

STATE OF INDIANA)
)
COUNTY OF MARION)
)
)
)

MARION COUNTY CIVIL COURT
CAUSE

KENNETH ALFORD, TERRY HASKET,)
RICHARD DANIELS, RICHARD BUNTON,)
ANTHONY OWENS, KEITH NYE, and)
WARDELL STRONG, on behalf of themselves)
and all others similarly situated,)

Plaintiffs,)

v.)

JOHNSON COUNTY COMMISSIONERS,)
in their official capacities,)
THE HONORABLE MARK LOYD,)
in his official and individual capacities,)
THE HONORABLE KEVIN BARTON,)
in his official and individual capacities,)
THE HONORABLE LANCE HAMNER,)
in his official and individual capacities,)
THE HONORABLE CYNTHIA EMKES,)
in her official and individual capacities,)
JOHN P. WILSON, ESQ.,)
MICHAEL BOHN, ESQ.,)
ANDREW EGGERS, ESQ.,)
JOHN NORRIS, ESQ.,)
DANIEL VANDIVIER, ESQ.,)
J. ANDREW WOODS, and)
MATTHEW SOLOMON,)

Defendants.)

CLASS ACTION COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Come now Plaintiffs Kenneth Alford, Terry Hasket, Richard Daniels, Richard Bunton,
Anthony Owens, Keith Nye, and Wardell Strong, on behalf of themselves and all others similarly

situated ("Plaintiffs"), by counsel, upon knowledge with respect to their own acts and circumstances, and on information and belief as to other matters, and make their Complaint for Declaratory and Injunctive Relief, and damages, alleging as follows:

I. INTRODUCTION

1. The Sixth and Fourteenth Amendments to the United States Constitution and Article 1, Section 13(a) of the Indiana State Constitution guarantee indigent persons charged with crimes the right to effective assistance of counsel.

2. The right to counsel when facing criminal charges is fundamental and is essential to a fair trial. *See Gideon v. Wainwright*, 372 U.S. 335, 342-45, 83 S. Ct. 792, 9 L. Ed. 2d 799 (1963); *Argersinger v. Hamlin*, 407 U.S. 25, 37, 92 S. Ct. 2006, 32 L. Ed. 2d 530 (1972).

3. Defendants, Johnson County Commissioners ("Commissioners") and Honorable Judges ("Judges"), are constitutionally required to operate a public defense system that provides effective assistance of counsel to indigent persons charged with crimes.

4. The Commissioners are responsible for establishing, implementing, and maintaining their public defense system.

5. Defendants have violated the constitutional rights of Plaintiffs, and all others similarly situated, by operating a public defense system that regularly and systematically deprives indigent persons of the right to assistance of counsel.

6. Defendants have:

- a. Failed to impose reasonable caseload limits on public defenders;
- b. Failed to monitor and oversee the public defense system;
- c. Failed to provide adequate funds for public defense;

- d. Implemented a system where public defenders enter into contractual agreements with judges, thus compromising the independence of the public defenders; and
- e. Failed to provide representation at all critical stages of prosecution.

As a result of these systemic and structural deficiencies, Defendants have constructively denied indigent defendants of the right to counsel that is guaranteed under the Constitution and affirmed under *Gideon*.

7. The United States Supreme Court has approved caseloads of 150 felonies or 400 misdemeanors for full time public defenders. *Scott v. Illinois*, 440 U.S. 367, 385 n. 16 (1979) (Brennan, J., dissenting) (simply citing a published standard: “The National Advisory Commission on Criminal Justice Standards and Goals adopted a maximum caseload standard of 150 felony cases or 400 misdemeanor cases per attorney per year. National Advisory Commission on Criminal Justice Standards and Goals, Courts, Standard 13.12, pp. 276-277 (1973).”)

8. The Indiana Public Defender Commission has published Standards for Indigent Defense Services in Non-Capital Cases, which standards list maximum caseloads for counsel with adequate support staff as 150 felony cases and 400 misdemeanor cases for full time public defenders and 75 felony cases or 200 misdemeanor cases for part-time (50%) public defenders. INDIANA PUBLIC DEFENDER COMMISSION, Standards for Indigent Defense Services in Non-Capital Cases, 16, Table 3 (last amended June 18, 2014), *available at* <http://www.in.gov/judiciary/pdc/files/indigent-defense-non-cap.pdf>. For counsel without adequate support staff (which is defined in Table 2 of the document), the felony caseload limits

are 120 for full time counsel and 60 for part-time counsel; the misdemeanor limits are 300 for full time counsel and 150 for part-time counsel. *Id.* at 15, Table 1.

9. Despite knowing that Johnson County part-time public defenders carry caseloads far in excess of these limits, Defendants Johnson County Commissioners and Judges have taken no steps to mitigate the situation.

10. Despite knowing of the deficiencies in their public defense system, Defendants have failed to take reasonable steps to protect the constitutional rights of indigent persons.

11. Indigent persons have suffered and continue to suffer harm as a result of Defendants' violations of constitutional rights:

- a. Indigent persons are deprived of adequate consultation and communication with their attorneys;
- b. Indigent persons must make decisions about their rights or contest issues without adequate factual or legal investigation by their attorneys;
- c. Indigent persons are deprived of meaningful opportunities to present defenses;
- d. The rights of indigent persons are waived without proper consultation and advice;
- e. Indigent persons are deprived of the services of investigators and expert witnesses;
- f. Indigent persons are denied the right to a speedy trial;
- g. The cases of indigent persons are not properly prepared for trial; and
- h. Indigent persons do not receive meaningful benefits in exchange for guilty pleas.

12. Pursuant to 42 U.S.C. § 1983, the Sixth and Fourteenth Amendments to the United States Constitution, and Article 1, Section 13(a) of the Indiana Constitution, Plaintiffs bring this lawsuit to ask this Court for declaratory and injunctive relief to prevent further violations and to protect the constitutional rights of all indigent persons charged with crimes in Johnson County, Indiana, and to compensate the named Plaintiffs for their efforts and assistance in representing the class members.

II. JURISDICTION AND VENUE

13. Indiana Trial Rule 75 allows for filing in any Indiana County.

14. Since every Judge in the Johnson County Superior and Circuit System is a defendant in this lawsuit venue in Johnson County is not appropriate.

15. Marion County is geographically the next most convenient county for Defendants.

III. THE PARTIES

DEFENDANTS

Johnson County Commissioners

16. Brian Baird, Kevin Walls, Ron West, Kathleen Hash, Barbara Davis, and Amy Briggs are all currently the Johnson County Commissioners.

17. Each Commissioner can be served at 86 West Court Street, Franklin, Indiana 46131.

Judge K. Mark Loyd

18. The Honorable K. Mark Loyd was admitted to the Indiana Bar in 1985 and is currently the presiding judge in the Johnson County Circuit Court.

19. Judge Loyd can be served at 5 East Jefferson Street, 2nd Floor, Franklin, Indiana 46131.

Judge Kevin Barton

20. The Honorable Kevin Barton was admitted to the Indiana Bar in 1980 and is currently the presiding judge in Johnson County Superior Court 1.

21. The only criminal cases handled in Judge Barton's court are cases for post-conviction relief ("PCR") and attorneys appointed to represent the indigent in PCR cases in Johnson County Court 1 are paid at a rate of \$75 after invoicing the court.

22. Judge Barton can be served at 5 East Jefferson Street, 3rd Floor, Franklin, Indiana 46131.

Judge Lance Hamner

23. The Honorable Lance Hamner was admitted to the Indiana Bar in 1988 and is currently the presiding judge in Johnson County Superior Court 3.

24. Judge Hamner can be served at 5 East Jefferson Street, 2nd Floor, Franklin, Indiana 46131.

Judge Cynthia Emkes

25. The Honorable Cynthia Emkes was admitted to the Indiana Bar in 1985 and is currently the presiding judge in Johnson County Superior Court 2.

26. Judge Emkes can be served at 18 West Jefferson Street, Courthouse Annex North, Franklin, Indiana 46131.

John P. Wilson

27. John P. Wilson was admitted to the Indiana Bar in 1974 and is currently a member in good standing.

28. In addition to his duties as a public defender, Mr. Wilson is an attorney with the firm of Wilson & Wilson and can be served at P.O. Box 531, Greenwood, Indiana 46142.

29. Copies of Mr. Wilson's public defender contracts with the Johnson County Court are attached as Exhibit A.

Michael Bohn

30. Michael Bohn was admitted to the Indiana Bar 2002 and is currently a member in good standing.

31. In addition to his duties as a public defender, Mr. Bohn works as a private attorney and can be served at 101 East Monroe Street, Franklin, Indiana 46131.

32. Copies of Mr. Bohn's contracts with the Johnson County Court are attached as Exhibit B.

John Norris

33. John Norris was admitted to the Indiana Bar in 1993 and is currently a member in good standing.

34. In addition to his duties as a public defender, Mr. Norris is an attorney with the firm of Vandivier, Norris & Solomon and can be served at 103 East Monroe Street, Franklin, Indiana 46131.

35. Copies of Mr. Norris' contracts with the Johnson County Court are attached as Exhibit C.

Daniel Vandivier

36. Daniel Vandivier was admitted to the Indiana bar in 1992 and is currently a member in good standing.

37. In addition to his duties as a public defender, Mr. Vandivier is an attorney with the firm of Vandivier, Norris & Solomon and can be served at 103 East Monroe Street, Franklin, Indiana 46131.

38. Copies of Mr. Vandivier's contracts with the Johnson County Court are attached as Exhibit D.

Matthew Solomon

39. Matthew Solomon was admitted to the Indiana bar in 2001 and is currently a member in good standing.

40. In addition to his duties as a public defender, Mr. Solomon is an attorney with the firm of Vandivier, Norris & Solomon and can be served at 103 East Monroe Street, Franklin, IN 46131.

41. Upon information and belief, Mr. Solomon either has a contract with the Johnson County Court, or is appointed public defense cases on the basis of his employment with Vandivier, Norris & Solomon.

Andrew Eggers, J. Andrew Woods, and Eggers Woods

42. Eggers Woods is a law firm located at 58 West Jefferson Street, Franklin, Indiana 46131.

43. The firm's website (www.eggers-woods.com) lists its attorneys as Jeffrey Eggers, J. Andrew Woods, and Andrew Eggers.

44. Andrew Eggers signed the contract with the Johnson County Court on behalf of the firm.

45. J. Andrew Woods can be served through Andrew Eggers at 58 West Jefferson Street, Franklin, Indiana 46131.

46. Copies of Eggers Woods's contract with the Johnson County Court are attached as Exhibit E.

PLAINTIFFS

47. Kenneth Alford is currently incarcerated at the Johnson County Corrections Center.

48. Mr. Alford has complained to the Court in writing of the gross lack of adequate representation (see Exhibits F-1, F-2)

49. Terry Hasket is currently incarcerated at the Johnson County Corrections Center.

50. Richard Daniels is currently incarcerated at the Johnson County Correctional Center.

51. Richard Bunton was incarcerated at the Johnson County Corrections Center but has since been released on bond and resides in Colorado.

52. Keith Nye is currently incarcerated at the Johnson County Correctional Center.

53. Wardell Strong is currently incarcerated at the Johnson County Correctional Center.

IV. CLASS ACTION ALLEGATIONS

54. Plaintiffs and all other similarly situated individuals (collectively, the "Class Plaintiffs") bring this action pursuant to Civil Rule 23(a) and (b)(2) on behalf of themselves and all others similarly situated (collectively the "Class Members") as members of the following proposed plaintiff class (the "Class"): All indigent persons who have or will have criminal cases pending in the Circuit and Superior courts of Johnson County, who are appointed an attorney.

55. The Class is so numerous that the individual joinder of all members is impracticable. At any given time, there are scores of indigent persons with criminal cases pending in the courts of Johnson County.

56. There are questions of law and fact common to the Class.

57. The questions of law and fact common to all members of the Class include, but are not limited to: (a) whether Defendants are constitutionally required to provide indigent persons charged with crimes the assistance of counsel; and (b) whether Defendants have violated that mandate.

58. The Class Plaintiffs' claims are typical of the claims of the Class.

59. The Class Plaintiffs will fairly and adequately protect the interests of the Class. There are no conflicts of interest between the Class Plaintiffs and other Class Members. The Class Plaintiffs will vigorously prosecute this action on behalf of the Class. The Class Plaintiffs are represented by competent counsel who will vigorously prosecute the case on behalf of the Class.

60. Defendants have acted or refused to act on grounds generally applicable to the entire Class.

61. The claims asserted herein are inherently transitory and capable of repetition while evading review. There is a continuing and substantial public interest in these matters.

V. FACTS ENTITLING PLAINTIFFS TO RELIEF

A. Background Facts and Information

62. The Sixth and Fourteenth Amendments to the United States Constitution and Article 1, Section 13(a) of the Indiana Constitution guarantee to every indigent person charged with a crime the right to effective assistance of counsel.

63. Each Defendant is constitutionally required to provide every indigent person charged with a crime in Johnson County with effective assistance of counsel.

64. In Johnson County, public defenders are selected by judges.

65. In Johnson County, each public defender contracts with a specific judge and/or his or her court.

66. Neither the Commissioners nor the Judges provide funds to the Johnson County part-time public defenders for expenditures such as investigations, experts, and other services that are necessary to assure quality legal representation.

67. The State of Indiana has long held, in fact long before the United States Supreme Court required it, that the State was committed to providing its indigent citizens with a quality criminal defense. *Scott v. State* 593 N.E.2d 198 (1992); and see *Webb v. Baird*, 6 Ind. 13 (Ind. 1854), *Johnson v. Zerbst*, 304 U.S. 458, 82 L. Ed. 1461, 58 S. Ct. 1019 (1938), and *Gideon v. Wainwright*, 372 U.S. 335, 9 L. Ed. 2d 799, 83 S. Ct. 792 (1963).

68. The current public defender system employed in Johnson County does not meet the basic standards of quality indigent criminal defense that have been required for over 150 years by the Indiana Supreme Court.

B. Facts Regarding Specific Public Defenders

Public Defender Wilson

69. In 2014, while also maintaining a private practice, Defendant Wilson was assigned 176 unique felony cases and 32 unique misdemeanor cases. See Exhibit G.

70. Of 176 felony cases, 130 were resolved in 2014. See Exhibit G.

71. Of the aforementioned 130 felony cases resolved in 2014:

a. 106 were disposed of by plea agreement;

- b. 2 went to jury trial;
- c. 1 was taken to a bench trial;
- d. 14 were dismissed by the State of Indiana; and
- e. 7 were not resolved through plea, trial, or dismissal.

See Exhibit B.

72. Defendant Wilson filed motions to suppress in only 2 out of the 176 felony cases assigned to him in 2014. See Exhibit G.

73. Of the 176 felony cases assigned to Defendant Wilson in 2014, 46 were unresolved as of December 31, 2014. See Exhibit G.

74. The current caseload for Mr. Wilson appears to be comparable to his 2014 caseload.

75. In addition to the felony cases assigned to Defendant Wilson in 2014, there were dozens of felonies assigned to Mr. Wilson in 2013 that were not resolved as of January 1, 2014.¹

76. Defendant Wilson's caseload is in excess of maximum caseload approved by the United States Supreme Court (*see e.g., Scott v. Illinois*, 440 U.S. 367, 385 n. 16 (1979) (Brennan, J., dissenting)) and the INDIANA PUBLIC DEFENDER COMMISSION, Standards for Indigent Defense Services in Non-Capital Cases (last amended June 18, 2014), *available at* <http://www.in.gov/judiciary/pdc/files/indigent-defense-non-cap.pdf>.

Public Defender Bohn

77. In 2014, while also maintaining a private practice, Defendant Bohn was assigned 83 unique felony cases and 69 unique misdemeanor cases. See Exhibit H.

¹ Felonies assigned to Mr. Wilson in 2013 that were still active cases on January 1, 2014 were not tracked in the data reported in Exhibit G, however these "carry-over" cases would only increase his already excessive caseload.

78. A sample of 60 felony cases assigned to Defendant Bohn in 2014 was reviewed for this complaint. See Exhibit H.

79. Of the aforementioned 60 felony cases:

- a. 0 went to jury trial;
- b. 38 were disposed of by plea agreement;
- c. 10 were dismissed by the State of Indiana (one of these cases had a motion to suppress evidence filed in it); and
- d. 12 were unresolved as of July 1, 2014.

See Exhibit H.

80. Defendant Bohn's caseload is in excess of maximum caseload approved by the United States Supreme Court (*see e.g., Scott v. Illinois*, 440 U.S. 367, 385 n. 16 (1979) (Brennan, J., dissenting)) and the INDIANA PUBLIC DEFENDER COMMISSION, Standards for Indigent Defense Services in Non-Capital Cases (last amended June 18, 2014), *available at* <http://www.in.gov/judiciary/pdc/files/indigent-defense-non-cap.pdf>.

81. Mr. Bohn's current caseload appears to be comparable to his 2014 caseload.

Public Defender Norris

82. In 2014, while also maintaining a private practice, Defendant Norris was assigned 4 unique felony cases and 37 unique misdemeanor cases. See Exhibit I.

83. The Plaintiffs are unclear as to what Mr. Norris' exact status was with the Johnson County Court indigent defense system was in 2014 or is currently and will clarify this role through discovery.

Public Defender Vandivier

84. In 2014, while also maintaining a private practice, Defendant Vandivier was assigned 50 unique felony cases and 25 unique misdemeanor cases. See Exhibit J. On or around September 1, 2015, Defendant Vandivier was assigned to the juvenile court, but it is unknown how many of the indigent defense cases felony and misdemeanor previously assigned to him he maintains.

85. A sample of 40 felony cases assigned to Defendant Vandivier in 2014 was reviewed for this complaint.

86. Of the aforementioned 40 felony cases, 16 were unresolved as of July 1, 2014.

87. Of the remaining 24 felony cases:

- a. 0 went to jury trial;
- b. 18 were disposed of by plea agreement;
- c. 6 were dismissed by the State of Indiana; and
- d. Only 1 motion to suppress was filed.

See Exhibit J.

C. Facts Regarding Specific Plaintiffs

Kenneth Alford (Public Defender Vandivier; Judge Hamner)

88. Mr. Alford was arrested in January of 2015 and charged with two level-4 felonies in Johnson County Superior Court 3.

89. Mr. Alford was appointed a public defender by Judge Hamner.

90. Originally, Mr. Alford's public defender was Defendant Daniel Vandivier.

91. On September 1, 2015, Mr. Vandivier was replaced by Attorney Matthew Solomon.
92. Mr. Alford has been incarcerated for nearly nine months.
93. During his entire incarceration, Mr. Alford has only met with Mr. Vandivier at court hearings.
94. Mr. Alford mailed letters to Mr. Vandivier seeking assistance.
95. Mr. Alford mailed a letter to the Court seeking a new public defender.
96. Copies of Mr. Alford's letters to the Court are attached as Exhibit F-1 and F-2.
97. All of Mr. Alford's letters went unanswered.
98. Mr. Alford has been pressured to accept a plea deal despite his professed innocence.
99. Mr. Vandivier did not perform any investigation specifically requested by Mr. Alford.
100. As of September 1, 2015 Defendant Matthew Soloman was assigned as a Mr. Alford's public defender.
101. Defendant Soloman visited Mr. Alford once in jail.
102. When Mr. Alford appeared in court on September 30, 2015, Defendant Solomon told him that he did not even know that Mr. Alford was scheduled for that date; when Mr. Alford expressed dissatisfaction with Mr. Solomon's failure to prepare a defense, Defendant Solomon then asked to withdraw from representation.
103. The Court granted Defendant Solomon's motion to withdraw, then transferred the case to the Johnson Circuit Court, and Mr. Alford was told that Defendant Wilson would be

appointed his attorney, though Defendant Wilson has not entered an appearance as of the time of filing.

Terry Hasket (Public Defender Bohn; Judge Emkes)

104. Mr. Hasket has been incarcerated since his arrest in June of 2015.

105. In early July 2015, Mr. Hasket was charged with a felony in Johnson County Superior Court 2.

106. Mr. Hasket was assigned Defendant Michael Bohn as his public defender.

107. Mr. Bohn has visited Mr. Hasket once in person and spoken to him on the phone.

108. Mr. Hasket specifically requested a fast and speedy trial.

109. Mr. Bohn disregarded or ignored Mr. Hasket's request for a fast and speedy trial by not preparing for the August 19, 2015 omnibus hearing date; Mr. Bohn was thus forced to waive Mr. Hasket's speedy trial rights.

110. Mr. Bohn pressured Mr. Hasket to accept a plea deal despite Mr. Hasket's professed innocence.

111. Mr. Bohn also attempted to leverage Mr. Hasket's criminal record to persuade him to accept a plea deal.

112. When Mr. Bohn has spoken directly with Mr. Hasket, it has been in hurried fashion.

113. Mr. Bohn refused to comply with Mr. Hasket's initial requests that he conduct discovery in the case.

114. Mr. Bohn told Mr. Hasket that he (Bohn) relied on the prosecution to provide evidence, including evidence that impeaches state witnesses, and said that if he pursued the requested discovery, the prosecutor would retaliate and file a habitual offender charge.

115. Discovery was not produced until September 25, 2015.

116. Mr. Hasket has not received, and is not receiving, effective assistance of counsel from his public defender.

Richard Daniels (Public Defender Bohn; Judge Emkes)

117. Mr. Daniels has been incarcerated since July 7, 2015.

118. Mr. Daniels is disabled and draws disability benefits.

119. Mr. Daniels was charged with a felony in Johnson County Superior Court 2.

120. In late July, 2015, Mr. Daniels was assigned Defendant Michael Bohn as his public defender.

121. Mr. Daniels first met and spoke with Mr. Bohn at his initial hearing on September 2, 2015.

122. Mr. Bohn attempted to pressure Mr. Daniels into accepting a plea deal.

123. Mr. Bohn relented to the protestations of Mr. Daniels and requested a continuance.

124. As of the date of filing Mr. Bohn has not visited Mr. Daniels in person.

125. Mr. Daniels has spoken with Mr. Bohn on the telephone only twice.

126. During each of their interactions with one another, Mr. Bohn has pressured Mr. Daniels to accept a plea agreement.

127. Mr. Daniels has additionally sent letters to both the Court and to Mr. Bohn.

128. One of Mr. Daniels' letters to Mr. Bohn included a specific request for a bond reduction hearing.

129. Copies of Mr. Daniels' letters will be obtained through discovery.

130. All of Mr. Daniels' letters have gone unanswered.

131. Mr. Daniels has not received, and is not receiving, effective assistance of counsel from his public defender.

Richard Bunton (Public Defender Vandivier; Judge Loyd)

132. Richard Bunton was arrested on August 12, 2015 in Colorado and extradited to Indiana.

133. Mr. Bunton was charged with felony failure to pay child support in Johnson County Circuit Court.

134. Mr. Bunton was assigned Defendant Daniel Vandivier as a public defender.

135. As of September 9, 2015, Mr. Bunton had yet to meet or speak with Mr. Vandivier or any other public defender.

136. Mr. Bunton has since paid his bond and has been released.

137. As of the date of filing, Defendant Vandivier is still listed as Mr. Bunton's public Defender.

138. Mr. Bunton has not received, and is not receiving, effective assistance of counsel from his public defender.

Keith Nye (Public Defender Bohn; Judge Hamner)

139. Keith Nye was charged with a felony in Johnson County Superior Court 3 at the end of July, 2015.

140. Mr. Nye was assigned Defendant Michael Bohn as his public defender.

141. Mr. Nye spoke with Mr. Bohn at his initial hearing.

142. When Mr. Nye spoke with Mr. Bohn at the initial hearing, Mr. Nye asked for a speedy trial, but Mr. Bohn refused to file the motion.

143. Mr. Nye has had little to no contact with Mr. Bohn outside of the courtroom.

144. Mr. Nye has not received, and is not receiving, effective assistance of counsel from his public defender.

Wardell Strong (Public Defender Wilson; Judge Hamner)

145. Wardell Strong was charged with a felony in Johnson County Superior Court 3 on June 20, 2015.

146. Mr. Strong was assigned Defendant John Wilson as his public defender.

147. Mr. Strong met Mr. Wilson at his initial hearing.

148. Mr. Strong has not seen Mr. Wilson in person on any other occasion.

149. On only one occasion has Mr. Strong spoken with Mr. Wilson on the telephone.

150. Mr. Strong has sent multiple letters to Mr. Wilson, asking for discovery and requesting a suppression hearing.

151. In response to that request, Mr. Wilson withdrew his appearance, but the court ordered him reinstated on October 1, 2015. Mr. Wilson has not done anything since October 1, 2015, to provide a defense.

152. Mr. Wilson has not responded to any of Mr. Strong's letters.

153. In his letters to Mr. Wilson, Mr. Strong maintains his innocence and provides Mr. Wilson with information that he believes could exonerate him.

154. Mr. Wilson has not followed up on or investigated any of the information provided by Mr. Strong.

155. Mr. Wilson has not communicated any case strategy to Mr. Strong.

156. Mr. Strong has specifically requested that Mr. Wilson seek a bond reduction hearing.

157. Mr. Wilson has not requested a bond reduction hearing for Mr. Strong.

158. Mr. Strong has not received, and is not receiving, effective assistance of counsel from his public defender.

D. Facts Regarding Other Johnson County Indigent Defendants

Anthony Owens (Public Defender Wilson; Judge Loyd)

159. Mr. Owens was arrested in October 2014.

160. Mr. Owens was charged with a felony in the Johnson County Circuit Court.

161. Mr. Owens was assigned Defendant John Wilson as his public defender.

162. Mr. Wilson refused Mr. Owens' requests to conduct discovery into the facts and witnesses concerning his case.

163. At one hearing, Mr. Wilson pressured Mr. Owens to take a plea deal despite Mr. Owens' claims of innocence.

164. Mr. Wilson additionally pressured Mr. Owens to waive his right to a jury trial in order to appease the prosecutor and secure a better plea deal.

165. In August of 2015, Mr. Owens verbally requested that the Court assign him a new public defender due to Mr. Wilson's ineffective assistance.

166. Mr. Owens' request for a new public defender was denied.

167. Mr. Wilson then again pressured Mr. Owens to accept a plea deal, this time telling him that if he did not do so, the prosecutor would file for habitual offender status.

168. After conducting his own research, Mr. Owens learned that he did not meet the requirements for habitual offender status.

169. Mr. Owens then filed a motion seeking dismissal of his case on the theory that he had been inappropriately pressured into accepting a plea deal.

170. Mr. Owens' case was transferred to Johnson County Superior Court 3 and Mr. Wilson withdrew his representation.
171. In over eight months as his representative, Mr. Wilson never visited Mr. Owens at the jail.
172. In over eight months as his representative, Mr. Wilson did not file a single substantive motion.
173. Mr. Owens is now represented by Defendant John Norris.
174. Since taking Mr. Owens' case, Mr. Norris has not conducted any investigation or discovery.
175. Mr. Norris has also pressured Mr. Owens to waive his right to trial by jury and to accept a plea deal.
176. Because of the lack of diligent defense, Mr. Owens eventually accepted a plea agreement..

E. Facts Regarding the Injuries Suffered by Plaintiffs

177. As a result of Defendants' acts and omissions, including the policies, practices and procedures for public defense that Defendants have maintained and countenanced, Plaintiffs and all other indigent persons charged with crimes in the courts of Johnson County, Indiana have suffered, and/or are at imminent and serious risk of suffering, harm.
178. Plaintiffs, indigent criminal defendants in Johnson County, and all others similarly situated are, among other things:
- a. Deprived of adequate consultation and communication with their attorneys;
 - b. Required to make decisions about their rights or contest issues without adequate factual or legal investigation by their attorneys;
 - c. Deprived of meaningful opportunities to present defenses;

- d. Required to waive their rights without the benefit of proper legal consultation and advice;
 - e. Deprived of the services of investigators and expert witnesses;
 - f. Deprived of the right to a speedy trial;
 - g. Not properly prepared for trial; and
 - h. Denied meaningful benefits in exchange for guilty pleas.
179. There is a substantial probability that Defendants' violations will continue and will deprive the Class Plaintiffs and other Class Members of their rights.
180. Among other things, Defendants have:
- a. Known, or should have known, that indigent criminal defendants in Johnson County were being deprived of their rights;
 - b. Persisted in a wrongful course of conduct for many years, despite that knowledge;
 - c. Failed to take prompt action to fix their broken public defense system; and
 - d. By allowing such enormous caseloads to persist, have allowed their public defense system to descend into chaos.

VI. CAUSES OF ACTION

Count One

*Violation of the Sixth and Fourteenth Amendments to the United States Constitution
42 U.S.C. § 1983*

181. Plaintiffs incorporate the foregoing paragraphs as though fully restated herein.
182. This Count applies to the Commissioners and Judges named as Defendants.

183. Acting under color of state law, the above-identified defendants have violated and caused violations of Plaintiffs' right to the assistance of counsel, as that right is guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution.

184. Plaintiffs and all those similarly situated have suffered harm as a result of the deprivation and/or denial of their constitutionally guaranteed right to the assistance of counsel.

185. Unless enjoined by the Court, Defendants will continue to violate and cause the violation of the constitutional rights of Plaintiffs and all those similarly situated.

Count Two

Violation of Article 1, § 13(a) of the Indiana Constitution

186. Plaintiffs incorporate the foregoing paragraphs as though fully restated herein.

187. This Count applies to the Commissioners and Judges named as Defendants.

188. Acting under color of state law, the above-identified defendants have violated and caused violations of Plaintiffs' right to the assistance of counsel, as that right is guaranteed by Article 1, section 13(a) of the Indiana Constitution.

189. Plaintiffs and all those similarly situated have suffered harm as a result of the deprivation and/or denial of their constitutionally guaranteed right to the assistance of counsel.

190. Unless enjoined by the Court, Defendants will continue to violate and cause the violation of the constitutional rights of Plaintiffs and all those similarly situated.

Count Three

Breach of Contract (Third Party Beneficiary)

191. Plaintiffs incorporate the foregoing paragraphs as though fully restated herein.

192. This Count applies to the Part-Time Public Defenders and Judges named as Defendants.

193. The above-identified defendant-judges contracted with the defendant-attorneys to provide legal representation to indigent persons charged with a crime in Johnson County, Indiana.

194. As indigent persons charged with a crime in Johnson County, Indiana, Plaintiffs and their fellow class members were third party beneficiaries to the contracts between the above-identified defendants.

195. As set forth above, the above-identified defendants failed to provide adequate public defense to indigent persons, including Plaintiffs, in Johnson County, Indiana.

196. The above-identified defendants breached their contracts, both actual and implied.

197. Plaintiffs and all those similarly situated have suffered harms as a result of the breaches of contract.

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief and respectfully ask the Court:

A. For certification of a class as defined above;

B. For a declaration that Defendants are depriving Plaintiffs and all those similarly situated of their right to the assistance of counsel, as that right is guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article 1, section 13(a) of the Indiana Constitution, and the contracts between the Johnson County Courts and public defenders;

C. For the issuance of preliminary and permanent injunctions enjoining Defendants Johnson County Commissioners from violating the Sixth and Fourteenth Amendments to the United States Constitution in the provision of indigent defense services;

D. For the issuance of preliminary and permanent injunctions enjoining Defendants Johnson County Commissioners, the Honorable Mark Loyd, the Honorable Kevin Barton, the Honorable Cynthia Emkes, and the Honorable Lance Hamner from violating Article I, section 13(a) of the Indiana Constitution in the provision of indigent defense services;

E. For the issuance of preliminary and permanent injunctions enjoining to compel the creation of public defender services, which are not under the Courts' supervision or financial control, which are adequately funded, and which conform to the caseload standards set by the American Bar Association and the Indiana Public Defender Commission.

F. For an award of damages to the Plaintiffs and those similarly situated so as to reasonably compensate them for the damages that they have suffered as a result of the breach of contract by the Defendants;

G. For an award of Plaintiffs' costs and attorneys' fees; and

H. For all other relief just and proper in the premises.

Respectfully Submitted

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