

IN THE COURT OF COMMON PLEAS OF
ALLEGHENY COUNTY, PENNSYLVANIA

THOMAS DOYLE, R.W. AND
S.K.,

Plaintiffs,

v.

ALLEGHENY COUNTY SALARY BOARD,
COUNTY COMMISSIONERS LAWRENCE
DUNN, BOB CRANMER, MICHAEL
DAWIDA, and CHIEF PUBLIC
DEFENDER KEVIN SASINOSKI,

Defendants.

: Civil Division
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: Civil Action No.
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: Code No. 011
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: **COMPLAINT**
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: FILED ON BEHALF OF:
: Plaintiffs
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Defendants.

NOTICE TO DEFEND

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

**LAWYER REFERRAL SERVICE
THE ALLEGHENY COUNTY BAR ASSOCIATION
920 CITY-COUNTY BUILDING
PITTSBURGH, PA 15219**

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CLASS ACTION COMPLAINT

I. INTRODUCTION

1. This civil rights class action is to remedy profound defects in the Allegheny County Public Defender program that undermine rights guaranteed to indigent criminal defendants and those who are the subject of involuntary civil commitment proceedings by the Sixth and Fourteenth Amendments to the United States Constitution and other provisions of federal and state law. As detailed in this Complaint, overwhelming caseloads, severe understaffing, inadequate resources, defective policies and procedures, inferior physical facilities and other long-standing systemic problems prevent persons who are entitled to representation by the Public Defender's Office from receiving constitutionally and statutorily adequate assistance of counsel, or, at the very least, place them at serious and imminent risk of such a deprivations. Because of the above deficiencies, Allegheny

County's public defenders, despite their dedication and commitment, frequently are unable to engage in even the most basic functions of representation, such as conferring with clients in a meaningful manner prior to critical stages of their criminal or mental health proceedings, reviewing client files, assisting in the securing of witnesses, conducting pre-trial investigations and preparing for hearings and trials.

2. Pursuant to 42 U.S.C. §1983, the Pennsylvania Constitution, the Commonwealth's Public Defender Act and various other provisions of state statutory law, plaintiffs, on behalf of themselves and all those similarly situated, seek injunctive and declaratory relief to correct the historic deficiencies that have deprived members of the plaintiff class of their right to legal representation - deficiencies that were only exacerbated when, in February 1996, Defendants cut the budget of the Public Defender program by 27.5%.

II. PARTIES

A. Named Plaintiffs

3. Plaintiff Thomas Doyle is a client of the Allegheny County Public Defender system. In one matter, he was charged with forgery, theft, receiving stolen property and criminal conspiracy and, in another matter, escape from house arrest. Since June 12, 1996, he has been incarcerated at the Allegheny County Jail. Because of a general lack of resources, including attorney staff and investigators, the Public Defender's Office is not providing

him with effective assistance of counsel, in violation of his constitutional and statutory rights. Although almost four months have passed since his arrest, the Office has yet to initiate an investigation into the charges against him. In addition, his public defenders are not conferring with him in a meaningful manner.

4. Mr. Doyle was represented by three different public defenders in connection with his theft charge. He met with each attorney once, immediately prior to a court appearance, and talked to each for no longer than a few minutes. None of them was able to conduct an investigation into the charges.

1. Although he was informed in July that he had been appointed a third public defender for the escape charge and that it is scheduled for trial in November, Mr. Doyle has yet to meet this attorney.

2. Plaintiff R.W. has been a client of the Allegheny County Public Defender system several times during the last twelve years. He suffers from a mental illness and is homeless. To protect his privacy, Mr. W. appears in this litigation under a pseudonym.

3. Since 1984, Mr. W. has been involuntarily committed to state psychiatric institutions at least six times. On each occasion, he was represented by a public defender. On each occasion, systemic deficiencies prevented the Public Defender system from providing him with the legal representation to which he was constitutionally and statutorily entitled. Attorneys did not meet and confer with him in a meaningful manner, investigate the

charges against him, utilize expert witnesses or advocate zealously on his behalf.

4. Mr. W. was most recently committed to a psychiatric institution in April 1996. In connection with this commitment, he had three hearings and was represented at each hearing by a different public defender. He met each attorney for the first time a few minutes prior to the hearings and told each one that he did not want to be committed. None of the public defenders, however, had him evaluated by an independent psychiatrist. On information and belief, none of the public defenders advocated aggressively on Mr. W.'s behalf, and each hearing lasted between five and ten minutes. Mr. W.'s current psychiatrist confirms that Mr. W. should not have been committed and, instead, should be referred to a community placement.

5. Because of the recurring nature of Mr. W.'s mental illness and his homelessness, Mr. W. is likely to be the subject of involuntarily commitment proceedings in the future and again will have to rely on the Public Defender system for legal representation. Because of the long-standing nature of the Public Defender program's lack of resources and systemic deficiencies, he will again be deprived of effective assistance of counsel or subject to the real and immediate threat of such an injury.

6. Plaintiff S.K. is currently a client of the Allegheny County Public Defender system. Because she was under the age of 18 when she was arrested, she appears in this litigation with a pseudonym to protect her privacy. Due to a lack of resources and

personnel, the Public Defender's Office is not providing her with the effective legal representation to which she is constitutionally and statutorily entitled. Although she has had several court appearances, her public defenders have not met and conferred with her in a meaningful manner. On information and belief, they have not initiated an appropriate investigation into her case and they have been unable to utilize necessary and appropriate expert witness assistance.

7. On July 5, 1996, Ms. K., a high school senior with a part-time job, was arrested, charged with disorderly conduct, possession of an illegal substance and possession with intent to deliver, and detained although she was statutorily entitled to a delinquency hearing within 10 days of her arrest, she was not provided and one and no one from the Public Defender's Office objected.

8. She remained in detention until at which time she was released on electronic home monitoring. She has had four court appearances since her arrest and three different public defenders. She met each public defender for the first time immediately prior to an appearance and spoke with him or her for only a few minutes each.

9. At the second court appearance, the prosecution declared that it would seek to prosecute Ms. K. as an adult with respect to the drug charges and obtained permission to have Ms. K. evaluated by a psychiatrist to prove that Ms. K. was incapable of being rehabilitated by the juvenile justice system. At the third court

appearance, Ms. K's then-public defender let it be known that the Public Defender's Office did not have the funds to hire its own independent expert to counter the prosecution's expert witness.

10. Ms. K. has yet to explain fully to any public defender her version of the events that led to her arrest, why she is innocent of the drug charges against her, and why she should be permitted to complete high school and continue to work at her part-time job.

B. Defendants

11. Pursuant to 16 Pa. Cons. Stat. §§1620 and 1622-23, defendant Allegheny County Salary Board is the county entity responsible for determining the number and compensation of attorneys and support personnel working for Allegheny County's Public Defender program. By statute, it is composed of the three County Commissioners, the County Controller and the Chief Public Defender. Its current members are County Commissioners Lawrence Dunn, Bob Cranmer and Michael Dawida, County Controller Frank Lucchino, and Public Defender Kevin Sasinowski. Although the Board has long-known of the Public Defender program's systemic deficiencies and inability comply with its constitutional and statutory mandates, it has failed and refused to provide the Public Defender program with the number and type of employees it needs to fulfill its duties.

12. Defendants Lawrence Dunn, Bob Cranmer and Michael Dawida are Allegheny County Commissioners, and as stated above, members of the Salary Board. As members of the Salary Board, they are

responsible for the number and compensation of employees working for the Public Defender system. Pursuant to the Commonwealth's Public Defender Act, 16 Pa. Cons. Stat. §§9960.1-13, they are responsible for the appointment of Allegheny County's Public Defender and the implementation of the Public Defender Act within Allegheny County. Pursuant to 42 Pa. Cons. Stat. §3721, they are also responsible for the maintenance of offices, supporting facilities and services for public defenders at the county courthouse. They and their predecessors-in-office have known of the Public Defender program's inability to provide adequate representation to its clients and have failed and refused to rectify the systemic deficiencies responsible for this inability. Most recently, they cut the program's budget by 27.5%, exacerbating existing problems. They are sued in their official capacities.

13. Defendant Kevin Sasinoski is the chief Public Defender. As a member of the Salary Board and pursuant to the Commonwealth's Public Defender Act, 16 Pa. Cons. Stat. §§9960.1-13, he is responsible for ensuring, among other things, that a sufficient number of attorneys and support personnel are employed by the Public Defender program to enable him to carry out the duties of his office. Pursuant to the Public Defender Act, he is also responsible for ensuring that persons who are eligible for public defender services receive the legal representation to which they are constitutionally and statutorily entitled. He and his predecessors-in-office have known of the Office's inability to provide effective assistance of counsel to its clients. Because

of, among other things, the actions and inactions of the other Defendants in this action, he and his predecessors-in-office have failed to remedy the systemic defects responsible for this inability. He is sued in his official capacity.

14. Hereinafter, all the County Salary Board, the three County Commissioners and the Chief Public Defender are referred to collectively as "Defendants."

III. CLASS ACTION ALLEGATIONS

15. Pursuant to 42 Pa. Cons. Stat. §§1701-16, 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 the unlawful and unconstitutional practices of the Public Defender's Office in Allegheny County and who seek equitable relief from Defendants' failure to ensure that the Allegheny County Public Defender system provides constitutionally adequate assistance of counsel to all those individuals eligible for and entitled to its services.

16. The class that the Named Plaintiffs seek to represent is composed of all persons who are or will be entitled to public defender services, including those who have been or will be refused public defender services because of the unlawful manner in which the Allegheny County Public Defender system determines eligibility for such services.

17. The prerequisites for class certification are satisfied in this case.

a. The class is so numerous that joinder of all members is impracticable. It is a fluid class that includes thousands of current and future Public Defender clients and persons who are or will be eligible for public defender services.

b. There are questions of law and fact common to the members of the plaintiff class, including, but not limited to, whether Allegheny County's Public Defender program has been and continues to be plagued by excessive caseloads, severe understaffing, inadequate resources, defective policies and procedures, and inferior physical facilities; whether these systemic deficiencies prevent the Public Defender program from providing effective assistance of counsel to its clients; and whether the failure to provide effective assistance of counsel violates rights secured to plaintiffs and members of the plaintiff class by the Sixth and Fourteenth Amendments to the United States Constitution, and state constitutional and statutory law.

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

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

e. The prosecution of separate actions by individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the parties opposing the class.

f. Because Defendants have consistently acted and refused to act on grounds generally applicable to the class, final declaratory and injunctive relief with respect to the class as a whole will be appropriate.

IV. FACTUAL ALLEGATIONS REGARDING THE SYSTEMIC DEFICIENCIES
IN THE ALLEGHENY COUNTY'S PUBLIC DEFENDER SYSTEM

A. Allegheny County's Indigent Defense Scheme

18. In the wake of Gideon v. Wainwright, 372 U.S. 335 (1963), holding that indigent criminal defendants are constitutionally entitled to legal representation, a Public Defender's Office was established in Allegheny County. While the Office originally represented adults, the Commonwealth of Pennsylvania subsequently expanded its jurisdiction to include juveniles charged with delinquency and persons named as respondents in involuntary mental health commitment proceedings.

19. In accordance with its constitutional and statutory obligations, the Allegheny County Public Defender's Office has had broad responsibilities, representing clients at various stages in their criminal and mental health proceedings. More specifically, public defenders represent adult clients accused of criminal wrongdoing at preliminary hearings, pre-trial conferences, trials,

post-conviction proceedings, and probation and parole revocation proceedings. Although such clients must also appear at preliminary and formal arraignments, they are not represented by counsel at these hearings.

20. The Public Defender's Office represents juvenile clients charged with delinquency at detention hearings, hearings adjudicating whether the juvenile should be tried as an adult pursuant to 42 Pa. Cons. Stat. §6322, trials and post-conviction proceedings. And, it represents mentally-ill adults and children who are the subject of involuntary commitment proceedings at hearings held in connection with such proceedings.

21. Pursuant to long-standing practice, the Office's attorneys were and continue to be designated and paid as part-time employees.

22. Prior to 1996, they were assigned to one or more of the following divisions with the Public Defender's Office: Preliminary Hearing, Pre-Trial, Trial, Homicide, Appeals and Post-Conviction Relief, Parole and Probation, Juvenile, and Mental Health.

23. Attorneys assigned to the Preliminary Hearing, Pre-Trial, Trial, Appeals and Post-Conviction and Parole and Probation Divisions represented the same adult criminal clients at different points in their proceedings. Under this horizontal system, Preliminary Hearing attorneys represented them at preliminary hearings. Attorneys in the Pre-Trial Division represented them after the preliminary hearings but prior to the pre-trial conferences for purposes of discovery and pre-trial motion

practice. Attorneys in the Trial Division represented them from pre-trial conference to disposition. Attorneys in Appeals and Post-Conviction Division represented them in post-conviction proceedings, and those charged with parole and probation revocation violations were represented by attorneys in the Parole and Probation Division.

24. Pursuant to the same system, attorneys in the Homicide Division represented adults charged with homicide and capital crimes. Juveniles charged with delinquency were represented by public defenders in the Juvenile Division through disposition and by public defenders in the Appeals and Post-Conviction Division in post-conviction proceedings. Attorneys assigned to the Mental Health Division represented adults and juveniles facing involuntary commitment to mental health facilities.

25. Each year, thousands of indigent persons have relied on the Public Defender's Office to represent them in criminal, juvenile delinquency and mental health proceedings. Despite the important consequences of such proceedings on the lives and liberties of these individuals, Allegheny County's Public Defender Office is, and historically has been, ill-equipped to deliver the legal representation to which its clients are constitutionally and statutorily entitled.

26. Inadequate facilities and resources, excessive caseloads, defective policies and procedures and other systemic problems engendered by years of Defendants' deliberate indifference have produced a program that functions without regard for, and in

violation of, constitutional and statutory mandates, Pennsylvania's Rules of Professional Responsibility and accepted national standards for effective assistance of counsel, attorney workload, attorney training, and office resources. Such standards have been either promulgated or endorsed by, among other organizations, the American Bar Association, the National Study Commission on Defense Services, the National Legal Aid and Defender Association, and the National Advisory Commission on Criminal Justice Standards and Goals.

27. Despite the fact that many attorneys employed by the Public Defender's Office are conscientious, dedicated lawyers, systemic deficiencies within the Office have prevented these part-time lawyers from undertaking the following tasks in a meaningful and adequate manner: meeting and conferring with their clients prior to critical stages of their proceedings; reviewing client files; conducting pre-trial investigations; researching relevant legal issues; appearing at pre-trial proceedings; pursuing pre-trial motions; obtaining transcripts of preliminary hearings; employing necessary and appropriate expert witnesses; seeking bond reductions; exploring pre-trial alternatives to incarceration; evaluating sentencing options; preparing for trial; prosecuting appeals and motions for post-conviction relief in the manner mandated by law; representing clients at probation and parole revocation hearings; and opposing involuntary mental health commitments.

28. In November 1995, The Spangenberg Group, a private consulting group specializing in the assessment of civil and criminal justice systems, conducted a study of Allegheny County's Public Defender system and prepared a Report that identified many of the deficiencies alleged in this Complaint. The Group found that the Office had fewer resources than virtually all comparable public defender offices elsewhere in the nation and that "the overall conditions of the office create a major impediment to providing quality representation to indigent defendants."

29. The Report made numerous recommendations for change. It suggested, among other things, that the expert budget of the Public Defender program be increased, public defender positions be made full-time, attorneys be provided with continuing legal education, office space be increased and written policies and procedures be promulgated.

30. Although Defendants received a copy of the Spangenberg Report, they failed to implement these recommendations and in February 1996, slashed the budget of the Public Defender's Office by 27.5%. Almost overnight, funding for the Public Defender system went from approximately \$3.9 million to roughly \$2.9 million.

31. The County Commissioners then brought in an Assistant County Solicitor to oversee the restructuring of the Office necessitated by the budget cuts. Because the County Solicitor's Office appears in opposition to the Public Defender's Office in some juvenile and all mental health proceedings, its involvement in

the administration of the Public Defender's Office raised serious ethical questions.

32. The effects of the February 1996 budget cuts and the subsequent reorganization have been devastating. As of December 1995, the Allegheny County Public Defender system handled approximately 15,000 cases per year with a staff of 10 administrators and/or supervisors, 49 part-time public defenders and 27 support staff. The budget cuts resulted in the immediate dismissal of 15 of the attorneys, approximately 20% of the clerical staff, the complete social work staff, and the complete investigative staff. It also led to the dismantling of the Pre-Trial Division. During the ensuing months, Defendants encouraged additional public defender staff to leave under a program designed to reduce the local government payroll. Although some attorneys and support personnel were eventually rehired, as of June 1996, the Public Defender's Office had seven administrators and/or supervisors, 38 part-time attorneys and 20 full-time support staff.

33. As alleged in more detail below, each of the wrongs identified in paragraph 31 above now occurs with greater frequency, depriving even more members of the plaintiff class of their constitutional and statutory right to effective representation of counsel or placing them at even greater risk of such deprivation. Not only has the system had to operate with less staff and fewer resources, many public defenders have increased responsibilities as a result of the passage of recent legislation, including Act 33 (42 Pa. Cons. Stat. §6322), a bill which requires that juveniles

accused of certain types of crimes be tried as adults unless their legal representatives can convince the juvenile court otherwise.

B. Caseloads

34. For several years, national standards have recommended that public defender organizations be staffed with full-time attorneys to avoid conflicts between paying and non-paying clients, and to ensure that public defenders do not work full-time for part-time pay. They further recommend that full-time, non-supervisory public defenders should not be assigned more than 150 felonies per attorney per year; 400 misdemeanors per attorney per year; 200 juvenile cases per attorney per year, or 25 appeals per attorney per year. In fact, these standards, as well as the Rules of Professional Responsibility, advise defender organizations to refuse or take steps to reduce caseloads that are so excessive that they erode the attorneys' ability to provide adequate representation.

35. The caseloads of the part-time public defenders exceeded national minimums for full-time public defenders long before the February 1996 budget cuts. These caseloads so overwhelmed defenders that they had neither the time nor the resources to practice law in a manner consistent with constitutional and statutory mandates, the Rules of Professional Responsibility and national practice standards.

36. During the first six months of 1995, each of the part-time attorneys assigned to the Preliminary Hearing Division handled approximately 1,100 preliminary felony and misdemeanor hearings.

The Trial Division conducted 3,498 felony or misdemeanor hearings. The four-person Homicide Division conducted 26 homicide trials, for an annualized rate of more than 13 trials per attorney. Attorneys in the Appeals and Post-Conviction Unit filed 192 appellate briefs, petitions and other documents for an annualized rate of 64 per attorneys, and lawyers in the Juvenile Division conducted 2,964 hearings for an annualized rate of 1,186 hearings per attorney.

37. With the recent budget cuts, the resulting staff reductions and the elimination of the Pre-Trial Division, attorney caseloads, particularly in the Trial Division, have increased as lawyers have assumed the job responsibilities of their former colleagues. As lawyers have been transferred or laid off, many attorneys with already heavy caseloads have been asked to represent an additional 50 to 60 new clients.

38. As of April 1996, many attorneys in the Trial Division had between 75 and 100 open cases proceeding towards trial at any one point in time and were receiving 20 to 30 new cases every two weeks. On information and belief, some attorneys had a total of 40 jury trials, non-jury trials and pleas scheduled each month.

39. In June 1996, each Juvenile public defender had between 40 and 50 open matters proceeding towards trial at any one point in time. On information and belief, each attorney in the Post-Conviction and Appeals Division is currently expected to handle between 40 and 60 appeals and/or post-conviction relief cases per year. On information and belief, the six part-time attorneys

assigned to the Mental Health Division are involved in approximately 7200 involuntary commitment proceedings per year.

40. Although many attorneys are aware that the size of their caseloads is preventing them from providing effective assistance of counsel to their clients, the Trial Division attorneys have been instructed that they cannot petition the court to withdraw from a case without receiving prior approval from senior administrators. Because permission is rarely granted, many attorneys have simply stopped asking.

C. Lack of Resources

41. State statutes, including 42 Pa. Cons. Stat. 3721, mandate and national standards recommend that Defendants provide indigent defender systems with adequate office space, furniture, equipment and the supplies and resources required for constitutionally and statutorily adequate representation, including a law library, funding for experts, clerical support staff and investigators. Defendants have long failed to make such resources available to Allegheny County's Public Defender system.

42. Office space has been and continues to be inadequate. The space cannot accommodate the number of attorneys who need to use the office and often affords no privacy for confidential interviews of clients and witnesses.

43. Library and legal research facilities are lacking. Public defenders in the Juvenile Division never have had access to a law library at their courthouse offices and can not research cases. Although attorneys in the Trial Division have had access to

a library located over a mile from the courthouse, that library has no digests, case reporters or Shepard's Citations for lower federal courts. As a result, these attorneys have had no efficient means of locating relevant case law or of ensuring that case law has not been overturned. Although attorneys in the Post-Conviction and Appeals Division had access to a total of three hours of WESTLAW each month, the Office discontinued the service after the February 1996 budget cuts and did not reinstate it until July.

44. For many years, there have not been enough investigators to assist public defenders in investigating their cases so that they may properly prepare a defense. Prior to the February 1996 budget cuts, there were eight full-time "investigators," whose only responsibilities were to interview clients in their office or at jail. Pursuant to the policy of the then-investigative chief, they were not to leave the office to seek out witnesses, serve subpoenas or visit crime scenes except in extraordinary circumstances. In February 1996, the entire full-time investigative staff was fired and, as of July 15, 1996, one investigator and five "interviewers" (one of whom is technically referred to as an investigator) had been hired in its place. The investigator only works on certain capital cases, egregious homicides and an occasional mental health case. On information and belief, he is not available to work on any other type of public defender case, including juvenile and post-conviction cases. The interviewers' primary responsibility is to determine whether those seeking public defender services are eligible for such services. Without investigators, public

defenders frequently cannot conduct the type of factual investigation necessary to permit them to advocate effectively on their clients' behalf.

45. For many years, there have not been enough social workers to assist public defenders in exploring, preparing and proposing alternatives to incarceration or institutionalization on behalf of adult and juvenile clients. An effective social worker can help locate alternative placements for mentally-ill clients who do not require institutionalization. In addition, he or she may be able to help juvenile clients find needed social services programs or more appropriate placements. Although it typically costs law enforcement programs less to refer someone to a rehabilitation program than to incarcerate him, the only social worker employed by the agency was terminated in February 1996.

46. For many years, there have been no paralegals in the Public Defender's Office to assist public defenders in conducting legal research, marshaling the facts, drafting pleadings, preparing for trial, or other essential functions. As of June 8, 1996, there was one legal assistant for the entire office.

47. For many years, there have not been enough clerical personnel to prepare motions and other documents for public defenders in a timely manner, or to transcribe the tape recordings of the preliminary hearings. As of June 1996, the 18 attorneys in the Trial Division shared one secretary, as did the four attorneys in the Juvenile Division.

48. For many years, Defendants have failed to provide the Public Defender program with the funds necessary to engage expert witnesses or to procure psychiatric evaluations and scientific tests that are needed to represent clients adequately. Despite the enormous size of the agency's client base and the extensive need for such services, during fiscal year 1996 Defendants made only \$36,000 available for such purposes. At some point in 1996, public defenders in the Mental Health Division were told by their superiors that there were no funds available for independent psychiatric evaluations of clients who were the subject of involuntary commitment proceedings.

49. For many years, there have been no written policies and procedures regarding a public defender's ethical obligations to his or her clients, or defining the minimum job responsibilities of the attorneys within the respective divisions of the Public Defender Office. There is no uniform procedure governing the use of expert witnesses. There are no written policies or procedures discussing the representation of clients charged with capital crimes. There are no limitations on the number of private clients a public defender may accept and no written rules regarding conflicts of interests between a part-time public defender's private clients and his public defender clients. There has been no system of quality control and no internal monitoring to ensure that the quality of public defender representation meets constitutional and statutory mandates.

50. For many years, there have been no training programs for newly hired public defenders to teach them court procedures, the relevant criminal law and the Rules of Professional Responsibility as they pertain to indigent defense representation. In addition, there are no training programs for more experienced public defenders to apprise them of changes in law and procedures.

51. For example, public defenders in the Juvenile Division received no training on recent legislation mandating that every child charged with certain serious offenses be tried as an adult unless, at a decertification hearing, his or her public defender could convince a judge otherwise. Specifically, they were not instructed on how to prepare for or prevail at a decertification hearing. As a result, representation at these hearings has been chaotic.

52. For many years, the Public Defender program has had no information systems designed to keep track of caseloads and case assignments. On information and belief, this has resulted in the uneven distribution of cases and the allocation of excessive numbers of cases to some public defenders.

53. Defendants' indifference to the legal needs of public defender clients is further reflected in the large disparity between the amount of money that Allegheny County spends on its Public Defender program and the amount spent by comparably sized counties elsewhere in the country for public defender services. According to the 1990 national census, Bronx County, New York, Broward County, Florida, Middlesex County, Massachusetts, Hennipen

County, Minnesota, and Suffolk County, New York, each has a population similar to Allegheny County's -- between 1.2 and 1.3 million. In sharp contrast to Allegheny County's \$2.9 million public defender budget, the 1994 budget for public defender services in Bronx, Broward and Middlesex counties was approximately \$14 million. In Hennipen it was \$11 million and in Suffolk it was \$5.3 million.

54. Defendants' indifference is also illustrated by the substantial difference in funding between Allegheny County's prosecutorial and public defender services. The District Attorney's 1996 budget was approximately three times larger than the Public Defender's 1996 budget of \$2.8 million. While Defendants cut the Public Defender budget by 27.5% in February 1996, they cut the District Attorney's budget by only 2.2%.

D. Harm to Plaintiffs

55. National standards and Professional Rules of Responsibility define adequate assistance of counsel as requiring, among other things, that defense counsel: (a) have adequate knowledge of the relevant areas of the law; (b) be assigned to their clients as early in the criminal, delinquency or mental health proceeding as possible; (c) be present at every critical stage of their clients' proceedings; (d) conduct reasonable factual and legal pre-trial investigations into the charges against their clients, pursue available formal and informal discovery procedures, and use appropriate and necessary experts; (e) consult with their clients to elicit relevant information about the case, to inform

clients of their rights, and to enable clients to make informed decisions about the direction of their cases; and (f) perform their work with reasonable diligence and promptness.

56. For years, the effects of extreme caseloads, inadequate resources as described above, and poor policies and procedures have had a pervasive negative impact on the quality of indigent legal representation in Allegheny County. As described earlier in this Complaint, these systemic defects have acted to deprive the named plaintiffs of their constitutional and statutory right to effective assistance of counsel or have placed them at serious and imminent risk of such a deprivation. As will be described in more detail below, members of the plaintiff class are being harmed or threatened with harm in much the same manner. Even the most diligent and knowledgeable public defenders cannot surmount the agency's systemic deficiencies and harm to members of the class is inevitable.

General Allegations of Harm

57. Because of the ever-changing nature of the Office and the lack of oversight, training, and written policies, procedures and guidelines, many Allegheny County public defenders do not have the knowledge or experience necessary to advocate effectively on behalf of their clients. With the recent staffing shortages, lawyers are routinely transferred from one Division to another without preparation, training or supervision. Attorneys with no experience in the mental health area have been asked to defend suicidal clients who are the subject of involuntary commitment proceedings.

Trial attorneys with no experience in capital defense have been required to represent capital defendants at the sentencing stage.

58. Upon information and belief, public defenders have represented and continue to represent clients who have conflicting interests without informing the clients of the conflict or seeking a waiver from them.

Adult Criminal Clients

59. Adult criminal clients are not being provided with legal representation at preliminary arraignments. Pursuant to Pennsylvania law, an individual's constitutional right to counsel attaches at this stage in his or her proceedings. See Commonwealth v. Moose, 602 A.2d 1265 (1992). Yet, the Public Defender's Office does not provide representation to its clients at this critical stage.

60. Because of the Office's systemic deficiencies, public defenders in the Preliminary Hearing and Trial Division do not meet and confer with their clients in a meaningful manner prior to, and in between, critical stages of their criminal proceedings. Public defenders in the Preliminary Hearing Division generally meet their clients on the day of the preliminary hearing, minutes before the hearing. Because it is not unusual for such an attorney to have 30 preliminary hearings scheduled on a single day, he or she may have to meet and confer with 30 clients immediately prior to the hearings. Trial attorneys frequently meet their clients for the first time minutes before their pre-trial conferences and often do not talk to them again until the next court hearing.

61. Because there is no unified central system for preparing and disseminating certified transcripts of preliminary hearings, Trial attorneys frequently cannot not obtain such transcripts. Should the prosecution's description of a client's alleged criminal conduct change as a case proceeds, a competent defense lawyer may use testimony from the preliminary hearing at later proceedings to impeach or weaken the prosecution's case. Without a copy of the transcript, however, a public defender can do no such thing.

62. Hampered by the lack of investigators and excessive caseloads, public defenders have been and continue to be unable to investigate the cases to which they are assigned. With only one investigator who can actually go out into the field, attorneys in the Trial Division must conduct their own investigations if any investigation is to occur. Because of their excessive caseloads, however, they rarely initiate investigations prior to trial. They do not have time to meet with or subpoena witnesses, to visit the scene of the crime or to examine evidence.

63. Trial attorneys historically have had great difficulty obtaining expert assistance. On information and belief, they can not utilize experts without permission from senior management, and such permission usually is not granted.

64. Public defenders often do not have the time to make prepare and present pre-trial motions or conduct appropriate discovery. With the demise of the Pre-Trial Division in February 1996, this situation has worsened. The responsibility for pre-trial motions and discovery has shifted to the overextended Trial

Division, which lacks the time or sufficient information to perform these functions adequately.

65. Overwhelmed by their excessive caseloads, many public defenders ask for repeated continuances, forcing some clients to remain incarcerated for protracted periods prior to the disposition of their cases and others to waive their right to a speedy trial. Although sentencing alternatives exist, public defenders have neither the time nor the ability to explore them.

66. The inability of public defenders to meet and confer with their clients in a meaningful manner, obtain preliminary hearing transcripts, conduct pre-trial investigations, utilize expert witnesses, make necessary pre-trial motions and obtain relevant discovery has far-reaching consequences. Public defenders do not obtain important information about their cases, including the names of valuable witnesses, possible alibis, defenses or mitigating circumstances, and the availability of relevant evidence. Without such information, they cannot advocate effectively against detention or the imposition of bail, participate effectively in plea negotiations, prepare for trial or make informed decisions about whether clients should testify at hearings and trials. In addition, they cannot explain to their clients the nature and importance of their proceedings, and they jeopardize the clients' ability to make informed decisions, including decisions relating to the advisability of pleading guilty or proceeding to trial.

67. Due to Defendants' failure to cure the Public Defender program's systemic deficiencies, plaintiffs and members of the

plaintiff class do not receive fair trials and are denied due process or persuaded to waive due process protections without a sufficient understanding of the protections they are waiving. Clients who have meritorious defenses are persuaded to plead guilty. Others receive harsher sentences than the facts of their case may warrant.

68. Public defender clients charged with capital crimes are particularly poorly served by the Public Defender system. Prior to the February 1996 budget cuts, all capital cases were handled by attorneys in the Homicide Division. After the budget cuts, the Homicide Division was reconfigured and capital cases are being assigned, often on the eve of trial, to attorneys in the Trial Division with no prior experience in death penalty litigation. Because of their caseloads, these attorneys have little time to prepare or to meet and confer with their clients. Experienced lawyers do not second chair the trials. There are no mitigation experts on staff or under contract to assist in the sentencing phase and no funds to hire such experts. There are no attorneys in the Post-Conviction and Appeals Division with death penalty trial or appellate experience to handle appeals.

Juvenile Clients

69. Like their colleagues in the Preliminary Hearing and Trial Divisions, public defenders in the Juvenile Division are unable to meet and confer with their clients in a meaningful manner. Since the February 1996 budget cuts, many Juvenile Division attorneys have begun to represent children at juvenile

detention hearings without ever having met them. Although studies indicate that children who are detained pending their delinquency hearings generally receive harsher sentences than those who are not detained, the public defenders do not play an active role at the detention hearings and most hearings are usually concluded in a matter of minutes.

70. With the passage of Act 33 (42 Pa. Cons. Stat. 6322), juveniles charged with certain types of crimes must be tried as adults unless their public defenders can convince a court, at a decertification hearing, that the child is capable of rehabilitation and would be better served by the juvenile system. Because of the onerous nature of their caseloads, the lack of training and guidelines, and their existing job responsibilities, Juvenile Division attorneys have neither the time nor ability to prepare for these hearings adequately. Although expert testimony is often necessary to establish that clients are capable of rehabilitation by the juvenile justice system, attorneys in the Juvenile Division are not given the funds to hire such experts.

71. Juvenile Division attorneys generally receive the files of clients who are not the subject of decertification hearings the afternoon before their delinquency hearings and meet with the children, their parents and/or their probation officers for the first time the day of the hearings. They often do not have the time to conduct any type of pre-hearing investigation into the charges against their clients and cannot advocate effectively on behalf of their clients at the hearings. They only meet with

witnesses if the clients' families are knowledgeable enough to bring them to the hearings. On information and belief, several public defenders have placed witnesses on the stand without having interviewed them or prepared them to testify, and in some cases, the testimony of those witnesses has actually been harmful to the clients. Although probation officers routinely make recommendations at these hearings as to how the court should dispose of the cases, many public defenders do not interview the probation officers prior to the hearings and do not know what the probation officers will say until they testify.

72. On information and belief, those juvenile clients who are convicted are often not informed of their right to appeal. On further information and belief, without the assistance of social workers, little, if any, work is done on sentencing alternatives or social service referrals.

73. As in the adult criminal context, the inability of public defenders to meet and confer with their juvenile clients in a meaningful manner, conduct pre-trial investigations, utilize expert witnesses and explore sentencing alternatives has profound consequences. Public defenders cannot effectively advocate against detention or certification, effectively represent their clients at delinquency hearings or participate in plea negotiations. Children with meritorious defenses or mitigating circumstances are needlessly detained or receive harsher sentences than they might otherwise with an adequately prepared advocate. Without adequate legal representation, public defender clients do not receive a fair

trial and are, therefore, denied due process. In some instances, they are persuaded to waive due process protections without a sufficient understanding of the protections they are waiving.

Mental Health Clients

74. Like the attorneys in the Preliminary Hearing, Trial and Juvenile Divisions, Mental Health attorneys do not meet and confer with their clients in a meaningful manner, investigate the charges against their clients, utilize necessary expert witness assistance, or seriously explore alternatives to institutionalization. Most attorneys in the Mental Health Division meet their clients for the first time minutes before their involuntary commitment proceedings.

75. They generally do not meet with the clients' families or friends, and if they review relevant mental health records, it is immediately before the hearings. Although expert testimony is often the only meaningful way to oppose an involuntary mental health commitment proceeding, Mental Health public defenders rarely obtain independent psychiatric evaluations of their clients or utilize mental health experts to oppose commitment.

76. Mental Health attorneys who do seek psychiatric expert assistance almost always use doctors or clinicians from one of the two local hospitals that admit involuntarily committed patients. Which doctors or practitioners are utilized depends on which hospital has agreed to accept the client as a patient. If the state is attempting to commit the client to one hospital, the attorney will ask the other to review the client's commitment papers. That the two hospitals that stand to gain financially from

involuntarily commitments act as each other's evaluators raises an apparent conflict and casts doubt on the impartiality of the evaluation. On information and belief, however, these attorneys have no other options. As stated earlier, there has been no funding to pay for any other type of mental health evaluation since January 1996.

77. As a result of their inability to prepare adequately for the hearings, clients who do not want to be committed and for whom other alternatives exist are needlessly institutionalized.

E. Exclusion of Indigents from Public Defender Representation

78. While many members of the plaintiff class are denied or at imminent risk of being denied adequate assistance of counsel, others who are eligible for public defender services receive no legal representation at all.

79. A number of years ago, the Allegheny County Court of Common Pleas promulgated Rule 317.4 establishing eligibility criteria. Rule 317.4 requires that an eligibility determination "must include an assessment of both assets and liabilities. The sum used to determine eligibility must be the amount which remains after the liabilities are deducted from the prospective client's assets" (emphasis in original). The eligibility determinations conducted by the Allegheny County Public Defender's Office, however, have routinely failed to include an assessment of the liabilities of potential agency clients. As a result, indigent persons entitled to and in need of legal representation by the Public Defender system do not receive it.

F. Defendants' Long-Standing Knowledge of Inadequate Representation and Lack of Adequate Remedy at Law

80. The systemic deficiencies alleged herein constitute a pattern and practice. Defendants and their predecessors-in-office have long been aware of these inadequacies and have failed to remedy them. Their failure to remedy them constitutes deliberate indifference to the constitutional and statutory rights of the plaintiffs and members of the class.

81. Plaintiffs and members of the plaintiff class have suffered irreparable harm or are at imminent and serious risk of suffering such harm because of Defendants' failure to remedy the system's deficiencies. There is no adequate remedy at law to address these matter deficiencies or the system-wide deprivation of counsel.

V. LEGAL CLAIMS

A. First Count: United States Constitution, Sixth and Fourteenth Amendments and 42 U.S.C. §1983

82. Paragraphs one through 85 are incorporated herein by reference the same as though pleaded in full.

83. Defendants' failure to provide plaintiffs and members of the plaintiff class with 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 effective assistance of counsel and due process.

B. Second Count: Pennsylvania Constitution, Art. I, §9

84. Paragraphs one through 87 are incorporated herein by reference the same as though pleaded in full.

85. Defendants' failure to provide plaintiffs and members of the plaintiff class with adequate legal representation violates plaintiffs' rights under Art. I, §9 of the Pennsylvania Constitution, which, among other things, guarantees to all criminally accused the right to be heard through a legal representative.

C. Third Count: Pennsylvania's Public Defender Act,
16 Pa. Cons. Stat. §§9960.1-13

86. Paragraphs one through 89 are incorporated herein by reference the same as though pleaded in full.

87. By failing to provide plaintiffs and each of the class members with effective assistance of legal counsel, Defendants have violated plaintiffs' rights and the rights of the plaintiff class under the Pennsylvania Public Defender Act, 16 Pa. Cons. Stat. §§9960.1-13, which requires Defendants to provide counsel and legal services to indigent criminal defendants and those who are the subject of involuntary mental health proceedings.

D. Fourth Count: Pennsylvania's Juvenile Act, 42 Pa. Cons. Stat.
§6337

88. Paragraphs one through 91 are incorporated herein by reference the same as though pleaded in full.

89. By failing to provide juvenile members of the plaintiff class with effective assistance of legal counsel, Defendants have violated the rights of those plaintiffs under 42 Pa. Cons. Stat.

§6337, which states that such plaintiffs are entitled to legal counsel at every stage of any delinquency proceeding.

E. Fifth Count: Pennsylvania's Mental Health Procedures Act, 50 Pa. Stat. Ann. §7304, and 55 Pa. Code §6250.22

90. Paragraphs one through 93 are incorporated herein by reference the same as though pleaded in full.

91. By failing to provide members of the plaintiff class who are the subject of an involuntary mental health commitment proceeding with effective assistance of legal counsel, Defendants have violated the rights of those plaintiffs under 50 Pa. Stat. Ann. §7403 and 55 Pa. Code §6250.22, which state that such plaintiffs are entitled to legal counsel at every stage of any mental health commitment proceeding.

F. Sixth Count: Pennsylvania's Law on Probation and Parole, 37 Pa. Code §§71.2 and 71.4.

92. Paragraphs one through 95 are incorporated herein by reference the same as though pleaded in full.

93. By failing to provide members of the plaintiff class who are the subject of revocation of parole proceedings with effective assistance of legal counsel, Defendants have violated the rights of those plaintiffs under 37 Pa. Code §§71.2 and 71.4, which state that such plaintiffs are entitled to legal counsel at revocation hearings.

G. Seventh Count: Pennsylvania's Public Defender Act, 16 Pa. Cons. Stat. §§9960.1-13, and 42 Pa. Cons. Stat. §3721

94. Paragraphs one through 97 are incorporated herein by reference the same as though pleaded in full.

95. By failing to provide the public defender system with adequate facilities and resources, Defendants have violated plaintiffs' rights and the rights of the plaintiff class under 16 Pa. Cons. Stat. §9960.9 and 42 Pa. Cons. Stat. §3721, which require Defendants to provide suitable office space, furniture, equipment and supplies for the use of the Public Defender's Office.

H. Eighth Count: Sixth and Fourteenth Amendments to the United States Constitution; Pennsylvania's Public Defender Act, 16 Pa. Cons. Stat. §§9960.1-13; and Rule 317.4 of the Allegheny County Court Rules

96. Paragraphs one through 99 are incorporated herein by reference the same as though pleaded in full.

97. By failing to determine eligibility for public defender services in the manner required by state law, Defendants have violated plaintiffs' rights and the rights of the plaintiff class under the Sixth Amendment to the United States Constitution, Pennsylvania's Public Defender Act, 16 Pa. Cons. Stat. §§9960.1-13, and Rule 317.4 of the Allegheny County Court Rules.

VI. PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully request the following relief:

1. A declaration that plaintiffs' rights are being violated.
2. The issuance of preliminary and permanent injunctions requiring Defendants to provide a Public Defender program in Allegheny County that is consistent with the Sixth and Fourteenth Amendments to the United States Constitution; 42 U.S.C. §1983; Art. I, §9 of the Pennsylvania Constitution; 16 Pa. Cons. Stat.

§§9960.1-13; 42 Pa. Cons. Stat. §§3721 and 6337; 50 Pa. Cons. Stat. § 7304; 37 Pa. Code §§71.2 and 71.4; 55 Pa. Code §6250.22, and Rule 317.4 of the Allegheny Local Court Rules.

3. The award to plaintiffs of costs and attorneys' fees under 42 U.S.C. §1988.

4. The granting of such other and further relief as this Court deems necessary or proper.

Respectfully submitted,

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VERIFICATION

I, Claudia Davidson, am one of the attorneys for the Plaintiffs in this matter and do verify that all of the allegations herein are true upon information and belief or personal knowledge. The source of this information is from the named-Plaintiffs and from persons having direct and personal knowledge of all other averments. All other averments are based upon personal knowledge. Due to complex nature of this case, no one of the three named-plaintiffs has personal knowledge of all of the averments in the Complaint.

CLAUDIA DAVIDSON, ESQUIRE