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IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON  
COUNTY OF SKAGIT

JOSEPH JEROME WILBUR, a Washington resident; JEREMIAH RAY MOON, a Washington resident; and ANGELA MARIE MONTEGUE, a Washington resident, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

CITY OF MOUNT VERNON, a Washington municipal corporation; and CITY OF BURLINGTON, a Washington municipal corporation,

Defendants.

NO.

**COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF**

Plaintiffs Joseph Jerome Wilbur, Jeremiah Ray Moon, and Angela Marie Montague (“Plaintiffs”), by and through their respective undersigned counsel, upon knowledge with respect to their own acts and circumstances, and on information and belief as to other matters, allege as follows:

**I. INTRODUCTION**

1. The Sixth and Fourteenth Amendments to the United States Constitution and Sections 3 (due process), 12 (equal protection), and 22 (right to counsel) of Article I of the

1 Washington State Constitution guarantee indigent persons charged with crimes the right to  
2 effective assistance of counsel. This right is fundamental and is essential to a fair trial. *See*  
3 *Gideon v. Wainwright*, 372 U.S. 335, 342-45, 83 S. Ct. 792, 9 L. Ed. 2d 799 (1963);  
4 *Argersinger v. Hamlin*, 407 U.S. 25, 37, 92 S. Ct. 2006, 32 L. Ed. 2d 530 (1972).

5         2. Defendant City of Mount Vernon (“Mount Vernon”) and Defendant City of  
6 Burlington (“Burlington”) (collectively “Defendants”) have a constitutional duty to operate a  
7 public defense system that provides effective assistance of counsel to indigent persons charged  
8 with crimes.

9         3. Mayor Bud Norris is the executive officer of Mount Vernon and is responsible  
10 for the execution of policies set by Mount Vernon’s city council. Mayor Norris is assisted in  
11 the performance of his duties by Project Administrator Eric Stendal and City Attorney Kevin  
12 Rogerson. The members of Mount Vernon’s city council are Bob Fiedler, Joe Lindquist, Scott  
13 McMullen, Gary Molenaar, Ken Quam, Dale Ragan and Mike Urban.

14         4. Mayor Edward J. Brunz is the executive officer of Burlington and is responsible  
15 for the execution of policies set by Burlington’s city council. Mayor Brunz is assisted in the  
16 performance of his duties by City Attorney Scott G. Thomas. The members of Burlington’s  
17 city council are Ted Montgomery, Edie Edmundson, Joanne Valentine, Tonya Bieche, Chris  
18 Loving, Bill Aslett and Steve Sexton.

19         5. The mayors of Mount Vernon and Burlington, the mayors’ assistants, and the  
20 city council members are responsible for establishing, implementing, and maintaining their  
21 public defense system.

22         6. Defendants, under the direction of their respective mayors and city councils,  
23 have breached their constitutional duties by operating a public defense system that regularly  
24 and systematically deprives indigent persons of the right to assistance of counsel. Among other  
25 things, Defendants have failed to impose reasonable caseload limits on public defenders, have  
26 failed to monitor and oversee the public defense system, have failed to provide adequate funds

1 for public defense, and have failed to provide representation at all critical stages of prosecution.  
2 As a result of these systemic and structural deficiencies, Defendants have constructively denied  
3 indigent defendants of the right to counsel that is guaranteed under *Gideon*.

4         7. Defendants, through their officers, representatives and employees, have known  
5 of the structural deficiencies of their public defense system for many years. Numerous  
6 complaints have been lodged regarding Richard M. Sybrandy and Morgan M. Witt, both of  
7 whom have long provided the primary public defender services for Mount Vernon and  
8 Burlington under contracts with Defendants. Those complaints detail a systemic denial of the  
9 constitutional right to assistance of counsel. Furthermore, Sybrandy and Witt have submitted  
10 reports to Defendants showing that each attorney handles between 950 and 1,150 public  
11 defense cases per year, if not more, while also maintaining a busy private practice.  
12 Remarkably, Defendants' contract with Sybrandy and Witt allows each attorney to handle up to  
13 1,200 cases per year even though such a caseload is three times the maximum allowable  
14 amount for a full-time public defender pursuant to standards established by the Washington  
15 State Bar Association. Despite being aware of the extensive number of indigent defendants  
16 who need assistance of counsel each year, Defendants have failed to provide adequate funding  
17 for their public defense system.

18         8. Despite knowing of the deficiencies in their public defense system, Defendants  
19 have failed to take reasonable steps to protect the constitutional rights of indigent persons.  
20 Indeed, Defendants recently chose to extend their contract with Sybrandy and Witt by two  
21 years.

22         9. Indigent persons have suffered and continue to suffer harm as a result of  
23 Defendants' violations of constitutional rights. Among other things, indigent persons are  
24 deprived of adequate consultation and communication with their attorneys; indigent persons  
25 must make decisions about their rights or contest issues without adequate factual or legal  
26 investigation by their attorneys; indigent persons are deprived of meaningful opportunities to

1 present defenses; the rights of indigent persons are waived without proper consultation and  
2 advice; indigent persons are deprived of the services of investigators and expert witnesses; the  
3 cases of indigent persons are not properly prepared for trial; and indigent persons do not  
4 receive meaningful benefits in exchange for guilty pleas.

5 10. Pursuant to 42 U.S.C. § 1983, the Sixth and Fourteenth Amendments to the  
6 United States Constitution, and Sections 3, 12, and 22 of Article I of the Washington State  
7 Constitution, Plaintiffs bring this class action lawsuit to ask this Court for injunctive and  
8 declaratory relief to prevent further violations and to protect the constitutional rights of all  
9 indigent persons charged with crimes in the municipal courts of Mount Vernon and Burlington.

## 10 **II. JURISDICTION AND VENUE**

11 11. The Court has jurisdiction over this action pursuant to 42 U.S.C. § 1983 in that  
12 this is an action for deprivation of rights, privileges and immunities secured by the United  
13 States Constitution.

14 12. The Court has jurisdiction over this action pursuant to Article IV, Section 6 of  
15 the Washington State Constitution and RCW 2.08.010 in that this is a case in equity.

16 13. The Court has jurisdiction over this action pursuant to Article IV, Section 6 of  
17 the Washington State Constitution and RCW 2.08.010 in that exclusive jurisdiction over this  
18 matter has not been vested in some other court.

19 14. Venue is proper in this Court pursuant to RCW 4.12.025(1) because Defendants  
20 are located and reside in Skagit County.

## 21 **III. THE PARTIES**

22 15. Plaintiff Joseph Jerome Wilbur is an indigent person who has been charged with  
23 crimes in Burlington Municipal Court. Plaintiff Wilbur has been assigned a public defender  
24 and, as of the date of the filing of this complaint, that public defender was Richard Sybrandy.  
25 Plaintiff Wilbur's case in Burlington Municipal Court is currently pending.  
26







1 Defendants and Sybrandy/Witt agreed to extend the duration of the Contract by two years to  
2 December 31, 2012. A copy of the Amendment is attached hereto as Exhibit C.

3 37. Under the Contract, Sybrandy and Witt are referred to as the single “Public  
4 Defender.” The Public Defender’s clients include all indigent persons who are assigned to the  
5 Public Defender by the City of Mount Vernon, the City of Burlington, the Office of Assigned  
6 Counsel, or the municipal courts of Mount Vernon and Burlington.

7 38. Pursuant to the Contract, Mount Vernon pays Sybrandy/Witt (as the Public  
8 Defender) “\$117,400/year for combined services, or \$121,750/year if arraignment is necessary  
9 as described [in the Contract].” Burlington pays Sybrandy/Witt (as the Public Defender)  
10 “\$57,600/year for combined services, or \$60,750/year if arraignment is necessary as described  
11 [in the Contract].” The Contract provides “[t]he Public Defender shall invoice each City on a  
12 monthly basis,” and “[t]he cities shall divide each monthly amount equally between each  
13 primary defender who is a signatory to [the Contract].”

14 39. Pursuant to the Contract, the Public Defender “shall provide adequate  
15 investigative, paralegal, and clerical services and facilities necessary for representation of  
16 indigent defendants,” and these services shall be paid out of the compensation provided to the  
17 Public Defender. Likewise, “[a]dministrative expenses shall be paid out of compensation  
18 provided to the Public Defender.” Finally, expert services must be paid out of the Public  
19 Defender’s compensation unless those services have been approved by a court.

20 **C. Defendants Have Failed to Impose Reasonable Caseload Limits on**  
21 **Sybrandy and Witt**

22 40. Defendants have failed to impose reasonable caseload limits on Sybrandy and  
23 Witt. As a result, the indigent defense caseloads of Sybrandy and Witt are excessive.

24 41. The WSBA Standards provide that “[a] case is defined as the filing of a  
25 document with the court naming a person as defendant or respondent, to which a public defense  
26 attorney is appointed in order to provide representation.”



1           42.     The WSBA Standards provide that “[t]he caseload of a full-time public defense  
2 attorney or assigned counsel shall not exceed . . . 300 misdemeanor cases per attorney per  
3 year.” This caseload “may be adjusted to no more than 400 cases depending upon . . . [t]he  
4 caseload distribution between simple misdemeanors and complex misdemeanors.”

5           43.     The WSBA Standards provide that “[i]n jurisdictions where assigned counsel or  
6 contract attorneys also maintain private law practices, the contracting agency should ensure that  
7 attorneys not accept more cases than they can reasonably discharge. In these situations, the  
8 caseload should be based on the percentage of time the lawyer devotes to public defense.”

9           44.     Sybrandy and Witt spend a substantial amount of their professional time on  
10 private practice. This includes both criminal cases and civil cases for paying clients.

11           45.     On the legal directory Avvo.com, Sybrandy lists his “Practice Areas” as follows:  
12 “40% Family”; “20% Criminal Defense”; “20% DUI/DWI”; “10%  
13 Construction/Development”; “5% Landlord/Tenant”; and “5% Foreclosure.” On his website,  
14 [www.sybrandy-law.org](http://www.sybrandy-law.org), Sybrandy also lists “Bankruptcy” as a practice area.<sup>1</sup>

15           46.     On the legal directory Avvo.com, Witt lists his “Practice Areas” as follows:  
16 “67% Litigation” and “33% Criminal Defense.” On his website, [www.legalwitt.com](http://www.legalwitt.com), Witt lists  
17 the following practice areas in this order: “Civil Disputes”; “Real Estate Matters”; “Estate  
18 Planning Services”; “Dissolutions/Divorces”; “Traffic Infractions”; “D.U.I.”; and “Criminal  
19 Matters.”<sup>2</sup>

20           47.     Pursuant to the WSBA Standards, the caseload limit for an attorney who devotes  
21 only 33 percent of his time to public defense work is 100 to 133, depending on the complexity  
22 of those cases.

23           48.     The public defense caseloads of Sybrandy and Witt greatly exceed the limits  
24 established by the WSBA Standards. In 2010, Sybrandy handled more than 950 public defense  
25

26 <sup>1</sup> Websites last visited on June 8, 2011.

<sup>2</sup> Websites last visited on June 8, 2011.

1 cases, and Witt handled more than 1,150 public defense cases. These figures are limited to  
2 cases involving indigent defendants and do not include the criminal or civil cases that Sybrandy  
3 and Witt handled for private clients. On information and belief, Sybrandy and Witt had  
4 similarly large public defense caseloads in prior years.

5 49. Defendants have knowingly permitted the public defense caseloads of Sybrandy  
6 and Witt to exceed the WSBA standards. Indeed, the Contract specifically allows each attorney  
7 to handle as many as 1,200 cases per year. This is because Defendants only grant “1/3” of a  
8 case credit for the following charges: driving while license suspended third degree (first two  
9 offenses); theft third degree (first two offenses); NVOL without identification (first three  
10 offenses); malicious mischief under \$50 (first offense); unlawful issuance of bank checks; or  
11 any other “misdemeanor case of similar complexity as determined by the Contract  
12 Administrator.” Likewise, Defendants grant only “1/2” of a case credit for several other  
13 charges, including driving while license suspended third degree (third or greater offense);  
14 driving while license suspended second degree; malicious mischief under \$50 (second or  
15 greater offense); malicious mischief over \$50; negligent driving first degree; theft third degree  
16 (third or greater offense); or any other “misdemeanor case of similar complexity as determined  
17 by the Contract Administrator.”

18 50. Furthermore, the Contract does not prohibit the attorneys from taking private  
19 cases, nor does it reduce the maximum number of public defense cases that may be handled by  
20 an amount proportional to the time spent on private cases. Thus, Defendants have failed to  
21 place “limitations on private practice of contract attorneys,” as required by RCW 10.101.030.  
22 Likewise, Defendant Mount Vernon has failed to set a “caseload ceiling . . . based on the  
23 percentage of time the lawyer devotes to public defense,” as required by Mount Vernon  
24 Municipal Code § 2.62.030.

1 **D. Defendants Are Systematically Failing to Provide Assistance of Counsel to**  
2 **Indigent Defendants Who Have Cases Pending in the Municipal Courts of**  
3 **Mount Vernon and Burlington**

4 51. Defendants are systematically failing to provide assistance of counsel to indigent  
5 defendants who have cases pending in the municipal courts of Mount Vernon and Burlington.

6 52. As noted above, Defendants have hired two attorneys—Sybrandy and Witt—to  
7 provide the indigent defense services in their cities. Sybrandy and Witt fail to provide the  
8 services to which indigent defendants are entitled under the United States Constitution and the  
9 Washington State Constitution. Among other things:

10 a. Sybrandy and Witt rarely, if ever, meet with indigent defendants while  
11 those defendants are in custody. Indigent defendants who have cases pending in the municipal  
12 courts of Burlington and Mount Vernon are jailed at the Skagit County jail. In 2010, Sybrandy  
13 and Witt made only six visits to the jail, meeting with a total of seven clients.<sup>3</sup> By contrast,  
14 attorneys from the Skagit County Public Defender’s Office made 750 visits to the jail and met  
15 with 1,551 clients. The results were similar for 2009. Sybrandy and Witt made five visits to  
16 the Skagit County jail and met with eight clients, whereas attorneys from the Skagit County  
17 Public Defender’s Office made 691 visits to the jail and met with 1,232 clients;

18 b. Sybrandy and Witt regularly fail to return calls from indigent defendants  
19 in a timely manner, if at all;

20 c. Sybrandy and Witt regularly fail to meet with indigent defendants in  
21 advance of court hearings;

22 d. Sybrandy and Witt regularly fail to devote sufficient time to  
23 interviewing and counseling indigent defendants;

24 e. Sybrandy and Witt rarely, if ever, investigate the charges made against  
25 indigent defendants;

26 \_\_\_\_\_  
<sup>3</sup> It is not known whether those clients were indigent defendants or private clients.

1 f. Sybrandy and Witt regularly fail to pursue or review discovery from the  
2 prosecution in public defense cases;

3 g. Sybrandy and Witt regularly fail to make sufficient preparations for  
4 court hearings involving indigent defendants;

5 h. Sybrandy and Witt regularly fail to stand with indigent defendants  
6 during court hearings. Moreover, Sybrandy and Witt often pay no attention to those  
7 proceedings because they are busy talking with other clients; and

8 i. Sybrandy and Witt rarely, if ever, take cases to trial on behalf of indigent  
9 defendants.

10 53. Under Defendants' public defense contract system, indigent persons are being  
11 deprived of adequate consultation and communication with attorneys.

12 54. Under Defendants' public defense contract system, indigent defendants must  
13 make decisions about their rights and contest issues without adequate factual or legal  
14 investigation by attorneys.

15 55. Under Defendants' public defense contract system, indigent defendants are  
16 being deprived of meaningful opportunities to present defenses.

17 56. Under Defendants' public defense contract system, indigent defendants are  
18 waiving their rights without proper consultation with or advice from attorneys.

19 57. Under Defendants' public defense contract system, indigent defendants are not  
20 receiving accurate information regarding jail alternatives, plea alternatives, dispositional  
21 alternatives, plea consequences, and consequences associated with immigration status.

22 58. Defendants have breached their constitutional duties by establishing and  
23 perpetuating a public defense system that deprives indigent persons of the constitutional right  
24 to assistance of counsel.  
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1 **E. Defendants Have Received Numerous Complaints Regarding Their Failure**  
2 **to Provide Assistance of Counsel to Indigent Defendants**

3 59. On December 31, 2008, the director of the Skagit County Office of Assigned  
4 Counsel emailed Sybrandy and Witt to inform them that indigent defendants in Mount Vernon  
5 and Burlington would “go to court, come to our office, and [go] again to court with no attorney  
6 there to represent them even though counsel has been appointed.” The director told Sybrandy  
7 and Witt that “lack of attorney contact or communication has been a major complaint from the  
8 [Mount Vernon] clients.” Finally, the director stated that “representation complaints . . . will  
9 no longer be forward[ed] . . . to the court” but instead “will now be forwarded to the contract  
10 manager who will be monitoring [the public defense] contract for the cit[ies] of Mount Vernon  
11 and Burlington.” Copied on the email to Sybrandy and Witt were the Honorable David A.  
12 Svaren and the Honorable Warren M. Gilbert, judges in the municipal courts of Mount Vernon  
13 and Burlington; the Honorable Lindford Smith, a commissioner in the municipal courts of  
14 Mount Vernon and Burlington; Jon Aarstad, city administrator for Burlington; and Eric  
15 Stendal, Mount Vernon Project Administrator and public defense contract manager. In  
16 response to the director’s email, Witt acknowledged that he often “get[s] blamed by [his]  
17 clients or others for lack of communication.” In an attempt to excuse his behavior, Witt stated:  
18 “[I]n most cases we are not in any position to talk to clients about their respective cases until  
19 just before the next assigned pretrial conference date” because “we do not get police reports  
20 until just before the next assigned pretrial conference date.”

21 60. On May 11, 2009, an indigent defendant with the initials A.A. submitted a  
22 written complaint to Mount Vernon regarding Sybrandy. In the complaint, A.A. stated that he  
23 visited Sybrandy’s office and left contact information, but Sybrandy never called him.  
24 Moreover, Sybrandy failed to appear at A.A.’s first hearing. When he eventually spoke to  
25 A.A., Sybrandy asked A.A. whether he was guilty. A.A. said no, and Sybrandy responded,  
26 “come on . . .” A.A. told Sybrandy that he felt as though Sybrandy was “on the side of [the]  
Mount Vernon Police Department.” Sybrandy responded by saying, “[I’ll] see you in the court

1 house,” and then he hung-up. A.A.’s complaint was processed by Eric Stendal. In a responsive  
2 letter to Mr. Stendal, Sybrandy stated: “Overall, I just do not see anything to substantively  
3 respond to in his complaint.”

4 61. On May 19, 2009, an indigent defendant with the initials K.M. submitted a  
5 written complaint to Mount Vernon regarding both Sybrandy and Witt. In the complaint, K.M.  
6 stated that Sybrandy and Witt failed to meet with her regarding her case: “I have not been fairly  
7 represented by either [Morgan Witt or Richard Sybrandy]. They have neglected to help my  
8 case at all. I would like a new public defender appointed to my cases please. Someone who  
9 will go over my case w/ me, discuss my options, meet w/ me before court e[tc.]” In response  
10 to the complaint, Witt asserted that K.M. “arrived at the Skagit County Jail . . . on or about May  
11 15, 2009” and that he “filed a Notice of Appearance on May 21, 2009.” Witt did not deny that  
12 he failed to meet or talk with K.M. before June 2, 2009. Witt acknowledged that K.M. had a  
13 probation review hearing on May 26, 2009, but he asserted that he was “out of town” that day  
14 and that “Sybrandy continued the case to June 2, 2009.” Though he took over for Witt at the  
15 May 26, 2009 hearing, Sybrandy’s response to the complaint stated as follows: “I do not  
16 represent [K.M.] in her current proceedings . . . . [I]t has been Mr. Witt who represents her.  
17 That being the case, her complaint against me is without merit and I have no way or need to  
18 respond.” K.M.’s complaint was processed by Eric Stendal.

19 62. On September 4, 2009, an indigent defendant with the initials J.B. submitted a  
20 written complaint to Mount Vernon regarding Sybrandy. In the complaint, J.B. stated that  
21 Sybrandy failed to return her calls or meet with her in advance of her court appearance: “I  
22 call[ed] Sybrandy 3 time[s] before court and left 2 message[s] asking for him to call me back so  
23 we may talk about my case. He did not respond back. I waited about 2 weeks for a call.” J.B.  
24 also stated that when she appeared in court, she asked for Sybrandy. He identified himself and  
25 told her to sit down and wait for him to call her. Approximately 15 minutes later, Sybrandy  
26 read her file and then asked her about the charges. When J.B. started to explain her position,

1 Sybrandy told her she was “not special” and “need[ed] to face what [she] did.” He also told her  
2 that she was “luck[y]” to only have been charged with a misdemeanor and recommended that  
3 she “should just end [it] today.” Feeling she had “no cho[ic]e,” J.B. pled guilty to the charge.  
4 J.B.’s complaint was processed by Eric Stendal.

5 63. On September 16, 2009, an indigent defendant with the initials V.M. submitted  
6 a written complaint to Mount Vernon regarding Sybrandy. In the complaint, V.M. stated that  
7 she met with Sybrandy at her court hearing, and Sybrandy asked her whether she was guilty.  
8 V.M. answered, “I’m not and I’m not going to sign anything that is not true.” Sybrandy then  
9 asked, “So you want to take it to trial[?]” When V.M. answered yes, Sybrandy told her “good  
10 luck with that” and said she was “going to wa[ste] [everyone’s] time and his but it’s ok.”  
11 Sybrandy then asked, “Who do you think the judge is going to believe: you or the officer?”  
12 (Punctuation added.) Sybrandy answered his own question with “the officer.” When V.M.  
13 again said that she was not going to plead guilty because she was innocent, Sybrandy told her  
14 that she would be convicted and “was going to be in jail for a very long time.” V.M.’s  
15 complaint was processed by Eric Stendal.

16 64. In November 2009, Eric Stendal received a series of emails from Mount  
17 Vernon’s Chief of Police, Ken Bergsma, and City Attorney, Kevin Rogerson, regarding  
18 complaints that Mount Vernon police officers had been making about “the public defender  
19 services being provided by Witt and Sybrandy.” Those complaints included the following  
20 statement from Detective Toby Ruxton:

21 Officer Cohen was assisting defendant in calling a public  
22 Defender for DUI arrest. He was unable to make any contact by  
23 the phone numbers supplied by them. This isn’t an isolated case.  
24 I also had difficulty contacting Public Defenders S[y]brandy and  
25 Witt. My discussions with other officers was the same on  
26 previous incidents. Since they are contracted through the city,  
can this issue be brought to their attention that we are not getting  
the service that is their obligation to perform[?]

1 (Emphasis added.) Also included in the emails was the following statement from Lieutenant  
2 Greg Booth: “[There] has been a pretty consistent inability to contact them after hours. After  
3 this initial e-mail from Toby, several other officers have come forward to say they’ve  
4 experienced the same thing and have then had to spend time trying to call some other attorneys  
5 in the phone book.”

6 65. On December 8, 2009, the husband of an indigent defendant with the initials  
7 L.G. emailed a complaint to Mount Vernon Mayor Bud Norris regarding the public defender  
8 assigned to his wife’s case. In the email, the husband stated:

9 In June of 2009 my wife was arrested for shoplifting . . . . [W]e  
10 hoped that the legal system would clear the matter up. We both  
11 have college degrees and neither of us have any record or  
12 smidgen of problems with the law . . . . The prosecutor[’]s office  
13 would not discuss the matter with us unless we had an attorney.  
14 We wanted to hire an attorney to fight the matter but . . . we  
15 could not afford the large retainer required. We appeared at the  
16 arraignment and she pleaded not guilty. We sought a public  
17 defender . . . . The assigned attorney did not appear at the [next]  
18 hearing. Another attorney came and told us that we could settle  
19 the matter quick and easy with a bail for[f]eiture. This was  
20 offered to us[] at the [prior] arraignment. They told us if we paid  
21 \$100 the matter would be dropped. We were angry enough to  
22 want a trial . . . . This time we were told it was \$250 as the  
23 amount had [gone] up July 1st. We still wanted to go to trial but  
24 [were] concerned . . . since our assigned attorney would not meet  
25 with us prior to the hearing and then didn’t even show up at the  
26 hearing. We avoided trial by paying bail forfeiture.

20 The husband also stated that he and his wife “spent no more than 5 minutes with [the second]  
21 attorney,” and “[i]n that time [the second attorney] called a half dozen others from the court  
22 room offering them the same paper to sign.” The mayor’s office forwarded the email to  
23 Sybrandy, who gave the following response: “Please advise both Mr. Stendal and Mayor  
24 Norris that this was not my case, it was [Witt’s] . . . . Quite honestly, I looked at the file, and  
25 the result . . . was excellent.”



1           66.     On June 18, 2010, an indigent defendant with the initials J.F. submitted a written  
2 complaint to Burlington regarding Sybrandy. The complaint referenced an attached letter from  
3 three days earlier to an unnamed judge. In the letter, J.F. wrote: “I am very concerned with my  
4 case. I don’t feel like my lawyer is adequate counsel for this case. Reason being is he has yet  
5 to come to see me to speak of my case. So I have no knowledge of this case or its status. And  
6 when I did see him a couple of minutes before my last court date, he told me he couldn’t help  
7 me because of me being in c[u]stody and my past record.” (Capitalization altered from  
8 original.) For these reasons, J.F. asked the judge to appoint him “new counsel, one that will at  
9 least try and help me in this situation I regret putting myself into.” (Capitalization altered from  
10 original.) The complaint was directed to Burlington Mayor Edward J. Brunz, who forwarded it  
11 to Sybrandy. In a responsive letter to Mayor Brunz, Sybrandy wrote: “As a preliminary matter,  
12 what [J.F.] alleges in his complaint does not amount to a violation of legal standards of  
13 practice, a violation of ethical rules, or a breach of my contract with the City of Burlington . . . .  
14 [A]ssuming everything he says is true, it does not amount to a matter which should require a  
15 response from me.”

16           67.     On June 28, 2010, an indigent defendant with the initials T.G. submitted a  
17 written complaint to Mount Vernon regarding Sybrandy. In the complaint, T.G. wrote: “Prior  
18 to court, I had my girlfriend . . . contact Mr. Sybrandy’s office. We were making sure Mr.  
19 Sybrandy would talk to us prior to court and obtain the police records. He did not obtain the  
20 police records. His secretary stated that he could not and would not obtain the police records.  
21 When Mr. Sybrandy’s secretary called back, she stated that Mr. Sybrandy only discusses cases  
22 at Mount Vernon Municipal Court the day of a court appearance. Upon the date of court, we  
23 arrived early. Mr. Sybrandy did not want to give us any of his time, nor did he receive the  
24 police reports about this case. Then, it was my turn to go before the Judge. [Sybrandy] told me  
25 to plea[d] guilty. Take the 20 days of jail and \$1000.00 fine. The amount of time Mr.  
26 Sybrandy spent defending me, if you can call it that, before the Judge was less than 3 minutes

1 total on my case.” T.G.’s complaint was processed by Eric Stendal. Mr. Stendal forwarded the  
2 complaint to Sybrandy, who responded: “[T.G.] is greatly confused about his case, principally  
3 because if he does not hear what he thinks he wants to hear, he refuses to listen.” In his  
4 response, Sybrandy did not deny that he only discusses cases with clients on the day of the  
5 court appearance, and he admitted that his office told T.G. it would not obtain the police  
6 records. Nevertheless, Sybrandy concluded: “I don’t think I really have to explain to anyone  
7 why it is that we were unable to make [T.G.] happy,” and “I hope . . . this demonstrates why  
8 [T.G.’s] complaint should be directed at himself, not me.” Mr. Stendal sent Sybrandy’s letter  
9 to T.G. along with a note stating, “I am satisfied with Mr. Sybrandy’s response and will not be  
10 taking any further action.”

11 68. On October 26, 2010, an indigent defendant with the initials B.C. submitted a  
12 written complaint to Mount Vernon regarding Witt and Sybrandy. In the complaint, B.C. stated  
13 that Witt was assigned to defend him. On the day of his hearing, B.C. asked to speak to Witt  
14 before his case was called but the other attorney at the table “flipped out” on B.C., told B.C. “to  
15 leave him alone,” and said “that he would call [B.C.] to review [the] case.” Nobody called,  
16 however. In response to the complaint, Witt stated as follows: “I was meeting with another  
17 client when [B.C.] walked up to counsel’s table. He spoke with Mr. Sybrandy, who was the  
18 one who ‘flipped out.’ At that time, I did not know who [B.C.] was and believed he was Mr.  
19 Sybrandy’s client . . . [T]he Court called the case before I had a chance to review the case with  
20 the client.” B.C.’s complaint was processed by Eric Stendal.

21 69. On December 13, 2010, the mother of an indigent defendant with the initials  
22 A.G. submitted a written complaint to Burlington regarding Witt. In the complaint, the mother  
23 stated that Witt “doesn’t answer” the flyers her son sends from jail or the calls she makes.  
24 After the mother went to visit Witt in person and explain that her son believed he was not  
25 getting credit for time served, Witt said he would help. When he met with the son, however,  
26 Witt failed to discuss the situation. The mother’s complaint was processed by Eric Stendal.

1 After calling and discussing the issue with Witt, who informed Stendal that he “will call back  
2 the mother,” Stendal wrote: “I am satisfied with [Witt’s] responses.”

3 70. On January 20, 2011, the director of the Skagit County Office of Assigned  
4 Counsel wrote to Eric Stendal, Mount Vernon Project Administrator and public defense  
5 contract manager, and notified Mr. Stendal that the Office of Assigned Counsel “continues to  
6 receive complaints” about public defense services, “especially from clients who are in  
7 custody.”

8 71. On information and belief, numerous other complaints have been made  
9 regarding Sybrandy and Witt and the lack of public defense services in Mount Vernon and  
10 Burlington. These complaints include the repeated failure of Sybrandy and Witt to do the  
11 following: make themselves readily accessible to indigent defendants; return phone calls or  
12 respond to inquiries from indigent defendants; meet with indigent defendants in advance of  
13 court hearings; meet with clients in custody; investigate the charges against indigent  
14 defendants; prepare for court hearings involving indigent defendants; attend court hearings with  
15 indigent defendants; adequately represent indigent defendants; and assist indigent defendants in  
16 making informed decisions as to whether to plead guilty or proceed to trial. The failure to  
17 assist indigent defendants in making informed decisions includes the failure to provide accurate  
18 information regarding jail alternatives, plea alternatives, dispositional alternatives, plea  
19 consequences, and consequences associated with immigration status.

20 72. On March 22, 2011, Sybrandy wrote to Eric Stendal in response to a complaint  
21 by an indigent defendant with the initials M.B. At the end of his letter, Sybrandy stated: “I  
22 would request that the City of Mount Vernon, as administrator for our [public defense]  
23 contract, **INSTRUCT** the office of assigned counsel to stop their involvement in providing the  
24 “PUBLIC DEFENDER COMPLAINT FORM” to criminal defendants.” (Emphasis in  
25 original.)  
26

1           73.     In addition to filing complaints, indigent defendants incarcerated at the Skagit  
2 County jail have sent numerous “Public Defender Request Form[s]” to Sybrandy and Witt, and  
3 those forms demonstrate the failure of the attorneys to provide assistance of counsel. Copies of  
4 the forms, also known as “kites,” are maintained by the Skagit County Office of Assigned  
5 Counsel.

6           74.     For example, between January 6 and 11, 2010, an incarcerated indigent  
7 defendant with the initials J.M. sent 10 separate Public Defender Request Forms to Witt asking  
8 him to call. In one of the kites, J.M. wrote: “I am having problems with my Public Defender  
9 [Witt] . . . . [H]e promise[d] me if I sign I would get out for [C]hris[t]mas and he wasn[']t  
10 honest to me and I[']ve been trying to get a hold of him for 3 weeks and my mom has called his  
11 office ever[y] day and he never returns her call . . . .” Notes kept by the Skagit County Office  
12 of Assigned Counsel confirm that J.M.’s mother left messages with Witt, but he did not call her  
13 back.

14           75.     On January 12, 2010, an incarcerated indigent defendant with the initials F.S.  
15 sent a Public Defender Request Form to the Skagit County Office of Assigned Counsel, making  
16 the following complaint about Sybrandy and Witt: “I need a different attorney who can  
17 properly represent me please. I have been here since December 25th and have yet to speak to  
18 Sybandy and Witt. I have sent countless kites and [have had] family members call them but to  
19 no use.”

20           76.     On May 20, 2010, an incarcerated indigent defendant with the initials M.A. sent  
21 a Public Defender Request Forms to Sybrandy and Witt, stating “I need to [k]no[w] who my  
22 Public Defender is and if he can contact me please.” Though she sent a second kite to  
23 Sybrandy and Witt on May 24, 2010, M.A. had still not heard from them as of May 26, 2010,  
24 six days after the original request for contact was made.

25           77.     On December 30, 2010, an incarcerated indigent defendant with the initials A.C.  
26 sent a Public Defender Request Form to Sybrandy and Witt that stated: “I need to speak to you.

1 I have been here since Dec 20 2010 and have court Jan 4th or 5th . . . Please don't leave me  
2 hanging like last time. I would really like to know what's going on."

3 78. On January 16, 2011, an incarcerated indigent defendant with the initials A.M.  
4 sent a Public Defender Request Form to Sybrandy regarding the fact that A.M. had been in  
5 custody for nearly five weeks but hadn't been contacted by Sybrandy. Two days later, A.M.'s  
6 case was continued by Witt, who did not speak to A.M. at the court appearance. On January  
7 26, 2011, having still not heard from his attorney, A.M. sent a kite to Witt with the following  
8 message: "I have 6 weeks [i]n here and I want to know what's going to happen in my next  
9 court date. Can you please come see me or at least give me a call[?]"

10 79. On January 17, 2011, an incarcerated indigent defendant with the initials M.S.  
11 sent a Public Defender Request Form to Sybrandy that stated: "I have been here 20 days and  
12 you have yet come to see me, call or write. In my eyes that is completely disrespectful and  
13 completely dehumanizing [and] you really should be ashamed of yourself!!!" Four days  
14 earlier, M.S. sent a separate kite to Sybrandy that stated: "I need either a global resolution or  
15 bail reduction hearing as soon as possible [because] I will be homeless + posse[ssi]onless and  
16 veh[icle]less [unless I can get out of jail and take care of my affairs]."

17 80. On January 26, 2011, an incarcerated indigent defendant with the initials G.P.  
18 sent a Public Defender Request Form to Sybrandy that stated: "I have cases that you were  
19 appointed to me and would appreciate you following up with me about the cases you are  
20 supposed to be representing me on."

21 81. Despite the serious complaints made against Sybrandy and Witt, Defendants  
22 have failed to take reasonable steps to protect indigent persons and secure their constitutional  
23 rights. Among other things, Defendants have not terminated the Contract with Sybrandy and  
24 Witt. To the contrary, Defendants recently extended the Contract by two years.

1 **F. Defendants Have Failed to Adequately Monitor or Oversee Their Public**  
2 **Defense System**

3 82. Defendants have not implemented effective mechanisms for monitoring the  
4 performance of public defenders.

5 83. Defendants have not adopted meaningful publicized criteria for evaluating  
6 public defenders.

7 84. Defendants do not engage in systematic monitoring and evaluation of the  
8 performance of public defenders based on published criteria.

9 85. Defendants collect only the most basic of information from Sybrandy and Witt  
10 regarding public defense services. Specifically, Defendants ask Sybrandy and Witt to submit  
11 monthly reports on all completed cases with client names, case numbers, charges, dispositions,  
12 custody and probation statuses, and time spent on cases. Though he is obligated under the  
13 Contract to provide these basic reports, Witt regularly fails to do so. Instead, he often submits  
14 his reports months after they are due. Sybrandy also submits reports in an untimely manner.

15 86. Defendants do not obtain the meaningful information essential to fulfilling their  
16 constitutional duties of providing indigent defense services.

17 87. Defendants have not established any system for ensuring that Sybrandy and Witt  
18 investigate cases, prepare for trial, and communicate timely and adequately with clients.

19 88. Defendants do not take reasonable steps to ensure that the private practices of  
20 Sybrandy and Witt do not impair the public defense system.

21 89. Defendants have failed to establish an effective system for preventing conflicts  
22 of interest.

23 90. Defendants have failed to adequately respond to complaints about their public  
24 defense system, including complaints regarding Sybrandy and Witt.

25 91. If Defendants adequately monitored Sybrandy and Witt, Defendants would have  
26 found that Sybrandy and Witt rarely, if ever, meet with indigent defendants in custody.

1           92.     If Defendants adequately monitored Sybrandy and Witt, Defendants would have  
2 found that Sybrandy and Witt regularly fail to return calls from indigent defendants in a timely  
3 manner, if at all.

4           93.     If Defendants adequately monitored Sybrandy and Witt, Defendants would have  
5 found that Sybrandy and Witt regularly fail to meet with indigent defendants in advance of  
6 court hearings.

7           94.     If Defendants adequately monitored Sybrandy and Witt, Defendants would have  
8 found that Sybrandy and Witt regularly fail to devote sufficient time to interviewing and  
9 counseling indigent defendants.

10          95.     If Defendants adequately monitored Sybrandy and Witt, Defendants would have  
11 found that Sybrandy and Witt rarely, if ever, investigate the charges made against indigent  
12 defendants.

13          96.     If Defendants adequately monitored Sybrandy and Witt, Defendants would have  
14 found that Sybrandy and Witt regularly fail to pursue or review discovery from the prosecution  
15 in public defense cases.

16          97.     If Defendants adequately monitored Sybrandy and Witt, Defendants would have  
17 found that Sybrandy and Witt regularly fail to make sufficient preparations for court hearings  
18 involving indigent defendants.

19          98.     If Defendants adequately monitored Sybrandy and Witt, Defendants would have  
20 found that Sybrandy and Witt regularly fail to stand with indigent defendants during court  
21 hearings.

22          99.     If Defendants adequately monitored Sybrandy and Witt, Defendants would have  
23 found that Sybrandy and Witt rarely, if ever, take cases to trial on behalf of indigent  
24 defendants.

25          100.    If Defendants adequately monitored Sybrandy and Witt, Defendants would have  
26 found that Sybrandy and Witt fail to report the actual amount of time that they spend on

1 indigent defense cases. In Paragraph 67 above, for example, the complainant wrote that “[t]he  
2 amount of time Mr. Sybrandy spent defending me, if you can call it that . . . was less than 3  
3 minutes total on my case.” In his report to Mount Vernon, however, Sybrandy claimed that he  
4 spent one hour working on the case. Likewise, in Paragraph 65 above, the complainant stated  
5 that Witt was assigned to his wife’s case but failed to appear at the hearing. At that point,  
6 Sybrandy took over but “spent no more than 5 minutes” with the wife, who ultimately pled  
7 guilty. Though Witt never met with the client and did not appear at the hearing, he submitted a  
8 report to Mount Vernon in which he claimed that he spent one hour working on the case. A  
9 review of the reports submitted to Defendants shows that Sybrandy and Witt routinely record  
10 the same amount of time per charge—either 30 minute or one hour. Not only is this recorded  
11 time often insufficient to provide assistance of counsel but also, as shown above, it often  
12 overstates the actual amount of time spent on the matter.

13 101. If Defendants adequately monitored Sybrandy and Witt, Defendants would have  
14 found that Sybrandy and Witt devote a substantial portion (if not a majority) of their time to  
15 working on private cases, whether civil or criminal.

16 102. If Defendants adequately monitored Sybrandy and Witt, Defendants would have  
17 found that the private work performed by Sybrandy and Witt is performed to the detriment of  
18 public defense services.

19 **G. Defendants Have Failed to Provide Adequate Funds for Public Defense**

20 103. Defendants are responsible for funding the public defense system in the  
21 municipal courts of Mount Vernon and Burlington.

22 104. Defendants have consistently failed to fund indigent defense services at a level  
23 that is sufficient to ensure constitutionally adequate representation.

24 105. Under the Contract, the total amount of funds available to pay for all aspects of  
25 indigent defense services in the municipal courts of Mount Vernon is capped at \$121,750 per  
26 year. The total amount of funds available to pay for all aspects of indigent defense services in



1 the municipal courts of Burlington is capped at \$60,750 per year. When Defendants recently  
2 extended the Contract with Sybrandy and Witt by an additional two years, Defendants did so  
3 without any increase in compensation.

4 106. The amounts paid under the Contract must cover attorneys' fees, investigation  
5 costs, administrative costs, and all other costs other than approved expert fees for all  
6 proceedings in which indigent persons were entitled to court-appointed counsel.

7 107. These amounts are not sufficient to ensure constitutionally adequate  
8 representation. Moreover, the inadequate funding creates a conflict of interest for Sybrandy  
9 and Witt, whose income is diminished by the amount of any funds expended in the defense of a  
10 client, including investigator, consulting expert and non-court-approved expert fees.

11 108. Rule 1.8(m) of the Washington Rules of Professional Conduct provides that "[a]  
12 lawyer shall not: (1) make or participate in making an agreement with a governmental entity for  
13 the delivery of indigent defense services if the terms of the agreement obligate the contracting  
14 lawyer . . . to bear the cost of providing investigation or expert services, unless a fair and  
15 reasonable amount for such costs is specifically designated in the agreement in a manner that  
16 does not adversely affect the income or compensation allocated to the lawyer . . . ." This  
17 provision "prohibits agreements that do not provide that such services are to be funded  
18 separately from the amounts designated as compensation to the contracting lawyer or law  
19 firm." RPC 1.8, Cmt. 28. Furthermore, "a conflict of interest exists [where] there is significant  
20 risk that the lawyers representation of the client will be materially limited by the lawyer's own  
21 interest in the fee arrangement . . . ." RPC 1.8, Cmt. 12.

22 109. Pursuant to RCW 10.101.050, Defendants are entitled to apply for moneys to  
23 fund indigent defense services pursuant to the grant program set forth in RCW 10.101.080. In  
24 order to receive such funds, however, Defendants must require that attorneys providing public  
25 defense services attend training approved by the Office of Public Defense at least once per  
26 calendar year. Moreover, Defendants must report the expenditure for all public defense

1 services in the previous calendar year, as well as case statistics for that year, including per  
2 attorney caseloads, and must provide a copy of each current public defense contract to the  
3 office of public defense with their application. Finally, each individual that contracts to  
4 perform public defense services for Defendants must report to the city hours billed for  
5 nonpublic defense legal services in the previous calendar year, including number and types of  
6 private cases. On information and belief, Defendants have never applied for funds pursuant to  
7 the grant program established in RCW Chapter 10.101.

8 **H. Defendant Mount Vernon Has Violated RCW 10.101.040 and Created a**  
9 **Conflict of Interest in the Selection of Public Defenders**

10 110. Pursuant to RCW 10.101.040, “[c]ity attorneys . . . shall not select the attorneys  
11 who will provide indigent defense services.”

12 111. The City Attorney for Mount Vernon is Kevin Rogerson. As City Attorney, Mr.  
13 Rogerson supervises the prosecution of criminal matters.

14 112. In December 2010, while acting as Mount Vernon’s City Attorney, Mr.  
15 Rogerson recommended that the city council authorize the mayor to extend the public defense  
16 contract with Sybrandy/Witt by two years. He did this despite his knowledge of the complaints  
17 made against Sybrandy and Witt for their failure to take calls from and meet with indigent  
18 defendants. In his recommendation, Mr. Rogerson noted that there would be “no raise in the  
19 amount of consideration for the provision of these services.” He concluded that an extension of  
20 the Contract without any increase in compensation “is within the best interests of the City.”  
21 Mr. Rogerson presented his recommendation to the city council on December 15, 2010, and the  
22 city council voted unanimously to adopt his recommendation and extend the Contract.

23 113. In his capacity as City Attorney of Mount Vernon, Mr. Rogerson was involved  
24 in selecting Sybrandy and Witt as the attorneys who will provide indigent defense services in  
25 Mount Vernon in 2011 and 2012.

26 114. By allowing Mr. Rogerson to be involved in the selection of Sybrandy and Witt  
as public defenders, Defendant Mount Vernon has violated RCW 10.101.040 and created a

1 conflict of interest. Mount Vernon is prosecuting criminal charges against indigent defendants  
2 who lack assistance of counsel because of Mount Vernon's decision to maintain a contract with  
3 Sybrandy and Witt and Mount Vernon's decision to inadequately fund its public defense  
4 system, among other things.

5 **J. Defendants Have Failed to Provide Assistance of Counsel to Class Plaintiffs**

6 **(i) Plaintiff Joseph Jerome Wilbur**

7 115. On or about November 12, 2008, Plaintiff Wilbur was charged in Burlington  
8 Municipal Court with driving a motor vehicle while license suspended in the third degree and  
9 operating a motor vehicle that is not equipped with a required interlock device. These charges  
10 were filed under case number BUC11136, which is currently pending. Defendant Burlington  
11 has assigned an attorney to represent Plaintiff Wilbur on these charges, and that attorney is  
12 Richard Sybrandy.

13 116. On or about August 28, 2009, Plaintiff Wilbur was charged in Burlington  
14 Municipal Court with theft in the third degree. This charge was filed under case number  
15 BUC12231, which is currently pending. Defendant Burlington has assigned an attorney to  
16 represent Plaintiff Wilbur on this charge, and that attorney is Richard Sybrandy.

17 117. On or about March 25, 2010, Plaintiff Wilbur was charged in Burlington  
18 Municipal Court with two counts of theft in the third degree. These charges were filed under  
19 case numbers BUC12486 and BUC13018, both of which are currently pending. Defendant  
20 Burlington has assigned an attorney to represent Plaintiff Wilbur on these charges, and that  
21 attorney is Richard Sybrandy.

22 118. On or about February 14, 2011, Plaintiff Wilbur was charged in Burlington  
23 Municipal Court with bail jumping. This charge was filed under case number BUC005013,  
24 which is currently pending. Defendant Burlington has assigned an attorney to represent  
25 Plaintiff Wilbur on this charge, and that attorney is Richard Sybrandy.  
26

1           119. Plaintiff Wilbur has been incarcerated in the Skagit County jail at various times  
2 in relation to these charges. While in jail, Plaintiff Wilbur made numerous efforts to contact  
3 Sybrandy in advance of court hearings, but Sybrandy never responded. Plaintiff Wilbur's  
4 mother and grandmother also made efforts to contact Sybrandy, but Sybrandy never responded  
5 to them as well. Assistants at Sybrandy's office told Plaintiff Wilbur's mother that Sybrandy  
6 was "too busy" to communicate or meet with Plaintiff Wilbur.

7           120. Sybrandy regularly failed to communicate the circumstances of Plaintiff  
8 Wilbur's cases or the charges filed against him during court hearings.

9           121. Plaintiff Wilbur understands that he is entitled to enter in-patient treatment on or  
10 about June 20, 2011, and that he must first obtain a treatment order from the court before he  
11 can do so. Plaintiff Wilbur has attempted to contact Sybrandy to get his assistance with this,  
12 but Sybrandy has failed to respond to Plaintiff Wilbur. A drug and alcohol counselor has also  
13 tried to contact Sybrandy on Plaintiff Wilbur's behalf regarding this issue, but Sybrandy has  
14 failed to respond to the counselor.

15           122. Plaintiff Wilbur was previously charged with crimes in Mount Vernon  
16 municipal court, and Mount Vernon assigned Sybrandy to represent him. Plaintiff Wilbur  
17 experienced the same problems with Sybrandy in regard to the Mount Vernon charges as he has  
18 experienced with Sybrandy in regard to the Burlington charges.

19           123. Defendants Mount Vernon and Burlington have failed to assign an attorney to  
20 Plaintiff Wilbur who will communicate or meet with him while in custody.

21           124. Defendants Mount Vernon and Burlington have failed to assign an attorney to  
22 Plaintiff Wilbur who will communicate or meet with him in advance of court hearings.

23           125. Defendants Mount Vernon and Burlington have failed to assign an attorney to  
24 Plaintiff Wilbur who will respond to his requests for assistance of counsel.

1           126. Defendants Mount Vernon and Burlington have failed to assign an attorney to  
2 Plaintiff Wilbur who will devote time to interviewing and counseling his on the charges filed  
3 against his or the substantive legal issues related to his case.

4           127. Defendants Mount Vernon and Burlington have failed to assign an attorney to  
5 Plaintiff Wilbur who will provide his with the representation to which he is entitled under the  
6 constitutions of the United States and Washington.

7           128. The attorneys that Defendants Mount Vernon and Burlington have assigned to  
8 Plaintiff Wilbur's cases have had excessive caseloads.

9           129. The attorneys that Defendants Mount Vernon and Burlington have assigned to  
10 Plaintiff Wilbur's cases have not been adequately funded.

11           130. The attorneys that Defendants Mount Vernon and Burlington have assigned to  
12 Plaintiff Wilbur's cases have not been adequately monitored.

13           131. Plaintiff Wilbur has had to make decisions about his rights without adequate  
14 factual or legal investigation by his attorneys.

15           132. Plaintiff Wilbur has been deprived of meaningful opportunities to present  
16 defenses.

17           133. Plaintiff Wilbur has waived his rights without proper consultation and advice.

18           134. Plaintiff Wilbur has not received meaningful benefits in exchange for guilty  
19 pleas.

20           135. Defendants Mount Vernon and Burlington have constructively deprived Plaintiff  
21 Wilbur of his right to the assistance of counsel.

22           (ii) **Plaintiff Jeremiah Ray Moon**

23           136. On or about May 21, 2011, Plaintiff Moon was charged in Mount Vernon  
24 Municipal Court with assault in the fourth degree and interfering with reporting. These charges  
25 were filed under case number BUC009935, which is currently pending. Defendant Mount  
26

1 Vernon has assigned an attorney to represent Plaintiff Moon on these charges, and that attorney  
2 is Morgan Witt.

3 137. Mount Vernon has assigned Witt to represent Plaintiff Moon on previous  
4 charges, including the charge of driving a motor vehicle while under the influence of alcohol or  
5 drugs. Plaintiff Moon attempted to contact Witt numerous times in relation to that charge, but  
6 Witt failed to respond to him. The only time Witt spoke with Plaintiff Moon was during court  
7 proceedings. Because numerous other individuals were present during those proceedings—  
8 including the judge, the prosecutor, other indigent defendants, and members of the public—  
9 Plaintiff Moon was not able to communicate in private with Witt. Furthermore, Plaintiff Moon  
10 did not have sufficient time to discuss with Witt the circumstances of his case or the charges  
11 filed against him.

12 138. As of June 8, 2011, Plaintiff Moon has been confined in the Skagit County jail  
13 for several weeks, serving a commitment on a different charge. Plaintiff Moon has contacted  
14 Witt in an effort to get credit toward for time spent on work crew. Though he is currently  
15 assigned to represent Plaintiff Moon, Witt has failed to respond to Plaintiff Moon.

16 139. Witt has not contacted Plaintiff Moon to discuss the currently pending charge of  
17 assault in the fourth degree. A hearing on that charge is scheduled for June 21, 2011.

18 140. Defendant Mount Vernon has failed to assign an attorney to Plaintiff Moon who  
19 will communicate or meet with him while in custody.

20 141. Defendant Mount Vernon has failed to assign an attorney to Plaintiff Moon who  
21 will communicate or meet with him in advance of court hearings.

22 142. Defendant Mount Vernon has failed to assign an attorney to Plaintiff Moon who  
23 will respond to his requests for assistance of counsel.

24 143. Defendant Mount Vernon has failed to assign an attorney to Plaintiff Moon who  
25 will devote time to interviewing and counseling his on the charges filed against his or the  
26 substantive legal issues related to his case.

1           144. Defendant Mount Vernon has failed to assign an attorney to Plaintiff Moon who  
2 will provide his with the representation to which he is entitled under the constitutions of the  
3 United States and Washington.

4           145. The attorneys that Defendant Mount Vernon has assigned to Plaintiff Moon's  
5 cases have had excessive caseloads.

6           146. The attorneys that Defendant Mount Vernon has assigned to Plaintiff Moon's  
7 cases have not been adequately funded.

8           147. The attorneys that Defendant Mount Vernon has assigned to Plaintiff Moon's  
9 cases have not been adequately monitored.

10          148. Plaintiff Moon has had to make decisions about his rights without adequate  
11 factual or legal investigation by his attorneys.

12          149. Plaintiff Moon has been deprived of meaningful opportunities to present  
13 defenses.

14          150. Plaintiff Moon has waived his rights without proper consultation and advice.

15          151. Plaintiff Moon has not received meaningful benefits in exchange for guilty  
16 pleas.

17          152. Defendant Mount Vernon has constructively deprived Plaintiff Moon of his right  
18 to the assistance of counsel.

19           **(iii) Plaintiff Angela Marie Montague**

20          153. On or about July 9, 2007, Plaintiff Montague was charged in Burlington  
21 Municipal Court with driving a motor vehicle while license suspended in the third degree and  
22 driving a motor vehicle while under the influence of alcohol or drugs. These charges were filed  
23 under case number BUC009935. Defendant Burlington assigned an attorney to represent  
24 Plaintiff Montague on these charges, and that attorney was Richard Sybrandy.

25          154. In November 2008, while in custody at the Skagit County jail, Plaintiff  
26 Montague tried multiple times to contact Sybrandy regarding a court appearance scheduled for

1 December 3, 2008. Sybrandy failed to respond to her. The only time Sybrandy spoke with  
2 Plaintiff Montague was during court proceedings. Because numerous other individuals were  
3 present during those proceedings—including the judge, the prosecutor, other indigent  
4 defendants, and members of the public—Plaintiff Montague was not able to communicate in  
5 private with Sybrandy. Furthermore, Plaintiff Montague did not have sufficient time to discuss  
6 with Sybrandy the circumstances of her case or the charges filed against her.

7 155. Because Sybrandy was not providing her with assistance of counsel, Plaintiff  
8 Montague asked to have another attorney appointed to her case. Shortly thereafter, Defendant  
9 Burlington assigned Morgan Witt as Plaintiff Montague’s attorney.

10 156. Like Sybrandy, Witt failed to provide Plaintiff Montague with assistance of  
11 counsel. Witt did not respond to efforts by Plaintiff Montague to speak with her in advance of  
12 court appearances. The only time Witt spoke with Plaintiff Montague was during court  
13 proceedings, which did not allow for private communications or sufficient time to discuss the  
14 circumstances of the case or the charges filed against Plaintiff Montague.

15 157. On December 2, 2009, Plaintiff Montague entered into a deferred prosecution  
16 agreement regarding the charges brought against her in Burlington. At some point it became  
17 difficult for Plaintiff Montague to meet the terms of that agreement, so she tried to contact Witt  
18 to resolve her issues in a proactive manner with the court. Witt failed to respond to her.  
19 Because Plaintiff Montague was unable to work out a resolution with the court, a warrant was  
20 issued for her arrest.

21 158. Plaintiff Montague was arrested and brought back to court to be sentenced on  
22 the underlying charges. Witt did not talk with Plaintiff Montague before the court sentenced  
23 her. Though he was present at the hearing, Witt did not stand with Plaintiff Montague while  
24 she was being sentenced. Witt did not explain the circumstances of Plaintiff Montague’s  
25 situation to the court or to ask the court to credit Plaintiff Montague for time served.  
26



1           159. As of June 8, 2011, Plaintiff Montague has been confined in the Skagit County  
2 jail for several weeks. Plaintiff Montague has been attempting to get in-patient treatment in  
3 lieu of jail time, but she understands she cannot do so unless she first obtains a treatment order  
4 from the court.

5           160. Plaintiff Montague understands that Morgan Witt continues to serve as her  
6 assigned attorney and that the assistance of his counsel is necessary for her to obtain a review  
7 hearing and treatment order. Over the past two weeks, Plaintiff Montague has sent numerous  
8 kites to Witt requesting his assistance, but Witt has not responded to her.

9           161. Defendant Burlington has failed to assign an attorney to Plaintiff Montague who  
10 will communicate or meet with her while in custody.

11           162. Defendant Burlington has failed to assign an attorney to Plaintiff Montague who  
12 will communicate or meet with her in advance of court hearings.

13           163. Defendant Burlington has failed to assign an attorney to Plaintiff Montague who  
14 will respond to her requests for assistance of counsel.

15           164. Defendant Burlington has failed to assign an attorney to Plaintiff Montague who  
16 will devote time to interviewing and counseling her on the charges filed against her or the  
17 substantive legal issues related to her case.

18           165. Defendant Burlington has failed to assign an attorney to Plaintiff Montague who  
19 will provide her with the representation to which she is entitled under the constitutions of the  
20 United States and Washington.

21           166. The attorneys that Defendant Burlington has assigned to Plaintiff Montague's  
22 cases have had excessive caseloads.

23           167. The attorneys that Defendant Burlington has assigned to Plaintiff Montague's  
24 cases have not been adequately funded.

25           168. The attorneys that Defendant Burlington has assigned to Plaintiff Montague's  
26 cases have not been adequately monitored.

1 169. Plaintiff Montague has had to make decisions about her rights without adequate  
2 factual or legal investigation by her attorneys.

3 170. Plaintiff Montague has been deprived of meaningful opportunities to present  
4 defenses.

5 171. Plaintiff Montague has waived her rights without proper consultation and  
6 advice.

7 172. Plaintiff Montague has not received meaningful benefits in exchange for guilty  
8 pleas.

9 173. Defendant Burlington has constructively deprived Plaintiff Montague of her  
10 right to the assistance of counsel.

11 **K. Plaintiffs Face a Continuing Risk that their Constitutional Rights Will Be**  
12 **Violated**

13 174. As a result of Defendants' acts and omissions, including the policies, practices  
14 and procedures for public defense that Defendants have maintained and countenanced, indigent  
15 persons charged with crimes in the municipal courts of Mount Vernon and Burlington have  
16 suffered or are at imminent and serious risk of suffering harm. Among other things, these  
17 indigent persons are deprived of adequate consultation and communication with their attorneys.  
18 These indigent persons must make decisions about their rights or contest issues without  
19 adequate factual or legal investigation by their attorneys. These indigent persons are deprived  
20 of meaningful opportunities to present defenses. The rights of these indigent persons are  
21 waived without proper consultation and advice. These indigent persons are deprived of the  
22 services of investigators and expert witnesses. The cases of these indigent persons are not  
23 properly prepared for trial. These indigent persons do not receive meaningful benefits in  
24 exchange for guilty pleas.

25 175. There is a substantial risk that Defendants' violations will continue and will  
26 deprive the Class Plaintiffs and other Class Members of their rights. Among other things:

1 a. Defendants have persisted in a wrongful course of conduct for many  
2 years;

3 b. Defendants have persisted in a wrongful course of conduct even though  
4 Defendants knew or should have known that indigent persons were being deprived of their  
5 rights;

6 c. Defendants have failed to take prompt action to fix their public defense  
7 system;

8 d. Defendants have allowed their public defense system to descend into  
9 chaos.

10 **VI. CAUSES OF ACTION – COUNT ONE**  
11 **(Violation of the Sixth and Fourteenth Amendments to the**  
12 **United States Constitution (42 U.S.C. § 1983)**

13 176. The allegations of paragraphs 1 through 175 above are incorporated herein.

14 177. Acting under color of state law, Defendants have violated and caused violations  
15 of the Class Plaintiffs’ rights to the assistance of counsel pursuant to the Sixth and Fourteenth  
16 Amendments to the United States Constitution.

17 178. Unless enjoined by the Court, Defendants will continue to violate and cause the  
18 violation of the constitutional rights of the Class Plaintiffs and the Class Members.

19 **VII. CAUSES OF ACTION – COUNT TWO**  
20 **(Violation of Article I, §§ 3, 12 and 22 of the Washington State**  
21 **Constitution)**

22 179. The allegations of paragraphs 1 through 178 above are incorporated herein.

23 180. Acting under color of state law, Defendants have violated and caused violations  
24 of the Class Plaintiffs’ rights to the assistance of counsel pursuant to Article I, Sections 3, 12,  
25 and 22 of the Washington State Constitution.

26 181. Unless enjoined by the Court, Defendants will continue to violate and cause the  
violation of the constitutional rights of the Class Plaintiffs and the Class Members.

**VIII. PRAYER FOR RELIEF**

WHEREFORE, the Plaintiffs pray for relief as follows:

A. For certification of a class as defined above;

B. For a declaration that Defendants are depriving Class Members of their rights to the assistance of counsel pursuant to the Sixth and Fourteenth Amendments to the United States Constitution and Sections 3, 12, and 22 of Article I of the Washington State Constitution;

C. For the issuance of preliminary and permanent injunctions restraining Defendants from violating the Sixth and Fourteenth Amendments to the United States Constitution and Sections 3, 12, and 22 of Article I of the Washington State Constitution in the provision of indigent defense services;

D. For a preliminary and permanent injunction enjoining defendant Defendants from making expenditures of funds on indigent defense services likely to result in constitutional violations;

E. For an award of plaintiffs’ costs and attorneys’ fees; and

F. For such other and further relief as the Court may deem just and proper.

DATED this 9th day of June, 2011.

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