

**JOHN ANDERSON, ROBIN  
 LEBLANC, MICHAEL** : **NO. C545852 SECTION 24**  
**GULLORY, 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, THE  
 LOUISIANA PUBLIC DEFENDER  
 BOARD AND MITCHELL BERGERON,  
 IN HIS OFFICIAL CAPACITY AS THE  
 14TH JUDICIAL DISTRICT  
 PUBLIC DEFENDER**

**SECOND AMENDED CLASS ACTION COMPLAINT**

**INTRODUCTION**

1. This is a civil rights class action seeking to restrain the continuing denial of constitutional rights to assistance of counsel by indigent criminal defendants in Calcasieu Parish, Louisiana. These rights are 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. The failure of the defendant State of Louisiana, its Legislature, and the 14th Judicial District Court to provide adequate resources for indigent legal defense in Calcasieu Parish has left the District Public Defender for the Parish and the Louisiana Public Defender Board unable to carry out their duties to provide effective legal defense for indigent persons charged with felony offenses in the 14th Judicial District Court. Specifically, because of inadequate resources, the Public Defender's Office is unable to carry out even the most basic functions of legal representation, such as conferring with its clients, engaging in substantive investigation of its clients' cases, reviewing clients' files, securing witnesses, and preparing for hearings and trials.

4. Nonetheless, the Public Defender's Office continues to accept new cases in which the constitutional rights of indigent defendants are certain to be denied, and the Public Defender Board continues to allow that to occur. As a result, the State of Louisiana every day prosecutes citizens of the Parish and elsewhere who are unable to afford a lawyer to defend them, and who are denied their constitutional right to be defended by effective counsel provided by the State.

5. 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 restrain the continuing deprivation of Named Plaintiffs and Members of the Plaintiff Class of their right to legal representation.

#### VENUE

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

7. Venue is proper in East Baton Rouge Parish pursuant to Louisiana Annotated Code of Civil Procedure, Articles 42 and 593, and Act 307 of the 2007 Regular Session, the Louisiana Public Defender Act, La S. 15:149.1.

#### PARTIES

##### Named Plaintiffs

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.
13. 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.
14. Because of inadequate funding to the PDO, the lack of oversight and monitoring of the assistant public defenders, and the excessive caseloads of Calcasieu Parish's public defenders, Anderson was denied the effective assistance of counsel in violation of the federal and Louisiana constitutions.
15. 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.
16. 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 after the arraignment but was unable to reach him. Robin never met this lawyer, who no longer works in the PDO.
17. 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.
18. 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.
19. 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.

20. 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."

21. The Louisiana Attorney Disciplinary Board notified the PDO lawyers of the complaint filed against them. In his mandatory response to the ethical conduct 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.

22. During the two-and-a-half year period that Robin 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, almost three years after he was arrested. 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.

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

24. 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.

25. 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.

26. 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.

27. At some point thereafter, the PDO's 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.

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

29. 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.

30. 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 of counsel from the PDO. Queen's trial was initially scheduled for September 14, 2009, but the court rescheduled his trial date. Queen remains incarcerated in the CCC awaiting trial.

31. Because of inadequate funding to the PDO, the lack of oversight and monitoring of the assistant public defenders, and the excessive caseloads of Calcasieu Parish's public defenders,

Queen has been and is being denied the effective assistance of counsel in violation of the federal and Louisiana constitutions.

32. 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.

33. 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.

34. 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.

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

36. 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.

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

38. 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.

39. 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.

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

41. 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 a rare occurrence in Calcasieu Parish.

42. 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.

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

#### **Defendants**

44. The Constitution of the United States prohibits 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 prosecuting them for felony offenses while not adequately funding, monitoring, or otherwise providing the Calcasieu Parish Public Defender's Office with the necessary resources to provide Plaintiffs with a constitutionally adequate system for their defense. Defendant the State of Louisiana is therefore depriving Named Plaintiffs and Members of the Plaintiff Class of their right to the effective assistance of counsel in violation of the federal and Louisiana constitutions.

45. The Public Defender Act grants Defendant THE LOUISIANA PUBLIC DEFENDER BOARD ("LPDB") "all regulatory authority, control, supervision, and jurisdiction, including auditing and enforcement, and all power incidental or necessary to such regulatory authority,

control, supervision, and jurisdiction over all aspects of the delivery of public defender services throughout the courts of the state of Louisiana." La. S. 15:147(A). The LPDB is "a body corporate with the power to sue and be sued." La. S. 15:146(A). The LPDB is ultimately responsible for providing the 14th Judicial District Public Defender's Office with the necessary resources and staffing to provide constitutionally adequate assistance of counsel to indigent criminal defendants in Calcasieu Parish. Furthermore, the LPDB has the responsibility to perform the following functions, among others:

a. Adopt rules to implement the Louisiana Public Defender Act. La. S. 15:147(B)(2);

b. Review and approve the strategic plan and the budget submitted by the State Public Defender, the regional directors, where applicable, and the district public defenders. La. S. 15:147(B)(3);

c. Submit an annual report to the Louisiana Legislature concerning the status of public defense services throughout the State, including Calcasieu Parish. The Board is required to include any recommended changes to the law necessary to improve the provision of public defender services in Louisiana, a detailed accounting of all funds received and spent by the LPDB during the course of the year, and a comprehensive report on caseloads in each district, including the 14th Judicial District. La. S. 15:147(B)(4);

d. Establish and modify as necessary a plan to provide indigent criminal defense services throughout the State, including Calcasieu Parish. La. S. 15:147(B)(5).

46. By allowing the 14th Judicial District Public Defender's Office to continue to accept clients who cannot effectively be defended given available resources, Defendant the Louisiana Public Defender Board has deprived Named Plaintiffs and Members of the Plaintiff Class of their right to the effective assistance of counsel in violation of the federal and Louisiana constitutions.

47. Defendant MITCHELL BERGERON is the District Public Defender for the 14th Judicial District in Calcasieu Parish, Louisiana. As District Public Defender, Defendant Bergeron is required to perform the following functions, among others:

a. Manage and supervise all public defender services in Calcasieu Parish. La. S. 15:161(E)(1).

- b. Prepare and submit to the Public Defender Board an annual operating budget as well as monthly budget reports. La. S. 15:161(E)(2)-(4).
- c. "Work in conjunction with the compliance officers to ensure that public defender assignments within [Calcasieu Parish] comply with the standards and guidelines adopted pursuant to rule by the board and the Rules of Professional Conduct." La. S. 15:161(E)(5).
- d. Employ and supervise the work of district personnel. La. S. 15:161(E)(6)-(7).
- e. Implement the standards, guidelines and procedures established by the board, state public defender, and regional director in Calcasieu Parish. La. S. 15:161(E)(10).
- f. "Maintain a client workload for the district office as determined by the regional director, where applicable, the state public defender, and the board." La. S. 15:161(E)(11).
- g. Advise the regional director, where applicable, and "make recommendations regarding the method of delivery of public defender services for the district for submission to the board for board approval." La. S. 15:161(E)(12).
- h. Employ, set compensation levels for, manage, and terminate as necessary all district personnel. La. S. 15:161(E)(13).

48. Defendant Bergeron is responsible for the day-to-day operations of the 14th Judicial District Public Defenders Office. Because Defendant Bergeron lacks sufficient staff and resources to provide Named Plaintiffs and Members of the Plaintiff Class with constitutionally adequate assistance of counsel, Defendant Bergeron's continuing acceptance of clients is depriving Named Plaintiffs and Members of the Plaintiff Class of their right to the effective assistance of counsel in violation of 42 U.S. § 1983 and the federal and Louisiana constitutions.

#### CLASS ACTION ALLEGATIONS

49. 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 declaratory and injunctive 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.

50. 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 14th Judicial District in Calcasieu Parish. This Court granted Plaintiffs' Motion for Class Certification on May 29, 2007.

51. 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 office has been and continues to be plagued by systemic deficiencies, including excessive caseloads, severe understaffing, inadequate resources, a lack of monitoring, and defective policies and procedures; whether these systemic deficiencies in the Public Defender office 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**

52. Plaintiffs initially filed their complaint on September 23, 2004 in the 14th Judicial District Court of Louisiana ("14th JDC"). 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 the 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.

53. 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.

54. After allowing the State two years to implement Act 307 and to correct the grossly inadequate staffing and funding disparities in the Calcasieu Parish 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 and a lack of oversight and monitoring 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. Plaintiffs filed their Amended Complaint on August 24, 2009.

55. On November 6, 2009, Defendants filed peremptory exceptions to Plaintiffs' Amended Complaint. Plaintiffs filed their Opposition to Defendants' Peremptory Exceptions on January 11, 2010 and Defendants filed their Reply on March 1, 2010. After hearing oral argument on March 8, 2010, the Court overruled Defendants' Exception of No Right of Action and sustained Defendants' Exception of No Cause of Action. In the same Judgment, the Court granted Plaintiffs leave to file a Second Amended Complaint.

#### Louisiana's Indigent Defense System

56. 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."

57. 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).

58. Louisiana has drastically failed to provide adequate resources to 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."

59. 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."

60. 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 assistant public defenders to handle children in need of

care cases. These new responsibilities require the Public Defender Office for Calcasieu Parish to allocate additional resources and staff to non-felony cases.

61. Possibly the most constitutionally inadequate parish in the state for indigent legal defense 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**

62. Defendants the State of Louisiana, the Louisiana Public Defender Board, and Mitchell Bergeron and his predecessors have failed to ensure that indigent criminal defendants in the 14th Judicial District of Calcasieu Parish receive constitutionally mandated assistance of counsel.

63. Specifically, the State of Louisiana, the Louisiana Public Defender Board, and Bergeron and his predecessors have failed:

- a. To implement a mechanism that actually monitors the performance of Louisiana's public defenders, including the assistant public defenders of Calcasieu Parish;
- 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 budget and strategic plan to insure that public defenders in Calcasieu Parish have the resources to investigate cases, prepare for trials, or communicate with clients in a timely and adequate fashion.

64. The State of Louisiana's failure to provide the LPDB and District Public Defender Bergeron with adequate resources is the primary cause of this lack of oversight and monitoring of the 14th Judicial District Public Defender's Office.

**Inadequate Funding**

65. The State of Louisiana 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 in Calcasieu Parish.

66. Because the State has consistently failed to provide necessary resources, and because it continues to bring criminal prosecutions in its name knowing that indigent defendants will not be adequately represented, 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

67. The Indigent Defender Board for the 14th Judicial District has established a Public Defender's Office that is currently managed by Defendant Mitchell Bergeron, in which assistant 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.

68. The PDO represented nearly 90 percent of the approximately 2,500 to 3,000 persons charged with 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.

69. The PDO serves the 14th 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.

70. 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 had projected revenues of \$950,000 for 2009. On information and belief, it is likely that the PDO received less revenues than were projected.

### Staff and Caseloads

71. On information and belief, a Calcasieu Parish assistant 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. Defendant 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 LPDB's standard limits the caseload 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 LPDB has set for such cases.

72. 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.

73. As of August 2009, the PDO had 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 District Public Defender Bergeron, 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 employs contract attorneys to handle the many felony cases that the staff attorneys cannot handle due to conflicts with their other indigent clients.

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

75. 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.

76. 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.

77. 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.

78. The result of Calcasieu Parish's assistant public defenders carrying these high caseloads is to deprive indigent defendants of the right to the effective assistance of counsel.

#### **A Comparison of Criminal Prosecutions in Calcasieu Parish with National Averages**

79. 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.

80. 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.

81. While the number of criminal charges filed in the 14th 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 14th 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 14th 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.

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

83. 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 14th Judicial District, there were twice as many civil trials as there were criminal trials.

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

84. 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, the Louisiana Public Defender Board, and District Public Defender Hergeron.

85. 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 185 days—or six months—after an individual had been arrested.

86. 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.

87. 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.

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

89. 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."

90. 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.

91. 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.

92. 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 or 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.

93. 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**

94. 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.

95. 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.

96. 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.

97. Like all practicing members of the Louisiana Bar, the staff and contract attorneys who represent indigent defendants in Calcasieu Parish must comply with the Louisiana Rules of Professional Conduct, including but not limited to:

a. Rule 1.1(a), which requires all lawyers to "provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation." La. R. P. C. 1.1(a).

b. Rule 1.3, which requires all lawyers to "act with reasonable diligence and promptness in representing a client." La. R. P. C. 1.3.

c. Rule 1.4, which requires all lawyers, among other things, to "reasonably consult with the client about the means by which the client's objectives are to be met," to "keep the client reasonably informed about the status of the matter," to "promptly comply with reasonable requests for information," and to "give the client sufficient information to

participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued.” La. R. P. C. 1.4.

98. Because the Calcasieu Parish assistant public defenders carry excessive caseloads, and because their defenders’ salaries are so inadequate as to force the District Public Defender to permit the assistant public defenders to carry a private, civil docket to supplement their incomes, the assistant public defenders in Calcasieu Parish are unable to comply with the Louisiana Rules of Professional Conduct related to competence, diligence, and communication with their clients, among others.

99. 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.

100. 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:

101. Defendants have persisted in this wrongful conduct despite actual and/or constructive knowledge that indigent defendants were being deprived of their right to counsel.

102. The enactment of Act 307 has failed to date to cure the constitutional deficiencies in Calcasieu Parish.

### **LEGAL CLAIMS**

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

103. Paragraphs one through 102 are incorporated fully herein.

104. The State’s prosecution of Plaintiffs and Members of the Plaintiff Class without affording them adequate 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.

105. The Public Defenders Office for Calcasieu Parish and the Public Defender Board, by continuing to accept appointments for new cases, ensure that Plaintiffs and Members of the Plaintiff Class will continue to be denied effective legal representation.

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

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

107. Paragraphs one through 102 are incorporated fully herein.

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

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

**Count Three: 42 U.S.C. § 1983**

110. Paragraphs one through 102 are incorporated fully herein.

111. Defendant Mitchell Bergeron's failure to provide Plaintiffs and Members of the Plaintiff Class with adequate 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**

112. WHEREFORE, Plaintiffs respectfully request the following relief:
113. Certification of the Class as defined in paragraph 50 above;
114. A declaration that Defendants are depriving Named Plaintiffs and Members of the Plaintiff Class of their right to the effective assistance of counsel pursuant to the Sixth and Fourteenth Amendments to the United States Constitution and Article I, Sections 2 and 13 of the Louisiana Constitution of 1974;
115. The issuance of a permanent injunction restraining Defendant the State of Louisiana from prosecuting Named Plaintiffs and Members of the Plaintiff Class in Calcasieu Parish while they are being deprived of their constitutional rights to the effective assistance of counsel.
116. The issuance of a permanent injunction restraining Defendants the Louisiana Public Defender Board and Mitchell Bergeron in his official capacity as the 14th Judicial District Public Defender from accepting any new felony cases while the assistant public defenders carry felony caseloads that exceed statewide caseload standards set by the Louisiana Public Defender Board.
117. For an award of plaintiffs' costs and attorneys' fees; and,
118. Any such further relief as this Court deems necessary or proper to alleviate the violations set forth herein.

Respectfully Submitted,

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