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PRESS STATEMENT: LOUISIANA PUBLIC DEFENDER BOARD SEEKS FEE RULING AGAINST ORLEANS JUDGES

BATON ROUGE -- On December 20, 2010, the Louisiana Public Defender Board (the "Board") and the Orleans Public Defenders Office ("OPD") sued twenty-three New Orleans judges. The suit, which was filed in the Nineteenth Judicial District Court in East Baton Rouge Parish, is based on a state law that requires judges to assess a \$35 fee to every criminal defendant who is convicted after trial, pleads guilty or no contest, or who forfeits his or her bond for violation of a state statute or a parish or municipal ordinance other than a parking ticket. According to the suit, the New Orleans judges are not following the law.

"We don't take pleasure in suing judges, but, in this case, they left us no choice," said Board Chairman Frank Neuner. "Over a period of several months, Board representatives and staff met with a number of judges independently and made a presentation to the entire bench to try come to agreement on a way to address the fee collection issue. Judicial inaction and a developing funding crisis forced us to act."

The Board was created by the Louisiana Legislature in 2007 and given regulatory authority over all aspects of Louisiana's public defense system. Along with this authority, the Board has great responsibility to the Legislature and, ultimately, to the people of Louisiana. A fair and effective criminal justice system requires the state to provide qualified counsel to eligible defendants who cannot afford representation.

The Legislature imposed the \$35 fee in an effort to shift part of the costs of representation from Louisiana's taxpayers to the people using the criminal court system. "If judges are not assessing the amounts that the Legislature intended, the costs of representation fall heavily upon Louisiana's taxpayers. The Board is doing what it can to keep from increasing that burden. The only way to do that was to file suit," Neuner said. The Orleans Public Defender office (OPD) is facing a significant financial shortfall that threatens its ability to continue operations. "This shortfall is largely a result of the judge's failure to impose the fee that is designated to pay for defense services," Neuner maintains. "Compliance would significantly assist the administration of criminal justice in New Orleans."

The suit, called a Petition for Writ of Mandamus, is a civil proceeding that is used to compel public officials to perform duties required by law. The Board's suit seeks to have the judges either collect the \$35 fee or explain to the court why they are not required to do so. Derwyn Bunton, District Defender for the 41st JDC (Orleans), said, "By refusing to follow the law by assessing and collecting the mandatory \$35 fee, the judges are contributing to the crisis that New Orleans' public defense is facing and, potentially, putting the entire criminal justice system at risk."

The Board is being represented *pro bono* by renowned civil litigation attorney, Phillip Wittmann. Wittmann, who has been practicing law with the New Orleans-based Stone Pigman law firm for the past 49 years, is a past president of the New Orleans Bar Association and is regularly included in publications naming the top lawyers in the country.

The office of the Orleans Public Defenders is an independent legal office and political subdivision of the state responsible for providing legal representation to indigent individuals charged with criminal offenses in Orleans Parish. The mission of the Orleans Public Defenders Office is to provide each eligible client with client-centered legal representation of the highest quality – zealous, conscientious, caring, professional, ethical and skilled – whether in criminal, juvenile or municipal/traffic court.

In 2007, the Legislature passed the Louisiana Public Defender Act. The Act passed with over 100 co-authors, reflecting both strong recognition of Louisiana’s public defense crisis and broad commitment to improve fairness and accountability in Louisiana’s courts. The Public Defender Act created the Louisiana Public Defender Board, an executive branch agency that serves the public, advocates for clients, supports practitioners and protects the public by continually improving the services guaranteed by the constitutional right to counsel. Through its commitment to performance standards, ethical excellence, data-driven practices and client-centered advocacy, the Louisiana Public Defender Board oversees the delivery of high quality legal services affecting adults, children and families, and supports community well-being across Louisiana.

A copy of the Petition for Writ of Mandamus may be found online at www.lpdb.la.gov.