

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

KIMBERLY HURRELL-HARRING, JAMES ADAMS,
JOSEPH BRIGGS, RICKY LEE GLOVER, RICHARD
LOVE, JACQUELINE WINBRONE, LANDE LOYZELLE,
TOSHA STEELE, BRUCE WASHINGTON, SHAWN
CHASE, JEMAR JOHNSON, ROBERT TOMBERELLI,
CHRISTOPHER YAW, LUTHER WOODROW OF BOOKER,
JR., EDWARD KAMINSKI, JOY METZLER, VICTOR
TURNER, CANDACE BOOKINS, RANDY HABSHI and
RONALD McINTYRE, on behalf of themselves and all others
Similarly situated,

Plaintiffs,

Index No: 8866-07

ANSWER
on behalf of the
County of Schuyler

v.

THE STATE OF NEW YORK, GOVERNOR DAVID
PATTERSON, in his official capacity, THE COUNTY OF
ONONDAGA, NEW YORK, THE COUNTY OF ONTARIO,
NEW YORK, THE COUNTY OF SCHUYLER, NEW YORK,
THE COUNTY OF SUFFOLK, NEW YORK, and the
COUNTY OF WASHINGTON, NEW YORK,
Defendants.

Schuyler County, New York, appearing by its attorney, James P. Coleman, J.D.,
Schuyler County Attorney, alleges and shows to the court in answer to Plaintiffs'
Complaint* that Defendant:

- 1-3 Lacks sufficient information to form a belief as to the allegations at paragraphs
1-3 of Plaintiffs' Complaint.¹
- 4 Admits as to the existence of the Kaye Commission Report, cannot express a
conviction regarding the accuracy of its conclusions.

* All responses are in the same order as enumerated in Plaintiffs' Complaint, some are consolidated in the
interest of brevity but Plaintiffs' numbering scheme is followed.

1. In order to avoid the tedious repetition of a formulaic mantra throughout the remainder of the Answer,
the phrase "Lacks information" shall mean "Lacks information sufficient to form a belief as to the truth or
falsity regarding the allegation(s) at paragraphs ____ of Plaintiffs' Complaint."

- 5 Admits as to the existence of the Kaye Commission Report, cannot express a conviction regarding the accuracy of its conclusions.
- 6 Admit the identities of Plaintiffs and their status as criminal defendants, the appropriateness of their class representation is dealt with, *infra*.
- 7 Lacks information.
- 8 Admits.
- 9 Admit that counsel is a right to meaningful and effective assistance. Lack information as to Plaintiffs' conclusion regarding New York Public Defender counsel.
- 10 Admits.
- 11 Lacks information.
- 12 Lacks information.
- 13 Lacks information.
- 14 Lacks information.
- 15 Lacks information.

PARTIES

- 16-35 Admits.
- 36 Admits.
- 36(a) Admits.
- 37-41 Admits.

JURISDICTION AND VENUE

- 42 Admits.
- 43 Admits.

THE STATE'S FAILURE TO PROVIDE FOR CONSTITUTIONALLY AND LEGALLY ADEQUATE PUBLIC DEFENSE SERVICES

- 44-52 Lacks information. (Mrs. Hurrell-Harring)
- 53-68 Lacks information. (James Adams)

69-81 Lacks information. (Joseph Briggs)
82-96 Lacks information. (Ricky Lee Glover)
97-107 Lacks information. (Richard Love, Jr.)
108-119 Lacks information. (Jacqueline Winbrone)
120-126 Lacks information. (Lane Loyzelle)
127-135 Lacks information. (Tosha Steele)
136-143 Lacks information. (Bruce Washington)
144-152 Lacks information. (Shawn Chase)
153-161 Lacks information. (Jemar Johnson)
162-169 Lacks information. (Robert Tomberelli)
170-177 Lacks information. (Christopher Yaw)
178-191 Lacks information. (Luther Woodrow of Booker, Jr.)
192-202 Lacks information. (Edward Kaminski)
203-208 Lacks information. (Joy Metzler)
209-218 Lacks information. (Victor Turner)
219-226 Lacks information. (Candace Brookins)
227-234 Lacks information. (Randy Habshi)
235-241 Lacks information. (Ronald McIntyre)
242 Admits.
243 Admits.
244 Admits.
245 Admits.
246 Admits.
247 Lacks information.
248 Lacks information.
249 Admits.
250 Lacks information.
251 Lacks information.
252 Lacks information.
253 Lacks information.
254 Lacks information. ("Above my pay grade.")

255 Admit first allegation, lacking information as to the second.
256 Lacks information.
257 Lacks information except insofar as the Schuyler County Public
Defender's Office is concerned. On information and belief the Schuyler
County Public Defender's Office is/was in compliance at all times relevant
herein.
258 Lacks information.
259 Admits except insofar as the Schuyler County Public Defender services
are concerned. On information and belief Schuyler County services are
adequate, given the miniscule size (population 19,000) and extreme
poverty of the county.
260 Admits.
261 Lacks information except insofar as Schuyler County is concerned. State
funding amounted to 28% of the cost of Public Defender services in 2007.
262 Admits the existence of the Kaye Commission Report but lacks
information re the conclusions therein.
263 Admits the fact that the Kaye Commission concluded as alleged, but lacks
information as to the accuracy thereof.
264 Admits.
265 Admits.
266 Admits.
267 Admits the fact that the Kaye Commission concluded as alleged, but lacks
information as to the accuracy thereof.
268 Admits the fact that the Kaye Commission concluded as alleged, but lacks
information as to the accuracy thereof.
269 Lacks information.
270 Admits.
271 Admits.
272 Admits.
273 Admits the fact that the Kaye Commission concluded as alleged, but lacks
information as to the accuracy thereof.

274 Admits.

275 Admits the fact that the Kaye Commission concluded as alleged, but lacks
information as to the accuracy thereof.

276 Admits.

277 Admits the findings, denies application to Schuyler County.

278 Admits the fact that the Kaye Commission concluded as alleged, but lacks
information as to the accuracy thereof.

279 Admits the existence of the report; denies application to Schuyler County.

280 Admits.

281 Lacks information.

282 Lacks information and notes that Plaintiffs' allegations cumulate hearsay
upon hearsay.

283 Lacks information.

284 Denies – unable to quantify “national consensus.”

285 Lacks information.

286 Denies insofar as Schuyler county is concerned, particularly in regard to
allegations that judicial, prosecutorial and political authorities
compromise representation. (Emphasis added.)

287 Lacks information.

288 Lacks information and notes hearsay upon hearsay.

289 Admits.

290 Lacks information.

291 Lacks information.

292 Lacks information.

293 Denies. Schuyler County defendants arraigned overnight initially may
appear without counsel, however, assigned counsel is typically available
in 2-5 days at which time bail reduction is addressed.

294 Lacks information.

295 Lacks information.

296 Lacks information. It is unclear whether or not the defendant
spontaneously spoke when judge merely explained a charge to him.

297 Lacks information.

298 Lacks information as to the first conclusory allegation; admits the second.

299 admits the fact of the Kaye Commission Report; lacks information as to its
conclusions.

300 Denies insofar as Schuyler County is concerned; lacks information as to
other counties.

301 The office of the Schuyler County Pubic Defender has been substantially
restructured since this allegation was made.

302 Lacks information.

303 Lacks information.

304 Lacks information.

305 Admits the fact of the Kaye Commission Report, but lacks information as
to its conclusions.

306 Lacks information.

307 Lacks information.

308 Lacks information.

309 Lacks information.

310 Lacks information.

311 Lacks information.

312 Lacks information.

313 Denies the allegation. The Schuyler County indigent defense eligibility
standards are explained in detail at Exhibit "A" hereto.

314 Denies the allegation on the same grounds as #313, supra.

315 Lacks information.

316 Lacks information.

317 Lacks information.

318 Lacks information.

319 Lacks information.

320 Lacks information.

321 Lacks information, but notes that the Schuyler County Public Defender's
Office has been reorganized in 2008 to eliminate the situation alleged and
similar circumstances.

322 Lacks information.

323 Lacks information.

324 Lacks information.

325 Lacks information.

326 Lacks information.

327 Lacks information.

328 Lacks information.

329 Denies. Schuyler County had and has a direct line from the jail;
moreover, during the relevant period and to the present day, the Schuyler
County Public Defender's Office does accept collect calls from defendants
regardless of their location.

330 Lacks information.

331 Lacks information.

332 Lacks information.

333 Lacks information.

334 Lacks information.

335 Lacks information

336 Admits the fact of the Kaye Commission, but lacks information as to its
conclusions.

337 Lacks information.

338 Lacks information.

339 Lacks information.

340 The Public Defender for Schuyler County is appointed by the Legislature
on recommendation of the Schuyler County Attorney. The Public Safety
Criminal Justice Committee considers candidates on a case-by-case basis.

341 Admits as to Schuyler County.

342 Lacks information.

343 Lacks information.

344 Lacks information.

345 Lacks information as to the Plaintiffs' first assertion regarding training requirements; denies Plaintiffs' allegation regarding access to training programs insofar as Schuyler County is concerned.

346 Admits insofar as Schuyler County is concerned.

347 Admits insofar as Schuyler County is concerned.

348 Lacks information.

349 Lacks information.

350 Lacks information.

351 Denies the allegation that Public Defenders are not provided with the resources necessary to obtain support services. Such services are available via §722-c of the County Law. The duty to request assistance would rest with counsel; the duty to comply with §722-c would rest with the court. Moreover, during county year 2007 the Schuyler County Public Defender's Office did have money in its budget for such services.

352 Lacks information, but notes that one can't get what isn't requested.

353 Lacks information.

354 Admits the allegation to the extent of acknowledging the existence of standards for certain aspects of the defense system.

355 Lacks information.

356 Lacks information.

357 Lacks information.

358 Lacks information.

359 Lacks information.

360 Lacks information.

361 Lacks information.

362 Lacks information.

363 Denies. Workload is monitored by the Schuyler County Public Defender.

364 Denies as to Schuyler County.

365 Admits first allegation as to Schuyler County; lacks information as to
remainder and notes that since 1/1/08 the Schuyler County Public
Defender does not practice privately.

366 Admits that Schuyler County uses part-time Assistant Public Defenders
but current Schuyler County Public Defender is prohibited from private
practice and is genuinely full time.

367 Admits.

368 Lacks information.

369 Lacks information.

370 Lacks information.

371 Denies. Schuyler County now has vertical representation.

372 Lacks information.

373 Lacks information.

374 Lacks information.

375 Lacks information.

376 Admits that allegation #376 was formerly true but that vertical
representation is now the rule.

377 Denies as to Schuyler County.

378 Lacks information.

379 Lacks information.

380 Admits.

381 Lacks information.

382 Lacks information.

383 Lacks information but there must exist some check and balance on the
defense just as the voters and legislators constrain prosecution budgets.

384 Admits / Admits but deny performance-based standards set by political
actors.

385 Lacks information but observes that this allegation has expressed no more
and no less our deepest financial philosophy since the founding of the
Republic – the Legislature originates money bills and controls budgets.

386 Lacks information as to the specific in Washington County but observes
that judges must have discretion in regard to costs. Costs cannot be left
within the unfettered discretion of the defense any more than any other
agency of government in a fiscally-responsible, constitutionally cognizant
check-and-balance system. If denials of services or costs are thought to be
arbitrary or otherwise unacceptable, the issues are appealable or otherwise
reviewable.

387 Lacks information.

388 Admits.

389 Admits.

390 Lacks information.

391 Admits.

392 Lacks information.

393 Lacks information.

394 Lacks information.

395 Admits.

396 Admits.

397 Admits.

398 Admits.

399 Lacks information.

400 Lacks information.

401 Lacks information.

402 Admits.

403 Lacks information.

404 Lacks information.

405 Lacks information re public beliefs but admits that the Schuyler County
Public Defender did in fact refuse to move into a county building.

CLASS ALLEGATIONS

- 406 Denies and notes that the requirements of representativeness and typicality
sufficient to permit class certification are lacking.
- 407 Denies. Notes that the attribution of class characteristics to future
defendants is speculative.
- 408 Denies. Notes that the ultimate financial issues to be resolved in the
context of this action lie outside the purview of judicial compulsion with
regard to co-equal branches of government.
- 409 Denies.
- 410 Denies.
- 411 Denies.
- 412 Denies.

OTHER ALLEGATIONS

- 413 Denies. However, it is within the judicial power to declare a particular
indigent defense delivery system unconstitutionally inadequate.
- 414 Admits.
- 415-419 Lacks information.

AS AND FOR AFFIRMATIVE DEFENSES, DEFENDANT SCHUYLER COUNTY ALLEGES AS FOLLOWS

FIRST AFFIRMATIVE DEFENSE

- 1 The ultimate relief sought by Plaintiffs, if granted, could provoke a
constitutional crisis wherein the judiciary upholds an order which the
executive and legislative branches refuse to enforce.

SECOND AFFIRMATIVE DEFENSE

- 2 The rights of indigent Schuyler County defendants who are Plaintiffs herein have been adequately served by this respective defense counsel given the minute size of the county (19,000 population) and its very limited financial resources (traditionally the second poorest county in the state).

THIRD AFFIRMATIVE DEFENSE

- 3 Schuyler County Plaintiffs had an adequate remedy at the trial level, namely invoking the supervisory powers of the various courts in which their cases were docketed. It is the continuing responsibility of the trial judiciary to oversee the proper exercise of a criminal defendant's constitutional rights.

FOURTH AFFIRMATIVE DEFENSE

- 4 Allegations of counsel failure in various cases while failing to name the defense attorneys involved deprives those attorneys of an opportunity to be heard in vindication.

FIFTH AFFIRMATIVE DEFENSE

- 5 The court has ruled that the individual defendant counties are necessary parties because the relief sought would "... almost certainly require the respective counties to fund significant increases..." (Decision and Order of August 1, 2008 in the instant action.) It would therefore seem that the potential financial impact on all 62 New York counties would be an

equally pertinent consideration requiring the naming of all counties as parties to this action.

SIXTH AFFIRMATIVE DEFENSE

- 6 The indigent defense mechanism for Schuyler County is adequate given the very small population (19,000) and the prevalent poverty level often cited as the “second poorest county in the state.”

SEVENTH AFFIRMATIVE DEFENSE

- 7 Our county adopted the Public Defender system at the outset of the modern conception of indigent defense, beginning with a single part-time Public Defender in 1966.

During the period covered by the Complaint, Schuyler had a “full-time” Public Defender², a part-time Assistant Public Defender, a contract “conflicts defender” and occasional investigator hired on a case-by-case basis.

Access to expert services was via the CL §722-c mechanism. Relative to the size and poverty of the county, this compendium of defense services was compliant with minimal constitutional standards.

Schuyler County now has “vertical representation.”

EIGHTH AFFIRMATIVE DEFENSE

- 8 A classification in accordance with Article 9 of the CPLR is inappropriate because:
- a. Every Public Defender client has a unique situation and hence lacks commonality with other Plaintiffs.
 - b. The issues complained of are not identical as among the Plaintiffs.

² Private practice permitted but public duties to take precedence.

- c. Criminal defendants have adequate recourse within the criminal justice system.

NINTH AFFIRMATIVE DEFENSE

- 9 Governmental entities are not subject to a class action under the circumstances alleged by Plaintiffs. It is particularly relevant in the instant case to note the Court of Appeals position on the relationship between stare decisis and class wide judgments (Jones v. Berman, 1975, 37 NY² 42, 371 NYS² 422; Rivera v Katz, 1986, 67 NY² 485, 504 NYS² 74, and more recently, Jamie B v Hernandez, 2000, 274 AD² 335, 712 NYS² 91 (1st Dpt.).

TENTH AFFIRMATIVE DEFENSE

- 10 The Schuyler County Public Defender's Office was substantially and materially restructured on January 1, 2008. A new, full-time chief defender devoted exclusively to public practice was appointed. In addition a part-time Assistant Public Defender functions for 17 hours per week and a conflicts defender is employed as necessary. An investigator has been hired and office support staff is deemed adequate by the new incumbent. Additionally, case management software from the NY Public Defender's Association is to be installed September 23, 2008 to track all cases.
- As a matter of perspective, it is fitting to again note that Schuyler County has only 19,000 people and an impoverished tax base.

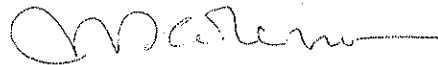
ELEVENTH AFFIRMATIVE DEFENSE

11 Insofar as those Plaintiffs' concerned claim that they were improperly denied access to public defense due to improper application of indigency standards, such denial(s) should have been reviewed via Article 78 proceedings, the statute of limitations on which has long expired.

PRAYER FOR RELIEF

Wherefore, the Defendant, Schuyler County, requests the dismissal of Plaintiffs' Complaint in its entirety. Alternatively, if Plaintiffs should prevail in the action and be awarded attorneys fees, such fees be declared the exclusive responsibility of NYS in accordance with CPLR 8601.

Respectfully submitted,



Dated: 9/24/08

James P. Coleman, J.D.
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Connie Fern Miller, Esq.

Public Defender

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Phone: (607) 535-0057

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**OFFICE OF THE
PUBLIC DEFENDER
SCHUYLER COUNTY**

Stewart E. McDivitt, Esq.

Assistant Public Defender

Route 14 & Ayers Street

Post Office Box 359

Montour Falls, NY 14865

Phone: (607) 535-4528

Fax: (607) 535-7646

- An application for public defender services is filled out and returned with pay stubs and federal income tax return. The Administrator of the Public Defender's Office makes the eligibility determination.
- Approximately 19 percent annually of public defender applicants are deemed ineligible (either not indigent or the type of proceeding is not eligible).
- If an applicant is deemed ineligible, he/she is sent a letter along with a list of attorneys who have agreed to charge on a sliding scale, reduced fees, and/or accept payments. If the applicant disagrees with our determination to deny services, or if he/she wishes to submit additional information in support of his/her application, he/she is asked to do so. Ultimately, the Court(s) may determine the issue.
- Our office bases eligibility first on gross income using current poverty guidelines from the NYS Defender's Association. We also take into consideration, an applicant's expenses, number of household members, assets, seriousness of charges/case, etc.
- Nearly all persons on public assistance would meet the eligibility guidelines.
- Along with a completed application, our office requires: pay stubs, federal income tax return, orders in effect, pending petitions, etc. for family court matters; and tickets, Accusatory Instruments, felony complaints, securing orders, statements, depositions, etc. in regard to criminal court matters.
- Bail is not taken into consideration as a factor.
- We have no provisions for partial payment or other options, except that we do provide a list of attorneys to persons not eligible for public defender services (see above).
- No affidavit required in regard to the eligibility process.
- The application form contains permission to conduct an investigation into any information given in the course of the eligibility determination.
- All information is confidential.



STATE OF NEW YORK
UNIFIED COURT SYSTEM
100 CENTRE STREET
NEW YORK, NEW YORK 10013
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ANN PFAU
Chief Administrative Judge

JUANITA BING NEWTON
Deputy Chief Administrative Judge
for Justice Initiatives
Administrative Judge
Criminal Court of the City of New York

April 23, 2007

Mr. Timothy M. O'Hearn
County Administrator, Schuyler County
County Office Building
105 Ninth Street, Unit 37
Watkins Glen, NY 14891

Dear Mr. O'Hearn:

Once again, thank you for responding to Chief Administrative Judge Jonathan Lippman's recent request for a copy of your county's assigned counsel plan. As a follow-up to that request, we are also interested in specific information regarding how your county determines eligibility for assignment of counsel for those who indicate the need for free representation. As you may be aware, the Final Report of the Commission on the Future of Indigent Defense Services highlighted eligibility as an issue of burgeoning importance in the provision of indigent representation.

Please address the following areas specifically in your response:

- a description of the eligibility process and who makes the determination;
- the annual percentage of those deemed ineligible;
- the appeal process for those found ineligible;
- income guidelines and other factors or information considered in eligibility determinations;
- public assistance as a factor;
- specific information or forms requested of the defendant;
- treatment of bail in the eligibility process;
- partial payment or options;
- requirement to sign an affidavit;
- permission or waivers to investigate any information given in the course of the eligibility determination; and
- the confidentiality of information provided.

Also, if there is an institutional provider or assigned counsel plan, please tell us if eligibility determinations are made in the same way. Additionally, where a minor is concerned, please address the following: rules applying to criminal and family cases; consideration of the parents' income; provision of representation if a parent(s) are found able to pay but refuse; and parental cost recovery.

At your earliest convenience, but no later than May 7, 2007, can you please forward such information to me, either by mail (100 Centre Street, Room 549B, New York, NY 10013) or electronically, (csalem@courts.state.ny.us) or both.

Thank you in advance for your attention to this matter. If you need further assistance or have any questions, please feel free to contact me at 646-386-4720.

Sincerely,

Carol Salem