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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

ROSS M. SHEPARD, Director, Public
Defender Services of Lane County, Inc.;
PUBLIC DEFENDER SERVICES OF
LANE COUNTY, INC.;
F. DOUGLASS HARCLEROD, District
Attorney for Lane County; and
JASON ALLEN FROST,

Plaintiffs,

v.

The Honorable MARY ANN BEARDEN;
The Honorable JACK A. BILLINGS; The
Honorable EVELEEN HENRY; The
Honorable KARSTEN H. RASMUSSEN;
and the Honorable WALLACE P CARSON,
JR., in his capacity as Administrative Head of
the Judicial Department of the State of
Oregon,

Defendants.

Case No. _____

COMPLAINT

Complaint for Declaratory Relief
(28 U.S.C. § 1983)

I. Jurisdiction and Venue

1.

This action is brought under 42 U.S.C. § 1983 to remedy the deprivation – under color of state law, practice or custom – of rights guaranteed by the United States Constitution. This court has jurisdiction under 28 U.S.C. § 1331.

2.

Plaintiffs' claim for declaratory relief is authorized by 28 U.S.C. §§ 2201 and 2202 and Rule 57 of the Federal Rules of Civil Procedure.

3.

This cause of action arose in the District of Oregon and, therefore, venue is proper under 28 U.S.C. § 1391(b).

Background

4.

Indigent defendants in a criminal proceedings have a right under the state and federal constitutions, and under state statute, to be represented by counsel appointed at public expense. The cost of such counsel is paid from the State Court Indigent Defense Account (the Indigent Defense Account), which is funded by the legislature and administered by the State Court Administrator.

5.

During its 2001 general session, the Oregon legislature appropriated \$163.7 million to the Indigent Defense Account for the 2001-03 biennium, which ends June 30, 2003. But in several special sessions in 2002, the legislature cut that appropriation by \$27.5, or approximately 16.8 percent. Later, the legislature restored \$5 million in funding. But the Indigent Defense Account is still substantially diminished from its original appropriation.

6.

As a consequence of the budget cuts, the Indigent Defense Account does not presently have sufficient funds to pay the anticipated cost of appointed counsel for indigent defendants through the end of the 2001-03 biennium.

7.

In addition to cutting the Indigent Defense Account, the legislature also cut the Judicial Department budget for the 2001-03 biennium by \$50.6 million, or approximately 12.1 percent of the original \$416.7 million appropriation.

8.

In response to the budget cuts described above, the Honorable Wallace P. Carson, Jr., Chief Justice of the Oregon Supreme Court, acting in his capacity as Administrative Head of the Judicial Department, developed the Chief Justice's Operations and Indigent Defense Appropriations Budget Reduction Plan (the Budget Reduction Plan), which provides in part that, beginning March 1, 2003, counsel will no longer be appointed for indigent defendants in the following "trial level case types":

- all non-person misdemeanors (adult and juvenile)
- all non-person misdemeanor probation violations (adult and juvenile);
- all post-conviction relief cases;

- all non-person felony probation violations (adult and juvenile);
- all adult contempts, except violation of a restraining order and child support contempts;
- all non-person Class C felonies (adult and juvenile); and
- all Class B possession of controlled substance felonies (adult and juvenile)

Exhibit A to this complaint is a copy of the “fact sheets” for the Budget Reduction Plan, published by the State Court Administrator.

9.

The Budget Reduction Plan provides for a process of “interrupted arraignment” in cases of the type described above. At the defendant’s first appearance in cases of that type, the trial court will “start arraignment” by advising the defendant of the nature of the charge against him. The court will also advise him that he has the right to remain silent; that anything he says can be used against him; that the state has the burden of proof; that he has the right to a trial by jury; that he has the right to be represented by an attorney; and that an attorney will be appointed for him if he cannot afford to hire his own. But, under the plan, the court will not in fact appoint an attorney, even if the defendant requests one. Instead, the court will discontinue the arraignment and postpone the proceedings until sometime after the start of the next biennium, in hope that, by then, the legislature will have appropriated sufficient funds to pay for counsel in all pending and anticipated cases, although there is no assurance that it will. Defendants with the financial ability to retain their own counsel are permitted to proceed with the arraignment.

10.

On February 4, 2003, Chief Justice Carson, still acting in his capacity as Administrative Head, issued Chief Justice Order Number 03-029 (Order 03-029), which authorizes the Presiding Judge of each circuit court in Oregon “to take all necessary actions and issue all necessary administrative directives to implement” the Budget Reduction Plan. Exhibit B to this complaint is a copy of Order 03-029.

11.

Metropolitan Public Defender Services, Inc., of Portland, Oregon, filed a petition for writ of mandamus with the Oregon Supreme Court, challenging the legislature’s failure to adequately fund the Judicial Department and Indigent Defense Account. The court denied the petition in an opinion published March 6, 2003. *See State ex rel Metropolitan Public Defender Services, Inc. v. Courtney*, 335 Or 236, 64 P3d 1138 (2003). Meanwhile, Michael Schrunk, the District Attorney for Multnomah County, filed two petitions of writ of mandamus with the Oregon Supreme Court, challenging the Multnomah County Circuit Court’s decisions, in two separate criminal proceedings, to deny the appointment of counsel for indigent defendants, in accordance with Order 03-029 and the Budget Reduction Plan. The supreme court denied both petitions without published opinion. *See State v. Kay* (S50249) (order of March 27, 2003); *State v. Wohlliab* (S50218) (order of March 27, 2003).

12.

Order 03-029 and the Budget Reduction Plan are projected to affect 28,000 criminal defendants statewide, including 1,500 in Lane County, before the end of the biennium.

Parties

13.

Defendant Bearden is the presiding judge and administrative hear of the Circuit Court of the State of Oregon for Lane County. Defendants Billings, Henry, and Rasmussen are associate judges of that court. Collectively, these defendants are responsible for arraigning the accuseds in criminal proceedings in that court.

14.

Defendants Bearden, Billings, Henry, and Rasmussen have decided, jointly or severally, to comply with Order 03-029 and implement the Budget Reduction Plan, including the parts of that plan which deny appointed counsel for indigent defendants in criminal proceedings.

15.

As noted above, Carson is the Chief Justice of the Oregon Supreme Court and, as such, the Administrative Head of the Judicial Department.

16.

Plaintiff Public Defender Services of Lane County, Inc. (PDSLCL), is a "public defender organization," which is authorized by ORS 151.010 to provide counsel for indigent defendants in criminal proceedings in Lane County. PDSLCL has a staff of 46, including 24 attorneys. Plaintiff Shepard is the Director, or chief executive officer, of PDSLCL. The State Court Administrator contracted with PDSLCL to represent indigent defendants during 2003, in return for approximately \$3.4 million, payable in monthly sums of approximately \$286,500. The size of the contract is related to the number of cases that PDSLCL is expected to handle under the contract, which exceed 7,000 in 2003.

17.

PDSLCL's contract requires that it provide counsel for – and thus PDSLCL's clients include – indigents who are *currently being* prosecuted for crimes affected by Order 03-029 and the Budget Reduction Plan, as well as indigents who *will be* prosecuted and indigents who are *threatened with* prosecution, during the remainder of 2003, for crimes affected by Order 03-029 and the Budget Reduction Plan.

18.

As a consequence of the Order 03-029 and the Budget Reduction Plan, the State Court Administrator has notified PDSLCL that it will suspend its contract with PSDLCL unless PDSLCL agrees to a 52 percent reduction in the agreed monthly payments for March through December 2003. The proposed reduction in payments will adversely affect PDSLCL by, among other things, forcing PDSLCL to layoff staff, including attorneys. The attorneys who remain will have to work harder to take over the caseloads of those laid off. The remaining attorneys will have to work harder – and PDSLCL will incur extraordinary expenses – defending cases affected by Order 03-029 and Budget Reduction Plan. The delay in appointment of counsel will raise novel and complex speedy-trial, due-process, and right-to-counsel issues that will have to be briefed and argued. The delay will make it harder to investigate the alleged crimes, because witnesses and evidence tend to disappear with time. The delay will also impose unusual burdens on PDSLCL to monitor abated cases, to keep clients informed of the status of the proceedings, to keep track of witnesses, etc.

19.

PDSLCL's current clients are – and its future clients will be – adversely affected by defendants' decision to follow Order 03-029 and the Budget Reduction Plan. Without the benefit of counsel, these clients will find it difficult, if not impossible, to obtain a speedy

resolution of the charges against them, whether by guilty plea, dismissal, or compromise. That delay alone is harmful. But the delay will also make it harder to prepare a defense to the charges, if the client chooses to contest them, and that, too, is harm. In addition, these clients will find it difficult – without assistance of counsel – to obtain release from custody before trial or other relief to which they might otherwise be entitled.

20.

Plaintiff Harclerod is the District Attorney for Lane County. As such, he is responsible for prosecuting crimes on behalf of the people of the State of Oregon. He also represents crime victims, who have a right, in some instances, to compensation and other relief in criminal proceedings, including restitution and consideration in pretrial release decisions. Plaintiff Harclerod is now, and will continue to be, adversely affected by defendants' decision to follow Order 03-029 and the Budget Reduction Plan. He will be unable to prosecute some crimes as quickly as before, and may be unable to prosecute some crimes at all, if the accused obtains a dismissal based on "speedy trial" guarantees or other problems arising from the delay in appointment of counsel and prosecution of the case. Likewise, plaintiff Harclerod will be unable to secure prompt – or, in some case, any – relief for crime victims.

21.

Plaintiff Frost is the defendant in a criminal proceeding now pending in Lane County Circuit Court, entitled *State v. Frost*, No. 20-99-22540A. He is indigent and would qualify for appointment of counsel at public expense, if not for defendants' decision to follow Order 03-029 and the Budget Reduction Plan. In accordance with that order and plan, the court denied plaintiff Frost's request for appointed counsel and postponed the proceedings in his case. Exhibit C to this complaint contains copies of filings in *State v. Frost*.

First Claim for Relief
(Violation of Sixth Amendment)

22.

The Sixth Amendment to the United States Constitution guarantees indigent defendants the right to have counsel appointed for them at public expense, beginning no later than the start of arraignment and continuing through all subsequent proceedings.

23.

The denial of counsel pursuant to Order 03-029 and the Budget Reduction Plan constitutes an ongoing deprivation of rights guaranteed by the Sixth Amendment.

Second Claim for Relief
(Denial of Due Process)

24.

Oregon law guarantees indigent defendants the right to have counsel appointed for them at public expense, beginning no later than the start of arraignment and continuing through all subsequent proceedings.

25.

The Fourteenth Amendment to the United States Constitution guarantees due process of law to all persons.

26.

The denial of counsel pursuant to Order 03-029 and the Budget Reduction Plan constitutes an ongoing denial of due process, in violation of the Fourteenth Amendment.

Third Claim

(Denial of Equal Protection

27.

The Fourteenth Amendment to the United States Constitution guarantees to all persons equal protection of the laws regardless of wealth.

28.

Order 03-029 and the Budget Reduction Plan discriminate on the basis of wealth by interrupting arraignment and delaying proceedings for indigent defendants, but not for defendants who can afford to retain their own attorney.

29.

Interrupting arraignments and delaying proceedings for indigent defendants, but not for defendants who can afford to retain counsel, as required by Order 03-029 and the Budget Reduction Plan, constitutes a denial of equal protection of the laws, in violation of the Fourteenth Amendment.

Fourth Claim

(Attorney Fees)

30.

Plaintiffs are entitled to attorney fees under 28 U.S.C. § 1988.

Prayer

Wherefore, plaintiffs pray for judgment as follows:

- (1) declaring that the denial of counsel pursuant to Order 03-029 and the Budget Reduction Plan constitutes an ongoing violation of rights guaranteed by the Sixth and Fourteenth Amendments;
- (2) awarding plaintiffs their costs and attorney fees; and
- (3) awarding plaintiffs such further relief as is proper.

DATED this 7th day of April, 2003.

Respectfully submitted,

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