

ACLU lawsuit says Fresno County public defense is inadequate

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The Fresno County Public Defender's Office gives inadequate defense counsel to indigent defendants because of heavy caseloads and a shortage of lawyers, investigators and office staff, the American Civil Liberties Union claims in a lawsuit filed Wednesday.

The [ACLU suit](#), filed in Fresno County Superior Court by three defendants, said that Fresno County and the state of California have insufficiently funded the Fresno County Public Defender's Office and failed to monitor the department's efforts.

The suit claims that the state and county violated indigent defendants' right to due process, Sixth Amendment right to a speedy trial, and Fourteenth Amendment right of equal protection under the U.S. Constitution. The suit also says the county and state are violating the California Constitution and California penal code. The suit seeks to make the state and Fresno County comply with state and federal law and attorney fees for costs of suit.

One plaintiff, Peter Yopez, said he had nine public defenders during his case hearings. The lawsuit said he has "suffered harm as a result of deficiencies in the county's public defense system."

Yopez, his mother-in-law and Fresno lawyer Carolyn Phillips were listed as plaintiffs. Yopez's most recent case is a felony for allegedly receiving a stolen vehicle, second-degree burglary and grand theft, according to Fresno County Superior Court documents.

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ACLU lawsuit filed Wednesday

Two years ago, public defenders were undergoing a crisis of confidence in their leadership because their caseloads were soaring. None of the named plaintiffs in the case is employed by the Public Defender's Office.

Novella Coleman, staff attorney for the ACLU, said the lawsuit's intent is to call out county and state officials for lack of funding and oversight of the Fresno County Public Defender's Office, not criticize lawyers in the Public Defender's Office.

"This is not about a lack of commitment on the public defenders," she said. "The county is throwing pennies at the Public Defender's Office and expecting them to be able to adequately protect the rights of their clients."

In 2013, public defenders said their caseload was at such a level that they only had the ability to "meet, greet and plead" their clients.

"Because Fresno County's public defense system is not capable of putting the prosecution's case to meaningful adversarial testing, courts cannot ensure that their decisions, judgments, verdicts and punishments are rendered fairly and accurately," the lawsuit said.

Between July 2014 and March, the ACLU lawsuit said, about 79% of the Public Defender's felony clients in jail were not visited by public defender staff.

Among Fresno County Jail inmates, 67% are awaiting hearings and have not been convicted of crimes they are

accused of committing. Much of the blame, county officials say, goes back to a clogged court system with too few lawyers and judges to handle caseloads.

The suit said that the Public Defender's Office lacks parity with its counterparts in the District Attorney's Office, which has more lawyers who are more experienced. The result is more plea bargains, according to the lawsuit. The District Attorney's Office has 112 lawyers in this year's county budget, including 19 grant-paid positions. The Public Defender's Office has 66 lawyers.

The heavy caseload also caused many experienced lawyers to leave the Public Defender's Office, only to be replaced by less experienced, entry-level lawyers, the ACLU suit said.

Plea bargains were more frequently employed than state or national averages. Fresno County public defender cases went to trial 0.19% of the time. Statewide, 2.29% of felony cases and 1.02% of misdemeanor cases went to trial in 2013-14, the lawsuit said.

In 2013, some Fresno County public defenders had 1,000 misdemeanor and 650 to 700 felony cases each year. The American Bar Association recommends 400 misdemeanor and 150 felony cases covered annually by public defenders.

"An attorney with too many cases simply doesn't have enough time to do what the Constitution requires," the lawsuit said.

David Carroll, executive director of the Boston-based Sixth Amendment Center, cited Fresno County's caseload numbers in 2013 as "some of the highest I have seen."

Carroll added: "You can't be defending that many people and doing what you need to do in every single case."

In her "informal fact finding," the ACLU's Coleman said, "I haven't heard of any numbers higher than Fresno."

The state and county, she said, are failing to ensure that "constitutional minimal standards are met."

The public defenders' jobs are further handicapped by the small number of investigators and office staff, Coleman said.

In 2009, when Public Defender Kenneth Taniguchi warned the Fresno County Board of Supervisors that his office would have to start declining cases, the Public Defender's Office had 78 lawyers. At its low in 2012, it fell to 79 employees, including 50 lawyers. Taniguchi resigned shortly after public defenders said they had lost confidence in his leadership in 2013. He was replaced by Liz Diaz last year.

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Scott Baly, president of labor unit representing public defenders

Last year, Fresno County supervisors budgeted 17 more employees for the office.

"The office today is in a different position than we were in the dark days of the great recession between 2010 and 2013," said Scott Baly, president of Professional Association of County Employees, the employee unit representing public defenders. "We have since received additional funding, additional staffing, and we have better case coverage than we did, but we still have a long way to go."

Baly said his organization had sent the ACLU and other defense advocate organizations information about the shortage in defense lawyers in Fresno County about two years ago.

"If we can adequately address the needs of people in trouble, we do more to keep them from getting in trouble

again,” he said.

Fresno County Counsel Dan Cederborg didn't comment on the suit.

John Navarrette, county administrative officer, said he had not seen the lawsuit Wednesday and could not comment.

“We are just adding (staff) as we have the ability,” Navarrette said.

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