
To The
SUPREME COURT
For The
STATE OF LOUISIANA

No. _____

IN RE 98 UNNAMED DEFENDANTS

An Original Petition to the Louisiana Supreme Court

Founded on its Constitutional Mandate
To Regulate the District Courts in the State of Louisiana

Requesting that the Supreme Court instruct
District Courts to
Immediately Appoint Counsel for Unrepresented Defendants

BY:

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To the Honorable Members of the
Louisiana Supreme Court
400 Royal Street
New Orleans, LA 70130

Madam Chief Justice, and the Associate Justices
Of the Louisiana Supreme Court:

I petition this Honorable Court to act for individuals who are
indigent,

Whose presence is commanded before sections of the Criminal
District Court, of Orleans Parish,

On accusations which place them at the risk and peril of
incarceration,

Yet rise for every appearance, since their initial appearance there,
Without Counsel.

Under your authority to regulate the District Courts of the State of
Louisiana, pursuant to Article V, Section 5(A) of the Louisiana
Constitution, to direct the District Courts of this State to provide these
individuals with counsel without delay,

And such other relief as described in this petition.

Regards,

John Ruskin
Member of the Bar, #14389
New Orleans, Louisiana
July 16th, 2012

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STATEMENT OF JURISDICTION

Jurisdiction is conferred by Article I, §§ 19, 21, and 22, as well as Article V, §§ 1, 2, 5, 10, of the Louisiana Constitution of 1974.

Particularly, jurisdiction is asserted under the Supreme Court’s authority to regulate the affairs of the District Courts, as provided in Article 5, Section 5(a), which provides, in pertinent part:

“The supreme court has general supervisory jurisdiction over all other courts. It may establish procedural and administrative rules not in conflict with law . . . “

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**PETITION to the SUPREME COURT
For The STATE OF LOUISIANA**

INTO COURT appears undersigned counsel, for the limited purposes herein inscribed, to seek redress from the Supreme Court for the State of Louisiana, on behalf of unrepresented, indigent criminal defendants.¹

PART ONE: On the Existence of Indigent Defendants Denied Counsel.

In Orleans Parish, currently, there are approximately 100 indigent individuals, arrested and charged with felonies yet who have not been appointed permanent counsel upon their first appearance.² The 100 appear on a non-public list maintained by the Orleans Public Defender (the “OPD”).

It is believed that most of those have also been charged by bill of information or indictment.

There are other, known and unknown indigent defendants who, on information, are not on that list, and who are also not represented by counsel.³

All of these individuals were entitled to appointment of counsel, at first appearance, under the Louisiana and U.S. Constitutions, under guidelines established by the LA Criminal Code and other statutes, and pursuant to the Rule 15.2 of the District Courts, established by the judiciary.⁴

¹ On information, only, and belief: all or substantially all are incarcerated.

² See *State v Citizen*, 898 So.2d 325 (La. 2005) at ---. “A district judge should appoint counsel to represent an indigent defendant from the time of the indigent defendant’s first appearance in court, even if the judge cannot then determine that funds sufficient to cover the anticipated expenses and overhead are likely to be available to reimburse counsel.”

³ These include 10 other individuals, believed to be in addition to the 100, yet similarly situated but only in Section “K” of the Criminal District Court. Mr. William Quigley appeared on their behalf, for the limited purposes related to getting the 10 defense counsel; this is discussed in further detail, below. In addition to the 100 and the 10, there are also other defendants in some of the other sections of that Courthouse, which, according to an informal survey by undersigned counsel, includes defendants who may or may not be on the OPD list. Per an informal survey of some Judges, there – current to July 13, 2011.

⁴ Chapter 15 Assignment of Cases and Preliminary Motions -- Rule 15.2 Appointment of Counsel. “Each district court shall set forth a method for appointing counsel for indigent defendants. The method established by each district is described in [Appendix 15.2](#) to these Rules.” In Orleans Parish, for the Criminal District Court, the Local Rule to 15.2 states: “Counsel for indigent defendants may be appointed at the magistrate hearing by the presiding duty judge, if appropriate. Alternatively, appointment of counsel may wait until arraignment in order to determine true indigency, or whether defendant has retained other counsel. If the Court appoints, it appoints the Office of Public Defender.” Contrast Desoto Parish, using this rule: “Determination of counsel shall be made within 72 hours for detained persons or at arraignment.”

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Instead, these individuals are denied the right to counsel, and the equal protection of the law.

All of these individuals, similarly situated, are entitled to the immediate appointment of permanent counsel, ready and able to represent them without delay.

PART TWO: On the Development of a “Waiting List” in Orleans Parish.

Concurrently, and through the end of the 2011-12 fiscal year, the Orleans Parish Defenders office (the “OPD”), the indigent defender program in Orleans Parish, continues to suffer an ongoing deficit.

That OPD deficit resulted in the firing of 21 of its staff lawyers, and the closure of the conflict/overflow division.⁵

With staffing levels drastically reduced, and the elimination of its conflict and overflow divisions and panels, OPD lawyers faced case load levels that prevented OPD from accepting additional cases.⁶

OPD, as a management tool, established a “waiting list”, by which measure it could assign available counsel. The original institution date of this “waiting list” is not known to undersigned counsel.⁷

The waiting list was established by OPD in response to a budget crisis which forced reductions in staff and/or contracted counsel available to represent indigent defendants in Orleans Parish.⁸

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See: <http://www.lasc.org/rules/dist.ct/COURTRULESAPPENDIX15.2.pdf>

⁵ It is assumed that the members of the Supreme Court are aware of the publically documented history and fallout, thereafter.

⁶ Sometime following Katrina, the OPD established a conflict and overflow division. That division disappeared with the major staffing and budget cuts of February, 2012. As of January 16th, 2012, the OPD declared that it could no longer be financially responsible for already appointed counsel, outside of staff counsel. By mid-year, 2011, it was already having funding difficulties which impacted engagement and funding of outside, contracted counsel. Despite declarations of the reengagement of part of the *Conflict Section* of OPD, with a new fiscal year on July 1, 2012, as of the date of this petition, only a supervisor has been rehired, and it is believed that only 3 lawyers will be engaged, and they have not been, as of the middle of the July, been engaged. The phone number for the conflict office still asserts it doesn't exist, as of July 13th, 2012.

⁷ On belief, this list likely existed in 2011.

⁸ That “waiting list” is but one of several methods used to address the lack of counsel, each with their own constitutional problems, e.g.: a) the mass appointment of counsel (the “profile lawyer” appointments), and; b) appointment of counsel without funding for non-fee or fee related defense costs (the “potted plant” appointments).

The OPD anticipated additional funding to restore some of the lost staffing, with the onset of the 2012-2013 fiscal year, beginning July 1st, 2012. Despite that planning, the OPD plan does not guarantee the end of the “waiting list”, as to all of list members, by the end of July 2012.⁹ The ODP conflict office phone message apologizes for its non-existence, still, as of July 13, 2012.

PART THREE: On How Circumstances, Financial Problems and Judicial Court Action Sustain An Environment Where Indigent Defendants Don't Get Counsel on First Appearance in Orleans Parish.

Since the institution of the OPD waiting list, the Judges of the Criminal District Court knew that the OPD was temporarily overloaded or that conflicts existed, and knew that OPD was placing defendants on a waiting list. Despite that circumstance, Judges have failed to appoint permanent, alternative counsel, immediately.¹⁰

It is known, on and before of July 13, 2012, that at least some members of this broad class of unrepresented, indigent defendants were and are not on the OPD waiting list.¹¹

Instead of making a permanent assignment of counsel at or before arraignment, some Judges merely arraigned the defendant and docketed the case for a “status hearing” or a “hearing to determine counsel”, weeks ahead. In at least one case, this wait time has extended to a year following filing of an indictment and approximately 8 months following on from the discharge of prior counsel.

⁹ Additionally, OPD readily acknowledged, before July 1st, that its “waiting list” may well not be a comprehensive list of all charged defendants who are not represented by counsel. This potential exists due to the possibility that some Judges may have deferred appointing counsel, or engaging OPD and its waiting list, until the end of the 2012 legislative session, or the renewal of the OPD fiscal year – a judicial “wait and see”, an undocumented potential collection of unrepresented individuals. Indeed, informal conversations with Judges on July 13th confirm that there are defendants, unrepresented, and not on the OPD waiting list.

¹⁰ It is noted that, in 2007, the legislature repealed 15:145, where sub-section(a) provided that indigent boards were to maintain a list of voluntary lawyers, and a list of all non-voluntary lawyers, under the age of 55, in the parish.

¹¹ Again, per informal discussions with some Judges of the Criminal District Court; the latest discussions were on July 13, 2012.

Despite that some private counsel have stepped forward to accept cases ¹², there remains an ongoing population of arrested and/or charged defendants who are without counsel.

The identities of approximately 98 of those individuals on the list are not known ¹³, and, under the circumstances, their identity cannot be determined by undersigned counsel. ¹⁴

The circumstances that led to the waiting list, are also not known – whether, for example, for each defendant the representation by OPD would be a conflict, or whether it was because OPD staff were over proper case loads.

PART FOUR: On an Example of How the Actions of Two Concerned Attorneys at the District Court Level, in Orleans Parish, Still Has Not Resolved the Crisis.

In late May, 2012, undersigned counsel, John Ruskin, approached Judge Hunter (of Section “K” of the Criminal District Court) with respect to funding of fee and non-fee defense costs for appointed counsel in cases unrelated to this original petition. During that discussion, Judge Hunter indicated that his court had two defendants on that “waiting list”.

Until that time in the current indigent defense crisis, no known counsel had stepped before any Judge, asserting that those collected, and unknown, defendants were entitled to an immediate appointment of counsel – to the appointment of their

¹² This includes undersigned counsel, a member of the Tulane Trial Advocacy Program faculty, appointed in February, 2012 by Judge Zibilich to a 19 year old aggravated rape/kidnapping case, and four other felony cases in that court. In addition, there have been two public declarations of involvement of the legal community. Judge Hunter appointed approximately 25 “profile” lawyers to various cases in a widely publicized event. Additionally, various downtown New Orleans firms pledged to take on 100 cases, in the following weeks. At the time that OPD had fired staff, in February, 2012, there were suddenly over 500 defendants without counsel; this number is believed to have since reduced.

¹³ The OPD management has elected not to disclose the “waiting list” to undersigned counsel, *i.e.*, the defendants, their charges, case numbers, sections of court or other details known. Management asserts that the non-disclosure is based on a business decision, *i.e.*, not related to a claim of privilege.

¹⁴ Other than the list maintained by OPD, there is no known, organized system for tracking defendants without counsel. Undersigned counsel asserts that the list is not a comprehensive list of all such defendants without permanent assigned counsel; it is merely a waiting list that OPD maintains.

permanent counsel, ready and able to advise, investigate and defend on behalf of their client's cause, without delay.

Undersigned counsel advised that Court that such defendants were not only entitled to counsel, but that the Supreme Court, in cases such as *State v Citizen*¹⁵, had made it clear that courts were to appoint counsel on first appearance. At that meeting, undersigned counsel suggested that, at the very least, they were entitled to appointment of counsel on that narrow issue, alone.¹⁶ Within days, that Court advised Mr. William Quigley¹⁷ that he would be appointed.¹⁸

Thereafter, weeks following, Mr. Quigley received a subpoena for a hearing to determine counsel for those two defendants, and others.

By July 13th, Mr. Quigley had been appointed to 10 cases, in total, all in Judge Hunter's Court. 7 are on bond, and 3 are incarcerated, as of that date.

Mr. Quigley made a limited appearance and moved to have the court appoint permanent counsel, and sought other relief pending that appointment, with respect to any similarly postured cases, but only within the jurisdiction of Section "K".¹⁹

Mr. Quigley has no means to determine if those 10 defendants are on the list of 100, if a conflict exists that caused OPD to present them to the conflict waiting list, or if their cases presented OPD with case load problems which led to placement on the waiting list.

As to the Quigley motion filed, on appointment of counsel and other matters, the Court set July 27th, 2012 for a decision, deferring again, appointment of counsel.

¹⁵ *State V. Citizen*. 898 So.2d 325 (La. 2005).

¹⁶ Undersigned counsel volunteered to appear for that limited purpose.

¹⁷ Mr. Quigley is a member of the faculty at the Loyola Law School.

¹⁸ Though undersigned counsel and Mr. Quigley were already communicating on issues related to appointments, and funding, in light of *Citizen*, the choice to appoint Mr. Quigley was that Court's.

¹⁹ That relief, sought by Mr. Quigley, beyond the appointment of counsel, is not the subject of this original petition to this Supreme Court. Hearing on that Quigley motion, below, had been set by the Court for July 13th, 2012, and was heard that day. Mr. Quigley sought no ruling as to individuals in any other section of Court. The subject matter of the remainder of Mr. Quigley's motions addressed stays and bonding/release issues; the State put on no witnesses nor advanced evidence by affidavit or otherwise as to the immediate availability of OPD counsel, or for any other purposes.

As of the close of Court business, on July 13th, 2012 there is no known, permanent counsel for any of the broad class of defendants identified herein as: on the list of 100 in all sections of the Criminal District Court; the Quigley 10 in Section “K”, or; the other known but unidentified, indigent defendants without counsel in the various sections of Court.

PART FIVE: On the Specific, Narrow Relief Sought from the Louisiana Supreme Court, as the Only Authoritative Body Which Can Resolve the Current Crisis, Pursuant to its Mandate to Regulate the Affairs of the District Courts.

Undersigned counsel, on behalf of those defendants and arrested subjects described above, known or unknown, seek the following relief from the Justices of the Louisiana Supreme Court.

1. That the Supreme Court order the Judges of the Criminal District Court²⁰ to:

- A) Identify in each of their sections all defendants: who have had a first appearance²¹, and; who do not have permanent counsel appointed.²²
- B) Bring each of those defendants to Court, by the third day following receipt of the order of the Supreme Court.
- C) On the day that they are brought before their Section of the District Court, to determine if those defendants or arrested individuals have permanent counsel, and if not to make a determination of indigency, and if indigent to appoint permanent counsel immediately or within 3 days, thereafter.
- D) Make a return to the Supreme Court, within 7 calendar days from their receipt of the order of this Supreme Court, identifying those defendants, charges and case numbers, in A), above, and the name of the attorney appointed, in C), above.
- E) To set the confirmation of that appointment, for hearing within those same 7 calendar days, thereafter, using the

²⁰ That is: all sections of the Court, including the Magistrate Court.

²¹ It is assumed that these defendants’ first appearance included a plea at arraignment, using some handy, present attorney to stand in for a plea of not guilty, even if, thereafter, no counsel was appointed nor assignment to OPD made. Historically, there are no significant lags after charges are filed, before a first appearance.

²² It is suggested that the OPD would likely cooperate, identifying those defendants of which it is aware in each of the individual sections.

subpoena power of the Courts, if necessary, and other means of contact, and to update reporting returned, as necessary.

2. Further, it is urged that the Supreme Court direct, in all cases hereafter arising in the Criminal District Court, that each Judge appoint permanent counsel on first appearance, and set a hearing within 7 days to confirm that appointment with a subpoena for that hearing directed to such counsel, with such other contact methods such as by phone or otherwise, at or before which time any objections to the appointment may be raised by that counsel.
3. Further, it is urged that this Honorable court appoint a special master, or a team of special masters, whose charge will be to examine the status of ongoing appearances of indigent defendants, and the practices of the Judges of the Criminal District Court relating to the appointment of counsel for individuals brought before them, and to report back to the Supreme Court thereafter.²³
4. Further, it is suggested that the Supreme Court, in its charge to the special masters, direct them and the Judges of the Criminal District Court, *en banc*, to cooperate in the amendment of Court Rules of the Orleans Parish Criminal District Court, with respect to the identification of eligible counsel for appointment to represent indigents, and the appointment of counsel.

Further, it is suggested by undersigned counsel that the Supreme Court extend the investigative aspects of 1, above, to all sections of all District Courts throughout the State of Louisiana, to also include a report on whether the intent of 2, above, is being met in each of those sections of court.

²³ It is suggested that such a team include a representative of OPD, a member of the private criminal bar with a demonstrated history of interest in indigent defense, one or more faculty members of a law school in Orleans Parish, and a representative selected by the *en banc*. Even if there is some future, fiscal relief for the indigent defense in Orleans Parish, there is no means to prevent similar occurrences in the event of a future, fiscal crisis.

PART SIX: On Such Other Issues for which Redress is Not Sought in This Petition

It is specifically noted to the Court that this petition does not seek redress or intervention, at this time, with respect to any of the following matters, all of which are manifestly important, and which are left to appointed counsel:

- A) The impact of any delay in appointment of permanent counsel, in so far as it might impact rights afforded under the Louisiana or U.S. Constitutions, including but not limited to the rights to counsel or due process, and remedies which might be granted;
- B) Identifying and mandating funding sources for the costs of counsel appointed outside of the auspices of the OPD, including fee or non-fee related defense costs;
- C) Equal protection and due process issues, in so far as those defendants are impacted by the means or methods by which their cases, or their counsel, are funded;
- D) The constitutionality of the legislative scheme for the funding of indigent defense, generally, or as it relates to Orleans Parish, specifically;
- E) The sufficiency of legislative funding for the indigent defense system, generally, or specifically as it relates to Orleans Parish;
- F) The constitutionality of appointments, or of the funding or lack of funding for attorney fees, or overhead, whether or not such issues arise under the U.S. 5th Amendment or as equal protection issues;
- G) Any other constitutional or statutory errors, and/or;
- H) The representation of any defendant on any of the underlying matters leading to arrest or charges.

It is suggested that these matters, or other similar issues, are properly raised by appointed counsel at the district court level, as the court of first impression.

CONCLUSION

WHEREFORE, for all the reasons given above, and for any other reasons that may occur to this Honorable Court, petitioner respectfully asks this Court to grant the relief requested

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