

**IN THE SUPERIOR COURT OF ELBERT COUNTY
STATE OF GEORGIA**

CHRISTOPHER MICHAEL)
CANTWELL, MITCHELL)
CLEVELAND MAJOR, DONNA)
GAIL ADAMS, BOBBY GENE)
GUNTER, and BRANDON)
RANSOM)

Plaintiffs, on behalf of)
themselves and all persons)
similarly situated.)

v.)

MACK CRAWFORD, in his official)
capacity as Director of the Georgia)
Public Defender Standards Council,)

BART L. GRAHAM, in his official)
capacity as Commissioner of the)
Georgia Department of Revenue,)

W. DANIEL EBERSOLE, in his)
official capacity as Director of the)
Georgia Office of Treasury and)
Fiscal Services,)

ROBERT LAVENDER, in his)
official capacity as District Attorney)
of the Northern Judicial Circuit,)

BARRY L. HASTON, in his official)
capacity as Sheriff of Elbert County,)

STEVIE D. THOMAS, in his official)
capacity as Sheriff of Franklin)
County,)

CIVIL ACTION

No. _____

CLASS ACTION

MIKE CLEVELAND, in his official)
 capacity as Sheriff of Hart County,)
)
 KIP C. THOMAS, in his official)
 capacity as Sheriff of Madison)
 County,)
)
 MIKE SMITH, in his official)
 capacity as Sheriff of Oglethorpe)
 County,)
)
 Defendants.)
 _____)

VERIFIED COMPLAINT

1. Plaintiffs are among hundreds of poor people charged with felony offenses in the Northern Judicial Circuit who are without legal representation in clear violation of the Supreme Court’s decision in Gideon v. Wainwright, 372 U.S. 335, 83 S. Ct. 792 (1963). Some have been without counsel for over six months.

2. Some of the plaintiffs and others without counsel are being detained in jails despite the holding in Gideon, Argersinger v. Hamlin, 407 U.S. 25 (1972), Alabama v. Shelton, 535 U.S. 654 (2002), and other cases with similar holdings that no person can be deprived of his or her liberty without representation by counsel. Plaintiffs CANTWELL, GUNTER, and MAJOR were detained for two and one half months without counsel. Plaintiff ADAMS has been detained without legal representation in the

Elbert County Jail since November 13th, 2008. Plaintiff RANSOM has been detained in the Oglethorpe County Jail since November, 2008 without legal representation. Others have been detained as long or longer.

3. Some of the plaintiffs and others without counsel have been called upon to enter pleas of guilty or not guilty to felony charges, despite the Supreme Court's decision that counsel must be provided when an accused is called upon to enter a plea at a felony arraignment. White v. Maryland, 373 U.S. 59 (1963). See also Hamilton v. Alabama, 368 U.S. 52 (1961).

4. Plaintiffs and others are without counsel in violation of Gideon and its progeny because defendant MACK CRAWFORD, Director of the Georgia Public Defender Standards Council ("GPDSC"), who is responsible for providing representation for people accused of crimes whose interests conflict with those of individuals represented by the Northern Circuit Public Defender Office, has failed to carry out his mandatory statutory duty to do so. See Ga. Code Ann. § 17-12-22. Defendant CRAWFORD and the GPDSC contracted with three lawyers who provided representation from July 1st, 2007 to June 30th, 2008 at a cost of \$129,166. However, Defendant CRAWFORD did not renew the contracts at the end of June, 2008, and has provided the Circuit with only \$37,152 to provide representation in conflict cases from July 1st, 2008 to June 30th, 2009. This was because the Georgia

Legislature reduced its appropriation to GPDSC for counsel in conflict cases.

5. Plaintiffs CANTWELL, MAJOR, ADAMS, GUNTER, and RANSOM bring this lawsuit as a class action pursuant to Ga. Code Ann. § 9-11-23 on behalf of themselves and all other indigent, unrepresented persons accused of crimes in Georgia's Northern Judicial Circuit, whose case conflicts with those of individuals represented by the Circuit Public Defender. They are being denied their right to counsel as if they were living in the 1950s before Gideon and the Supreme Court's other right to counsel cases were decided and before the Georgia Indigent Defense Act was enacted.

6. Plaintiffs ask that this Court order that they be provided counsel forthwith or the charges against them be dismissed; that the Court order the immediate release of all of those detained in violation of Gideon and its progeny; that the Court enjoin Defendant District Attorney LAVENDER from proceeding against all class members after the right to counsel attaches unless counsel is in fact provided; and for such other relief as to which they may be entitled.

JURISDICTION AND VENUE

7. This action is brought to enforce rights conferred by the United States and Georgia Constitutions and other applicable law. It is brought under the authority vested in this Court pursuant to Ga. Code Ann. §§ 9-4-2 and -3, Ga. Code Ann. § 9-5-1, Ga. Code Ann. §§ 9-6-20 to 23, -25; 42 U.S.C. §§ 1983, 1985; 28 U.S.C. §§ 1331, 1343, and 1367.

8. Venue is proper in Elbert County as substantial equitable relief is sought against at least one Defendant residing in Elbert County. See Ga. Code Ann. § 9-10-30.

9. All actions, and refusals to act, of the Defendants were under color of state law and with deliberate indifference to Plaintiffs' rights.

PARTIES

10. Plaintiff CHRISTOPHER MICHAEL CANTWELL, a 26 year-old resident of Elbert County, was arrested and detained on November 26th, 2008 on suspicion of committing one count of burglary, three counts of entering an automobile, one count of theft by receiving stolen property, and one count of cruelty to animals. Plaintiff CANTWELL has three co-defendants. Plaintiff CANTWELL was denied bond on December 2nd, 2008. Despite applying for a public defender and qualifying for assistance,

Plaintiff CANTWELL was not assigned a public defender due to a conflict of interest nor was he appointed a conflict attorney. Plaintiff CANTWELL remained detained in the Elbert County Jail until February 10th, 2009 when he posted a property bond. On March 19th, 2009, Plaintiff CANTWELL attended Elbert County arraignments and made another request for an attorney before being told there were no lawyers and to enter a plea of not guilty. As of the filing of this Complaint, Plaintiff CANTWELL remains unrepresented. Because Plaintiff CANTWELL is indigent, faces felony prosecution, and seeks the appointment of a lawyer to defend against the charges against him, he currently suffers and in the immediate future faces the likelihood of suffering substantial and irreparable injury.

11. Plaintiff MITCHELL CLEVELAND MAJOR, a 54 year-old resident of Elbert County, has three open cases. In his first case, Plaintiff MAJOR was arrested in February, 2008 on suspicion of committing one count of burglary, has one co-defendant, has posted a bond, and was appointed a conflict attorney. In the second case, Plaintiff MAJOR was arrested in November, 2008 on suspicion of committing one count of possession of cocaine and one count of possession of drug-related objects, has one co-defendant, had a \$21,000 bond, and was not appointed a lawyer. In the third case, Plaintiff MAJOR was arrested in December, 2008 on

suspicion of committing one count of burglary, has another co-defendant, had a \$25,000 bond, and was not appointed a lawyer. Despite filing applications for a public defender and qualifying for assistance, Plaintiff MAJOR was never appointed an attorney on the second two cases. On March 11th, 2009, Plaintiff MAJOR's bond was reduced by the jail administrator, Michael Thompson, and Plaintiff MAJOR was released after the reduced bond was posted. As of the filing of this Complaint, Plaintiff MAJOR has not spoken with an attorney regarding his criminal cases in months. Plaintiff MAJOR has been arraigned on two charges without representation. Because Plaintiff MAJOR is indigent, faces felony prosecution, and seeks the appointment of a lawyer to defend against the charges against him, he currently suffers and in the immediate future faces the likelihood of suffering substantial and irreparable injury.

12. Plaintiff DONNA GAIL ADAMS, a 43 year-old resident of Elbert County, was arrested and detained on November 13th, 2008 on suspicion of committing one count of armed robbery. Plaintiff ADAMS has one co-defendant. Plaintiff ADAMS was denied bond on November 17th, 2008. Despite financially qualifying for assistance and initially being represented by a public defender that filed and argued a bond motion on her behalf, Plaintiff ADAMS has not had contact with any attorney since her

December 17th, 2008 bond hearing. As of the filing of this Complaint, Plaintiff ADAMS is no longer represented by a public defender due to a conflict of interest. She has not been appointed another lawyer. Plaintiff Adams was arraigned on March 4th, 2009 without representation. Because Plaintiff ADAMS is indigent, faces felony prosecution, seeks the appointment of a lawyer to defend against the charges against her, and is detained in the Elbert County Jail, she currently suffers and in the immediate future faces the likelihood of suffering substantial and irreparable injury.

13. Plaintiff BOBBY GENE GUNTER, an 18 year-old resident of Elbert County, was arrested and detained on November 26th, 2008 on suspicion of committing one count of burglary and three counts of entering an automobile. Plaintiff GUNTER has three co-defendants. Plaintiff GUNTER was denied bond on December 2nd, 2008. After applying for a public defender and qualifying for assistance, Plaintiff GUNTER was told he would not be appointed a public defender due to a conflict of interest. He was not appointed another attorney. Plaintiff remained detained in the Elbert County Jail until February 11th, 2009 when he posted a property bond. As of the filing of this Complaint, Plaintiff GUNTER remains unrepresented. Because Plaintiff GUNTER is indigent, faces felony prosecution, and seeks the appointment of a lawyer to defend against the

charges against him, he currently suffers and in the immediate future faces the likelihood of suffering substantial and irreparable injury.

14. Plaintiff BRANDON RANSOM, a 28 year-old resident of Clarke County, was transferred to Oglethorpe County Jail in November, 2008. He was detained on suspicion of committing two counts of armed robbery, one count of aggravated assault, and one count of kidnapping. Plaintiff RANSOM has four co-defendants. At a December 8th, 2008 court appearance, Plaintiff RANSOM was told that there were no attorneys available to represent him. Despite requesting an attorney and financially qualifying for the assistance of a public defender, Plaintiff RANSOM was not appointed a lawyer. Plaintiff RANSOM does not have a bond set. As of the filing of this Complaint, Plaintiff RANSOM remains detained and unrepresented. Because Plaintiff RANSOM is indigent, faces felony prosecution, seeks the appointment of a lawyer to defend against the charges against him, and is detained in the Oglethorpe County Jail, he currently suffers and in the immediate future faces the likelihood of suffering substantial and irreparable injury. See Attachment A for Plaintiffs' Declarations.

15. Defendant MACK CRAWFORD is the Director of the Georgia Public Defender Standards Council ("GPDSC"). As Director, Defendant

CRAWFORD is responsible for protecting the rights of poor people accused of crimes established by the United States Supreme Court in Gideon, In re Gault, 387 U.S. 1 (1967), and their progeny, as well as the provisions of the United States and Georgia Constitutions providing for the right of access to the courts. He is charged with providing “support services and programs for circuit public defenders and other attorneys representing indigent persons in criminal or juvenile cases in order to improve the quality and effectiveness of legal representation and to fulfill the purposes of Chapter 12 of O.C.G.A. Title 17.” See Georgia Public Defender Standards Council Bylaws § 5.3. In authorizing the drastic reduction of the budget for conflict attorneys in the Northern Circuit while failing to renew their contracts, Defendant CRAWFORD effectively ended conflict representation in the Northern Circuit and acted in breach of his constitutional, statutory, administrative, and ethical obligations.

16. Defendant BART L. GRAHAM is the Commissioner of the Georgia Department of Revenue. Defendant GRAHAM’s continued enforcement and administration of the Code renders Defendant GRAHAM liable for violation of the Plaintiffs’ civil rights and subject to equitable relief in his official capacity.

17. Defendant W. DANIEL EBERSOLE is the Director of the Georgia Office of the Treasury and Fiscal Services, the office responsible for the receipt and disbursement of state funds, lottery funds, and management of the state's cash resources. In his role in providing these services to state agencies, Defendant EBERSOLE is liable for violation of the Plaintiffs' civil rights and subject to equitable relief in his official capacity.

18. Defendant ROBERT LAVENDER, resident of Elbert County, is the District Attorney for the Northern Judicial Circuit. As District Attorney, Defendant LAVENDER is responsible for prosecuting criminal defendants. In his role in processing those prosecutions, Defendant LAVENDER is liable for violation of Plaintiffs' civil rights and subject to equitable relief in his official capacity.

19. Defendants HASTON, STEVIE D. THOMAS, CLEVELAND, KIP C. THOMAS, and SMITH are sheriffs in counties of the Northern Judicial Circuit. In their role in detaining unrepresented criminal defendants, each sheriff Defendant is liable for violation of Plaintiffs' civil rights and subject to equitable relief in his official capacity.

CLASS ACTION ALLEGATIONS

20. Plaintiffs bring this action as class representatives under Ga. Code Ann. § 9-11-23, on behalf of themselves and all persons similarly situated.

21. The class Plaintiffs seek to represent consists of all indigent persons who are or will in the future be charged in a criminal case in the Northern Judicial Circuit, whose case conflicts with a case of a client of the Circuit Public Defender, and who are not represented by the Circuit Public Defender Office.

22. Plaintiffs meet the requirements of Ga. Code Ann. § 9-11-23(a) in that:

- (a) The members of the class are so numerous as to make it impracticable to bring separate civil rights actions. Currently, there are hundreds of unrepresented people charged with crimes whose interests conflict with clients of the Circuit Public Defender, and the number grows daily;
- (b) The policies and practices challenged in this action apply equally to Plaintiffs and all members of the proposed class. Accordingly, the claims asserted by the members constituting the proposed class

raise common questions of law and fact that will predominate over individual questions of law or fact;

(c) Plaintiffs assert claims which are typical of claims members of the proposed class have against all Defendants; and

(d) Plaintiffs and their counsel will adequately represent the interests of all members of the proposed class. The named Plaintiffs do not have any interests that would conflict with members of the class, and Plaintiffs' counsel have the experience and resources necessary to adequately represent all members of the proposed class.

23. Plaintiffs meet the requirements of Ga. Code Ann. § 9-11-23(b)

in that:

(a) A class action is superior and necessary form for resolving the issues raised by this Complaint because the Defendants' actions have resulted in constitutionally inadequate or nonexistent representation for all members of the proposed class, making appropriate declaratory and prospective injunctive relief against the Defendants with respect to all members of the class.

24. Because the actions on the part of the Defendant have denied Plaintiffs the right to counsel and because Plaintiffs are indigent and do not

have alternative access to representation, the remedies available at law are both unavailing and unavailable. Thus, class members will suffer substantial and irreparable injury.

FACTUAL ALLEGATIONS

25. The Northern Judicial Circuit contains five counties: Elbert, Franklin, Hart, Madison, and Oglethorpe. Indigent defense services are provided by the Circuit Public Defender Office, and until June 30th, 2008, three private attorneys were contracted to handle all conflict cases.

26. In all cases, including multiple defendant cases, a representative from the public defender office interviews every person charged with committing a crime. The representative interviews each person charged to determine whether the individual is indigent as defined by the Indigent Defense Act and to determine whether there is a conflict of interest. If during the interview a conflict of interest is apparent, the public defender requests appointment of a private attorney to represent those with conflicts who also qualify as indigent. Similarly, if during later interactions with the clients, assistant public defenders or their staff determines a conflict, the public defender requests a private attorney for one or more of the clients. Until August 1st, 2008, Northern Circuit Superior Court judges then appointed a contract conflict attorney to represent the conflict cases. After

August 1st, however, judges did not have a pool from which to appoint private conflict attorneys because Defendant CRAWFORD unreasonably chose to reduce the Northern Circuit conflict budget by more than seventy percent and also opted not to renew the private attorneys' contracts.

27. Three private attorneys in the circuit entered into year-long contracts with GPDSC to provide conflict representation through June 2008. The GPDSC compensated the three lawyers a total of \$129,166.69 for the 2008 fiscal year (July 1st, 2007 to June 30th, 2008) to provide representation for all of the Northern Circuit conflict cases. Warren Caswell contracted to handle 175 cases for \$50,000, Dennis Helmreich contracted to handle another 175 cases for \$50,000, and Harvey Wasserman contracted to handle 100 cases for \$29,166.69. In fiscal year 2009, Defendant CRAWFORD refused to renew the conflict defenders' contracts and reduced the budget for conflicts in the Northern Circuit to approximately \$37,152. See Attachment B. At the end of June 2008, the conflict attorneys were asked to continue representing clients. After a month, however, the funds budgeted for conflicts in the circuit were exhausted.

28. Starting August 1st, 2008, the conflict attorneys ceased billing. Two of the conflict attorneys, Dennis Helmreich and Warren Caswell, filed motions to withdraw in their pending cases. Their withdrawal motions were

granted. An example of a withdrawal motion and order granting withdrawal is attached as Attachment C. The third conflict attorney, Harvey Wasserman, did not withdraw, but he was not paid, and as a result, did not and does not work on his appointed cases. Judges stopped appointing conflict attorneys to new cases. Hundreds of indigent persons are left without legal representation. Although some attempt has been made to find representation for conflict cases from the neighboring Athens Regional Conflict Defender office, the relief has been extremely limited. Only two conflict cases are being handled by the Athens Regional Conflict Defender. There is no indication if/when lawyers will be appointed for Plaintiffs and others similarly situated.

29. Without any sort of representation, some plaintiffs are left to languish in jail. As Judge Bailey noted in his Order dated February 4th, 2009 and appended hereto as Attachment D, “[Plaintiffs] ... remain incarcerated without representation and without the means by which to request a bond hearing.”

30. Plaintiff CANTWELL was incarcerated over two months without representation. During his incarceration, approximately \$1,200.00 worth of property was stolen from Plaintiff CANTWELL’s trailer. Plaintiff CANTWELL also received a termination notice from his job.

Consequently, Plaintiff CANTWELL lost his trailer due to his inability to pay rent. While still incarcerated, not long after the break-in and the job termination, Plaintiff CANTWELL's grandfather passed away, and Plaintiff CANTWELL was not allowed to attend the funeral.

31. Plaintiff ADAMS has been incarcerated for more than four months. While incarcerated, Plaintiff ADAMS has been unable to follow-up on the results of her mammogram and ultrasound.

32. Plaintiff MAJOR was incarcerated for over two months without representation. Plaintiff MAJOR suffers from heart disease, asthma, schizophrenia, and bi-polar disorder. While incarcerated, Plaintiff MAJOR did not receive mental health medication, an inhaler, or any medication for high blood pressure. While incarcerated, Plaintiff MAJOR lost his home temporarily.

33. Without representation, *all* plaintiffs' cases suffer irreparable damage. Without representation, discovery requests are not made, other motions are rarely, if ever, filed, and no investigation is conducted - witnesses become harder to find, memory fades, and evidence grows stale. Furthermore, some plaintiffs are brought to court without notice and left to make significant legal decisions without the benefit of counsel.

34. At Elbert County's March 4th, 2009 arraignments, a critical stage of prosecution, eight people were present for cases in which the public defender declared a conflict. All eight proceeded without representation; they were vulnerable and bewildered by the criminal process. They went forward with no explanation of procedure, no explanation of viable options, and no indication of when representation would be made available. One of the eight pled guilty and was sentenced to serve time in jail without ever having spoken with a lawyer specifically about his charges.

35. Similarly, at the March 19th, 2009 arraignments several conflicts were declared. Ten people accused of crimes were present and eligible for indigent defense services, but were not appointed counsel. In one instance, a six co-defendant case was arraigned. The Circuit Public Defender declared conflicts in all but two of the cases. This arraignment mirrored the March 4th, 2009 arraignments in that those accused of crimes were not provided with details about procedure, next steps, or likely timing of appointment of counsel. Plaintiffs CANTWELL, MAJOR, and GUNTER were arraigned on March 19th, 2009. Plaintiff CANTWELL requested postponement of the proceedings until appointment of counsel. His request was denied because of the unavailability of lawyers due to lack of funds. Plaintiff CANTWELL left the proceeding without answers to several questions including: date of

next court proceeding, whether he would have a lawyer for the next court date, and whether he would have a lawyer in time to prepare his defense.

36. The effect of Defendants' actions is not limited to Plaintiffs; the repercussions reach further. Cases for all individuals charged in multiple-defendant conflict cases are also on hold, and the effective administration of justice is halted.

37. Plaintiffs CANTWELL, MAJOR, ADAMS, GUNTER, and RANSOM were all interviewed by the Circuit Public Defender Office. Each was deemed indigent as defined by the Georgia Indigent Defense Act, and as such, each qualified for defense services at public expense. See Ga. Code Ann. § 17-12-1 et seq.

38. The Sixth and Fourteenth Amendments to the United States Constitution, as well as Article I, Section 1, Paragraph XIV of the Georgia Constitution, impose on the State of Georgia the obligation, delegated to Defendant CRAWFORD as Director of the GPDSC, to ensure that indigent persons accused of crimes for which they may be imprisoned are provided with effective legal representation. See Ga. Code Ann. § 17-12-1.

39. In purporting to carry out the responsibility of providing representation for indigent persons accused of a crime, Defendant

CRAWFORD is a state actor and subject to federal constitutional obligations.

40. In enforcing and administering the Code, Defendant GRAHAM is a state actor.

41. In purporting to manage the state's financial resources, Defendant EBERSOLE is a state actor.

42. In prosecuting criminal cases and continuing to process prosecutions in cases where accused persons lack representation, Defendant LAVENDER is a state actor.

43. In detaining individuals charged with crimes without counsel, Defendants HASTON, STEVIE D. THOMAS, CLEVELAND, KIP C. THOMAS, and SMITH, are state actors.

44. Refusing to compensate lawyers fully for their services effectively impedes the provision of adequate legal representation. Similarly, failing to renew contracts for conflict attorneys and leaving hundreds of indigent individuals accused of committing crimes without representation also obstructs the right to counsel.

45. State actors are prohibited from interfering with ongoing attorney-client relationships. Because of the fundamental and unique nature of the right to counsel, interference with it causes irreparable injury to the

plaintiffs and other class members. This injury is compounded when the interference results in a complete lack of representation and people accused of crimes are detained and/or their cases are processed without the benefit of counsel.

**COUNT I:
RIGHT TO COUNSEL, FEDERAL**

46. The allegations of the foregoing paragraphs are incorporated herein as if set forth in full.

47. Defendants, acting under color of state law, drastically reduced the budget for conflicts in the Northern Circuit, allowed the contracts of conflict attorneys to lapse, and failed to provide for another mode of conflict representation to indigent individuals accused of committing felony offenses in the Northern Judicial Circuit of Georgia. As such, Defendants have effectively terminated the provision of legal representation to Plaintiffs CANTWELL, MAJOR, ADAMS, GUNTER, and RANSOM, and others similarly situated in violation of the right to counsel as guaranteed by the Sixth and Fourteenth Amendments of the United States Constitution, as enforced through 42 U.S.C. § 1983 and other applicable law.

**COUNT II:
RIGHT TO COUNSEL, STATE**

48. The allegations of the foregoing paragraphs are incorporated herein as if set forth in full.

49. Defendants, by effectively terminating the provision of legal representation in conflict cases in the Northern Judicial Circuit without providing for another mode of representation for indigent people accused of committing crimes in the Northern Judicial Circuit, violated the right to counsel of Plaintiffs CANTWELL, MAJOR, ADAMS, GUNTER, and RANSOM, and others similarly situated in violation of Article I, Section I, Paragraph XIV of the Georgia Constitution.

**COUNT III:
DUE PROCESS, FEDERAL**

50. The allegations of the foregoing paragraphs are incorporated herein as if set forth in full.

51. Defendants, acting under color of state law, by effectively terminating the provision of legal representation in conflict cases in the Northern Judicial Circuit without providing for another mode of representation for indigent individuals accused of committing crimes in the Northern Judicial Circuit, violated the due process rights of Plaintiffs CANTWELL, MAJOR, ADAMS, GUNTER, and RANSOM, and others

similarly situated in violation the Fourteenth Amendment of the United States Constitution, as enforced through 42 U.S.C. § 1983 and other applicable law.

**COUNT IV:
DUE PROCESS, STATE**

52. The allegations of the foregoing paragraphs are incorporated herein as if set forth in full.

53. Defendants, by effectively terminating the provision of legal representation in conflict cases in the Northern Judicial Circuit without providing for another mode of representation for indigent individuals accused of committing crimes in the Northern Judicial Circuit, violated the due process rights of Plaintiffs CANTWELL, MAJOR, ADAMS, GUNTER, and RANSOM, and others similarly situated in violation of Article I, Section I, Paragraph I of the Georgia Constitution.

**COUNT V:
ACCESS TO COURTS, FEDERAL**

54. The allegations of the foregoing paragraphs are incorporated herein as if set forth in full.

55. Defendants, acting under color of state law, by effectively terminating the provision of legal representation in conflict cases in the Northern Judicial Circuit without providing for another mode of

representation for indigent individuals accused of committing crimes in the Northern Judicial Circuit, violated the right of Plaintiffs CANTWELL, MAJOR, ADAMS, GUNTER, and RANSOM, and others similarly situated to access the courts in violation of the First, Sixth, and Fourteenth Amendments of the United States Constitution, as enforced through 42 U.S.C. § 1983 and other applicable law.

**COUNT VI:
ACCESS TO COURTS, STATE**

56. The allegations of the foregoing paragraphs are incorporated herein as if set forth in full.

57. Defendants, by effectively terminating the provision of legal representation in conflict cases in the Northern Judicial Circuit without providing for another mode of representation for indigent individuals accused of committing crimes in the Northern Judicial Circuit, violated the right of Plaintiffs CANTWELL, MAJOR, ADAMS, GUNTER, and RANSOM, and others similarly situated to access the courts in violation of Article I, Section I, Paragraph XII of the Georgia Constitution.

PRAYER FOR RELIEF

WHEREFORE, based on the foregoing, Plaintiffs respectfully pray that this Court grant the following:

- A. Certify the case as a class action;
- B. Grant Plaintiffs a trial in this matter;
- C. Issue a declaratory judgment finding that Defendant CRAWFORD is in violation of his constitutional, statutory, administrative and ethical obligations governing the representation of indigent persons accused of committing crimes in the Northern Circuit;
- D. Issue an injunction requiring Defendant CRAWFORD to comply with constitutional, statutory, administrative, ethical and professional obligations governing the representation of indigent persons accused of committing crimes in the Northern Circuit, including, but not limited to the creation and implementation of a system that provides for the timely appointment of competent counsel with sufficient resources to consult with clients, conduct independent investigation and provide vigorous and effective advocacy, or in the alternative, issue a writ of mandamus to compel Defendants to perform their clear constitutional, statutory, administrative, contractual and ethical duties, as set forth above;
- E. Enjoin Defendants from proceeding against any and all

Plaintiffs and class members after the right to counsel attaches unless counsel is in fact provided (See O’Kelley v. State, 278 Ga. 564, 604 S.E.2d 509 (2004));

F. Order dismissal of charges without prejudice and order release of any and all Plaintiffs and class members who have a right to counsel but for whom no counsel has been provided (See Rothgery v. Gillespie Cty. Tex., 128 S. Ct. 2578 (2008));

G. Order that unrepresented individuals accused of committing crimes who have not waived counsel, but who remain unrepresented by counsel, and whose case is not tried within the two-term period prescribed by the Georgia speedy trial rule are entitled to dismissal pursuant to the speedy trial rule;

H. Order that nonparties subject to this ruling be notified;

I. Grant Plaintiffs such other relief as the Court deems necessary and proper.

Respectfully submitted this 7th day of April 2009.

Gerald Weber
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Brooke Sealy
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Attorneys for Plaintiffs

By: _____

CERTIFICATE OF SERVICE

I hereby certify that pursuant to Ga. Code Ann. § 9-11-4, I have this day perfected service of this **VERIFIED COMPLAINT** upon all Defendants at the following addresses:

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Georgia Public Defender Standards Council
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W. Daniel Ebersole
Georgia Office of Treasury and Fiscal Services
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Atlanta, GA 30334

Robert Lavender
118 W. Johnson Street
Hartwell, GA 30643

Sheriff Barry L. Haston
Elbert County Sheriff's Department
26 West Church Street
Elberton, GA 30635

Sheriff Stevie D. Thomas
Franklin County Sheriff's Department
1 James Little Street
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Carnesville, GA 30521

Sheriff Mike Cleveland
Hart County Sheriff's Department
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Hartwell, GA 30643

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This 7th day of April, 2009.
