

ACLU  
MONTANA  
LPA suit

1 Ronald F. Waterman  
2 GOUGH, SHANAHAN, JOHNSON & WATERMAN  
3 33 South Last Chance Gulch, Suite 1  
4 Helena, MT 59624-1715  
5 (406) 442-8560

6 Beth Brenneman  
7 AMERICAN CIVIL LIBERTIES UNION OF MONTANA

8 Robin L. Dahlberg  
9 E. Vincent Warren  
10 AMERICAN CIVIL LIBERTIES UNION FOUNDATION

11 Julie A. North  
12 CRAVATH, SWAINE & MOORE

13 Attorneys for Plaintiffs.

14 MONTANA FIRST JUDICIAL DISTRICT COURT, LEWIS AND CLARK COUNTY

15 LARRY WHITE, CANDACE BERGMAN,  
16 MICHELLE FORD, GARY ACKERMANN,  
17 KENNETH SELLARS, WINCHESTER WISEMAN,  
18 and CHRIS KOWITZ,

19 Plaintiffs,

20 v.

21 GOVERNOR JUDY MARTZ;

22 SUPREME COURT ADMINISTRATOR RICK  
23 LEWIS;

24 APPELLATE DEFENDER COMMISSIONERS  
25 DANIEL DONOVAN, DOROTHY McCARTER,  
26 BEVERLY KOLAR, MICHAEL SHERWOOD, and  
27 RANDI HOOD;

28 the BOARDS OF COMMISSIONERS OF  
MISSOULA, GLACIER, TETON, FLATHEAD,  
LAKE, and RAVALLI COUNTIES;

BUTTE-SILVER BOW COUNTY CHIEF  
EXECUTIVE JUDY JACOBSON;

MISSOULA COUNTY COMMISSIONERS  
BARBARA EVANS, BILL CAREY, and JEAN  
CURTISS;

GLACIER COUNTY COMMISSIONERS ALLAN  
LOWRY, WILLIAM ICENOGGLE, and RAYMOND  
SALOIS;

No. C DV-2002-133

COMPLAINT

1 TETON COUNTY COMMISSIONERS R.F. SAM  
2 CARLSON, MARY SEXTON, and ARNIE GETTEL;  
3 DISTRICT COURT JUDGE MARC BUYSKE;  
4 FLATHEAD COUNTY COMMISSIONERS DALE  
5 WILLIAMS, HOWARD GIPE, and ROBERT  
6 WATNE;  
7 LAKE COUNTY COMMISSIONERS MIKE  
8 HUTCHIN, BARRY BAKER, and DAVE STIPE; and  
9 RAVALLI COUNTY COMMISSIONERS JACK  
10 ATTHOWE, ALAN THOMAS, and BETTY LUND;  
11 Defendants.

12 Plaintiffs Larry White, Candace Bergman, Michelle Ford, Gary Ackermann,  
13 Kenneth Sellars, Winchester Wiseman, and Chris Kowitz ("plaintiffs"), on behalf of  
14 themselves and all others similarly situated, by and through the undersigned counsel, upon  
15 knowledge with respect to their own acts and on information and belief as to other matters,  
16 allege as follows:

17 **I. INTRODUCTION**

18 1. Plaintiffs bring this civil rights class action to remedy Montana's failure to  
19 provide constitutionally and statutorily adequate legal representation to indigent adults with  
20 criminal cases pending in the district courts in Butte-Silver Bow, Missoula, Glacier, Teton,  
21 Flathead, Lake, and Ravalli Counties (the "Counties"). This failure deprives, or threatens to  
22 deprive, plaintiffs of rights guaranteed to them by the Sixth and Fourteenth Amendments to  
23 the United States Constitution, Sections 4, 17, and 24 of Article II of the Montana  
24 Constitution, and other provisions of state law.

25 2. The Bill of Rights of the United States Constitution guarantees the right of  
26 the accused "to have the assistance of counsel for his defense". In 1963, the United States  
27 Supreme Court held in *Gideon v. Wainwright*, 372 U.S. 335 (1963), that the Sixth and  
28 Fourteenth Amendments require states to provide counsel, free of cost, to indigent persons

1 charged with felony wrongdoing by the state. The Declaration of Rights of the Montana  
2 Constitution, section 24, similarly guarantees the right of the accused “to appear and defend  
3 in person and by counsel”. The right to counsel requires effective assistance of competent  
4 counsel. *See McMann v. Richardson*, 397 U.S. 759, 771 (1970); *State v. Rose*, 187 Mont.  
5 74, 86 (1980).

6         3. Montana has delegated partial responsibility for the provision of indigent  
7 defense services to its 56 counties. Pursuant to state law, the counties design and administer  
8 their own indigent defense programs. The State then reimburses the counties for attorney  
9 time and certain costs incurred in the representation of indigent adults in district court.

10        4. By law, the State must set standards for the counties’ provision of indigent  
11 defense services. It has, however, failed to set such standards, or to exercise any supervision  
12 to ensure that county indigent defense programs provide constitutionally and statutorily  
13 adequate legal representation. Although the State has established minimum qualifications,  
14 training programs, and minimum rates of pay, it does not require that the Counties hire  
15 indigent defense providers on merit, train them in criminal defense, issue written practice  
16 standards, or monitor or limit excessive workloads.

17        5. The State permits the Counties to underfund their indigent defense services to  
18 the point where the lack of financial resources impedes the delivery of representation. The  
19 State refuses to guarantee the counties full reimbursement of permissible expenses. Fearful  
20 that they may have to assume unanticipated expenses, the Counties design indigent defense  
21 budgets to minimize potential financial liability rather than to ensure adequate defense  
22 representation. To keep costs low, they refuse to budget for necessary attorney staff, they  
23 refuse to compensate indigent defense counsel adequately, and they refuse to provide  
24 adequate funds for necessary support services such as investigators, expert witnesses,  
25 paralegals, and secretarial assistance.

26        6. Because of the State’s failure to supervise and fund indigent defense  
27 adequately, none of the indigent defense programs in the Counties can engage in the type of  
28 adversarial advocacy contemplated by the United States and Montana Constitutions.

1 Lacking time and training, counsel cannot confer with clients in a meaningful manner,  
2 research relevant case law, review client files, conduct necessary pre-trial investigations,  
3 secure necessary expert assistance, or prepare adequately for hearings and trials. When  
4 counsel do file pre-trial motions or take cases to trial, judges often admonish them for taking  
5 the court's time, and county or court officials deny them further assignments because of the  
6 costs they incur.

7         7. Because of the State's failure to supervise and fund indigent defense  
8 adequately, indigent clients suffer multiple deprivations of their constitutional and statutory  
9 rights. Persons who might otherwise be eligible for bail remain in pre-trial incarceration  
10 unnecessarily. They cannot challenge the evidence against them. Innocent persons plead  
11 guilty. Those who have meritorious defenses cannot present them. They receive harsher  
12 sentences than the facts of their case warrant. They do not learn of sentencing alternatives.  
13 Indigent clients waive their due process rights, their right to a fair and speedy trial, and their  
14 right to appeal their convictions.

15         8. Defendants have known for decades of the State's failure to set adequate  
16 standards and provide the resources to meet them, and the consequent inability of the  
17 Counties to provide constitutionally and statutorily adequate legal representation. Two 1976  
18 statewide studies and a 1982 legislative report cited many of the same problems in providing  
19 indigent defense services that persist today. Minor reforms enacted by the legislature, such  
20 as the duty of the Appellate Defender Commission to support trial level indigent defense,  
21 have never been implemented. Defendants' failure to remedy these inadequacies constitutes  
22 deliberate indifference to the constitutional and statutory rights of plaintiffs and members of  
23 the plaintiff class.

24         9. Pursuant to 42 U.S.C. § 1983; the Sixth and Fourteenth Amendments to the  
25 United States Constitution; sections 4 (Individual Dignity), 17 (Due Process of Law) and 24  
26 (Rights of the Accused) of Article II of the Montana Constitution; and sections 46-8-101  
27 (Right to Counsel), 46-8-201 (Remuneration of Appointed Counsel), 46-8-202 (Public  
28 Defender's Office), and 2-15-1020 (Appellate Defender Commission) of the Montana Code

1 Annotated, plaintiffs seek declaratory and injunctive relief to remedy deficiencies in the  
2 indigent defense programs that provide representation to criminal defendants in the district  
3 courts in the Defendant Counties.

## 4 5 **II. THE PARTIES**

### 6 **A. Plaintiffs**

#### 7 1. Larry White (Butte-Silver Bow County)

8 10. Plaintiff Larry White is and at all times pertinent herein has been a citizen of  
9 the United States and resident of Butte, Montana. He has pending criminal cases in the  
10 Butte-Silver Bow County District Court and is incarcerated at the Butte-Silver Bow County  
11 Temporary Jail located in Warm Springs, Montana. Mr. White is represented by a member  
12 of the private bar who has contracted with the Chief Executive of Butte-Silver Bow County  
13 to provide indigent defense services in that county.

14 11. Mr. White is 30 years old and suffers from chronic pain in his left leg that  
15 requires constant pain management. He is charged with drug possession for allegedly  
16 possessing morphine and valium pills, and with bail jumping. Because of the deficiencies in  
17 the Butte-Silver Bow County indigent defense program, which include lack of sufficient  
18 funding, sufficient attorney and professional staff, training, workload limits, adequate  
19 contracting standards, adequate attorney qualification standards, and other indigent defense  
20 policies and procedures, the Butte-Silver Bow indigent defense program is not providing  
21 him with the legal representation to which he is constitutionally and statutorily entitled.

22 12. Mr. White was arrested in February 2001 and was incarcerated on \$17,500  
23 bond. His attorney does not accept collect calls from the jail and has visited Mr. White in  
24 jail only for a few minutes on two occasions. After over a month of incarceration, Mr.  
25 White was released on bond, but his attorney failed to inform him of the date of his next  
26 court appearance. After weeks without any contact from his attorney, Mr. White contacted  
27 him and was told that he had missed a court date and that there was a warrant out for his  
28 arrest. Although Mr. White's attorney promised to get the warrant vacated, the attorney

1 failed to do so, resulting in Mr. White's re-arrest. Mr. White spent approximately three  
2 weeks in jail because his attorney failed to take steps to facilitate his immediate release.

3 13. Mr. White was subsequently re-arrested for missing another court date and  
4 losing contact with his attorney. He is now incarcerated on \$100,000 bond. To date, a year  
5 after he was first arrested, Mr. White and his attorney have had no substantive discussions  
6 about his case, and no steps have been taken to secure an alternative to incarceration.

7 2. Candace Bergman (Missoula County)

8 14. Plaintiff Candace Bergman is and at all times pertinent herein has been a  
9 citizen of the United States and resident of Missoula, Montana. She has pending criminal  
10 cases in the Missoula County District Court and is incarcerated at the Missoula County  
11 Detention Facility. Ms. Bergman is represented by the Public Defender's Office in  
12 Missoula.

13 15. Ms. Bergman is 35 years old and is charged with drug possession, obstruction  
14 of justice, and lesser charges. Because of the deficiencies in the Missoula County indigent  
15 defense program, which include lack of sufficient funding, sufficient attorney and  
16 professional staff, training, workload limits, case management systems, and other indigent  
17 defense policies and procedures, the Public Defender's Office is not providing Ms. Bergman  
18 with the legal representation to which she is constitutionally and statutorily entitled.

19 16. Ms. Bergman has been incarcerated since September 14, 2001. She cannot  
20 call her attorney because Missoula's Public Defender's Office has a policy of refusing to  
21 accept collect calls from the county jail. In addition, because of overwhelming caseloads  
22 and a lack of sufficient personnel, the Public Defender's Office does not promptly respond  
23 to "kites" (requests for attorney contact) sent from incarcerated clients. For example,  
24 Ms. Bergman sent as many as 15 kites before receiving a response from her public defender.  
25 When finally meeting with Ms. Bergman more than a month after he promised to consult  
26 with her, Ms. Bergman's public defender attempted to convey a proposed plea agreement to  
27 her but neglected to bring a copy of the agreement for her to consider. As of January 16,  
28 2002, her public defender had still not shown her a copy of the proposed plea agreement,

1 despite repeated requests to do so, and she and her public defender had never discussed the  
2 facts of her case. Ms. Bergman's public defender has not conducted a factual or legal  
3 investigation into the charges against her.

4                   3.     Michelle Ford (Flathead County)

5           17.     Plaintiff Michelle Ford is and at all times pertinent herein has been a citizen  
6 of the United States and resident of Kalispell, Montana. She has a pending criminal case in  
7 the Flathead County District Court and is incarcerated at the Flathead County Detention  
8 Center. Ms. Ford is represented by a member of the private bar who has contracted with the  
9 Board of Commissioners of Flathead County to provide indigent defense services in that  
10 county.

11          18.     Ms. Ford is 23 years old and has no prior arrests. She is charged with  
12 conspiracy to commit deliberate homicide, theft, tampering with evidence, and conspiracy to  
13 commit a deceptive practice. Because of the deficiencies in the Flathead County indigent  
14 defense program, which include lack of sufficient funding, sufficient attorney and  
15 professional staff, training, workload limits, adequate contracting standards, adequate  
16 attorney qualification standards, and other indigent defense policies and procedures, the  
17 Flathead indigent defense program is not providing her with the legal representation to  
18 which she is constitutionally and statutorily entitled.

19          19.     Ms. Ford was assigned an attorney who is on the rotation to receive homicide  
20 cases despite the fact that he has never tried a homicide case to completion. Although she  
21 has been incarcerated since July 10, 2001, Ms. Ford has met with her attorney only three  
22 times, and they have never discussed the facts of her case or the evidence against her. On  
23 August 9, 2001, her attorney postponed her arraignment pending a psychological evaluation,  
24 but did not arrange for a meeting with a psychiatrist until October 2001. Because of the  
25 lengthy postponement, Ms. Ford has yet to be formally confronted with the charges against  
26 her.

27          20.     Ms. Ford is believed to be suffering from Fetal Alcohol Effect—brain  
28 damage that can cause developmental delays and impair one's judgment and ability to think

1 and act independently. Her attorney has failed to pursue offers to have Ms. Ford tested for  
2 Fetal Alcohol Effect by statewide experts in genetics. On information and belief, Ms.  
3 Ford's attorney has not conducted factual and legal investigations into her case and has  
4 neither sought nor retained adequate expert services on her behalf.

5 4. Gary Ackermann (Lake County)

6 21. Plaintiff Gary Ackermann is and at all times pertinent herein has been a  
7 citizen of the United States and resident of Pablo, Montana. He has a pending criminal case  
8 in the Lake County District Court. Mr. Ackermann is represented by a member of the  
9 private bar who has contracted with the Board of Commissioners of Lake County to provide  
10 indigent defense services in that county.

11 22. Mr. Ackermann is 32 years old and is charged with assault. Because of the  
12 deficiencies in the Lake County indigent defense program, which include lack of sufficient  
13 funding, sufficient attorney and professional staff, training, workload limits, adequate  
14 contracting standards, adequate attorney qualification standards, and other indigent defense  
15 policies and procedures, the Lake indigent defense program is not providing Mr. Ackermann  
16 with the legal representation to which he is constitutionally and statutorily entitled.

17 23. Mr. Ackermann submitted six requests to see his attorney during a twenty-  
18 day period leading up to a court appearance. His attorney did not respond and only met with  
19 Mr. Ackermann once – five minutes prior to the court proceeding. Although the alleged  
20 assault victim has recanted her accusation, Mr. Ackermann's attorney has not investigated  
21 the circumstances surrounding the allegation and its withdrawal.

22 5. Kenneth Sellars (Glacier County)

23 24. Plaintiff Kenneth Sellars is and at all times pertinent herein has been a citizen  
24 of the United States and resident of Browning, Montana. He has a pending criminal case in  
25 the Glacier County District Court and is incarcerated at the Glacier County Sheriff's  
26 Department. Mr. Sellars is represented by a member of the private bar who has been  
27 appointed by the District Court Judge for the Ninth Judicial District to provide indigent  
28 defense representation to Mr. Sellars.



1           25.     Mr. Sellars is 35 years old and is charged with aggravated assault. Because  
2 of the deficiencies in the Glacier County indigent defense program, which include lack of  
3 sufficient funding, sufficient attorney and professional staff, training, workload limits, and  
4 adequate indigent defense policies and procedures, the Glacier indigent defense program is  
5 not providing him with the legal representation to which he is constitutionally and  
6 statutorily entitled.

7           26.     Mr. Sellars has been incarcerated since September 28, 2001. He made his  
8 initial appearance in District Court on October 3, 2001, at which time he was appointed  
9 counsel by the court. Although he called his appointed counsel immediately, Mr. Sellars's  
10 attorney did not speak with him until approximately two weeks later. At that time, Mr.  
11 Sellars provided his attorney with the names of two witnesses who he believes may possess  
12 exculpatory evidence, and his attorney promised to contact these witnesses and arrange for a  
13 polygraph test with the county attorney. Mr. Sellars's attorney, however, never contacted  
14 the witnesses or arranged for a polygraph test. Frustrated by his attorney's failure to take  
15 steps reasonably calculated to exonerate him, Mr. Sellars instructed one witness to contact  
16 his attorney directly. The witness called Mr. Sellars's attorney, who did not interview her  
17 but instead instructed her to write him a letter, which she did. Mr. Sellars's attorney again  
18 promised to confer with this witness but failed to do so.

19           27.     In early December 2001, Mr. Sellars's attorney passed away. Mr. Sellars  
20 learned of his attorney's death not from a Glacier County official but from an inmate at the  
21 Glacier County Sheriff's Department. Approximately one month passed before Mr. Sellars  
22 was informed that he had been appointed new counsel. He has spoken briefly with his new  
23 counsel approximately three times. Each time his attorney made clear that he had not had  
24 time to read the case file or work on the case in any meaningful way. Despite Mr. Sellars'  
25 requests, his new attorney has not contacted the potential defense witnesses, has declined to  
26 arrange for a polygraph test, and has refused to file a speedy trial motion. To date, Mr.  
27 Sellars' attorney has not conducted an investigation into his case, informed him of the status  
28 of his case, or discussed the preparation of a defense.

1                   6.     Winchester Wiseman (Teton County)

2           28.     Plaintiff Winchester Wiseman is and at all times pertinent herein has been a  
3 citizen of the United States and resident of Chouteau, Montana. He has pending criminal  
4 cases in the Teton County District Court and the Cascade County District Court and is  
5 incarcerated at the Cascade County Detention Center. Mr. Wiseman is represented in his  
6 pending case in Teton County by a member of the private bar who has been appointed by  
7 the District Court Judge for the Ninth Judicial District to provide indigent defense  
8 representation to Mr. Wiseman.

9           29.     Mr. Wiseman is 21 years old and is charged in Teton County with criminal  
10 possession of a dangerous substance, criminal operation of a clandestine laboratory, and  
11 lesser charges. Because of the deficiencies in the Teton County indigent defense program,  
12 which include lack of sufficient funding, sufficient attorney and professional staff, training,  
13 workload limits, and adequate indigent defense policies and procedures, the Teton indigent  
14 defense program is not providing him with the legal representation to which he is  
15 constitutionally and statutorily entitled.

16          30.     Although he was appointed counsel on January 8, 2002, Mr. Wiseman has  
17 spoken with his attorney only once for a few minutes. His attorney has not provided him  
18 with a copy of the charges against him or with any discovery material. His attorney did not  
19 inform him that his omnibus hearing occurred, nor has she informed him of the status of his  
20 case or the date of his next court appearance. Although Mr. Wiseman's attorney mentioned  
21 that the search warrant issued against Mr. Wiseman may have been invalid, she has failed to  
22 discuss with Mr. Wiseman the possibility of bringing an appropriate evidentiary motion.  
23 Because he cannot call his attorney from the Cascade County Detention Center, Mr.  
24 Wiseman has not had a meaningful opportunity to discuss the facts of his case with her, ask  
25 questions about the nature and ramifications of the charges against him, or prepare a  
26 defense.

1                   7.     Chris Kowitz (Ravalli County)

2           31.     Plaintiff Chris Kowitz is and at all times pertinent herein has been a citizen of  
3 the United States and resident of Montana. He has a pending criminal case in the Ravalli  
4 County District Court and is incarcerated at the Ravalli County Detention Center. Mr.  
5 Kowitz is represented by a Missoula law firm that has contracted with the Board of  
6 Commissioners of Ravalli County to provide indigent defense services in that county.

7           32.     Mr. Kowitz is charged with forgery. Because of the deficiencies in the  
8 Ravalli County indigent defense program, which include lack of sufficient funding,  
9 sufficient attorney and professional staff, training, workload limits, adequate contracting  
10 standards, adequate attorney qualification standards, and other indigent defense policies and  
11 procedures, the Ravalli County program is not providing Mr. Kowitz with the legal  
12 representation to which he is constitutionally and statutorily entitled.

13          33.     Mr. Kowitz was arrested in the fall of 2001 and was incarcerated due to a  
14 failure to pay a bond. His attorney did not take Mr. Kowitz's calls and never visited him in  
15 jail. Ultimately, Mr. Kowitz was released on bond, but his attorney failed to inform him of  
16 the date of his next court appearance on January 15, despite his regular calls to his attorneys  
17 office over a period of months. Still uninformed of his court date, Mr. Kowitz was  
18 rearrested on January 25 under a bench warrant issued following his failure to appear in  
19 court, and incarcerated on \$50,000 bond. Since his last incarceration, Mr. Kowitz has  
20 attempted to contact his attorney nearly every day in order to inquire about the status of his  
21 case, but his attorney has not responded, conducted an investigation into his case, informed  
22 him of the status of his case, or discussed the preparation of a defense.

23           **B.     Defendants**

24                   1.     State Defendants

25          34.     Defendant Judy Martz is Governor of the State of Montana. Defendant  
26 Governor is charged with the protection of the rights of the citizens of the state and must  
27 ensure that the laws are faithfully executed. Art. VI, sec. 4(1), Mont. Const. Defendant  
28 Governor has failed to take the steps necessary to protect the legal rights of indigent persons

1 charged with criminal wrongdoing in the district courts in the Defendant Counties. In  
2 addition, she has failed to ensure that the laws guaranteeing indigents in those counties the  
3 right to effective assistance of competent counsel are faithfully executed. She is sued in her  
4 official capacity.

5 35. Defendant Rick Lewis (“Defendant Court Administrator”) is the Supreme  
6 Court Administrator for the State of Montana. Under state law, Defendant Court  
7 Administrator is responsible for establishing procedures for the disbursement of funds to  
8 counties for expenses associated with the defense of indigents with criminal cases before the  
9 district courts, and for recording payments at a detailed level for budgeting and auditing  
10 purposes. Section 3-5-902, MCA. Defendant Court Administrator has established and  
11 implemented procedures that impede the provision of constitutionally adequate legal  
12 representation. He is sued in his official capacity.

13 36. Defendants Daniel Donovan, Dorothy McCarter, Beverly Kolar, Michael  
14 Sherwood, and Randi Hood (collectively, “Defendant Appellate Commissioners”) are  
15 members of the Appellate Defender Commission, which was created in 1991. By state law,  
16 the Commission must propose minimum standards with which all trial and appellate public  
17 defenders are to comply. Section 2-15-1020(9), MCA. The Commission also must compile,  
18 maintain, and distribute to all state judges and justices a current statewide roster of attorneys  
19 eligible for appointment as indigent defense counsel. Section 2-15-1020(10), MCA.  
20 Defendant Appellate Commissioners have failed to comply with either mandate. They are  
21 sued in their official capacities.

22 2. County Defendants

23 a. *Butte-Silver Bow County*

24 37. Defendant Chief Executive Judy Jacobson is the chief executive in Butte-  
25 Silver Bow County. She enters into fixed-price contracts with local attorneys to provide  
26 indigent defense services to those charged with criminal wrongdoing in the district court.  
27 She structures and administers these contracts in a manner that impedes the ability of the  
28 attorneys to provide constitutionally and statutorily adequate legal representation to their

1 clients. Together with the State Defendants, she is responsible for ensuring that indigent  
2 defendants receive constitutionally and statutorily adequate legal representation. She has  
3 failed to take the steps necessary to ensure such representation. She is sued in her official  
4 capacity.

5 38. The Butte-Silver Bow Chief Executive is referred to herein as the "Butte-  
6 Silver Bow County Defendant".

7 b. *Missoula County*

8 39. Defendant Board of County Commissioners of Missoula County is the chief  
9 executive authority in Missoula County. It is authorized under state law to establish a public  
10 defender office and required to provide it with the resources "necessary to satisfy the legal  
11 requirements in providing counsel for defendants unable to employ counsel." Section 46-8-  
12 202, MCA. Defendant Board of Commissioners established a public defender office in  
13 1985, but has failed to provide it with the resources necessary to enable it to provide  
14 constitutionally and statutorily adequate legal representation to indigent adults with criminal  
15 cases in the district court.

16 40. Defendants Barbara Evans, Bill Carey, and Jean Curtiss are the County  
17 Commissioners of Missoula County. They have the jurisdiction and power to: (a) discharge  
18 the duties of the chief executive authority of the county government, Section 7-5-2101,  
19 MCA; (b) manage the county's business and concerns, *id.*; (c) make and enforce rules  
20 necessary for the transaction of business, section 7-5-2101, MCA; and (d) adopt, approve,  
21 and amend the county's budget, section 7-5-2320, MCA. Together with the State  
22 Defendants, they are responsible for ensuring that indigent defendants receive  
23 constitutionally and statutorily adequate legal representation. They have failed to take the  
24 steps necessary to ensure that the county has a program that can provide such representation.  
25 They are sued in their official capacities.

26 41. The Missoula Board of Commissioners and the Missoula County  
27 Commissioners are referred to herein collectively as the "Missoula County Defendants".  
28

1 c. *Glacier and Teton Counties*

2 42. Defendant Boards of Commissioners of Glacier and Teton Counties are the  
3 chief executive authorities in Glacier and Teton Counties.

4 43. Defendants Allan Lowry, William Icenoggle, and Raymond Salois are the  
5 County Commissioners of Glacier County.

6 44. Defendants R.F. Sam Carlson, Mary Sexton, and Arnie Gettel are the County  
7 Commissioners of Teton County.

8 45. Defendant Marc Buyske is the District Court Judge in the Ninth Judicial  
9 District with jurisdiction over Glacier and Teton Counties.

10 46. The Glacier and Teton Boards of Commissioners rely upon the District Court  
11 Judge for the Ninth Judicial District to appoint counsel for indigent defendants on a case-by-  
12 case basis. Section 46-8-201, MCA. They are responsible for determining the amount of  
13 money available to the Judge for attorneys' fees and costs and for paying those expenses not  
14 reimbursed by the State. Sections 3-5-901, 46-8-201, MCA. They have failed to make  
15 available sufficient funds to enable indigent defense counsel to provide constitutionally and  
16 statutorily adequate legal representation to indigent adults with criminal cases in district  
17 court.

18 47. The Glacier and Teton County Commissioners have the jurisdiction and  
19 power to: (a) discharge the duties of the chief executive authority of the county government,  
20 section 7-5-2101, MCA; (b) manage their counties' business and concerns, *id.*; (c) make and  
21 enforce rules necessary for the transaction of business, section 7-5-2101, MCA; and  
22 (d) adopt, approve, and amend their counties' budget, Section 7-5-2320, MCA. Together  
23 with the State Defendants, they are responsible for ensuring indigent defendants receive  
24 constitutionally and statutorily adequate legal representation. They have failed to take the  
25 steps necessary to ensure such representation. They are sued in their official capacities.

26 48. The District Court Judge is responsible for ensuring that indigent felony  
27 defendants who need counsel are assigned attorneys, section 46-8-101, MCA, and that those  
28 attorneys receive adequate compensation, Section 46-8-201, MCA. He has failed to take the

1 steps necessary to ensure that the indigent defense counsel in the counties over which he has  
2 jurisdiction receive the financial resources necessary to provide constitutionally and  
3 statutorily adequate legal representation to their clients with cases in the district court. He is  
4 sued in his official capacity as an administrator of the indigent defense programs in Glacier  
5 and Teton Counties.

6 49. The Glacier and Teton Boards of Commissioners, the individual  
7 commissioners, and the District Court Judge are referred to herein collectively as the  
8 “Glacier and Teton County Defendants”.

9 d. *Flathead County*

10 50. Defendant Board of County Commissioners of Flathead County is the chief  
11 executive authority in Flathead County. By and through its individual commissioners, it  
12 enters into fixed-price contracts with local attorneys to provide indigent defense services to  
13 those charged with criminal wrongdoing in district court. The Defendant Board of  
14 Commissioners structures and administers these contracts in a manner that impedes the  
15 ability of the attorneys to provide constitutionally and statutorily adequate legal  
16 representation to indigent adults with criminal cases in the district court.

17 51. Defendants Dale Williams, Howard Gipe, and Robert Watne are the County  
18 Commissioners of Flathead County. They have the jurisdiction and power to: (a) discharge  
19 the duties of the chief executive authority of the county government, section 7-5-2101,  
20 MCA; (b) manage the county’s business and concerns, *id.*; (c) make and enforce rules  
21 necessary for the transaction of business, section 7-5-2101, MCA; and (d) adopt, approve,  
22 and amend the county’s budget, Section 7-5-2320, MCA. Together with the State  
23 Defendants, they are responsible for ensuring that indigent defendants receive  
24 constitutionally and statutorily adequate legal representation. They have failed to take the  
25 steps necessary to ensure that the County a program that can provide such representation.  
26 They are sued in their official capacities. Section 3-5-901, MCA.

27 52. The Flathead Board of Commissioners and the Flathead County  
28 Commissioners are referred to herein collectively as the “Flathead County Defendants”.

1                                   e.     *Lake County*

2           53.     Defendant Board of County Commissioners of Lake County is the chief  
3 executive authority in Lake County. By and through its individual commissioners, it enters  
4 into fixed-price contracts with local attorneys to provide indigent defense services to those  
5 charged with criminal wrongdoing in district court. The Defendant Board of  
6 Commissioners structures and administers these contracts in a manner that impedes the  
7 ability of the attorneys to provide constitutionally and statutorily adequate legal  
8 representation to indigent adults with criminal cases in the district court.

9           54.     Defendants Mike Hutchin, Barry Baker, and Dave Stipe are the County  
10 Commissioners of Lake County. They have the jurisdiction and power to: (a) discharge the  
11 duties of the chief executive authority of the county government, section 7-5-2101, MCA;  
12 (b) manage the county's business and concerns, *id.*; (c) make and enforce rules necessary for  
13 the transaction of business, section 7-5-2101, MCA; and (d) adopt, approve, and amend the  
14 county's budget, Section 7-5-2320, MCA. Together with the State Defendants, they are  
15 responsible for ensuring that indigent defendants receive constitutionally and statutorily  
16 adequate legal representation. They have failed to take the steps necessary to ensure that the  
17 County has a program that can provide such representation. They are sued in their official  
18 capacities.

19           55.     The Lake Board of Commissioners and the Lake County Commissioners are  
20 referred to herein collectively as the "Lake County Defendants".

21                                   f.     *Ravalli County*

22           56.     Defendant Board of County Commissioners of Ravalli County is the chief  
23 executive authority in Ravalli County. By and through its individual Commissioners, it  
24 enters into fixed-price contracts with local attorneys to provide indigent defense services to  
25 those charged with criminal wrongdoing in district court. The Defendant Board of  
26 Commissioners structures and administers these contracts in a manner that impedes the  
27 ability of the attorneys to provide constitutionally and statutorily adequate legal  
28 representation to their clients.



1           57. Defendants Jack Atthowe, Alan Thomas, and Betty Lund are the County  
2 Commissioners of Ravalli County. They have the jurisdiction and power to: (a) discharge  
3 the duties of the chief executive authority of the county government, section 7-5-2101,  
4 MCA; (b) manage the county's business and concerns, *id.*; (c) make and enforce rules  
5 necessary for the transaction of business, section 7-5-2101, MCA; and (d) adopt, approve  
6 and amend the county's budget. Section 7-5-2320, MCA. Together with the State  
7 Defendants, they are responsible for ensuring that indigent defendants receive  
8 constitutionally and statutorily adequate legal representation. They have failed to take the  
9 steps necessary to ensure that the County has a program that can provide such  
10 representation. They are sued in their official capacities.

11           58. The Ravalli Board of Commissioners and the Ravalli County Commissioners  
12 are referred to herein collectively as the "Ravalli County Defendants".  
13

### 14 **III. JURISDICTION AND VENUE**

15           59. This Court has jurisdiction over this action pursuant to  
16 sections 3-5-302(1) (original jurisdiction) and 3-5-312 (jurisdiction of judges coextensive  
17 with the state), MCA.

18           60. This Court has personal jurisdiction over the defendants pursuant to Mont. R.  
19 Civ. P. 4(B) (jurisdiction of persons) and Art. II, 18, Mont. Const. (state subject to suit).  
20 Defendants are public officials found in the state of Montana and committed the wrongs  
21 giving rise to this action within this state.

22           61. Venue is proper pursuant to sections 25-2-125 (against public officers or their  
23 agents), 25-2-126 (against state, county, and political subdivisions), and 25-2-117 (multiple  
24 defendants), MCA.  
25  
26  
27  
28

1 **IV. CLASS ACTION**

2 62. Plaintiffs bring this action as a class action against the State Defendants, with  
3 seven subclasses against the County Defendants, pursuant to Mont. R. Civ. P. 23.

4 63. The proposed class to be maintained against the State Defendants consists of  
5 all indigent persons who have or will have criminal cases pending in the district courts in the  
6 Counties and who rely or will rely upon the Counties to provide them with defense counsel.  
7 The representatives of this class are Larry White, Candace Bergman, Michelle Ford, Gary  
8 Ackermann, Kenneth Sellars, Winchester Wiseman, and Chris Kowitz.

9 64. The plaintiff class is so numerous that joinder of all members is impractical.  
10 At any point in time, several hundred adults with criminal cases pending in the district  
11 courts rely on indigent defense counsel in the Counties for legal representation.

12 65. There are questions of law and fact common to the members of the plaintiff  
13 class, including, but not limited to:

- 14 (a) Whether the State has an obligation under the Sixth and Fourteenth  
15 Amendments to the United States Constitution, the Montana  
16 Constitution, and other provisions of state law to provide adequate  
legal counsel to indigents charged with felony wrongdoing;
- 17 (b) Whether in delegating to the Counties its constitutional and statutory  
18 obligation, the State has failed to ensure that the indigent defense  
programs provide adequate representation to indigent persons;
- 19 (c) Whether the State funds indigent defense in a manner that impedes  
20 the delivery of constitutionally and statutorily adequate legal  
representation;
- 21 (d) Whether the State's failure to supervise and to promulgate policies  
22 and guidelines required by state law impedes the delivery of  
constitutionally and statutorily adequate legal representation;
- 23 (e) Whether the State's failure to adequately fund, supervise, and  
24 administer the indigent defense programs in the Counties violates the  
rights of the plaintiff class under the United States Constitution, the  
25 Montana Constitution, and other provisions of state law.

26 66. The claims of the class representatives are typical of the claims of the  
27 putative class members, and by pursuing their own interests, the class representatives will  
28 advance the interests of the absent class members.

1           67.     The class representatives will fairly and adequately protect the interests of the  
2 class. There are no conflicts of interest between the class representatives and absent class  
3 members, and the class representatives will vigorously prosecute the suit on behalf of the  
4 class.

5           68.     The State Defendants have consistently acted and refused to act in ways  
6 generally applicable to the class. Thus, final declaratory and injunctive relief with respect to  
7 the class as a whole will be appropriate.

8           69.     The proposed subclasses to be maintained against the County Defendants are  
9 as follows:

- 10           (a)     A subclass consisting of all indigent persons who have or will have  
11 criminal cases pending in the district court in Butte-Silver Bow  
12 County and who rely or will rely upon the Chief Executive of Butte-  
Silver Bow County to provide them with defense counsel. The  
representative of this subclass is Larry White.
- 13           (b)     A subclass consisting of all indigent persons who have or will have  
14 criminal cases pending in the district court in Missoula County and  
15 who rely or will rely upon the Missoula County Board of  
Commissioners and the Missoula County Commissioners individually  
16 to provide them with defense counsel. The representative of this  
subclass is Candace Bergman.
- 17           (c)     A subclass consisting of all indigent persons who have or will have  
18 criminal cases pending in the district courts in Glacier County and  
19 who rely or will rely upon the Glacier County Board of  
Commissioners, the Glacier County Commissioners individually, and  
the Ninth Judicial District Judge to provide them with defense  
counsel. The representative of this subclass is Kenneth Sellars.
- 20           (d)     A subclass consisting of all indigent persons who have or will have  
21 criminal cases pending in the district courts in Teton County and who  
22 rely or will rely upon the Teton County Board of Commissioners, the  
Teton County Commissioners individually, and the Ninth Judicial  
23 District Judge to provide them with defense counsel. The  
representative of this subclass is Winchester Wiseman.
- 24           (e)     A subclass consisting of all indigent persons who have or will have  
25 criminal cases pending in the district court in Flathead County and  
26 who rely or will rely upon the Flathead County Board of  
Commissioners and the Flathead County Commissioners individually  
to provide them with defense counsel. The representative of this  
subclass is Michelle Ford.
- 27           (f)     A subclass consisting of all indigent persons who have or will have  
28 criminal cases pending in the district court in Lake County and who  
rely or will rely upon the Lake County Board of Commissioners and

1 the Lake County Commissioners individually to provide them with  
2 defense counsel. The representative of this subclass is Gary  
Ackermann.

3 (g) A subclass consisting of all indigent persons who have or will have  
4 criminal cases pending in the district court in Ravalli County and who  
5 rely or will rely upon the Ravalli County Board of Commissioners  
6 and the Ravalli County Commissioners individually to provide them  
7 with defense counsel. The representative of this subclass is Chris  
Kowitz.

70. Each proposed subclass is sufficiently large and fluid to make joinder of all  
8 subclass members impracticable.

9 71. There are several questions of law and fact common to the members of each  
10 proposed subclass, including, but not limited to:

11 (a) Whether each County Defendant funds indigent defense in a manner  
12 that impedes the delivery of constitutionally and statutorily adequate  
legal representation;

13 (b) Whether each County Defendant's failure to supervise and to  
14 promulgate policies and guidelines impedes the delivery of  
constitutionally and statutorily adequate legal representation;

15 (c) Whether each County Defendant's failure to adequately fund,  
16 supervise, and administer its indigent defense program violates the  
17 rights of each plaintiff subclass under the United States Constitution,  
the Montana Constitution, and other provisions of state law.

18 72. The claims of the subclass representatives are typical of the claims of the  
19 corresponding putative subclass members, and by pursuing their own interests, the subclass  
20 representatives will advance the interests of their respective absent subclass members.

21 73. There are no conflicts of interest between any subclass representatives and  
22 their respective absent subclass members, and each subclass representative will vigorously  
23 prosecute this lawsuit on behalf of his or her subclass

24 74. As set forth below, the respective County Defendants have acted and refused  
25 to act in ways generally applicable to each corresponding subclass. Thus, final declaratory  
26 and injunctive relief with respect to each subclass as a whole will be appropriate.

27

28

1 **V. THE STATE'S DELEGATION OF ITS INDIGENT DEFENSE DUTY TO**  
2 **THE COUNTIES**

3 75. The constitutional and statutory obligation to provide effective assistance of  
4 competent counsel rests with the State. State Defendants, however, have abdicated this duty  
5 by the manner in which they have delegated to County Defendants the task of providing  
6 indigent defense services.

7 76. State Defendants' procedures for funding indigent defense impede the  
8 provision of adequate legal representation. Each county initially funds indigent defense  
9 services in its district court. The State then reimburses counties for indigent defense  
10 expenses. The State, however, does not guarantee full reimbursement for indigent defense  
11 expenses. On information and belief, the State's refusal to guarantee full reimbursement for  
12 indigent defense expenses results in Defendant Counties' underfunding indigent defense and  
13 informally discouraging expenditures on even basic tools of legal representation.

14 77. State Defendants exercise no supervision over the county indigent defense  
15 programs. They also have failed to establish, require, or enforce any practice standards or  
16 guidelines for the provision of non-capital indigent defense. Absent such standards, neither  
17 the State nor County Defendants can ensure that indigent defendants receive constitutionally  
18 and statutorily adequate representation.

19 **A. The Defendant Counties' Indigent Defense Programs**

20 78. The State has delegated to the counties the provision of indigent defense  
21 services in each of its 56 counties' district courts. The district courts are courts of original  
22 jurisdiction with authority to hear felonies, certain misdemeanors (those arising at the same  
23 time and out of the same transaction as a felony, resulting from the reduction in charge from  
24 a felony, or found to be a lesser-included offense of a felony), juvenile delinquency and  
25 dependency matters, and appeals from misdemeanors disposed of by the State's courts of  
26 limited jurisdiction, the justice and municipal courts. Sections 3-5-302, 303, MCA.

27 79. County Defendants provide indigent defense services through three methods:  
28 public defender offices, counsel appointed by judges on a case-by-case basis, and fixed-

1 price contracts with private attorneys. Each group of County Defendants has designed  
2 programs with deficiencies that stem directly from the State Defendants' failure to provide  
3 the supervision and resources necessary for constitutionally and statutorily adequate legal  
4 representation.

5 1. Missoula County

6 80. Pursuant to section 46-8-202, MCA, each county may, at its discretion,  
7 develop a public defender office. If it does so, it must provide for the appointment of a  
8 salaried public defender and such "assistant public defenders as may be necessary to satisfy  
9 the legal requirements in providing counsel for defendants unable to employ counsel".

10 Missoula County Defendants have chosen to provide indigent defense services through a  
11 Public Defender's Office.

12 81. The Missoula Public Defender's Office represents indigents in adult criminal,  
13 juvenile delinquency, abuse and neglect, guardianship, and mental health proceedings in  
14 Missoula's district and justice courts. In fiscal year 2001, it had a staff of eight attorneys  
15 (including a Chief Public Defender), one investigator, one social worker, one research  
16 assistant (who is also an attorney, but does not appear in court), and two and one-half  
17 clerical personnel.

18 2. Glacier and Teton Counties

19 82. Pursuant to section 46-8-104, MCA, counties may rely upon their local  
20 district court judges to assign counsel to indigent defendants on a case-by-case basis.  
21 Section 46-8-201, MCA, requires that attorneys not employed by a formal public defender  
22 office be compensated an amount determined by a district court judge or justice of the  
23 supreme court to be reasonable and be reimbursed for reasonable costs. Glacier and Teton  
24 County Defendants have chosen to rely upon the District Court Judge for the Ninth Judicial  
25 District to appoint counsel to provide indigent defense services on a case-by-case basis.

26 83. The District Court Judge for the Ninth Judicial District has delegated  
27 appointment of indigent defense counsel to the justice courts.

1                   3.     Butte-Silver Bow, Flathead, Lake, and Ravalli Counties

2           84.     County Defendants from Butte-Silver Bow, Flathead, Lake, and Ravalli  
3 Counties do not have public defender's offices, nor do they rely on judicially appointed  
4 counsel. Instead, they contract with one or more members of the private bar to represent, for  
5 a fixed fee, all indigents assigned to that attorney during the contract period. Attorneys are  
6 permitted to maintain private practices throughout the contract term.

7           85.     The Butte-Silver Bow County Defendant awards four indigent defense  
8 contracts to local attorneys to represent adults in Butte's district and justice courts. (In fiscal  
9 year 2001, two attorneys split one of these four contracts).

10          86.     Flathead County Defendants award contract "units" for the representation of  
11 adult indigents in Flathead District Court. In fiscal year 2001, Flathead County Defendants  
12 awarded nine units to five attorneys. Three attorneys received multiple units. One received  
13 three adult units and two received two adult units.

14          87.     Lake County Defendants award two contracts for the representation of  
15 indigents in the County's district and justice courts. One contract attorney provides  
16 representation in one half of the County's adult felony cases and all of the misdemeanor,  
17 juvenile, and mental health cases. The other contract attorney provides representation in the  
18 remaining adult felony cases.

19          88.     Ravalli County Defendants contract with two law firms to provide indigent  
20 defense services. One firm, based in Missoula, provides indigent defense services in  
21 Ravalli's district and justice courts, and the other provides legal representation in  
22 conflict-of-interest cases.

23           **B.     The State's Failure To Guarantee Funding for Indigent Defense**

24          89.     The County Defendants are responsible for the formulation and  
25 administration of the budgets for their indigent defense programs. Since 1985, the State,  
26 through the District Court Criminal Reimbursement Program (DCCRP), has reimbursed the  
27 counties for expenses associated with the provision of indigent defense services to adults  
28 with criminal cases in the district courts. The counties remain responsible for funding all

1 other aspects of their indigent defense programs, including the representation of defendants  
2 in misdemeanor cases and respondents in involuntary civil commitment proceedings.

3 90. The State currently relies on the motor vehicle licensing tax to fund the  
4 DCCRP. Because the amount of tax collected varies from year to year, the State only  
5 guarantees reimbursement to the extent that funding is available. Section 3-5-901(4)(b),  
6 MCA. In accordance with guidelines issued by the Defendant Court Administrator, the  
7 State initially reimburses each county 80% of its monthly expenses, and if, at the end of the  
8 year, there is sufficient funding to reimburse each county 100%, the State pays the  
9 remaining 20% of each monthly claim. If there is not enough funding, the counties are  
10 responsible for the shortfall.

11 91. Pursuant to legislation enacted in the 2001 legislative session, the indigent  
12 defense funding structure will change in fiscal year 2003, but not in any way that will  
13 provide more financial certainty to the counties. While the money for indigent defense will  
14 come from the State's general fund, the amount available will be limited to the funds spent  
15 by the State on indigent defense in fiscal year 2001. Moreover, the State will continue to  
16 refuse to guarantee full reimbursement. The new statute specifically states that the State  
17 will only reimburse to the extent funding is available and that "[i]f money appropriated for  
18 [indigent defense expenses] is insufficient to fully fund those expenses, the county is  
19 responsible for payment of the balance." Section 3-5-901(4)(b), MCA (effective July 1,  
20 2002).

21 92. Because the State does not and will not guarantee full reimbursement, the  
22 County Defendants currently budget, and on information and belief, will continue to budget,  
23 for indigent defense in a manner designed to minimize their financial exposure, with little  
24 regard for the amounts needed to administer an adequate defender program.

25 **C. The State's Failure To Set Standards for and Supervise the Counties'**  
26 **Provision of Indigent Defense**

27 93. The State compounds its failure to fund indigent defense services adequately  
28 by failing to set standards for and supervise the provision of those services. Lacking



1 appropriate guidance from the State, County Defendants have not devised adequate  
2 procedures to assess the quality of indigent defense services. Absent such procedures,  
3 neither the State nor the County Defendants can effectively ensure constitutionally or  
4 statutorily adequate legal representation.

5 94. National standards pertaining to the administration and provision of indigent  
6 defense programs have been in existence for decades.<sup>1</sup> State and local entities across the  
7 country have adopted many of these practice standards. Montana has none.

8 1. Failure To Adopt and Publicize Job Descriptions and Set Job  
9 Qualifications

10 95. County Defendants hire, award contracts to, or appoint attorneys who have  
11 neither the experience, inclination, nor resources to provide adequate legal representation to  
12 indigent clients.

13 96. National standards for the administration of indigent defense services include  
14 policies and procedures designed to ensure that counsel are competent advocates and  
15 familiar with criminal law and procedure.<sup>2</sup> While the State requires that all county attorneys  
16 must have practiced law for five years, *see, e.g.*, section 7-4-2701, MCA, and sets forth their  
17 job responsibilities with some specificity, sections 7-4-2711, -2717, MCA, it has not issued  
18 written job descriptions and job qualifications for indigent defense counsel in non-capital  
19 cases.

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20 <sup>1</sup> *See, e.g.*, American Bar Association (“ABA”) Standards for Criminal Justice:  
21 Prosecution Function and Defense Function (1993); ABA Standards for Criminal Justice:  
22 Providing Defense Services (1992); National Legal Aid and Defender Association  
23 (“NLADA”) Performance Guidelines for Criminal Defense Representation (1995);  
24 NLADA Guidelines for Negotiating and Awarding Governmental Contracts for Criminal  
25 Defense Services (1984); NLADA Standards for the Administration of Assigned Counsel  
26 Systems (1989); NLADA Guidelines for Legal Defense Systems in the United States  
27 (1976); President’s National Advisory Commission on Criminal Justice Standards and  
28 Goals, Report of the Task Force on the Courts (1973).

25 <sup>2</sup>*See, e.g.*, ABA Standards for Criminal Justice: Providing Defense Services,  
26 Standards 5-2.2, 5-3.3(b)(vi); NLADA Guidelines for Legal Defense Systems in the  
27 United States, Guidelines 2.3, 5.9; NLADA Guidelines for Negotiating and Awarding  
28 Governmental Contracts for Criminal Defense Services, Guideline III-7; NLADA  
Standards for the Administration of Assigned Counsel Systems, Standard 4.1.1(a);  
National Conference of Commissioners on Uniform State Laws, Model Public Defender  
Act § 5.

1           97. Pursuant to section 2-5-1020, MCA, the Defendant Appellate Commissioners  
2 are required to compile and keep current a statewide roster of attorneys eligible for  
3 appointment by an appropriate court as trial and appellate counsel for indigent defendants.  
4 The Defendant Commissioners have failed to do so, and State Defendants do not require  
5 County Defendants to maintain such a roster.

6           98. Only two Defendant Counties have written job qualifications. Ravalli  
7 County requires its contract attorneys to have two years of indigent defense experience. The  
8 Missoula Public Defender's Office requires attorneys to have two years of legal experience,  
9 but not necessarily in the area of criminal law. No Defendant County requires its attorneys  
10 to have trial or appellate experience.

11           99. No Defendant County has adequate written hiring, appointment, or  
12 contracting standards for indigent defense counsel. None of the County Defendants hires,  
13 appoints, or contracts pursuant to objective, publicized criteria.

14           100. Lacking identifiable, objective, published hiring and job qualifications, the  
15 County Defendants hire, appoint, or contract for attorneys not because they are competent,  
16 but instead because they are willing to underbid their services, they will not challenge the  
17 county attorney by advocating vigorously for their clients, or they will not impede the local  
18 judges' ability to move their cases forward expeditiously. Consequently, many indigent  
19 defense counsel lack the qualifications and experience necessary to provide constitutionally  
20 adequate legal representation.

## 21           2.     Failure To Establish Practice Standards

22           101. The national standards and professional rules of responsibility define  
23 adequate assistance of counsel as requiring, among other things, that defense counsel:  
24 (a) have adequate knowledge of the relevant areas of the law;<sup>3</sup> (b) act with reasonable  
25  
26

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27           <sup>3</sup> See, e.g., ABA Standards for Criminal Justice: Providing Defense Services,  
28 Standards 5-1.5, 5-2.2; NLADA Performance Guidelines for Criminal Defense  
Representation, Guideline 1.2; Montana Rules of Professional Conduct, Rule 1.1 (1985).

1 diligence and promptness, avoiding unnecessary delay in the disposition of cases;<sup>4</sup>  
2 (c) provide representation at every critical stage of their clients' proceedings;<sup>5</sup> (d) conduct  
3 reasonable factual and legal pre-trial investigations into the charges against their clients,  
4 pursue available formal and informal discovery procedures, and use appropriate and  
5 necessary experts;<sup>6</sup> and (e) consult with their clients to elicit relevant information about the  
6 case, to inform clients of their rights, and to enable clients to make informed decisions about  
7 the direction of their cases.<sup>7</sup>

8 102. National standards further mandate that indigent defense programs subject  
9 their attorneys to systematic supervision and evaluation based upon publicized practice  
10 standards.<sup>8</sup> Montana has no such standards or policies.

11 103. While county attorneys must report to and take direction from the State's  
12 attorney general, Section 2-15-501, MCA, State Defendants have no written practice  
13 standards for non-capital indigent defense counsel and no formal program of supervising  
14 and monitoring counsel. Although Section 2-5-1020, MCA, requires the Defendant  
15 Appellate Commissioners to propose to the Montana Supreme Court for its ratification  
16 minimum practice standards to which all trial and appellate public defenders are to conform,  
17 the Defendant Appellate Commissioners have not done so.

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19 <sup>4</sup> See, e.g., ABA Standards for Criminal Justice: Prosecution and Defense  
20 Function, Standards 4-1.3, 4-3.6.

21 <sup>5</sup> See, e.g., NLADA Performance Guidelines for Criminal Defense  
Representation, Guideline 1.1.

22 <sup>6</sup> See, e.g., ABA Standards for Criminal Justice, Prosecution and Defense  
23 Function, Standards 4-4.1, 4-4.4, 4-6.1; NLADA Performance Guidelines for Criminal  
Defense Representation, Guidelines 4.1, 4.2, 4.3.

24 <sup>7</sup> See, e.g., ABA Standards for Criminal Justice: Prosecution Function and  
25 Defense Function, Standards 4-3.1(a), 4-3.2, 4-3.8, 4-5.1, 4-5.2(b); NLADA Performance  
26 Guidelines for Criminal Defense Representation, Guidelines 1.3(c), 2.2, 7.5; Montana  
Rules of Professional Conduct, Rule 1.4.

27 <sup>8</sup> See, e.g., NLADA Guidelines for Negotiating and Awarding Governmental  
28 Contracts for Criminal Defense Services, Guideline III-16; NLADA Standards for the  
Administration of Assigned Counsel Systems, Standards 4.4, 4.4.1, 4.4.2; NLADA  
Guidelines for Legal Defense Systems in the United States, Guidelines 5.4, 5.5.

1           104. State Defendants do not require County Defendants to set practice standards  
2 or methods of evaluation, supervision, and monitoring to ensure the adequate assistance of  
3 indigent defense counsel.

4           105. None of the County Defendants has issued standards or exercises either  
5 formal or meaningful supervision of indigent defense counsel's performance. There are no  
6 written standards or guidelines with respect to: the timing of indigent defense appointments,  
7 practice responsibilities prior to a client's appearance in district court, conducting factual  
8 and legal pre-trial investigation, the use of discovery or expert evidence, client consultation,  
9 trial and hearing preparation, motion practice, or appeals.

10          106. Lacking basic standards for constitutionally adequate legal representation, or  
11 any means of supervision, the County Defendants rely on overworked, underpaid,  
12 inexperienced, untrained, understaffed, and often conflicted indigent defense counsel.

13                   3.     Failure To Train

14          107. County Defendants do not train new indigent defense counsel who start with  
15 little or no prior criminal experience.

16          108. Current indigent defense counsel receive neither the time nor the resources to  
17 continue legal education.

18          109. National standards require training, professional development, and  
19 continuing legal education.<sup>9</sup> Indigent defense counsel must acquire and maintain lawyering  
20 skills as well as keep current with new developments in the complex and rapidly changing  
21 field of criminal law.

22          110. While the State has created a special office, the county attorney training  
23 coordinator, to provide training and technical assistance to county attorneys on a regular  
24 basis, section 44-4-103, MCA, State Defendants have no equivalent program for indigent

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25                   <sup>9</sup>See, e.g., ABA Standards for Criminal Justice: Providing Defense Services,  
26 Standard 5-5.1; NLADA Standards for the Administration of Assigned Counsel Systems,  
27 Standards 4.2, 4.3.2, 4.4.1; NLADA Guidelines for Legal Defense Systems in the United  
28 States, Guidelines 5.6, 5.7, 5.8; President's National Advisory Commission on Criminal  
Justice Standards and Goals, Report of the Task Force on the Courts, Standards 13.15,  
13.16; National Conference of Commissioners on Uniform State Laws, Model Defender  
Act § 10(e).

1 defense counsel. State Defendants provide no orientation to newly hired indigent defense  
2 counsel, no ongoing training to more experienced counsel, and no technical assistance to  
3 counsel in need of such help.

4 111. State Defendants do not require the County Defendants to provide such  
5 training or assistance.

6 112. None of the Defendant Counties has a formalized training program for  
7 indigent defense counsel. All Montana attorneys are required to attend 15 hours of  
8 Continuing Legal Education ("CLE") courses annually, and the Montana Criminal Defense  
9 Attorneys' Association offers two CLE course each year on criminal law or procedure.  
10 None of the County Defendants requires their indigent defense counsel to attend these  
11 seminars.

12 113. Two counties allocate money for training but to little effect. In fiscal year  
13 2001, the Missoula County Defendants allocated \$4,000 for training. Former staff attorneys  
14 report, however, that newly hired attorneys are trained "on the fly" and more experienced  
15 attorneys receive little, if any, criminal law training.

16 114. Similarly, the Flathead County Defendants allocate \$1,000 annually for  
17 continuing legal education and training for its contract attorneys. County Defendants do not  
18 ensure that attorneys are aware of these resources. As a result, the money is rarely spent.

19 115. Of the approximately 35 attorneys regularly employed as indigent defense  
20 counsel in the Defendant Counties as of January 1, 2002, only two or three have the  
21 experience necessary to be certified as a capital defender. Pursuant to standards recently set  
22 by the Montana Supreme Court, capital defenders must have had significant experience,  
23 within the last five years, trying criminal cases to conclusion. At least one of those cases  
24 must have been a capital case or a case involving charges of or equivalent to deliberate  
25 homicide.

26 116. Lacking formal orientation, newly hired attorneys have no opportunity to  
27 acquire and maintain the skills and legal knowledge necessary to put the prosecution's case  
28 to the crucible of adversarial testing.

117. Lacking ongoing training by the State or counties, indigent defense counsel have no formal opportunity to hone their skills and remain knowledgeable of significant changes in the law without personally funding the substantial travel and registration expenses required to participate in continuing education and training programs outside the State.

4. Failure To Monitor Excessive Workloads

118. State and County Defendants' underfunding of indigent defense services results in unmanageably large workloads for individual indigent defense counsel. Workload affects the productivity and effectiveness of indigent defense counsel more directly than any other variable.

119. National standards explicitly provide for the development of workload standards. Indigent defense counsel should not carry a workload which "interferes with the rendering of quality representation, endangers the client's interest in the speedy disposition of charges, or may lead to the breach of professional obligations."<sup>10</sup>

120. The National Advisory Commission on Criminal Justice Standards and Goals states that a single full-time indigent defense counsel can reasonably be expected to handle no more than: (a) 150 felonies per year; or (b) 400 misdemeanors per year; or (c) 200 juvenile delinquency cases per year.<sup>11</sup>

121. Workload limits may be lower for attorneys who work part-time, have limited support services, must travel frequently or great distances to perform their jobs, or have other job-related supervisory or administrative responsibilities.<sup>12</sup>

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<sup>10</sup>ABA Standards for Criminal Justice: Prosecution Function and Defense Function, Standard 4-1.3. *See generally* ABA Standards for Criminal Justice: Providing Defense Services, Standard 5-5.3; NLADA Guidelines for Negotiating and Awarding Government Contracts for Criminal Defense Services, Guideline III-12; NLADA Standards for the Administration of Assigned Counsel Systems, Standard 4.1.2; NLADA Guidelines for Legal Defense Systems in the United States, Guidelines 5.1, 5.2, 5.3; President's National Advisory Commission on Criminal Justice Standards and Goals, Report of the Task Force on the Courts, Standard 13.12.

<sup>11</sup> President's National Advisory Commission on Criminal Justice and Goals, Report of the Task Force on the Courts, Standard 13.12.

<sup>12</sup> *See id.*, commentary.

1 122. State Defendants have not set workload standards and do not require that the  
2 County Defendants do so.

3 123. Neither the State nor the County Defendants maintain caseload data. None of  
4 the Defendant Counties monitors the workloads of their indigent defense counsel to ensure  
5 that they are manageable, and that the attorneys are devoting sufficient time to their cases.  
6 While many attorneys record, on a monthly basis, the time they spend on individual cases,  
7 neither the State nor the County Defendants have compiled this data to measure caseloads.

8 124. A review of these time records reveals, however, that in the absence of  
9 standards and proper supervision, many indigent defense counsel in the Defendant Counties  
10 maintain caseloads in excess of national standards. The excess caseloads impede counsel's  
11 ability to provide constitutionally and statutorily adequate legal representation.

12 5. Failure To Compensate Attorneys Adequately

13 125. County Defendants do not allocate the funding necessary to compensate  
14 indigent defense counsel adequately.

15 126. While state law sets the annual compensation for county attorneys and their  
16 deputies, section 7-4-2503, MCA, it only requires that counties reimburse indigent defense  
17 counsel "a reasonable compensation" for their time and "reasonable costs". Section 46-8-  
18 201, MCA. State law does not identify the factors to be considered in defining  
19 "reasonable".

20 127. Defendant Court Administrator has stated that the State will reimburse  
21 counties for the time expended by assigned counsel at a maximum rate of \$60 per hour, but  
22 he has not established a minimum rate of compensation for contract attorneys or attorneys  
23 employed by public defender's offices.

24 128. Without appropriate guidance from the State, County Defendants establish  
25 rates of compensation that jeopardize the defense function. The Missoula Public Defender's  
26 Office, for example, has a high rate of attrition, in part, because rates of compensation are so  
27 low. The salaries of attorneys employed by the Missoula Public Defender's Office are  
28

1 significantly less than those of attorneys employed by the County Attorney's office with  
2 similar levels of experience and seniority.

3       129. The payment structure of the indigent defense contracts used by Butte-Silver  
4 Bow, Flathead, Lake, and Ravalli County Defendants encourages defense counsel to plead  
5 cases out early rather than spend the necessary time and resources developing appropriate  
6 defenses. These contracts require attorneys, all of whom have private practices, to represent  
7 all clients assigned to them by the district court judges for an annual fixed rate set at the  
8 beginning of the contract term. Thus, the more cases an attorney is assigned and the more  
9 time he spends on those cases, the lower his hourly rate of compensation under the contract  
10 and the less time he has available for his private practice.

11       130. Many qualified attorneys cannot afford to forfeit their private practices  
12 because the contracts do not pay them enough to both support themselves and meet their  
13 office overhead. As a result, they have no choice but to compromise the quality of the  
14 representation provided to their indigent clients.

15       131. Although some contracts state that attorneys will receive additional  
16 compensation for extraordinary cases, there are no written guidelines defining additional  
17 compensation or extraordinary cases. Moreover, in practice, courts rarely award such  
18 compensation. In denying one such request, a Second Judicial Circuit District Court Judge  
19 noted that were he to award additional compensation, there was "no guarantee of state  
20 reimbursement." Report from District Judge Mark P. Sullivan to Chief Executive Jack  
21 Lynch, dated May 2, 1994.

22       132. Unable to provide adequate compensation, Defendant Counties have  
23 difficulty attracting qualified defense counsel, and many experienced attorneys are unwilling  
24 to spend the time away from private practice necessary to represent indigent defendants  
25 adequately.



1                   6.     Failure To Provide Support Services

2           133.   In a further effort to minimize their financial exposure, County Defendants  
3 underfund support services and resources necessary for competent criminal defense practice.

4           134.   While guidelines issued by the Defendant Court Administrator state that  
5 counties may seek reimbursement for the cost of photocopying, telephone, postage, fax  
6 services, legal research (LEXIS and WestLaw), paralegal, secretarial services, and office  
7 expenses, most Defendant Counties do not.

8           135.   In fact, most Defendant Counties do not reimburse indigent defense counsel  
9 for such expenses. With the exception of Flathead contract attorneys, all contract and  
10 assigned counsel are expected to pay for such services out of their contract fee or their  
11 hourly rate.

12          136.   As a result, many indigent defense counsel go without such services. The  
13 Lake County indigent defenders, for example, have no paralegals and no secretaries.  
14 County Defendants have turned down requests for such assistance.

15          137.   Administrators working under the direction of the Butte-Silver Bow County  
16 Defendant have publicly acknowledged that they do not want to provide the County with a  
17 formal public defender office because the County would have to provide it with the same  
18 types of support staff and facilities as it provides the county attorney's office.

19          138.   To obtain funding for expert and investigative services, defense counsel in  
20 most Defendant Counties must apply to the district court judge. Few do, and then only  
21 rarely.

22          139.   The Ravalli contract, for example, requires defense counsel to keep  
23 "[investigative and expert] costs to a minimum." None of the defense counsel requested  
24 such services in either fiscal year 2000 or fiscal year 2001.

25          140.   County Defendants and district court judges have let it be known that they  
26 will deny requests for investigative and expert witness services to minimize County  
27 expenses or that they will retaliate against attorneys who do incur such expenses.

1 141. Lacking support services or the funds to provide them, indigent defense  
2 counsel must subsidize these expenses out of their own pockets, take time away from  
3 representing indigent clients to tend to clerical tasks or perform investigations, rely solely on  
4 police detective work, or forego legal research and factual investigations necessary for  
5 constitutionally and statutorily adequate legal representation.

6 7. Failure To Adopt Conflict of Interest Policies and Identify Conflicts

7 142. The ABA Model Rules of Professional Conduct caution attorneys from  
8 representing clients who have conflicting interests or whose interests conflict with the  
9 attorneys' own interests. ABA Model Rules of Professional Conduct, Rule 1.7.

10 143. State Defendants have not issued, and do not require the County Defendants  
11 to issue, formal policies defining or governing conflicts of interests.

12 144. None of the Defendant Counties has such policies, or any reliable method of  
13 identifying conflicts.

14 145. None of the Defendant Counties that contract with or appoint attorneys to  
15 provides indigent defense services prohibits the appointment of local prosecutors as defense  
16 counsel.

17 146. Lacking formal conflict of interest policies, indigent defense counsel attempt  
18 to screen conflicts by using unreliable sources such as individual or institutional memory, or  
19 the clients themselves. Consequently, conflicts are identified late in the judicial process, if  
20 at all, depriving clients of their constitutional right to conflict-free representation.

21  
22 **VI. HARM TO PLAINTIFFS: FAILURE TO TAKE BASIC STEPS**  
23 **TO PROVIDE ADEQUATE LEGAL REPRESENTATION**

24 147. Hampered by a lack of experience, excessive workloads, inadequate  
25 compensation, the lack of support services, and the absence of meaningful administrative  
26 oversight and technical assistance, indigent defense counsel in the Defendant Counties do  
27 not or are unable to perform even the most basic tasks necessary to provide adequate  
28

1 representation to their clients. They do not act as an adversarial check upon the prosecution  
2 function.

3 148. Because few defense counsel screen their individual cases for conflicts, many  
4 have represented clients with conflicting interests without informing the clients of the  
5 conflict or seeking a knowing and voluntary waiver.

6 149. Most defense counsel do not meet and confer with their clients in a  
7 meaningful manner prior to critical stages in their clients' criminal proceedings. They do  
8 not visit clients in jail and are unavailable by phone. They limit their client contact to a few  
9 minutes in the courthouse immediately prior to a court appearance.

10 150. Without adequate client contact, defense counsel cannot and do not  
11 adequately argue against pretrial incarceration or the imposition of bail. Because their  
12 counsel fail to advocate effectively against detention or the imposition of bail, or seek  
13 repeated continuances, clients are detained unnecessarily or for prolonged periods of time  
14 before trial.

15 151. Many defense counsel do not adequately investigate the charges against their  
16 clients. Most rely upon the information in the county attorney's files to make an assessment  
17 of their clients' cases. They do not meet with or subpoena witnesses, visit the scene of the  
18 crime, or examine evidence. They rarely apply to the district court for, or use, independent  
19 investigative resources.

20 152. Most indigent defense counsel do not conduct appropriate discovery or make  
21 necessary pre-trial motions. They rarely make discovery motions or challenge the  
22 sufficiency of the documents they are permitted to review.

23 153. The trial rate in the Defendant Counties is well below the national average.  
24 While the Department of Justice's Bureau of Justice Statistics reports that approximately 6%  
25 of all felony cases in state court go to trial,<sup>13</sup> most Defendant Counties have trial rates of  
26

27  
28 <sup>13</sup> Bureau of Justice Statistics Bulletin: Felony Sentences in State Courts, 1998, at  
8-9 (October 2001).

1 between one and four percent. Indigent defense counsel who represent their clients  
2 zealously or take too many cases to trial are penalized professionally.

3 154. Those indigent defense counsel who do take cases to trial do not adequately  
4 prepare. They rarely use expert witnesses. Nor do they request, and in most cases cannot  
5 obtain, independent verification of testing and forensic work conducted by the state criminal  
6 laboratory.

7 155. Innocent clients and clients with meritorious defenses are compelled to plead  
8 guilty. They waive their rights to a trial and other due process protections without a  
9 sufficient understanding of the protections they are waiving.

10 156. Because their counsel do not gather or prepare mitigating evidence, clients  
11 receive harsher sentences than the facts might warrant. Some take "open" pleas on the  
12 advice of counsel that often result in punishment that is disproportionate to the crimes  
13 charged.

14 157. Although sentencing alternatives exist, many indigent defense counsel have  
15 neither the time nor the ability to explore them.

16 158. Many indigent defense counsel do not know of provisions in the law that  
17 allow the accused to preserve his or her right to appeal a plea of guilty. The few counsel  
18 who are aware of these provisions do not pursue them during plea negotiations and do not  
19 inform their clients of this right.

20 159. None of the indigent defense counsel adequately informs clients of their post-  
21 conviction rights. The filing of notices of appeals is discouraged.

22 160. The inability of indigent defense counsel to perform these functions has far-  
23 reaching and often dire consequences for clients. Without adequate guidance from counsel,  
24 they are unable to make informed decisions about their defense.

1 **VII. PATTERN AND PRACTICE OF DELIBERATE INDIFFERENCE**

2 161. Defendants have known of the deficiencies in the Defendant Counties'  
3 indigent defense programs for many years. Their failure to remedy these deficiencies  
4 constitutes deliberate indifference to the rights of the individuals who must rely upon the  
5 program for legal representation.

6 162. In December 1976 the National Center for Defense Management  
7 (NCDM) received a grant from the United States Department of Justice to study and issue a  
8 report on the condition of indigent defense in Montana. This 25-year-old report identified  
9 many of the deficiencies alleged in this Complaint and counseled the State and its officers to  
10 correct them. Specifically, NCDM found, among other things, that:

- 11 (a) Counties attempted to hold down spending in such a way that  
12 adversely affected the quality of indigent representation;
- 13 (b) Judges' and county commissioners' control of indigent defense  
14 counsels' compensation jeopardized the independence of the defense  
function;
- 15 (c) A lack of support services, including investigators and adequate law  
16 libraries, hampered the right to counsel;
- 17 (d) Neither the State nor counties offered formal orientation or training  
for inexperienced attorneys; and
- 18 (e) The State neglected to collect uniform indigent defense caseload and  
19 expenditure data, making it impossible to determine whether adequate  
indigent defense services were being provided in the most cost-  
20 effective way.

21 Twenty-five years later these same deficiencies persist.

22 163. Also in 1976, the Montana Council on Criminal Justice Standards and Goals  
23 recommended that the State organize, finance, and administer a public defender system and  
24 a coordinated assigned counsel system. The Council recommended that the state create an  
25 office of the public defender and that local government create full-time public defender  
26 positions. The Council also recommended that the State compile and maintain a list of  
27 private attorneys eligible to receive indigent defense appointments. Twenty-five years later,  
28 the State and County Defendants have failed to implement these reforms.

1           164. In April 1981, the 47th Montana Legislature, in a joint resolution, found that  
2 "the constitutional requirement of the effective assistance of counsel for persons accused of  
3 crimes has not been achieved consistently on a statewide basis". In December 1982, the  
4 Joint Subcommittee on Judiciary recommended the creation of a "Public Defense  
5 Coordinator" to train, provide technical and research assistance to, and collect caseload data  
6 of indigent defense counsel. Twenty years later, the State Defendants have failed to  
7 implement any of these reforms.

8           165. In March 2001, the American Bar Association invited various Montana  
9 organizations to apply for a catalyst grant to foster systemic improvements in the area of  
10 indigent defense. The grants ranged from \$50,000 to \$100,000. Among the suggested  
11 reform efforts to be funded under the grants were: (1) increasing the resources available for  
12 indigent defense services; (2) establishing performance and compensation standards for  
13 attorneys in non-capital cases; (3) expanding training for indigent defense service providers;  
14 and (4) increasing public defender salaries.

15           166. Among the organizations specifically invited to apply for the grants were  
16 Defendant Flathead Commissioners, Defendant Missoula Commissioners, Defendant Butte-  
17 Silver Bow Commissioners, and Defendant Supreme Court Administrator. None of the  
18 invitees submitted an application to receive a grant.

19           167. During the last several years, Defendants have received numerous complaints  
20 about the need of indigent defense programs for additional funding and administrative  
21 resources and about the manner in which the lack of such resources affects the ability of  
22 indigent defense counsel to perform their jobs properly. They have also received complaints  
23 from current and former indigent defense clients about inadequacies in the legal  
24 representation provided by their attorneys. Defendants have largely ignored these  
25 complaints. By continuously failing to address reports and complaints of severe deficiencies  
26 in the manner in which they provide legal representation to indigent criminal defendants,  
27 Defendants have demonstrated deliberate indifference to plaintiffs' constitutional and  
28 statutory rights.

1  
2 **VIII. PLAINTIFFS LACK AN ADEQUATE REMEDY AT LAW**

3 168. Plaintiffs and members of the plaintiff class have suffered irreparable harm or  
4 are at imminent and serious risk of suffering such harm because of Defendants' failure to  
5 remedy the financial and administrative deficiencies that plague the indigent defense  
6 programs in the Defendant Counties. There is no adequate remedy at law to address these  
7 deficiencies or the consequent deprivation of adequate counsel.

8  
9 **IX. CAUSES OF ACTION**

10 **Count One**

11 United States Constitution Sixth and Fourteenth Amendments, and 42 U.S.C. § 1983  
(Right to Counsel and Due Process)  
(All Defendants)

12 169. All other paragraphs of this complaint are incorporated herein by reference.

13 170. Defendants' failure to provide plaintiffs and members of the plaintiff class  
14 with adequate legal representation violates plaintiffs' rights under the Sixth and Fourteenth  
15 Amendments to the United States Constitution, including, but not limited to, their rights to  
16 effective assistance of counsel and due process.

17  
18 **Count Two**

19 Montana Constitution, Art. II, sections 4, 17, and 24, and section 46-8-101, MCA  
(Right to Counsel)  
(All Defendants)

20 171. All other paragraphs of this complaint are incorporated herein by reference.

21 172. Defendants' failure to provide plaintiffs and members of the plaintiff class  
22 with adequate legal representation violates plaintiffs' rights under Mont. Const. Art. II,  
23 sections 4, 17, and 24, and section 46-8-101, MCA, including their rights to counsel, due  
24 process, and individual dignity.

25 **Count Three**

26 Section 46-8-201, MCA  
(Remuneration of Appointed Counsel)  
(All Defendants)

27  
28 173. All other paragraphs of this complaint are incorporated herein by reference.

1 174. Defendants' failure to provide plaintiffs and members of the plaintiff class  
2 with adequate legal representation violates plaintiffs' rights under section 46-8-201, MCA,  
3 which requires, among other things, that Defendants reimburse indigent defense counsel a  
4 reasonable amount for time expended in the representation of a client and for reasonable  
5 costs incurred in connection with the representation of a client.

6  
7 **Count Four**  
8 Section 46-8-202, MCA  
(Public Defenders' Office)  
(Missoula County Defendant)

9 175. All other paragraphs of this complaint are incorporated herein by reference.

10 176. Defendants' failure to provide plaintiffs and members of the plaintiff class  
11 with adequate legal representation violates plaintiffs' rights under section 46-8-202, MCA,  
12 which requires, among other things, that counties with public defender offices provide those  
13 offices with the resources necessary to satisfy the legal requirements in providing counsel  
14 for defendants unable to employ counsel.

15  
16 **Count Five**  
17 Sections 2-15-1020(9) and (10), MCA  
(Appellate Defender Commission)  
(State Defendants)

18 177. All other paragraphs of this complaint are incorporated herein by reference.

19 178. By failing to ensure that the State's Appellate Defender Commission propose  
20 to the Montana Supreme Court minimum standards to which all trial and appellate public  
21 defenders, including locally appointed private counsel, shall conform, State Defendants have  
22 violated the rights of plaintiffs and members of the plaintiff class under section 2-15-  
23 1020(9), MCA.

24 179. By failing to ensure that the State's Appellate Defender Commission keep  
25 current, and supply to all justices and judges in the state, a statewide roster of competent  
26 attorneys eligible for appointment, State Defendants have violated the rights of plaintiffs and  
27 members of the plaintiff class under section 2-15-1020(10), MCA.  
28



1 **X. PRAYER FOR RELIEF**

2 WHEREFORE, plaintiffs respectfully request the following relief:

- 3 (a) The certification of this action as a class action, pursuant to Mont. R.  
4 Civ. P. 23.
- 5 (b) A declaration that plaintiffs' rights are being violated.
- 6 (c) The issuance of preliminary and permanent injunctions requiring  
7 Defendants to provide indigent defense programs consistent with the  
8 Sixth and Fourteenth Amendments of the United States Constitution;  
42 U.S.C. § 1983; Art. II, sections 3, 17 and 24 of the Montana  
Constitution; and sections 2-5-1020(9) and (10), 46-8-101, 46-8-201,  
and 46-8-202, MCA.
- 9 (d) The award to plaintiffs of costs and attorneys' fees under 42 U.S.C. §  
10 1988.
- 11 (e) The granting of such other and further relief as this court deems  
necessary or proper.

12 Respectfully submitted,

13 GOUGH, SHANAHAN, JOHNSON &  
14 WATERMAN

15 by

Ronald F. Waterman  
A member of the Firm

17 OF COUNSEL:

18 BETH BRENNEMAN  
19 ACLU OF MONTANA  
Power Block West, Suite 4E  
20 Helena, MT 59601  
(406) 443-8590

21 ROBIN L. DAHLBERG  
22 E. VINCENT WARREN  
AMERICAN CIVIL LIBERTIES UNION FDN.  
23 125 Broad Street, 18th Floor  
New York, NY 10004  
24 (212) 549-2602

25 JULIE A. NORTH  
26 CRAVATH, SWAINE & MOORE  
Worldwide Plaza  
27 825 Eighth Avenue  
New York, NY 10019  
28 (212) 474-1000