

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION**

CALVIN WILSON, DAVID BLUME, and)
ASIA MARSHALL, individually and)
on behalf of all others similarly situated,)

Plaintiffs,)

v.)

CASE NO. 1:15-cv-00402-PPS-SLC

ALLEN COUNTY COUNCIL,)
ALLEN COUNTY BOARD OF)
COMMISSIONERS, and ALLEN COUNTY)
PUBLIC DEFENDER BOARD,)

Defendants.)

THIRD AMENDED CLASS ACTION COMPLAINT

Plaintiffs, Calvin Wilson, David Blume, and Asia Marshall, individually and on behalf of all others similarly situated, allege Defendants Allen County Council, Allen County Board of Commissioners, and Allen County Public Defender Board have subjected them to constructive denial of counsel and as follows:

I. INTRODUCTION

1. The Sixth and Fourteenth Amendments to the United States Constitution and Section 13(a) of Article 1 of the Indiana State Constitution guarantee indigent defendants charged with crimes the right to effective assistance of counsel. The right is fundamental and essential to a fair trial. *See Gideon v. Wainwright*, 372 U.S. 335, 344 (1963);¹ *Argersinger v.*

¹ “Governments, both state and federal, quite properly spend vast sums of money to establish machinery to try defendants accused of crime. Lawyers to prosecute are everywhere deemed essential to protect the public’s interest in an orderly society. Similarly, there are few defendants charged with crime, few indeed, who fail to hire the best lawyers they can get to prepare and present their defenses. That government hires lawyers to prosecute and defendants who have the money hire lawyers to defend are the strongest indications of the widespread belief that lawyers in criminal courts are necessities, not luxuries.”

Hamlin, 407 U.S. 25 (1972); *Winn v. State*, 232 Ind. 70, 111 N.E.2d 653 (Ind. 1953).

2. The right of an indigent defendant to effective assistance of counsel has been long recognized in the State of Indiana. *See Webb v. Baird*, 6 Ind. 13, 18 (Ind. 1854).²
3. Defendants, who operate the public defense system of Allen County, Indiana, have a duty to ensure individuals charged with crimes, including misdemeanor crimes, are provided effective assistance of counsel.
4. However, Defendants for years in Allen County have operated a constitutionally, structurally, and systemically deficient public defender system for indigent individuals charged with misdemeanor crimes. Systemic failures are numerous and include, in particular, excessive attorney caseloads. These failures have led to the denial of and impossibility of effective assistance of counsel and resulted in the constructive denial of counsel to misdemeanor defendants who are clients of the Allen County Public Defender's Office.
5. Despite knowing of the deficiencies of their public defense system for at least ten (10) years,³ including excessive attorney caseloads, Defendants have failed to take reasonable steps to protect the constitutional rights of those affected.
6. As a result, indigent individuals charged with misdemeanor crimes in Allen County have suffered and continue to suffer harm as a result of Defendants' violations of their constitutional rights and constructive denial of the right to counsel.

² "It is not to be thought of in a civilized community . . . that any citizen put in jeopardy of life or liberty should be debarred of counsel because he is too poor to employ such aid. No court could be expected to respect itself to sit and hear such a trial."

³ Fred McKissack, *Maximum Caseload: Misdemeanor Public Defenders Must Scramble*, THE FORT WAYNE JOURNAL GAZETTE (April 3, 2005).

7. Therefore, Plaintiffs bring this class action lawsuit for injunctive and declaratory relief to prevent further constitutional violations and to protect the constitutional rights of all indigent individuals charged with misdemeanor crimes in the courts of Allen County.

II. JURISDICTION AND VENUE

8. This suit is brought under 42 U.S.C. § 1983 to redress the deprivation of rights secured by the United States Constitution and the Indiana State Constitution.
9. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343(a).
10. This Court has the authority to enter declaratory judgment and to provide preliminary and permanent injunctive relief pursuant to Rules 57 and 65 of the Federal Rules of Civil Procedure and 28 U.S.C. §§ 2201 and 2202.
11. Venue is proper in this district pursuant to 28 U.S.C. §1391(b). Defendants have offices within the district and the events and omissions that have given rise to and continue to give rise to Plaintiffs' injuries occurred and continue to occur within this district.

III. PARTIES

12. Class Plaintiffs Calvin Wilson ("Wilson"), David Blume ("Blume"), and Asia Marshall ("Marshall") are Allen County, Indiana residents and indigent individuals charged with misdemeanor crimes in Allen County as of the filing of the original Complaint in this action. As of the filing of the original Complaint in this action, Class Plaintiffs have been assigned attorneys from the Allen County Public Defender's Office and face incarceration and the loss of thousands of dollars should they be convicted or plead guilty. In their cases,⁴ Class Plaintiffs' assigned attorneys:

⁴ *State of Indiana v. Calvin L Wilson*, Case No. 02D05-1507-CM-002566 (Allen Co., Ind. Super. Ct. filed July 6, 2015); *State of Indiana v. David R Blume*, Case No. 02D04-1511-CM-004570 (Allen Co., Ind. Super. Ct. filed

- a. Have caseloads consisting of hundreds of additional misdemeanor cases;
 - b. Have not meaningfully conducted any legal research into Class Plaintiffs' cases;
 - c. Have not meaningfully investigated Class Plaintiffs' charges;
 - d. Have not filed any substantive motions in the cases;
 - e. Have not held one (1) confidential in-person meeting with Class Plaintiffs outside a courthouse; and
 - f. Have devoted less than one (1) hour in whole to the defense of each of Class Plaintiffs' cases.
13. Defendant Allen County Council is the elected body of Allen County that sets budgets, appropriates funds, and makes final financial decisions for Allen County and its agencies. These agencies include the Allen County Public Defender's Office. Defendant Allen County Council, along with Allen County Board of Commissioners, is responsible for approving staffing levels at the Allen County Public Defender's Office.
- a. Defendant Allen County Council is the sole agency legally responsible for final approval of funding the misdemeanor division of the Allen County Public Defender's Office.
14. Defendant Allen County Board of Commissioners is the elected body of Allen County that serves as the county's executive and legislative branches, makes and passes laws, sets employee polices, and signs service contracts for county agencies. These agencies include the Allen County Public Defender's Office.

October 23, 2015); *State of Indiana v. Asia Marshall*, Case No. 02D06-1501-CM-000132 004570 (Allen Co., Ind. Super. Ct. filed Jan. 12, 2015).

- a. Defendant Allen County Board of Commissioners is the sole agency with legal authority to terminate members of the Allen County Public Defender Board.
15. Defendant Allen County Public Defender Board is the appointed body of Allen County that supervises and manages the county's public defense system, primarily through the Allen County Public Defender's Office.

IV. CLASS ACTION ALLEGATIONS

16. Class Plaintiffs bring this action pursuant to Federal Civil Rule of procedure 23(a) and (b)(2) on behalf of himself and all others similarly situated (collectively, "Class Members") as members of the following proposed Class:

All individuals who have or will have misdemeanor criminal cases pending in the courts of Allen County, Indiana, who have or will have an attorney assigned to them due to indigency and have not been convicted or entered into a plea agreement.

17. The Class is so numerous that individual joinder of all Class Members is impracticable. Fed. R. Civ. P. 23(a)(1). At any point in time, thousands of individuals have misdemeanor criminal cases pending in Allen County courts, at least hundreds of which are indigent and rely on an appointed attorney due to indigency.
18. There are questions of law and fact common to the Class. Fed. R. Civ. P. 23(a)(2). The questions of law and fact common to all Class Members include but are not limited to:
- a. Whether Defendants have a duty to provide indigent individuals charged with misdemeanor crimes in Allen County effective assistance of counsel;
 - b. Whether Defendants have breached their duties; and
 - c. Whether Class Plaintiffs and Members are being subject to constructive denial of the right to counsel.

19. Class Plaintiffs' claims are typical of the claims of the Class. Fed. R. Civ. P. 23(a)(3).
20. Class Plaintiffs will fairly and adequately protect the interests of the Class. Fed. R. Civ. P. 23(a)(4). There are no conflicts between the Class Plaintiffs and other putative Class Members. Class Plaintiffs will vigorously prosecute this action on behalf of the Class. Class Plaintiff is represented by competent counsel, Christopher C. Myers & Associates, who will vigorously prosecute the case on behalf of the Class.
21. Defendants have acted or refused to act on grounds that are generally applicable to the entire Class. Fed. R. Civ. P. 23(b)(2).
22. The claims asserted in this Complaint are capable of repetition while evading review.
23. There is continuing and substantial public interest in these matters.⁵

V. FACTS

A. Defendants Have a Duty to Provide Effective Assistance of Counsel for Indigent Individuals Charged with Misdemeanor Crimes in Allen County

24. Defendants have a constitutional duty to provide indigent individuals charged with misdemeanors crimes in Allen County effective assistance of counsel.
25. To ensure effective assistance of counsel for indigent individuals in Indiana, state statute provides that counties generally must establish systems for the provision of public defense at the trial court level. Ind. Code Ann. §§ 33-40-7-1 *et seq.*
26. Defendant Allen County has chosen to provide for indigent criminal representation

⁵ *Wilson v. State*, 222 Ind. 63, 51 N.E.2d 848, 854-55 (Ind. 1943) ("This court has consistently held that, under the Constitution of Indiana, there can be no valid judgment against a defendant in a criminal case unless he has been offered, and, if so desired, provided with, adequate counsel The spirit of these constitutional provisions requires that an accused must have something more than a perfunctory representation Whether he is paid by the county or the accused, whether he is paid much or little, or nothing at all, the attorney's obligation to his client is the same." (citations and quotations omitted)).

primarily through the Allen County Public Defender's Office. This office is supervised and managed by Defendant Allen County Public Defender Board. *Id.*; Allen County, Ind. Code § 1-17-1 *et seq.*

27. By statute, the Allen County Public Defender's Office must have staff necessary to operate the services of a public defender. Ind. Code Ann. § 33-40-7-7(2). Staffing levels are to be recommended by Defendant Allen County Public Defender Board and approved by Defendants Allen County Council and Allen County Board of Commissioners. *Id.*
28. Defendant Allen County Board of Commissioners established Defendant Allen County Public Defender Board by ordinance in 2003 to provide for the legal representation as required by law of indigent individuals charged with crimes in the county. Allen County, Ind. Code § 1-17-1. The duties of the Allen County Public Defender Board include preparing a comprehensive plan for indigent defense services, establishing policy and procedures for the provision of such services, monitoring the expenditures of the Allen County Public Defender's Office, and recommending an annual operating budget to Defendant Allen County Council. *Id.* at 1-17-3, 4.
29. By state statute and county ordinance, Defendant Allen County Public Defender Board adopted Allen County's Comprehensive Plan for Indigent Defense Services in 2003 to establish how the county would operate its public defense system. The Comprehensive Plan is attached and incorporated into this complaint as Exhibit A.
30. Allen County's Comprehensive Plan for Indigent Defense Services provides that:
 - a. The Allen County Public Defender's Office will be the "primary method of providing criminal defense services in Allen County." *Id.* at 1.

- b. The Allen County Public Defender’s Office will comply with legal representation standards established by the state. *Id.* These standards, known as the Indiana Public Defender Commissions Standards for Indigent Defense Services, are attached and incorporated into this complaint as Exhibit B.
- c. Attorneys for the Allen County Public Defender’s Office will not carry excessive caseloads that “interfere with the rendering of quality representation or lead to the breach of professional obligations.” Exhibit A at 6.
- d. Attorneys for the Allen County Public Defender’s Office handling misdemeanor cases on a part-time basis will generally not carry more than 150 cases within a twelve-month period. *Id.* This caseload limit mirrors state standards. Ex. B at 14-16.
- e. Attorneys for the Allen County Public Defender’s Office will notify the managing attorney of their office, the County Public Defender, if their caseloads become excessive. Ex. A at 6.
- f. The County Public Defender will notify county judges “and refuse to accept the appointment of additional cases” when attorney caseloads become excessive. *Id.* at 6-7.⁶

B. Defendants’ are Systemically Failing to Provide Effective Assistance of Counsel to Indigent Individuals Charged with Misdemeanor Crimes in Allen County and Subjecting These Individuals to Constructive Denial of Counsel

⁶ The limitation on caseload sizes is critical to the operation of an effective county public defender office. According to the Indiana Public Defender Commission, “Not even the most able and industrious lawyers can provide quality representation when their workloads are unmanageable. Excessive caseloads, moreover, lead to attorney frustration, disillusionment by clients, and undermine the integrity of the adversary system of criminal justice.” Ex. B at 17.

31. Defendants – under the U.S. and Indiana constitutions, Indiana statute, local ordinance, state standards, and their own comprehensive plan of operation – are systemically failing to provide effective assistance of counsel to indigent individuals charged with misdemeanor crimes in Allen County.

i. Defendants fail to properly staff and fund misdemeanor cases

32. Approximately 5,800 criminal misdemeanor cases are filed in Allen County courts annually, according to Indiana Division of State Court Administration. Of those, about one-third to one-quarter are assigned to attorneys with the Allen County Public Defender's Office. *See Exhibit C.*⁷

33. Defendants, however, fail to properly staff and fund public defense for misdemeanor clients. Among other things:

- a. The Public Defender's Office employs no full-time attorneys to represent indigent individuals charged with misdemeanor crimes. *Id.*
- b. The Public Defender's Office devotes a very small amount of its expenditures to counsel for misdemeanor criminal clients. The amount expended on salaries for misdemeanor attorneys ranges from between 1 and 3 percent of the office's total spending. *Id.*
- c. The Public Defender's Office contracts with only three part-time attorneys, and at times a fourth, for the more than 1,500 misdemeanor criminal cases it is assigned

⁷ This exhibit collects Allen County's 2010 to 2014 end-of-the-year reports to the Indiana Public Defender Commission, which include indigent defense expenditures and caseloads. The purpose of these reports is to request reimbursement from the state for legal expenses. Indiana counties cannot currently request state reimbursement for misdemeanor cases. In each and every one of these reports, Allen County acknowledges that its misdemeanor attorneys are carrying excessive caseloads. In none of these reports does Allen County propose to redress excessive caseloads or request any state assistance, financial or otherwise, for excessive caseloads.

every year. *Id.*

- d. Part-time misdemeanor public defense attorneys earn between \$8,000 and \$24,000 annually, despite each handling hundreds of public defense cases and hundreds of other cases in their private practices. *Id.*

ii. Defendants' misdemeanor attorney caseloads are grossly excessive

34. Attorneys with the Allen County Public Defender's Office assigned to misdemeanor cases carry caseloads that are so excessive as to render effective assistance of counsel impossible and to constructively deny Class Plaintiffs and Members assistance of counsel. Among other things:

- a. Part-time misdemeanor attorneys carry caseloads that are double, triple, or even quadruple the maximum 150 cases allowed by the standards of the Indiana Public Defender Commission and Defendants' own Comprehensive Plan for Indigent Defenses Services. *See* Ex. A, B, and C.
- b. In 2014, the average part-time misdemeanor attorney's caseload ranged between 343 and 560 cases, which is representative of the years surveyed from 2010 to 2014. Ex. C. In 2010 and again 2011, at least one attorney for the given year represented over 600 indigent misdemeanor criminal cases. *Id.*
- c. Additionally, each of Defendants' part-time misdemeanor attorneys maintain active private law practices, greatly expanding the number of clients they represent overall.
- d. To be sure, between January 1, 2013 and August 1, 2015, Defendants' four active part-time misdemeanor attorneys appeared on more than 6,250 cases between their

public defense work and private practice clients. One attorney alone appeared on more than 1,950 cases. All attorneys each appeared at least 1,100 cases. A spreadsheet of these cases is attached as Exhibit D and incorporated into this Complaint.

iii. Defendants fail to provide indigent misdemeanor clients with adequate counsel and staff services

35. Defendants' lack of investment in the public defense of misdemeanor clients is reflected in the few legal services offered them. Among other things:

- a. Attorneys generally do not devote sufficient time to prepare and legally advise clients;
 - b. Attorneys generally do not devote sufficient time to analyze the facts or law pertinent to clients' charges;
 - c. Attorneys rarely invest more than one (1) hour of time in each of their cases;
 - d. Attorneys rarely file motions in cases, except to request continuances of time;
 - e. Attorneys rarely meet with clients except briefly and immediately prior to hearings;
 - f. Attorneys rarely meet with clients in a confidential setting outside a courthouse;
 - g. Attorneys rarely meet with clients while clients are in custody;
 - h. Attorneys rarely succeed, or even seek, to have all charges dismissed in a case;
 - i. Attorneys rarely take cases to trial, and, when they do, are not adequately prepared;
 - j. Attorneys rarely, if ever, sufficiently investigate charges made against their clients;
- and
- k. The bulk of attorneys' representation generally consists of a brief attorney-client meeting inside a courthouse to recommend that the client accept the plea agreement

offered by a prosecutor.

36. Further:

- a. Attorneys have never, even though required by the county's Comprehensive Plan for Indigent Services, notified the County Public Defender that their caseloads have become excessive; and
- b. The County Public Defender, though having actual knowledge of excessive caseloads, has never notified county judges of excessive caseloads nor refused to accept the appointment of additional cases based upon excessive caseloads as required by the county's Comprehensive Plan for Indigent Services.

37. Additionally, Defendants maintain few support personnel to assist with legal services for clients charged with misdemeanor crimes. Among other things:

- a. Defendants' Public Defender's Office self-identifies as an office with "inadequate support staff," *see* Ex. C;
- b. Defendants' employ zero paralegals in the Public Defender's Office for all of its more than thirty attorneys, including misdemeanor attorneys;
- c. Defendants' employ one (1) secretary in the Public Defender's Office for all of its more than thirty attorneys, including misdemeanor attorneys; and
- d. Though Defendants' employ seven (7) investigators in the Public Defender's Office, they generally devote no to little time to investigating the charges against misdemeanor clients.

C. Defendants' Know They are Constructively Denying Assistance of Counsel to Indigent Misdemeanor Clients but have not Taken Corrective Action

38. Defendants know they have provided and continue to provide indigent individuals charged

with misdemeanor crimes ineffective assistance of counsel.

39. However, Defendants have not sought to increase funding for misdemeanor public defense or sought to meaningfully supervise or correct the system despite their duties to do so.

Among other things:

- a. Defendant Allen County Council has not allocated necessary funds to provide effective assistance of counsel to indigent individuals charged with misdemeanor crimes;
 - b. Defendant Allen County Board of Commissioners has not passed laws to ensure that the county provides constitutionally effective assistance of counsel to indigent individuals charged with misdemeanor crimes nor ever exercised legal authority over the Public Defender Board to bring the services of the Public Defender's Office into legal compliance; and
 - c. Defendant Allen County Public Defender Board has not adequately supervised the Allen County Defender's Office and recommended annual budgets as to provide effective assistance of counsel to misdemeanor clients.
40. Defendants, as a whole, have taken little or no action to properly fund, regulate, or manage public defense in Allen County is such a way to provide effective assistance of counsel to indigent individuals charged with misdemeanor crimes, even though they are regularly notified of systematic failures, including excessive attorney caseloads.

D. Defendants' Constructive Denial of Counsel is Harming Class Members

41. Defendants have breached their constitutional duties to provide effective public defense to Class Members. This has deprived Class Members of, among other things:

- a. Adequate advise, consultation, and communication with attorneys;
- b. The ability to make informed decisions about their legal rights;
- c. Meaningful opportunity to present defenses against charges;
- d. Proper attorney assistance prior to waiving of rights; and
- e. Proper, prompt, and accurate information regarding plea alternatives, jail alternatives, and consequences of plea agreements and criminal sentences.

E. Defendants' Constructive Denial of Counsel is Harming Class Plaintiffs

42. Because Defendants have breached their constitutional duties by establishing and perpetuating a public defense system that deprives indigent individuals charged with misdemeanor crimes of the effective assistance of counsel, Class Plaintiffs are suffering harm.

43. At the time of the filing of the original Complaint in this action, Class Plaintiff Wilson is suffering harm and his constitutional rights are being violated do to the acts and omissions of Defendants.⁸ Among other things:

- a. On July 6, 2015, Plaintiff Wilson was charged with one count of Class A Misdemeanor Battery, a crime carrying a sentence of up to one (1) year imprisonment and a \$5,000 fine;

⁸ The charges of Plaintiffs Wilson and Blume have been dismissed since the time of the original filing of this Complaint on December 31, 2015 but his original allegations should related back to the original date of filing and so allow them to remain proper Plaintiffs in this action. *See Gerstein v. Pugh*, 420 U.S. 103, 111 n. 11 (1975) (action not moot where it is uncertain whether class representative would be detained long enough for the judge to rule on class certification); *see also Susman v. Lincoln American Corporation*, 587 F.2d 866, 870 (7th Cir. 1978) (“There may be cases in which the controversy involving the named plaintiffs is such that it becomes moot as to them before the district court can reasonably be expected to rule on a certification motion. In such instances, whether the certification can be said to ‘relate back’ to the filing of the complaint may depend upon the circumstances of the particular case and especially the reality of the claim that otherwise the issue would evade review.” (quoting *Sosna v. Iowa*, 419 U.S. 393, 402 n. 11)).

- b. On the same day, Plaintiff Wilson was assigned an attorney from the Allen County Public Defender's Office;
 - c. On July 21, 2015, Plaintiff Wilson had a court hearing on the charge, but:
 - i. Plaintiff Wilson's attorney had no contact with him prior to the hearing;
 - ii. Plaintiff Wilson's attorney had no contact with him during the hearing;
 - iii. Plaintiff Wilson's attorney contacted him only after the hearing when, because Plaintiff Wilson's attorney had not contacted or spoken for him, the court nearly issued a warrant for his arrest for failure to appear at the hearing; and
 - iv. When Plaintiff Wilson at their next brief meeting on July 28, 2015, he requested a copy of the probable cause affidavit in his case to be informed of the charge against him, Plaintiff Wilson's attorney refused to provide him a copy and told him that, if he chose, he could obtain such a copy from the court.
 - d. Plaintiff Wilson's attorney to date has filed no motions in his case other than requests for continuance;
 - e. Plaintiff Wilson's attorney has never met with Plaintiff Wilson aside from brief encounters inside a courthouse; and
 - f. Despite Plaintiff Wilson's requests, his attorney has failed to meaningfully investigate the charge against him, advise him on his rights, and provide him adequate counsel.
44. Class Plaintiff Blume is suffering harm and his constitutional rights are being violated due

to the acts and omissions of Defendants. Among other things:

- a. On October 23, 2015, Plaintiff Blume was charged with one count of Class A Misdemeanor Domestic Battery, a crime carrying a sentence of up to one (1) year imprisonment and a \$5,000 fine;
- b. However, Plaintiff Blume did not meet with his public defender for the first time until January 2016;
- c. On January 19, 2016, Plaintiff Blume for the first time had the opportunity to discuss his case with his attorney, but:
 - i. This conversation was held within a courthouse; and
 - ii. This conversation was held without his public defender having meaningfully investigated the facts or law concerning Plaintiff Blume's case.
- d. Nevertheless, Plaintiff Blume's attorney instructed him to accept an agreement to plead guilty to his charge. Plaintiff Blume notified his attorney he was innocent of the charge and refused his attorney's instructions;
- e. Since that time, Plaintiff Blume's attorney to date has filed no motions in his case other than requests for continuance;
- f. Plaintiff Blume's attorney has never met with Plaintiff Blume aside from brief encounters inside a courthouse; and
- g. Despite Plaintiff Blume's requests, his attorney has failed to meaningfully investigate the charge against him, advise him on his rights, and provide him adequate counsel.

45. Class Plaintiff Marshall is suffering harm and his constitutional rights are being violated due to the acts and omissions of Defendants. Among other things:

- a. On January 12, 2015, Plaintiff Marshall was charged with one count of Class A Misdemeanor Domestic Battery, a crime carrying a sentence of up to one (1) year imprisonment and a \$5,000 fine, and one count of Class B Disorderly Conduct;
- b. On March 9, 2016, Plaintiff Marshall, a single mother, was appointed a public defender after running out of funds for private counsel;
- c. Plaintiff Marshall is innocent of the charges against her and refused to plea guilty to either charge through any agreement;
- d. As a result, on June 29, 2016, a jury trial was held in her case;
- e. However, at the jury trial held after Plaintiff Marshall refused to accept any plea agreement, Plaintiff Marshall was constructively denied counsel due to her public defender's excessive caseload and Defendants' wrongdoings;
- f. At her trial, her public defender:
 - i. Called no witnesses;
 - ii. Introduced no evidence;
 - iii. Refused to permit her to testify despite her demand to do so; and
 - iv. Refused to cross-examine any but one (1) of the prosecution's witnesses;
- g. Because of the constructive denial of counsel, Plaintiff Marshall was convicted of both charges;
- h. At her sentencing, her attorney offered no argument for a lenient sentence;
- i. At her sentencing, Plaintiff Marshall was forced herself without assistance of her

attorney to request an appeal;

- j. After her sentencing, Plaintiff Marshall was incarcerated;
- k. Her case is now on appeal where, because she is unable to afford private counsel, she is represented by an attorney with the Allen County Public Defender's Office.

F. Plaintiffs Face a Continuing Risk their Constitutional Rights Will be Violated

46. As a result of Defendants' acts and omissions, individually named and class member Plaintiffs have suffered or is at imminent and serious risk of suffering harm because:

- a. Defendants have persisted in a wrongful course of conduct over many years;
- b. Defendants have persisted in a wrongful course of conduct even though they had actual knowledge indigent individuals charged with misdemeanor crimes were being deprived of their constitutional rights; and
- c. Defendants have failed to take proper, if any, action to correct the systematic failures of their public defense system.

47. As a result of Defendants' acts and omissions, including the policies, practices, and procedures for indigent individuals charged with misdemeanor crimes in Allen County courts, individually named and class member Plaintiffs have suffered or is in imminent and serious risk of suffering harm.

48. This harm includes not only the risk of fine and imprisonment, but collateral consequences of a criminal conviction.⁹

⁹ *Argersinger v. Hamlin*, 407 U.S. 25, 47-48 (1972) (Powell, J., concurring) ("The consequences of a misdemeanor conviction, whether they be a brief period served under the sometimes deplorable conditions found in local jails or the effect of a criminal record on employability, are frequently of sufficient magnitude not to be casually dismissed by the label 'petty.' Serious consequences also may result from convictions not punishable by imprisonment. Stigma may attach to a drunken driving conviction or a hit-and-run escapade. Losing one's driver's license is more serious for some individuals than a brief stay in jail.").

49. These consequences of conviction may include loss of employment, public benefits, housing, immigration status, and driving privileges.

50. Misdemeanor attorneys of the Allen County Public Defender's Office are ethically bound to advise indigent defendants of these consequences when presenting a plea agreement to their clients, though regularly fail to do so.¹⁰

51. Moreover, misdemeanor attorneys of the Allen County Public Defender's Office must represent their indigent clients under the same ethical standards under which they represent their private clients, though regularly fail to do so.¹¹

VI. CAUSES OF ACTION – COUNT ONE

Violation of the Sixth and Fourteenth Amendments to the United States Constitution

52. Acting under color of law, Defendants' actions have caused and are causing systematic and constructive violations of Plaintiffs' rights to the effective assistance of counsel under the Sixth and Fourteenth Amendments to the United States Constitution.

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

VII. CAUSES OF ACTION – COUNT TWO

Violation of Section 13(a) of Article 1 of the Indiana State Constitution

54. Acting under color of law, Defendants' actions have caused and are causing systematic and constructive violations of Plaintiffs' rights to the effective assistance of counsel under the

¹⁰ See, e.g., ABA STANDARDS FOR CRIMINAL JUSTICE: PLEAS OF GUILTY 14-3.2(f) (3d ed. 1997) (“to the extent possible, [to] determine and advise the defendant, sufficiently in advance of the entry of any plea, as to the possible collateral consequences that might ensue from the entry of the contemplated plea”).

¹¹ ABA Comm. on Ethics and Prof'l Responsibility, Formal Op. 06-441 (2006), available at http://www.abanet.org/cpr/06_441.pdf.

Section 13(a) of Article 1 of the Indiana State Constitution.

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

VIII. PRAYER FOR RELIEF

Wherefore, Plaintiffs respectfully request the Court:

- A. Certify the class as defined above;
- B. Declare that Defendants are subjecting Class Plaintiffs and Class Members to the constructive denial of counsel in violation of the Sixth and Fourteenth Amendments to the United States Constitution and Section 13(a) of Article 1 of the Indiana State Constitution;
- C. Issue a preliminary and permanent injunction restraining Defendants from violating the Sixth and Fourteenth Amendments to the United States Constitution and Section 13(a) of Article 1 of the Indiana State Constitution in the provision of public defense services to indigent individuals charged with misdemeanor crimes;
- D. Issue a preliminary and permanent injunction enjoining Defendants from making expenditures of funds on indigent defense services likely to result in violations of the constitutional rights of indigent individuals charged with misdemeanor crimes;
- E. Award Plaintiffs' costs and attorney fees; and
- F. Grant all other just and proper relief.

Respectfully,

CHRISTOPHER C. MYERS & ASSOCIATES

/s/ David W. Frank

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CERTIFICATE OF SERVICE

I certify that on the date stamped above a true and correct copy of the foregoing document was served electronically via CM/ECF to counsel of record.

s/David W. Frank

David W. Frank