

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

RECEIVED  
DISTRICT COURT  
EAST DISTRICT OF LA  
2007 MAR -6 PM 3:11  
LORETTA G. WHYTE  
CLERK

PERCY DEAR, individually, and as  
representative of class,

Plaintiffs,

v.

JOHN A. SHEA, in his official capacity as  
Municipal Judge, City of New Orleans;  
JOHN BLANCHARD, in his official capacity  
as Municipal Judge, City of New Orleans;  
SEAN T. EARLY, in his official capacity as  
Municipal Judge, City of New Orleans; and  
PAUL SENS, in his official capacity as  
Municipal Judge, City of New Orleans,

Defendants.

CASE NO. \_\_\_\_\_

JUDGE **07-1186**  
MAG: **SECT. B MAG 1**

COMPLAINT- CLASS  
ACTION

CIVIL RIGHTS  
COMPLAINT

PROPOSED CLASS ACTION COMPLAINT PURSUANT TO 42 U.S.C § 1983

The representative plaintiff identified in the caption ("Plaintiff"), on behalf of himself and all others similarly situated, complains as follows:

SUMMARY OF ALLEGATIONS

1. Plaintiffs bring this class action pursuant to 42 U.S.C. § 1983 to challenge what amounts to a debtors' prison system created by Defendants. Defendants, who are municipal court judges, routinely sentence persons convicted of New Orleans municipal code violations to alternative sentences: Plaintiffs must, on the day of sentence, pay a fine in the hundreds of dollars, or serve a jail sentence of several weeks. For example, pursuant to a "fine or time" sentence, a person convicted of begging might be sentenced to pay a fine of \$200 or to serve a jail sentence of twenty (20) days. A wealthy person will pay the fine and avoid jail time while a

poor person, who lacks the resources to pay the fine, will serve nearly three weeks in jail.

2. On information and belief, the cost of incarcerating these defendants is borne by the City of New Orleans at an approximate cost of \$23 per inmate per day, while the fines paid by those defendants with sufficient resources go to the Municipal Court.
3. The unconstitutionality of jailing indigent defendants unable to pay their fines has previously been brought to Defendants' attention, but the practice continues to this day. It will continue indefinitely further unless this Court Orders that the practice be stopped.

#### **JURISDICTION AND VENUE**

4. Jurisdiction is founded upon 28 U.S.C. §§ 1331 and 1343.
5. Declaratory relief is authorized by 28 U.S.C. §§ 2201 and 2202. A declaration of the law is necessary and appropriate to determine the respective rights and duties of the parties to this action.
6. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because, upon information and belief, all parties are residents of the Eastern District of Louisiana, and because all or a substantial part of the events giving rise to the claims in this action took place in the Eastern District of Louisiana.

#### **PARTIES**

7. Plaintiff and Class Representative Percy Dear is a United States citizen and is a resident of New Orleans, Louisiana. Mr. Dear is indigent and suffers from epilepsy, schizophrenia and bipolar disorder. Mr. Dear is currently incarcerated

in the Orleans Parish Prison serving a sentence of 20 days because he was unable to pay a fine of \$200 imposed on him by Municipal Judge John A. Shea as a punishment for begging.

8. Defendant John A. Shea is a Judge of the Municipal Court for Orleans Parish, Louisiana. As such, he is responsible for sentencing persons convicted of municipal offenses. He is sued in his official capacity only.
9. Defendant John Blanchard is a Judge pro tem of the Municipal Court for Orleans Parish, Louisiana. As such, he is responsible for sentencing persons convicted of municipal offenses. He is sued in his official capacity only.
10. Defendant Sean T. Early is a Judge of the Municipal Court for Orleans Parish, Louisiana. As such, he is responsible for sentencing persons convicted of municipal offenses. He is sued in his official capacity only.
11. Defendant Paul N. Sens is a Judge of the Municipal Court for Orleans Parish, Louisiana. As such, he is responsible for sentencing persons convicted of municipal offenses. He is sued in his official capacity only.

#### **CLASS ALLEGATIONS**

12. The named individual Plaintiff brings this action on behalf of himself and the Plaintiff class pursuant to Fed. R. Civ. P. 23. The class consists of all indigent persons currently or in the future sentenced to alternative “fine or time” sentences in Orleans Parish Municipal Court for violation of municipal ordinance who are jailed because of their inability to pay a fine.
13. The Plaintiff class is so numerous that joinder of all its members is impracticable; the size of the class is indefinite. Plaintiff’s counsel is presently unable to

determine the number of persons currently serving time pursuant to this unlawful practice. In addition, an indefinite number of future Municipal Court defendants will be subjected to this unlawful sentence so long as Defendants' current practice continues.

14. The claims of the class include common questions of law and fact, including:
  - a. Whether Plaintiffs were sentenced to a choice of paying a fine or serving jail time after being convicted of violating a Orleans Parish Municipal Ordinance;
  - b. Whether Plaintiffs served a jail sentence because they did not have the financial resources necessary to pay the imposed fine;
  - c. Whether Defendants violated Plaintiffs' constitutional rights to equal protection by sentencing them to alternative "fine or time" sentences;
  - d. Whether Defendants violated Plaintiffs' constitutional right to due process of law by sentencing them to alternative "fine or time" sentences.

The common questions of law and fact identified above predominate over any questions affecting only individual members of the class.

15. The claims of the named Plaintiff are typical of the claims of the members of the class as a whole. The named Plaintiff is a member of the class defined herein and has suffered, and will continue to suffer, violation of his constitutional rights. Plaintiff and the members of the class were all subjected to a violation of their constitutional rights to equal protection under the law and to due process of law when forced to serve a jail sentence because they were unable to pay the imposed fine.

16. The named Plaintiff will fairly and adequately represent the interests of the class. His interests do not conflict with the interests of the members of the class he seeks to represent. Plaintiff's attorneys include experienced counsel who have litigated civil rights actions in federal court.
17. Defendants have acted on grounds common to the class, thereby making declaratory and injunctive relief appropriate with respect to the class as a whole.
18. A class action is superior to other available methods for the fair and efficient adjudication of this litigation.

### **FACTS**

19. Persons arrested in the City of New Orleans for violations of the City's Municipal Code, such as public intoxication, begging, and disturbing the peace, are subject to the criminal jurisdiction of the New Orleans Municipal Court.
20. Defendants are employed as Judges in the Municipal Court.
21. On February 28, 2007, Plaintiff Percy Dear was arrested by officers of the New Orleans Police Department and charged with begging.
22. On the same day, Mr. Dear was brought before Municipal Judge Shea and found guilty of begging. Judge Shea sentenced Mr. Dear to either immediately pay a fine of \$200 or serve a jail sentence of 20 days.
23. Mr. Dear was unable to pay a \$200 fine and, as a result, is currently in jail at the Orleans Parish Prison serving a sentence of 20 days.
24. On information and belief, Defendants routinely sentenced convicted poor persons to alternative "fine or time" sentences: they must immediately pay a fine

or be sentenced to serve jail time. Unless enjoined by this Court, Defendants will continue this practice.

25. On information and belief, Defendants routinely jail indigent people who are unable to pay the imposed fines. Unless enjoined by this Court, Defendants will continue this practice.
26. Further, upon information and belief, poor persons are routinely jailed for failure to pay a fine without any hearing or process to determine whether they have the financial wherewithal to pay the fine.
27. Defense counsel in Orleans Parish have previously brought this practice to the attention of former Chief Municipal Judge McConduit and explained that the practice has been found unconstitutional by both the Federal and Louisiana courts in such decisions as *Frazier v. Jordan*, 457 F.2d 726 (5<sup>th</sup> Cir. 1972) (holding municipal court could not constitutionally impose sentence requiring defendant to pay fine forthwith or serve a specified number of days in jail because the alternative fine creates two disparately treated classes defined by wealth) *citing Williams v. Illinois*, 399 U.S. 235 (1970) and *Tate v. Short*, 401 U.S. 395 (1971).
28. Former Chief Municipal Judge McConduit previously stated that the practice of jailing indigent defendants unable to pay fines would be stopped. As made evident by Mr. Dear's situation, the practice nonetheless continues.
29. By reason of the foregoing, Defendants, acting under color of state law and in their official and enforcement capacities, have deprived Plaintiffs of the rights, privileges, and immunities secured to them under the Fourteenth Amendment to

the United States Constitution and section 1983 of Title 42 of the United States Code.

30. Plaintiffs have no adequate remedy at law for such deprivation of their rights.

## CLAIMS

### **FIRST CLAIM FOR RELIEF (Equal Protection)**

31. Plaintiffs, on behalf of themselves and all others similarly situated, re-allege and incorporate all allegations above, as though fully set forth herein.
32. By requiring Plaintiff and the proposed Plaintiff class to serve jail sentences which similarly situated non-indigent defendants avoid by paying fines, Defendants have violated Plaintiff's and class members' right to equal protection of the law under the 14<sup>th</sup> Amendment to the United States Constitution.
33. Defendants engaged in such conduct intentionally, willfully, and in disregard of the rights of Plaintiff and the proposed Plaintiff class.
34. Plaintiff and the proposed Plaintiff class will suffer injury as a result of Defendants' illegal conduct.

### **SECOND CLAIM FOR RELIEF (Due Process)**

35. Plaintiffs, on behalf of themselves and all others similarly situated, re-allege and incorporate all allegations above, as though fully set forth herein.
36. By requiring Plaintiff and the proposed Plaintiff class to serve jail sentences when they could not pay the alternative fine, Defendants have violated Plaintiff's and

Class members' right to due process of law pursuant to the 14<sup>th</sup> Amendment to the United States Constitution.

37. Defendants engaged in such conduct intentionally, willfully, and in disregard of the rights of Plaintiff and the proposed Plaintiff class.
38. Plaintiff and the proposed Plaintiff class will suffer injury as a result of Defendants' illegal conduct.

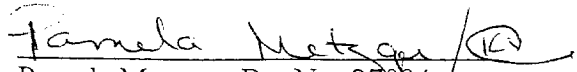
**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, on behalf of himself and the proposed Plaintiff class, respectfully requests that this Court enter judgment in his favor:

- (a) Certifying the proposed class of Plaintiffs;
- (b) Enjoining Defendants, their agents and employees, and all persons acting in concert or participation with them, including any successors and assigns, from henceforth imposing sentences requiring indigent defendants to pay a fine forthwith or serve time in jail;
- (c) Declaring that the actions of Defendants described above violate the Constitution, and declaring that Plaintiff and class members were denied their constitutional rights to equal protection and due process;
- (d) Awarding Plaintiff and class members their expenses, costs and fees associated with the filing and maintenance of this action, including reasonable attorneys' fees pursuant to 42 U.S.C. § 1988 and any other applicable provision of law;
- (e) Awarding any other equitable and further relief as the Court deems just and proper.



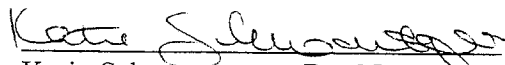
Respectfully Submitted,



Pamela Metzger, Bar No. 27094

*Trial Attorney*

*Tulane Criminal Law Clinic*



Katie Schwartzmann, Bar No. 30295

*American Civil Liberties Union Foundation  
of Louisiana, Staff Attorney*

P.O. Box 56157

New Orleans, Louisiana 70156

Steven C. Parker

*(Pro Hac Vice Admission Pending)*

The Justice Center

636 Baronne St.

New Orleans, LA 70113

Counsel for Plaintiffs