiana Constitution of 1974.
2. The Sixth and Fourteenth Amendments to the United States Constitution and Article I, Section 13 of the Louisiana Constitution of 1974 guarantee to every indigent person charged with a crime the right to counsel. In Calcasieu Parish, the vast majority of indigent criminal defendants are represented by the Public Defender's Office. Contract and assigned attorneys represent indigent defendants whom the Public Defender's Office cannot represent because of conflicts of interest.
3. By what they have done and what they have failed to do, Defendants have violated the constitutional rights of Plaintiffs and the Plaintiff Class. Specifically, because of Defendants' acts and omissions, the Calcasieu Public Defender's Office is unable to engage in even the most basic functions of legal representation, such as conferring with its clients, engaging in any sort of substantive investigation of its clients' cases, reviewing clients' files, assisting in the securing of witnesses, and preparing for hearings and trials. The direct result is a failure to provide any effective defense to indigent persons charged with crimes in Calcasieu Parish.
4. Pursuant to the United States Constitution, the Louisiana Constitution of 1974 and 42 U.S.C. § 1983, Plaintiffs, on behalf of themselves and all those similarly situated, seek injunctive

and declaratory relief to correct the deficiencies that have deprived members of the plaintiff class of their right to legal representation.

### VENUE

5. This Court has jurisdiction over this action pursuant to Article V, Section 16 of the Louisiana Constitution of 1974.

6. Venue is proper in East Baton Rouge Parish pursuant to Louisiana Annotated Code of Civil Procedure, Articles 42 and 593.

### PARTIES

#### Named Plaintiffs

7. JOHN ANDERSON is and at all pertinent times herein has been a citizen of the United States. He had no criminal record at the time of his arrest and incarceration at the Calcasieu Correctional Center (“CCC”) on October 29, 2002. At his right to counsel hearing, held within 72 hours of arrest, the Calcasieu Parish Public Defender’s Office (“PDO”) was assigned to represent him. No individual lawyer was designated as his counsel at that time.

8. After nearly four months in jail, on February 24, 2003, Anderson filed his own motion for bond reduction. A hearing was set for March 19, 2003, but was continued until March 26, 2003, at which point the motion was denied from the bench.

9. Over six months after his arrest, Anderson was arraigned on May 9, 2003. At his arraignment Anderson met his PDO lawyer for the first time.

10. Anderson’s PDO lawyer did not visit or confer with him after this first meeting. Unable to contact his lawyer, Anderson wrote two letters to the Court, complaining, among other things, that on his trial date he was not even taken from the jail to the courthouse.

11. In October 2003, Anderson filed a motion to recuse his PDO attorney. Anderson noted that he had not had any contact with his lawyer in six months and that his lawyer had failed to appear even at Anderson’s bond reduction hearing.

12. Anderson’s trial was scheduled for November 3, 2003. As is typical of criminal trials in Calcasieu Parish, his trial was continued until March 8, 2004; on that date his trial was continued again. His trial was continued twice more—for a total of four times—before Anderson entered a guilty plea in May 2005. Anderson’s decision to waive his constitutional right to be tried by a jury and to enter into a plea agreement was influenced by the numerous delays of his trial date and by the length of his detention while waiting for trial.

13. Because of inadequate funding to the PDO and the excessive caseloads of Calcasieu Parish's public defenders, Anderson was denied effective assistance of counsel in violation of the federal and Louisiana constitutions.

14. ROBIN LEBLANC ("Robin") is and at all pertinent times herein has been a citizen of the United States. A pipe fitter and welder by trade, Robin is a military veteran who had no prior criminal record at the time of his arrest on January 14, 2003. Initially unable to make his \$600,000 bond, Robin was confined in the CCC between his arrest and his entry of a plea agreement nearly two years later.

15. Robin was not indicted until March 6, 2003 and his arraignment was scheduled for June of 2003. At the arraignment, a PDO lawyer was assigned to represent Robin. Robin called his lawyer countless times but was unable to reach him. Robin never met this lawyer, who no longer works in the PDO.

16. On August 12, 2003, Robin filed a writ of habeas corpus and motion for bond reduction. On September 25, 2003, Robin appeared before the court.

17. When he appeared before the judge, Robin's PDO lawyer was not present. When Robin told the judge how his public defender was entirely inaccessible to him, the judge assured Robin that he would have the lawyer meet with Robin. The lawyer never contacted Robin.

18. Finally, the PDO Executive Director took over Robin's case in the fall of 2003. While represented by the PDO, Robin's case was scheduled for trial on nine dates between December 8, 2003 and December 12, 2005.

19. In December 2003, Robin's mother filed an ethical conduct complaint against the attorneys in the PDO. Robin's mother asserts that she called the PDO "at least 75 times" but no attorney has ever returned her calls, and that "[t]his is America. Legal representation is the law. And yet, there is no adequate representation for my son."

20. The Louisiana Attorney Disciplinary Board notified the PDO lawyers of the complaint filed against them. In his mandatory response to the ethical complaint, the PDO's executive director noted that the caseloads for attorneys in the PDO, along with the general lack of resources available to the PDO, greatly affect the representation that PDO lawyers can provide their clients.

21. During the two-and-a-half year period that he was represented by the PDO, another PDO lawyer filed a motion to suppress certain evidence on Robin's behalf, but as his seventh trial date

approached in June 2005, the Executive Director informed Robin that he was not prepared to go to trial because he had not had time to review Robin's case. Robin entered into a plea agreement in December 2005. Robin's decision to waive his constitutional right to be tried by a jury and to enter into a plea agreement was influenced by the numerous delays of his trial date and by the length of his detention while waiting for trial.

22. Because of inadequate funding to the PDO and the excessive caseloads of Calcasieu Parish's public defenders, Robin was denied effective assistance of counsel in violation of the federal and Louisiana constitutions.

23. MICHAEL GUILLORY is and at all pertinent times herein has been a citizen of the United States. Guillory was gainfully employed as a radio announcer and disc jockey when he was arrested on August 29, 2002. Guillory was a client of the PDO and, after his arrest, a PDO lawyer was assigned to represent him.

24. After his lawyer filed an unsuccessful motion to have Guillory's bond reduced, Guillory had no contact with the PDO for six months. He tried numerous times to contact his lawyer but she was entirely unavailable to him.

25. On January 22, 2003, Guillory's fiancée wrote a letter to the PDO's executive director, pleading with him to provide Guillory with some information on his case. On June 28, 2003, Guillory wrote his own letter to the PDO's executive director and implored him to provide any sort of update on Guillory's case.

26. At some point thereafter, the PDO executive director began to represent Guillory. He filed a speedy trial motion and the court set a trial date of September 8, 2003. Two days before the trial date, the District Attorney's office disclosed previously undisclosed material. The new information forced Guillory's lawyer to ask for a continuance and the trial was set for September 22, 2003. On that date the trial was continued again, and eventually a date of February 5, 2004 was set. On that date, the trial was continued for a third time and the court set a trial date of May 24, 2004. On that date, Guillory's trial was rescheduled again. In total, Guillory's trial date was refixed at least ten times before he entered into a plea agreement in February 2007. Guillory's decision to waive his constitutional right to be tried by a jury and to enter into a plea agreement was influenced by the numerous delays of his trial date and by the length of his detention while waiting for trial.

27. Because of inadequate funding to the PDO and the excessive caseloads of Calcasieu Parish's public defenders, Guillory was denied effective assistance of counsel in violation of the federal and Louisiana constitutions.

28. TIMOTHY QUEEN is and at all pertinent times herein has been a citizen of the United States. Queen was arrested on November 19, 2008. Queen was placed in the CCC, where he has been confined ever since. On January 16, 2009, Queen made his first appearance in court at a bond reduction hearing. Though the hearing had been rescheduled five times, Queen's PDO lawyer was unprepared for the hearing, and the Judge passed on the motion. Queen's PDO lawyer informed him that the reason for his lack of preparation is his massive caseload of between 430 and 500 cases at any one time.

29. Queen found the assistance of his PDO lawyer to be so ineffective as to force him into the difficult choice of filing a motion to proceed *pro se*. Queen would not have made the choice to represent himself had he been able to obtain effective assistance from the PDO. Queen's trial is currently set for September 14, 2009.

30. Because of inadequate funding to the PDO and the excessive caseloads of Calcasieu Parish's public defenders, Queen has been and is being denied effective assistance of counsel in violation of the federal and Louisiana constitutions.

31. RAMON LEBLANC ("Ramon") is and at all pertinent times herein has been a citizen of the United States. He was arrested on May 1, 2003 and became a client of the PDO almost immediately thereafter. He has been confined in the CCC ever since his arrest.

32. The District Attorney's Office did not file a bill of charges until December 3, 2003, after Ramon had sat in jail for over seven months. After charges were filed against him, Ramon called the PDO numerous times. Each time he called, he was instructed to hold the line but then was forced to hang up because the CCC-mandated fifteen minute time limit on phone calls had expired.

33. On February 9, 2004, Ramon was arraigned via a video link from the CCC to the courthouse. After the arraignment, he finally spoke on the phone with the PDO lawyer assigned to his case, who told him to call back to set up a time for her to meet with him at the CCC. Ramon called back numerous times, but never received any response.

34. On March 11, 2004, Ramon filed a *pro se* motion to quash, but never received any response.

35. Ramon never received a good explanation from anyone from the PDO about what was happening to him or his case. Even on February 1, 2005, the day Ramon entered into a plea agreement, his conversation with his public defender was less than two minutes long. The PDO lawyer urged Ramon to accept the deal the State was offering, but Ramon was given no meaningful answer to his request that she explain why he should take the deal. Feeling that his lawyer did not know much about the specifics of his case and uncomfortable relying on her for advice, Ramon accepted the agreement and received a 25-year sentence.

36. Because of inadequate funding to the PDO and the excessive caseloads of Calcasieu Parish's public defenders, Ramon was denied effective assistance of counsel in violation of the federal and Louisiana constitutions.

37. CARL RICHARD, SR. is and at all pertinent times herein has been a citizen of the United States. He was arrested on February 20, 2003, was released on bond, and was arrested again on September 15, 2003 and became a client of the PDO almost immediately thereafter.

38. Richard tried to contact his PDO lawyer by phone. On the rare occasions his lawyer took Richard's calls, he would tell Richard that he planned to meet with him but then would not visit Richard.

39. In fact, Richard met with his PDO lawyer outside of a courtroom only once, after more than two-and-a-half years of detention.

40. Despite his repeated requests, Richard never saw any papers, evidence or discovery related to his case or the charges against him. He filed a successful *pro se* motion for DNA testing, which is the rare exception in Calcasieu Parish.

41. Richard entered into a plea agreement on March 7, 2006. On that day, Richard's lawyer urged him to accept the deal being offered by the State. In response to Richard's requests for an explanation of what the deal meant, Richard's lawyer told him that he did not have time to explain it and that if Richard did not take the deal, he could be sentenced to life in prison. Not knowing what to do, Richard agreed to the deal and was subsequently sentenced to 25 years in prison.

42. Because of inadequate funding to the PDO and the excessive caseloads of Calcasieu Parish's public defenders, Richard was denied effective assistance of counsel in violation of the federal and Louisiana constitutions.

## **Defendants**

43. Defendant BOBBY JINDAL is the Governor of the State of Louisiana. As chief executive of the State of Louisiana, Defendant Jindal has the duty to “faithfully support the constitution and laws of the state and of the United States” as well as to “see that the laws are faithfully executed.” Pursuant to this duty as chief executive of the State of Louisiana, Defendant Jindal is ultimately responsible for ensuring that Louisiana provides the effective assistance of counsel to indigent persons accused of crimes by the State of Louisiana. Defendant Jindal and his predecessors have abrogated these basic duties of constitutional import, and accordingly he is sued in his official capacity as Governor of Louisiana.

44. The Louisiana Constitution of 1974 charges Defendant the LOUISIANA STATE LEGISLATURE with establishing “a uniform system for securing and compensating qualified counsel for indigents.” The Louisiana State Legislature consistently has failed to establish a system that secures and compensates qualified counsel for Named Plaintiffs and Members of the Plaintiff Class.

45. The Constitution of the United States enjoins Defendant the STATE OF LOUISIANA from depriving any person of life, liberty or property without due process of law. The State of Louisiana consistently has deprived Named Plaintiffs and Members of the Plaintiff Class of life, liberty and property without due process of law, by not adequately funding the Calcasieu Public Defender’s Office, thereby depriving Named Plaintiffs and Members of the Plaintiff Class of effective assistance of counsel.

## **CLASS ACTION ALLEGATIONS**

46. Pursuant to Louisiana Code of Civil Procedure Article 591, the Named Plaintiffs bring this suit on behalf of themselves and all others similarly situated who are or will in the future be adversely affected by Defendants’ conduct. The Named Plaintiffs seek equitable relief from Defendants’ failure to ensure that the Calcasieu Parish Public Defender system provides constitutionally adequate assistance of counsel to individuals eligible for and entitled to its services.

47. The class that the Named Plaintiffs seek to represent comprises all adults who are or will be entitled to appointed counsel to represent them against criminal charges in the Fourteenth Judicial District in Calcasieu Parish. This Court granted Plaintiffs’ Motion for Class Certification on May 29, 2007.

48. The elements for class certification are met in this case:

- a. The class is so numerous that joinder of all members is impracticable. It is a fluid class composed of hundreds of current and future indigent criminal defendants in Calcasieu Parish, Louisiana.
- b. There are questions of law and fact common to the Members of the Plaintiff Class, including, but not limited to, whether Calcasieu Parish's Public Defender program has been and continues to be plagued by systemic deficiencies, including excessive caseloads, severe understaffing, inadequate resources, and defective policies and procedures; whether these systemic deficiencies in the Public Defender program deprive class members of the right to the effective assistance of counsel; and whether the failure to provide counsel violates rights guaranteed to Named Plaintiffs and Members of the Plaintiff Class by the Sixth and Fourteenth Amendments to the United States Constitution as well as by state constitutional and statutory law. These questions predominate over any questions affecting only individual members. Thus, a class action suit is superior to other available methods for fairly and efficiently adjudicating this controversy.
- c. The claims of the Named Plaintiffs are typical of the claims of the class in that the constitutional and statutory deprivations caused by Defendants and claimed by the Named Plaintiffs are the same for all other Members of the Plaintiff Class and predominate over individual claims.
- d. Having no interests antagonistic to the class, the Named Plaintiffs will fairly and adequately protect the interests of the class. They are represented by attorneys experienced in complex civil litigation.
- e. The class is or may be defined objectively in terms of ascertainable criteria, such that the Court may determine the constituency of the class for purposes of the conclusiveness of any judgment that the Court deems appropriate.
- f. The prosecution of separate actions by individual members of the class would create a risk of inconsistent or varying adjudications and would establish incompatible standards of conduct for the parties opposing the class.
- g. Because Defendants have consistently acted and refused to act on grounds generally applicable to the class, the class may be defined objectively in terms of ascertainable criteria. Accordingly, final declaratory and injunctive relief with respect to the class as a whole is appropriate.



h. Lastly, due to Defendants' acts addressed in this complaint, most individual members of the class would be unable to pursue the claims brought forth herein without class certification.

## **FACTS ENTITLING PLAINTIFFS TO RELIEF**

### **Overview of the Litigation**

49. Plaintiffs initially filed their complaint on September 23, 2004 in the 14th Judicial District Court of Louisiana. The original complaint made similar allegations to those herein - that the system for providing counsel to indigent defendants in the 14th Judicial District violates guarantees of effective assistance of counsel contained in the 6th and 14th Amendments to the United States Constitution and Article I, Sections 2 and 13 of the Louisiana Constitution of 1974. The court of appeal ordered a change of venue to this Court on June 27, 2006 and this Court granted Plaintiffs' Motion for Class Certification on May 29, 2007.

50. Shortly after this Court certified the class, the Louisiana Legislature enacted Act 307 of the 2007 Regular Session, the Louisiana Public Defender Act of 2007, La. S. 15:141-184 ("Act 307"), which, among other things, created a state-wide public defender program and provided additional funding for it. In response to this new legislation, Defendants moved to dismiss the original complaint as moot. Plaintiffs opposed the motion, but, because Plaintiffs sought only injunctive and declaratory relief, they agreed to an informal stay of the proceedings to give the state an opportunity to implement Act 307. This Court denied the motion to dismiss and informally stayed these proceedings to allow the parties to monitor the State's implementation of Act 307.

51. After allowing the Legislature two years to implement Act 307 and to correct the grossly inadequate staffing and funding disparities in the Calcasieu Public Defender's Office, Plaintiffs have learned through investigation that the indigent defendants in the 14th JDC continue to have their constitutional right to the effective assistance of counsel violated because of inadequate resources and staffing in the Public Defender's Office. Plaintiffs therefore sought to reopen this litigation and this Court issued a new scheduling order on June 26, 2009.

### **Louisiana's Indigent Defense System**

52. Article I, Section 13 of the Louisiana Constitution of 1974 guarantees to any indigent person charged with a crime that could result in his incarceration the right to a court-appointed

attorney. The Constitution further charges the state legislature to establish “a uniform system for securing and compensating counsel for indigents.”

53. The Louisiana Supreme Court has held that the assistance of counsel means “that the lawyer . . . has the time and resources to apply his skill and knowledge to the task of defending each of his individual clients.” *State v. Peart*, 621 So.2d 780, 789 (La. 1993).

54. Louisiana has drastically failed to fund its indigent defense system. In June of 2003 the House of Delegates of the Louisiana State Bar Association approved a resolution holding in part that “Louisiana is one of a minority of states ... that do not assume at least half of the constitutional obligation to fund indigent defense services at the state level.”

55. The House of Delegates also observed that Louisiana is the only state “that attempts to fund the majority of its obligation through court costs collected on criminal offenses, primarily traffic tickets.”

56. The Louisiana Legislature passed Act 307 in an attempt to cure these funding and staffing deficiencies in Louisiana’s Public Defender Program. Act 307 provides for an appropriation of funds to each judicial district, such that the Public Defender Program no longer relies solely on court costs as its source of funding. Act 307 also imposes new responsibilities on the Public Defender Program, such as assigning attorneys to handle children in need of care cases. These new responsibilities require the Public Defender Program to allocate additional resources and staff to non-felony cases.

57. Possibly the most inadequately funded parish in the state is Calcasieu Parish, whose myriad inadequacies have been called into constitutional question by such independent publications as the *Louisiana Bar Journal*.

#### **Lack of Oversight or Monitoring**

58. Defendants the State of Louisiana and Bobby Jindal and his predecessors have failed to ensure that indigent criminal defendants in the Fourteenth Judicial District of Calcasieu Parish receive constitutionally mandated assistance of counsel.

59. Defendants the State of Louisiana and Bobby Jindal and his predecessors have failed properly to monitor or oversee Louisiana’s indigent defense system.

60. Specifically, Jindal and his predecessors have failed:

- a. To implement a mechanism for monitoring the performance of Louisiana’s public defenders;

- b. To adopt and enforce criteria for evaluating its public defenders;
- c. To establish a constitutionally adequate system for monitoring and overseeing the assignment and reassignment of cases to public defenders;
- d. To establish a system to insure that public defenders have the resources to investigate cases, prepare for trials, or communicate with clients in a timely and adequate fashion.

### **Inadequate Funding**

61. Jindal and his predecessors consistently have failed to provide adequate funds to ensure that Louisiana's indigent adult citizens who are accused of crimes receive the constitutionally adequate legal representation to which they are entitled.

62. The Louisiana State Legislature consistently has failed to fund indigent defense adequately. Louisiana's funding of its indigent defense system has not kept pace with the demand for the services.

63. Because the State Legislature has consistently failed to allocate necessary funds, the Named Plaintiffs and Members of the Plaintiff Class have been denied their right to the effective assistance of counsel.

### **Calcasieu Parish's Constitutionally Deficient Indigent Defense System**

#### **Overview**

64. The Indigent Defender Board for the 14<sup>th</sup> Judicial District has established a Public Defender's Office, in which public defenders represent most indigent adults charged with crimes. Contract attorneys and occasionally assigned attorneys represent the defendants whom the PDO cannot represent, generally because of conflicts of interest.

65. The PDO represented nearly 90 percent of the approximately 2,500 to 3,000 persons accused of felonies each year in Calcasieu Parish as of September 2004. The vast majority of these cases were resolved by plea bargain, most often nearly a year and a half after arrest. At the time Plaintiffs filed their original complaint, the PDO also handled approximately 3,500 misdemeanor cases per year.

66. The PDO serves the 14<sup>th</sup> Judicial District Court of Louisiana. The PDO assigns only one attorney to represent persons accused of felonies in each of the seven divisions of the court. One attorney is responsible for handling all felonies that require a mandatory life sentence. The remaining attorneys handle misdemeanors, juvenile cases, and city court cases.

67. The primary sources of funding for the PDO consist of funds appropriated to the PDO through Act 307 as well as court costs assessed on traffic fines and a portion of the bond forfeitures collected by the court. From these and other sources, the PDO has projected revenues of \$950,000 for 2009. On information and belief, it is likely that the PDO will receive less revenues than are projected.

### **Staff and Caseloads**

68. On information and belief, a Calcasieu Parish public defender handling felonies can have approximately 430 open felony cases at any one time and a greater number of felony cases over the course of an entire year. The Louisiana Public Defender Board's caseload standards recommend that a public defender not handle more than 150-200 non-capital felony cases per year. The American Bar Association recommends that a criminal defense attorney not handle more than 150 non-capital felonies per year. The average caseload carried by a staff attorney in the Calcasieu Parish PDO is therefore more than twice the standard established by the Louisiana Public Defender Board and more than two and a half times the national standard. Furthermore, the one attorney that is responsible for all of the felony cases that carry a mandatory life sentence has approximately 43 open cases at present. The state standard limits the case load to 15-25 mandatory life cases per lawyer per year; the Calcasieu PDO lawyer handling these serious felonies therefore carries a caseload far greater than the limit that the state has set for such cases.

69. The PDO's staff is too small to adequately meet its considerable legal and logistical needs. While Act 307 increased the funding for the Calcasieu PDO so that it could hire additional staff attorneys, the legislation has also imposed additional responsibilities on the office by requiring it to handle new types of cases that it previously had declined to accept.

70. The PDO has 29 full-time employees: eleven staff attorneys, an office administrator, five investigators, nine administrative assistants, one financial assistant, an administrative assistant who is also responsible for data entry, and an executive director, who, in addition to his considerable administrative duties, also handles a significant caseload. The PDO also currently employs four contract attorneys who provide counsel on matters involving bounced checks, delinquent child support payments, juvenile cases, and misdemeanors. The PDO also employs conflict attorneys to handle the many felony cases that the staff attorneys cannot handle due to conflicts with their other indigent clients.

71. Not only is the PDO inadequately staffed relative to its caseload, but its attorneys are insufficiently compensated for their work. This results in low morale and high turnover among the personnel. The lawyers in the District Attorney's Office ("DAO") are compensated at a rate much higher than the PDO lawyers.

72. Another tangible result of the PDO's low compensation is that the PDO is compelled to permit its attorneys to represent civil clients in addition to their public defender duties. Without permitting attorneys to have private practices, the PDO would not be able to attract qualified attorneys because of the low level of compensation the PDO is able to provide. Conducting a private practice further diminishes the time that PDO attorneys can devote to their criminal cases.

73. In addition to being underpaid, the attorneys in the PDO are significantly overburdened. A felony attorney in the Calcasieu Parish PDO may be responsible for approximately 430 open felony cases on any given day, including capital cases and appeals. Moreover, the enactment of Act 307 has not decreased the PDO's unmanageable caseload; if anything, it has exacerbated it.

74. Prior to the enactment of Act 307, the Calcasieu Parish PDO refused to take on children in need of care cases, because of its limited resources and staffing. The statute now requires that the PDO devote one of its staff attorneys to handle these cases. Furthermore, two staff attorneys are assigned only juvenile cases, one staff attorney is assigned only misdemeanors, and another staff attorney is assigned felony cases that carry mandatory life sentences, leaving the seven remaining staff attorneys to handle all of the felony cases that do not require a mandatory life sentence.

75. The result of attorneys carrying these high caseloads is to deprive indigent defendants of the right to counsel.

76. Nationwide, 90 percent of all felony cases are resolved within one year of arrest; as of September 2004, in Calcasieu Parish, only 20 percent of felony cases were disposed of within one year of arrest.

77. Nationally, the average time from arrest to disposition for felony cases is 214 days; as of September 2004, in Calcasieu Parish such disposition took an average of 501 days, over twice the national average.

78. While the number of criminal charges filed in the 14<sup>th</sup> Judicial District is similar to the number of filings in other districts of similar size, the number of criminal trials is unusually low.

Nationwide, districts the size of the 14<sup>th</sup> Judicial District averaged 67 criminal jury trials per year at the time Plaintiffs filed their original complaint in September 2004. At that same time, the 14<sup>th</sup> Judicial District averaged between 8 and 10 criminal trials per year. At present, the PDO lawyers handling felonies in Calcasieu Parish try only one to two cases per year on average.

79. Nationally, about 5% of criminal defendants had their cases decided by a jury in 2004. In the 14<sup>th</sup> Judicial District, approximately 0.25% of criminal defendants received jury trials.

80. The lack of jury trials in Calcasieu Parish applies only to criminal cases: statewide, Louisiana had three times as many criminal trials as civil jury trials as of September 2004, but in the 14<sup>th</sup> Judicial District, there were twice as many civil trials as there were criminal trials.

### **Pre-trial Treatment of Indigent Defendants in Calcasieu Parish**

81. The heavy caseloads of Calcasieu Parish public defenders contribute to extraordinary delays in the processing of cases. These delays are indicative of the constitutionally inadequate representation being provided by the State of Louisiana, Governor Jindal and the Legislature.

82. In Louisiana, a defendant learns the exact crimes with which he or she has been charged when the DAO files a bill of charges. In 2004 in Calcasieu Parish, the DAO did not file a bill of charges until an average of 186 days—or six months—after an individual had been arrested.

83. Nationally, on average, nearly half the felony charges filed by district attorneys as of 2004 had been disposed of in less time after arrest than it took the DAO to charge its defendants.

84. Louisiana's Code of Criminal Procedure, Article 701 mandates that the maximum time permitted for issuing a bill of charges for an incarcerated adult arrested on felony charges is 60 days, and 150 days when the defendant has posted bail. If the state fails to meet these deadlines, the defendant may file a motion for release that the court will grant unless the prosecutor can show "just cause" for the failure.

85. Absence of counsel permits the DAO to hold an indigent defendant for months before filing bills of charges, in clear violation of Louisiana law.

86. After the DAO files the bill of charges, a defendant is arraigned, during which he or she stands before a judge and enters a plea of either "guilty" or "not guilty."

87. Louisiana's Code of Criminal Procedure mandates that an arraignment must be set within 30 days of a bill of charges being filed. As of 2004 in Calcasieu Parish, defendants were not arraigned for an average of 129 days after the filing of a bill of charges.

88. After an indigent defendant had been arraigned in Calcasieu Parish in 2004, it took an average of 186 days, or more than six months, for the case to be resolved.

89. The PDO's treatment of "ten day orders" thwarts the efforts of the Named Plaintiffs and Members of the Plaintiff Class to file *pro se* motions for speedy trial, discovery, and to suppress statements and evidence:

a. When an indigent defendant in Calcasieu Parish files a *pro se* motion challenging the substance of the charges against him, the judge presiding over his/her case issues a "ten day order," ordering the public defender representing the indigent defendant, within ten days, to adopt the pleading, to supplement the pleading, or to explain to the client why he or she is withdrawing the pleading;

b. Due in large part to their heavy caseloads, public defenders in the Calcasieu Parish PDO routinely fail to respond to these orders, resulting in the *pro se* motions never being heard;

c. Thus, Named Plaintiffs and Members of the Plaintiff Class typically have no means to bring legal issues to the court's attention, advocate on their own behalf, or preserve their constitutional rights because the merits of their *pro se* motions are rarely heard by the court.

**Unless Enjoined, Defendants Will Continue to Violate the Constitutional Rights of the Named Plaintiffs and Members of the Plaintiff Class.**

90. As a result of Defendants' acts and omissions, the Named Plaintiffs and the Members of the Plaintiff Class have suffered or are at imminent risk of suffering harm.

91. Among other deprivations, Named Plaintiffs and Members of the Plaintiff Class are effectively deprived of consultation and communication with their attorneys. As a result, Named Plaintiffs and Members of the Plaintiff Class have made and will continue to make crucial decisions directly affecting their rights without having received constitutionally-mandated advice from legal counsel.

92. The limited advice that the Named Plaintiffs and the Members of the Plaintiff Class have received from their legal counsel has been issued without sufficient factual or legal investigation. PDO lawyers often provide legal advice without command of the facts underlying the charges against their clients.

93. The Named Plaintiffs and the Members of the Plaintiff Class thus have been unconstitutionally deprived of opportunities to present meaningful defenses. Consistently they

waive their constitutional rights, including their right to be tried by a jury of their peers, without legally adequate consultation or advice. They have been deprived of the services of investigators and expert witnesses. They have not been offered meaningful benefits in exchange for pleading guilty. Their cases are not being prepared for trial.

94. The facts lead to the invariable conclusion that Defendants will continue to violate the constitutional rights of the Named Plaintiffs and the Members of the Plaintiff Class:

- a. Defendants have persisted in their wrongful conduct for many years;
- b. Defendants have persisted in this wrongful conduct despite actual and/or constructive knowledge that indigent defendants were being deprived of their right to counsel;
- c. Defendants' attempt to cure the funding and staffing inadequacies in Calcasieu Parish's PDO through the enactment of Act 307 has been ineffective to date.

### **LEGAL CLAIMS**

#### **Count One: United States Constitution, Sixth and Fourteenth Amendments.**

95. Paragraphs one through 94 are incorporated fully herein.

96. Defendants' failure to provide Plaintiffs and Members of the Plaintiff Class with legal representation violates Plaintiffs' rights under the Sixth and Fourteenth Amendments to the United States Constitution, including, but not limited to, their rights to the effective assistance of counsel and due process of law.

97. Unless enjoined by the Court, Defendants will continue to violate and cause the violation of the constitutional rights of the Named Plaintiffs and the Class Members.

#### **Count Two: Article I, Sections 2 and 13 of the Louisiana Constitution of 1974**

98. Paragraphs one through 94 are incorporated fully herein.

99. Defendants' failure to provide Plaintiffs and Members of the Plaintiff Class with legal representation violates Plaintiffs' rights under Article I, Sections 2 and 13 of the Louisiana Constitution of 1974.

100. Unless enjoined by the Court, Defendants will continue to violate and cause the violation of the state constitutional rights of the Named Plaintiffs and the Class Members.

#### **Count Three: 42 U.S.C. § 1983**

101. Paragraphs one through 94 are incorporated fully herein.



102. Defendant Bobby Jindal's failure to provide Plaintiffs and Members of the Plaintiff Class with legal representation, which violates Plaintiffs' rights under the Sixth and Fourteenth Amendments to the United States Constitution, results from acts and omissions performed by him under the color of state law.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request the following relief:

- 103. Certification of the Class as defined in paragraph 47 above;
- 104. A declaration that Defendants are depriving Class Members of their right to the effective assistance of counsel pursuant to the Sixth and Fourteenth Amendments to the United States Constitution and Article I, Section 13 of the Louisiana Constitution of 1974 in providing indigent defense services in Calcasieu Parish;
- 105. The issuance of a permanent injunction requiring Defendants to provide a Public Defender program in Calcasieu Parish that is consistent with the Sixth and Fourteenth Amendments to the United States Constitution, and Article I, Sections 2 and 13 of the Louisiana Constitution of 1974.
- 106. For an award of plaintiffs' costs and attorneys' fees; and,
- 107. Any such further relief as this Court deems necessary or proper to alleviate the violations set forth herein.


Respectfully Submitted,

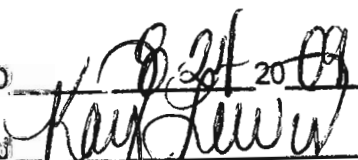
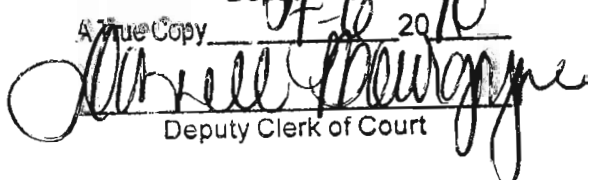
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FILED  8-31-09  
Signed: Kay Lewis  
Deputy Clerk of Court  
A True Copy  8-16-10  
Orville Newmyer  
Deputy Clerk of Court

David L. Hoskins

JOHN ANDERSON, MICHAEL GULLORY, TIMOTHY WILLIAMS, RAMON LEBLANC, ROBIN LEBLANC, JASON RAY LEGER, CARL RICHARD, SR., JULIAN MARTIN SOLOMON, JR. AND CHARLIE MYERS ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED

14<sup>TH</sup> JUDICIAL DISTRICT COURT

PARTY # PI  
CA  
M  
52  
50104  
Full  
RV

VS. NO. 2004-005405  
DIV F

PARISH OF CALCASIEU

THE STATE OF LOUISIANA, KATHLEEN BLANCO, IN HER OFFICIAL CAPACITY AS THE GOVERNOR OF THE STATE OF LOUISIANA, AND THE LOUISIANA STATE LEGISLATURE

STATE OF LOUISIANA

FILED: Sept. 23, 2004

M. Patricia R. Wood  
DEPUTY CLERK OF COURT TC/C

SCANNED

SEP 28 2004

CLASS ACTION COMPLAINT

I. INTRODUCTION

1. This is a civil rights class action seeking to remedy fundamental defects in the system for providing lawyers to indigent criminal defendants in Calcasieu Parish. These deficiencies undermine rights guaranteed to indigent criminal defendants by the Sixth and Fourteenth Amendments to the United States Constitution, and Article I, Sections 2 and 13 of the Louisiana Constitution of 1974.

2. The Sixth and Fourteenth Amendments to the United States Constitution and Article I, Section 13 of the Louisiana Constitution of 1974 guarantee to every indigent person charged with a crime the right to counsel. In Calcasieu Parish, the vast majority of indigent criminal defendants are represented by the Public Defender's Office. Contract and assigned attorneys represent indigent defendants whom the Public Defender's Office cannot represent because of conflicts of interest.

3. By what they have done and what they have failed to do, defendants have violated the constitutional rights of Plaintiffs and the Plaintiff class. Specifically, because of Defendants' acts and omissions, the Calcasieu Public Defender's Office is unable to engage in even the most basic functions of legal representation, such as conferring with its clients, engaging in any sort of substantive investigation of its clients' cases, reviewing clients' files, assisting in the securing of



PROCESSED  
DATE 9-27-04

witnesses, and preparing for hearings and trials. The direct result is a failure to subject the prosecution's cases to any sort of meaningful adversarial testing.

4. Pursuant to the United States Constitution, the Louisiana Constitution of 1974 and 42 U.S.C. § 1983, Plaintiffs, on behalf of themselves and all those similarly situated, seek injunctive and declaratory relief to correct the deficiencies that have deprived members of the plaintiff class of their right to legal representation.

**II. VENUE**

5. This Court has jurisdiction over this action pursuant to Article V, Section 16 of the Louisiana Constitution of 1974.

6. Venue is proper in Calcasieu Parish pursuant to Louisiana Annotated Code of Civil Procedure, Articles 42 and 593.

**III. PARTIES**

**Named Plaintiffs**

7. JOHN ANDERSON is and at all pertinent times herein has been a citizen of the United States. He has no criminal record. He is a client of the Calcasieu Parish Public Defender's Office ("PDO"). He has been incarcerated in the Calcasieu Correctional Center ("CCC") since October of 2002. Twice already his case has been set for trial, only to be postponed both times; if his case goes to trial as scheduled, in September of 2004, Anderson will have been incarcerated for one month shy of two years.

8. ROBIN LEBLANC is and at all pertinent times herein has been a citizen of the United States. He is an Army veteran who has no criminal record. He is a client of the PDO. He was arrested in January of 2003 and has been held in the maximum security section of the CCC ever since.

9. MICHAEL GUILLORY is and at all pertinent times herein has been a citizen of the United States. He was arrested in August of 2002. He is a client of the PDO, although, it was months before the PDO conferred with him in any meaningful way. He has been incarcerated since his arrest.

10. TIMOTHY WILLIAMS is and at all pertinent times herein has been a citizen of the United States. He was arrested on January 28, 2003 and has been confined in the CCC ever since. Williams does not know whether he is represented by the PDO, one of its conflicts attorneys, or even if he is represented at all.



11. RAMON LEBLANC is and at all pertinent times herein has been a citizen of the United States. He has been confined in the CCC since being arrested on May 1, 2003. He is a client of the PDO but no PDO attorney has conferred with him in any meaningful way.

12. JASON LEGER is and at all pertinent times herein has been a citizen of the United States and has no criminal history. He was arrested on May 22, 2002 and has been confined in the CCC since then. He is a client of the PDO and his trial has been postponed four times.

13. CARL RICHARD, SR. is and at all pertinent times herein has been a citizen of the United States. He has been confined in the CCC since being arrested on September 15, 2003 and has been a client of the PDO since shortly thereafter. His PDO lawyer has made several statements indicating that he cannot provide or cannot plan on providing Richard with a defense.

14. CHARLIE MYERS is and at all pertinent times herein has been a citizen of the United States. He has been confined in the CCC since his arrest on August 11, 2003. He is a client of the PDO and was not arraigned until approximately six months after his arrest.

15. JULIAN SOLOMON is and at all pertinent times herein has been a citizen of the United States and has no criminal record. He was arrested on July 24, 2003. He is a client of the PDO but has spoken with an attorney only twice in over a year.

#### Defendants

16. Defendant KATHLEEN BLANCO is the Governor of the State of Louisiana. As chief executive of the State of Louisiana, Defendant Blanco has the duty to “faithfully support the constitution and laws of the state and of the United States” as well as to “see that the laws are faithfully executed.” Pursuant to this duty as chief executive of the State of Louisiana, Defendant Blanco is ultimately responsible for ensuring that Louisiana provides the assistance of counsel to indigent persons accused of crimes by the State of Louisiana. Defendant Blanco and her predecessors have abrogated these basic duties of constitutional import, and accordingly she is sued in her official capacity as Governor of Louisiana.

17. The Louisiana Constitution of 1974 charges Defendant the LOUISIANA STATE LEGISLATURE with establishing “a uniform system for securing and compensating qualified counsel for indigents.” The Louisiana State Legislature consistently has failed to establish a system that secures and compensates qualified counsel for Named Plaintiffs and Members of the Plaintiff Class.



18. The Constitution of the United States enjoins Defendant the STATE OF LOUISIANA from depriving any person of life, liberty or property without due process of law. The State of Louisiana consistently has deprived Named Plaintiffs and Members of the Plaintiff Class of life, liberty and property without due process of law.

#### **IV. CLASS ACTION ALLEGATIONS**

19. Pursuant to Louisiana Code of Civil Procedure Article 591, the Named Plaintiffs bring this suit on behalf of themselves and all others similarly situated who are or will in the future be adversely affected by Defendants' conduct. The Named Plaintiffs seek equitable relief from Defendants' failure to ensure that the Calcasieu Parish Public Defender system provides constitutionally adequate assistance of counsel to individuals eligible for and entitled to its services.

20. The class that the Named Plaintiffs seek to represent comprises all adults who are or will be entitled to appointed counsel to represent them against criminal charges in the Fourteenth Judicial District in Calcasieu Parish.

The elements for class certification are met in this case:

a. The class is so numerous that joinder of all members is impracticable. It is a fluid class composed of hundreds of current and future indigent criminal defendants.

b. There are questions of law and fact common to the members of the plaintiff class, including, but not limited to, whether Calcasieu Parish's Public Defender program has been and continues to be plagued by systemic deficiencies, including excessive caseloads, severe understaffing, inadequate resources, and defective policies and procedures; whether these systemic deficiencies in the Public Defender program deprive class members of the right to counsel; and whether the failure to provide counsel violates rights guaranteed to plaintiffs and members of the plaintiff class by the Sixth and Fourteenth Amendments to the United States Constitution as well as by state constitutional and statutory law. These questions predominate over any questions affecting only individual members. Thus, a class action suit is superior to other available methods for fairly and efficiently adjudicating this controversy.

c. The claims of the Named Plaintiffs are typical of the claims of the class in that the constitutional and statutory deprivations caused by Defendants and claimed by the class representatives are the same for all other members of the class and predominate over individual claims.



d. Having no interests antagonistic to the class, the Named Plaintiffs will fairly and adequately protect the interests of the class. They are represented by attorneys experienced in complex civil litigation.

e. The class is or may be defined objectively in terms of ascertainable criteria, such that the Court may determine the constituency of the class for purposes of the conclusiveness of any judgment that the Court deems appropriate.

f. The prosecution of separate actions by individual members of the class would create a risk of inconsistent or varying adjudications and would establish incompatible standards of conduct for the parties opposing the class.

g. Because Defendants have consistently acted and refused to act on grounds generally applicable to the class, the class may be defined objectively in terms of ascertainable criteria. Accordingly, final declaratory and injunctive relief with respect to the class as a whole is appropriate.

h. Lastly, due to Defendants' acts addressed in this complaint, most individual members of the class would be unable to pursue the claims brought forth herein without class certification.

## **V. FACTS ENTITLING PLAINTIFFS TO RELIEF**

### **Louisiana's Indigent Defense System**

21. Article I, Section 13 of the Louisiana Constitution of 1974 guarantees to any indigent person charged with a crime that could result in his incarceration the right to a court-appointed attorney. The Constitution further charges the state legislature to establish "a uniform system for securing and compensating counsel for indigents."

22. The Louisiana Supreme Court has held that the assistance of counsel means "that the lawyer ... has the time and resources to apply his skill and knowledge to the task of defending each of his individual clients." *State v. Peart*, 621 So.2d 780, 789 (La. 1993).

23. Louisiana has drastically failed to fund its indigent defense system. In June of 2003 the House of Delegates of the Louisiana State Bar Association approved a resolution holding in part that "Louisiana is one of a minority of states ... that do not assume at least half of the constitutional obligation to fund indigent defense services at the state level."

24. The House of Delegates also observed that Louisiana is the only state "that attempts to fund the majority of its obligation through court costs collected on criminal offenses, primarily traffic tickets."



25. This unique practice of relying upon court costs and traffic tickets to fund a statewide indigent defense system results in inordinately disparate levels of funding among Louisiana's district indigent defender offices.

26. Possibly the most inadequately funded parish in the state is Calcasieu Parish, whose myriad inadequacies have been called into constitutional question by such independent publications as the Louisiana Bar Journal.

Lack of Oversight or Monitoring

27. Defendants the State of Louisiana and Kathleen Blanco and her predecessors have failed to ensure that indigent criminal defendants in the Fourteenth Judicial District of Calcasieu Parish receive constitutionally mandated assistance of counsel.

28. Defendants the State of Louisiana and Kathleen Blanco and her predecessors have failed properly to monitor or oversee Louisiana's indigent defense system.

29. Specifically, Blanco and her predecessors have failed:

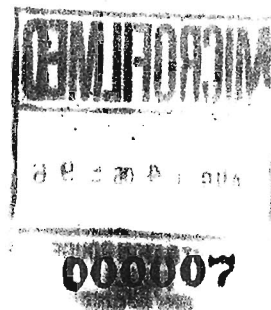
- a. to implement a mechanism for monitoring the performance of Louisiana's public defenders;
- b. to adopt and enforce criteria for evaluating its public defenders;
- c. to establish a constitutionally adequate system for monitoring and overseeing the assignment and reassignment of cases to public defenders;
- d. to establish a system to insure that public defenders have the resources to investigate cases, prepare for trials, or communicate with clients in a timely and adequate fashion.

Inadequate Funding

30. Blanco and her predecessors consistently have failed to provide adequate funds to ensure that Louisiana's indigent adult citizens who are accused of crimes receive the constitutionally adequate legal representation to which they are entitled.

31. The Louisiana State Legislature consistently has failed to fund indigent defense adequately. Louisiana's funding of its indigent defense system has not kept pace with the demand for the services.

32. Because the State Legislature has consistently failed to allocate necessary funds, the Named Plaintiffs and Members of the Plaintiff Class have been denied their right to counsel.





## Calcasieu Parish's Constitutionally Deficient Indigent Defense System

### Overview

33. The Indigent Defender Board for the 14<sup>th</sup> Judicial District has established a Public Defender's Office, in which public defenders represent most indigent adults charged with crimes. Contract attorneys and sometimes assigned attorneys represent the defendants whom the PDO cannot represent, generally because of conflicts of interest.

34. The PDO, consisting of ten lawyers, including the Executive Director, represents nearly 90 percent of the approximately 2,500 to 3,000 persons accused of felonies each year in Calcasieu Parish. The vast majority of these cases are resolved by plea bargain, most often nearly a year and a half after arrest. The PDO also handles approximately 3,500 misdemeanor cases per year.

35. The PDO serves the 14<sup>th</sup> Judicial District Court of Louisiana. The PDO assigns only one attorney to represent accused persons in each of the seven divisions of the court. The remaining two attorneys handle misdemeanors, juvenile cases, and city court cases.

36. The primary sources of funding for the PDO are court costs assessed on traffic fines and a portion of the bond forfeitures collected by the court. From these and other sources, the PDO has projected revenues of \$1,364,898.24 for 2004. It is likely that the PDO will receive less revenues than are projected.

### Staff and Caseloads

37. The PDO's staff is too small to meet adequately its considerable legal and logistical needs.

38. The PDO has 21 full-time employees: nine staff attorneys, an office administrator, three investigators, five secretaries, a runner, a receptionist and an executive director, who, in addition to his considerable administrative duties, also handles a significant case load, including all capital cases and all mandatory life cases. The PDO also employs six contract and conflict attorneys who provide counsel on matters involving bounced checks, child support payments and the approximately eight hundred felony cases that the staff attorneys cannot handle due to conflicts with their other indigent clients.

39. Not only is the PDO inadequately staffed relative to its caseload, but its attorneys are insufficiently compensated for their work. This results in low morale and high turnover among



the personnel. The lawyers in the District Attorney's Office ("DAO") are compensated at a rate much higher than the PDO lawyers.

40. Another tangible result of the PDO's low compensation is that the PDO is compelled to permit its attorneys to represent civil clients in addition to their public defender duties. Without permitting attorneys to have private practices, the PDO would not be able to attract qualified attorneys because of the low level of compensation the PDO is able to provide. Conducting a private practice further diminishes the time that PDO attorneys can devote to their criminal cases.

41. In addition to being underpaid, the attorneys in the PDO are significantly overburdened: There are seven staff attorneys to handle the approximately 2,550 new felony cases per year. Two staff attorneys handle approximately 3,500 misdemeanor cases per year, all of the city court cases, and all of the juvenile cases.

42. When the backlog of approximately 2,000 felony cases from previous years is included in the tabulation, a felony attorney in the Calcasieu Parish PDO may be responsible for approximately 400 open felony cases, including capital cases and appeals.

43. The average caseload carried by a staff attorney in the Calcasieu Parish PDO is approximately twice the standard established by the Louisiana Indigent Defense Assistance Board and more than two and a half times the national standard.

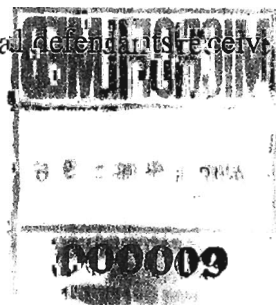
44. The result of attorneys carrying these high case loads is to deprive indigent defendants of the right to counsel.

45. Nationwide, 90 percent of all felony cases are resolved within one year of arrest; in Calcasieu Parish, only 20 percent of felony cases are disposed of within one year of arrest.

46. Nationally, the average time from arrest to disposition for felony cases is 214 days; in Calcasieu Parish such disposition takes an average of 501 days, over twice the national average.

47. While the number of criminal charges filed in the 14<sup>th</sup> Judicial District is similar to the number of filings in other districts of similar size, the number of criminal trials is unusually low. Nationwide, districts the size of the 14<sup>th</sup> Judicial District average 67 criminal jury trials per year. The 14<sup>th</sup> Judicial District averages between 8 and 10 criminal trials per year.

48. Nationally, about 5% of criminal defendants have their cases decided by a jury. In the 14<sup>th</sup> Judicial District, approximately 0.25% of criminal defendants receive jury trials.



49. The lack of jury trials in Calcasieu Parish applies only to criminal cases: Statewide, Louisiana has three times as many criminal trials as civil jury trials, but in the 14<sup>th</sup> Judicial District, there are twice as many civil trials as there are criminal trials.

Pre-trial Treatment of Indigent Defendants in Calcasieu Parish

50. The heavy case loads of Calcasieu Parish public defenders contribute to extraordinary delays in the processing of cases. These delays are indicative of the constitutionally inadequate representation being provided by the State of Louisiana, Governor Blanco and the Legislature.

51. In Louisiana, a defendant learns the exact crimes with which he or she has been charged when the DAO files a bill of charges, and, in Calcasieu Parish, the DAO does not file a bill of charges until an average of 186 days—or six months—after an individual has been arrested.

52. Nationally, on average, nearly half the felony charges filed by district attorneys have been disposed of by the time the DAO gets around to charging its defendants.

53. Louisiana’s Code of Criminal Procedure, Article 701 mandates that the maximum time permitted for issuing a bill of charges for an incarcerated adult arrested on felony charges is 60 days, and 150 days when the defendant has posted bail. If the state fails to meet these deadlines, the defendant may file a motion for release that the court will grant unless the prosecutor can show “just cause” for the failure.

54. Absence of counsel permits the DAO to hold an indigent defendant for months before filing bills of charges, in clear violation of Louisiana law.

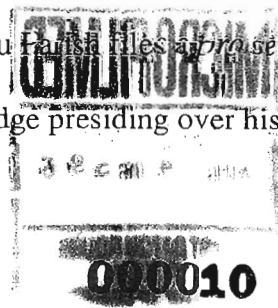
55. After the DAO files the bill of information, a defendant is arraigned, during which he or she stands before a judge and enters a plea of either “guilty” or “not guilty.”

56. Louisiana’s Code of Criminal Procedure mandates that an arraignment must be set within 30 days of a bill of charges being filed. In Calcasieu Parish, defendants are not arraigned for an average of 129 days after the filing of a bill of charges.

57. After an indigent defendant has been arraigned in Calcasieu Parish, it takes an average of 186 days, or more than six months, for the case to be resolved.

58. The PDO’s treatment of “ten day orders” thwarts the efforts of the Named Plaintiffs and members of the Plaintiff Class to file *pro se* motions for speedy trial, discovery, and to suppress statements and evidence:

- a. When an indigent defendant in Calcasieu Parish files a *pro se* motion challenging the substance of the charges against him, the judge presiding over his/her case issues a “ten



day order,” ordering the public defender representing the indigent defendant, within ten days, to adopt the pleading, to supplement the pleading, or to explain to his client why he is withdrawing the pleading;

b. Due in large part to their heavy caseloads, public defenders in the Calcasieu Parish PDO routinely fail to respond to these orders, resulting in the *pro se* motion’s never being heard;

c. Thus, Named Plaintiffs and members of the Plaintiff Class typically have no means to bring legal issues to the court’s attention, advocate on their own behalf, or preserve their constitutional rights because the merits of their *pro se* motions are rarely heard by the court.

**Defendants Have Denied the Named Plaintiffs Their Right to Legal Representation.**

John Anderson

59. Plaintiff John Anderson was arrested on October 29, 2002. At his right to counsel hearing, held within 72 hours of arrest, the PDO was assigned to represent him. No individual lawyer was designated as his counsel.

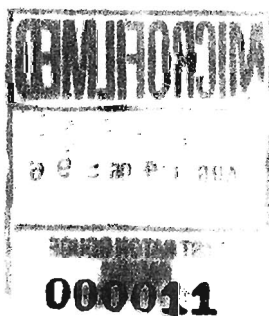
60. After nearly four months in jail, on February 24, 2003, Anderson filed his own motion for bond reduction. A hearing was set for March 19, 2003, but was continued until March 26, 2003, at which point the motion was denied from the bench.

61. Over six months after his arrest, Anderson was arraigned on May 9, 2003. At his arraignment Anderson met his PDO lawyer for the first time.

62. Anderson’s PDO lawyer did not visit or confer with him after this first meeting. Unable to contact his lawyer, Anderson wrote two letters to the Court, complaining, among other things, that on his trial date he was not even taken from the jail to the courthouse.

63. In October 2003, Anderson filed a motion to recuse his PDO attorney. Anderson noted that he had not had any contact with his lawyer in six months and that his lawyer had failed to appear even at Anderson’s bond reduction hearing.

64. Anderson’s trial was scheduled for November 3, 2003. As is typical of criminal trials in Calcasieu Parish, his trial was continued until March 8, 2004; on that date his trial was continued again. Presently Anderson remains confined in the CCC. His trial was continued again on September 7, 2004 to January 3, 2005.



65. Because of inadequate funding and excessive caseloads, Anderson has been and is being denied assistance of counsel in violation of the federal and Louisiana constitutions.

Robin LeBlanc

66. Plaintiff Robin LeBlanc was arrested on January 14, 2003. A pipe fitter and welder by trade, LeBlanc is a military veteran with no prior record. Initially unable to make his \$600,000 bond, LeBlanc has been confined in CCC since his arrest over one and a half years ago. His bond since has been revoked.

67. In December 2003, LeBlanc's mother filed an ethical conduct complaint against the attorneys in the PDO. LeBlanc's mother asserts that she has called the PDO "at least 75 times" but no attorney has ever returned her calls, and that "[t]his is America. Legal representation is the law. And yet, there is no adequate representation for my son."

68. The Louisiana Attorney Disciplinary Board notified the PDO lawyers of the complaint filed against them. In his mandatory response to the ethical complaint, the PDO's executive director noted that the caseloads for attorneys in the PDO, along with the general lack of resources available to the PDO, greatly affects the representation that PDO lawyers can provide their clients.

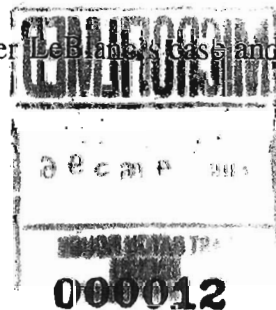
69. If a reasonable bond was set, LeBlanc would be able to go back to work and retain private counsel. Because he is being held in jail, LeBlanc cannot afford private counsel and is being represented by the PDO.

70. LeBlanc was not indicted until March 6, 2003 and his arraignment was scheduled for June of 2003. At the arraignment, a PDO lawyer was assigned to represent LeBlanc. LeBlanc called his lawyer countless times but was unable to reach him. To this day LeBlanc never met this lawyer, who no longer works in the PDO.

71. On August 12, 2003, LeBlanc filed a writ of habeas corpus and motion for bond reduction. On September 25, 2003 LeBlanc appeared before the court.

72. When he appeared before the judge, LeBlanc's PDO lawyer was not present. When LeBlanc told the judge how his public defender was entirely inaccessible to him, the judge assured LeBlanc that he would have the lawyer meet with LeBlanc. The lawyer never contacted LeBlanc.

73. Finally, the PDO Executive Director took over LeBlanc's case and a trial was scheduled for January 2004, but this trial has been postponed.



74. Because of inadequate funding and excessive caseloads, LeBlanc has been and is being denied assistance of counsel in violation of the federal and Louisiana constitutions.

Michael Guillory

75. Plaintiff Michael Guillory was gainfully employed as a radio announcer and disc jockey when he was arrested on August 29, 2002. Guillory has been confined in the CCC ever since. He is a client of the PDO and, after his arrest, a PDO lawyer was assigned to represent him.

76. After his lawyer filed an unsuccessful motion to have Guillory's bond reduced, Guillory had no contact with the PDO for six months. He tried numerous times to contact his lawyer but she was entirely inaccessible to him.

77. On January 22, 2003, Guillory's fiancée wrote a letter to the PDO's executive director, pleading with him to provide Guillory with some information on his case. On June 28, 2003, Guillory wrote his own letter to the PDO's executive director and implored him to provide any sort of update on Guillory's case.

78. At some point thereafter, the PDO executive director began to represent Guillory. He filed a speedy trial motion and the court set a trial date of September 8, 2003. Two days before the trial date, the District Attorney's office disclosed previously undisclosed material. The new information forced Guillory's lawyer to ask for a continuance and the trial was set for September 22, 2003. On that date the trial was continued again, and eventually a date of February 5, 2004 was set. On that date, the trial was continued for a third time and the court set a trial date of May 24, 2004. Guillory's trial then was rescheduled a fourth time, and presently is set for December 6, 2004.

79. Because of inadequate funding and excessive caseloads, Guillory has been and is being denied assistance of counsel in violation of the federal and Louisiana constitutions.

Timothy Williams

80. Plaintiff Timothy Williams was eighteen years old when he was arrested on January 28, 2003. Along with two co-defendants, Williams was placed in the CCC, where he has been confined ever since.

81. Williams does not know whether he is represented by the PDO, one of its conflicts attorneys or even if he is represented at all. In October of 2003, after Williams' privately retained counsel quit because Williams could not afford to pay him, Williams received word that a PDO lawyer would represent him.



82. Because the PDO was representing at least one of Williams' co-defendants, a conflict attorney should have been assigned to represent Williams.

83. Although he was not entirely sure who was representing him, Williams' trial date was set for November 17, 2003. On this date, however, he was not even taken from the jail to the courthouse. His trial was rescheduled for April 12, 2004; on this date, Williams was taken from the jail to the courthouse, but he was confined to the courthouse's holding cell and never stepped foot into the courtroom.

84. All available records indicate that Williams presently has no legal representation, and that he has been incarcerated for more than a year with no attorney assigned to represent him. Williams has given up trying talk to a lawyer in the PDO. He has called the PDO many times and has been told that his case is closed.

85. Because of inadequate funding and excessive caseloads, Williams has been and is being denied assistance of counsel in violation of the federal and Louisiana constitutions.

Ramon Leblanc

86. Plaintiff Ramon Leblanc was arrested on May 1, 2003 and became a client of the PDO almost immediately thereafter.

87. The District Attorney's Office did not file a bill of charges until December 3, 2003, after Leblanc had sat in jail for over seven months. After charges were filed against him, Leblanc called the PDO numerous times. Each time he called, he was instructed to hold the line but then was forced to hang up because the CCC-mandated fifteen minute time limit on phone calls had expired.

88. On February 9, 2004, Leblanc was arraigned via a video link from the CCC to the courthouse. After the arraignment, he finally spoke on the phone with the PDO lawyer assigned to his case, who told him to call back to set up a time for her to meet with him at the CCC. Leblanc called back numerous times, but never received any response.

89. On March 11, 2004, Leblanc filed a *pro se* motion to quash, but never received any response.

90. Because of inadequate funding and excessive caseloads, Leblanc has been and is being denied assistance of counsel in violation of the federal and Louisiana constitutions.

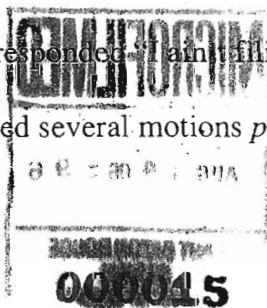


Jason Leger

91. Plaintiff Jason Leger had no criminal history and was gainfully employed when he was arrested on January 14, 2002.
92. Shortly thereafter, he became a client of the PDO, was arraigned on May 22, 2002 and entered a plea of Not Guilty.
93. Leger's trial was set for September 23, 2002. On that date, he was transferred to the courthouse, but was kept in a holding cell and did not so much as enter the courtroom.
94. Prior to his trial date, Leger met with his PDO lawyer only once, for less than three minutes. The extent of their meeting was Leger's lawyer asking him a few cursory questions and informing him of his trial date.
95. During this short meeting, Leger suggested that his lawyer file a motion for speedy trial. Leger's PDO lawyer replied that Leger had not yet been in jail long enough to file a speedy trial motion.
96. Leger's next trial date was set for November 8, 2002; when this date arrived, his trial was rescheduled for March 10, 2003. On March 6, 2003, a joint motion for continuance was filed and Leger's trial was rescheduled for early September, 2003. This trial date has been postponed numerous times, most recently on September 20, 2004. Leger's trial presently is scheduled for November 15, 2004, at which point Leger will have been incarcerated in CCC for more than two and a half years.
97. Numerous times and to no avail, Leger has attempted to speak with his PDO lawyer.
98. Leger has filed *pro se* motions for speedy trial, bond reduction and a motion to quash.
99. Because of inadequate funding and excessive caseloads, Leger has been and is being denied assistance of counsel in violation of the federal and Louisiana constitutions.

Carl Richard, Sr.

100. Plaintiff Carl Richard, Sr. was arrested on February 20, 2003, was released on bond, and was arrested again on September 15, 2003 and became a client of the PDO almost immediately thereafter.
101. Richard's PDO lawyer has made at least two troubling statements to Richard: On one occasion, Richard's lawyer told him that "They're going to give you life." When Richard asked his lawyer to file motions on his behalf, his lawyer responded "I ain't filing nothing because we ain't letting you go." Consequently, Richard has filed several motions *pro se*.





102. Richard tried to contact his lawyer by phone. On the rare occasions his lawyer took Richard's calls, he would tell Richard that he planned to meet with him but then would not visit Richard.

103. In fact, Richard has never met with his PDO lawyer outside of a courtroom. He has never had a private conversation with his lawyer except over the telephone, and, because telephone calls made by Named Plaintiffs and Members of the Plaintiff Class routinely are monitored and/or recorded by law enforcement officials at CCC, Richard never has held a verifiably private conversation with his lawyer.

104. Richard has not seen any papers, evidence or discovery related to his case or the charges against him. He filed a successful *pro se* motion for DNA testing, which is the rare exception in Calcasieu Parish.

105. Because of inadequate funding and excessive caseloads, Richard has been and is being denied assistance of counsel in violation of the federal and Louisiana constitutions.

Charlie Myers

106. Plaintiff Charlie Myers was arrested on August 11, 2003 and became a client of the PDO almost immediately thereafter. Prior to his arrest he worked at a home improvement store.

107. To date he has called the PDO over one hundred times but his lawyer has taken his call less than ten times. On numerous occasions the PDO has placed him on hold for longer than the CCC limit of fifteen minutes per phone call, and the phone automatically cut off. Myers has been trying unsuccessfully to get the PDO to file motions on his behalf.

108. Myers was not arraigned until February 9, 2004, nearly six months after his arrest. The PDO has conducted no investigation of his case.

109. Myers' trial was set for June 21, 2004. On this day, however, no trial took place. Rather, Myers was shown a police report from his alleged crime. He had difficulty understanding the report, however, and was not given an opportunity to speak with an attorney and have the report explained to him. His PDO lawyer had five other clients in the courtroom at the time.

110. Myers' trial was rescheduled for November 2, 2004.

111. Because of inadequate funding and excessive caseloads, Myers has been and is being denied assistance of counsel in violation of the federal and Louisiana constitutions.



Julian Solomon

112. Plaintiff Julian Solomon had no criminal record when he was arrested on July 24, 2003. He was placed in a hospital because of injuries sustained during his arrest.

113. Solomon was arraigned on February 11, 2004 and his trial was scheduled for May 10, 2004. This trial date has been rescheduled for November 10, 2004.

114. Solomon has had contact with the PDO only twice in over one year's time. He has never seen any papers relating to his case. The PDO has conducted no investigation.

115. In May 2004, Solomon's PDO lawyer filed a motion for bond reduction over Solomon's objections. The court denied the lawyer's motion and revoked Solomon's bond altogether. The PDO lawyer then told Solomon that he would talk to the DAO lawyer about procuring a plea for Solomon, but Solomon has heard nothing further about any possible plea.

116. Because of inadequate funding and excessive caseloads, Solomon has been and is being denied assistance of counsel in violation of the federal and Louisiana constitutions.

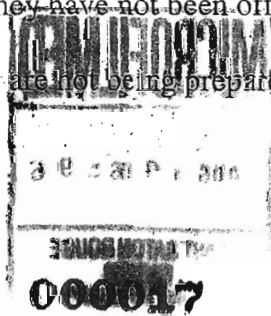
**Unless Enjoined, Defendants Will Continue to Violate the Constitutional Rights of the Named Plaintiffs and Members of the Plaintiff Class.**

117. As a result of Defendants' acts and omissions the Named Plaintiffs and the members of the Plaintiff Class have suffered or are at imminent risk of suffering harm.

118. Among other deprivations, Named Plaintiffs and members of the Plaintiff Class are effectively deprived of consultation and communication with their attorneys. As a result, Named Plaintiffs and members of the Plaintiff Class have made and will continue to make crucial decisions directly affecting their rights without having received constitutionally mandated advice from legal counsel.

119. The limited advice that the Named Plaintiffs and the members of the Plaintiff Class have received from their legal counsel has been issued without sufficient factual or legal investigation having been conducted by their attorneys. PDO lawyers often provide legal advice without command of the facts underlying the charges against their clients.

120. The Named Plaintiffs and the members of the Plaintiff Class thus have been unconstitutionally deprived of opportunities to present meaningful defenses. Consistently they waive their rights without legally adequate consultation or advice. They have been deprived of the services of investigators and expert witnesses. They have not been offered meaningful benefits in exchange for pleading guilty. Their cases are not being prepared for trial.



121. The facts lead to the invariable conclusion that Defendants will continue to violate the constitutional rights of the Named Plaintiffs and the members of the plaintiff class:

- a. Defendants have persisted in their wrongful conduct for many years;
- b. Defendants have persisted in this wrongful conduct despite actual and/or constructive knowledge that indigent defendants were being deprived of their right to counsel;
- c. Defendants have failed to take prompt and substantive action to fix Calcasieu Parish's indigent defense system.

## **VI. LEGAL CLAIMS**

### **Count One: United States Constitution, Sixth and Fourteenth Amendments.**

122. Paragraphs one through 121 are incorporated fully herein.

123. Defendants' failure to provide Plaintiffs and Members of the Plaintiff Class with legal representation violates plaintiffs' rights under the Sixth and Fourteenth Amendments to the United States Constitution, including, but not limited to, their rights to counsel and due process of law.

124. Unless enjoined by the Court, Defendants will continue to violate and cause the violation of the constitutional rights of the Class Plaintiffs and the Class Members.

### **Count Two: Article I, Sections 2 and 13 of the Louisiana Constitution of 1974**

125. Paragraphs one through 121 are incorporated fully herein.

126. Defendants' failure to provide Plaintiffs and Members of the Plaintiff Class with legal representation violates plaintiffs' rights under Article I, Sections 2 and 13 of the Louisiana Constitution of 1974.

127. Unless enjoined by the Court, Defendants will continue to violate and cause the violation of the state constitutional rights of the Class Plaintiffs and the Class Members.

### **Count Three: 42 U.S.C. § 1983**

128. Paragraphs one through 121 are incorporated fully herein.

129. Defendant Kathleen Blanco's failure to provide Plaintiffs and Members of the Plaintiff Class with legal representation, which violates plaintiffs' rights under the Sixth and Fourteenth Amendments to the United States Constitution, results from acts and omissions performed by her under the color of state law.



**VI. PRAYER FOR RELIEF**

WHEREFORE, plaintiffs respectfully request the following relief:

- 130. Certification of the class as defined above;
- 131. A declaration that Defendants are depriving Class Members of their rights to the assistance of counsel pursuant to the Sixth and Fourteenth Amendments to the United States Constitution and Article I, Section 13 of the Louisiana Constitution of 1974 in providing indigent defense services in Calcasieu Parish;
- 132. The issuance of a permanent injunction requiring Defendants to provide a Public Defender program in Calcasieu Parish that is consistent with the Sixth and Fourteenth Amendments to the United States Constitution, and Article I, Sections 2 and 13 of the Louisiana Constitution of 1974.
- 133. For an award of plaintiffs' costs and attorneys' fees; and
- 134. Any such further relief as this Court deems necessary or proper to alleviate the violations set forth herein.

Respectfully Submitted,

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