

September 19, 2011 - Order of the COA filed granting the NAACP Legal Defense and Educational Fund, Inc. to file an amicus curiae brief. The brief shall be deemed filed as of September 19, 2011.

September 19, 2011 - Order of the COA filed granting the University of Baltimore School of Law and the University of Maryland Francis King Carey School of Law to file an amicus curiae brief. The brief shall be deemed filed as of September 19, 2011.

September 19, 2011 - Order of the COA filed granting the Leadership Conference on Civil and Human Rights to file an amicus curiae brief. The brief shall be deemed filed as of September 19, 2011.

September 19, 2011 - Order of the COA filed granting the National Association of Criminal Defense Lawyers, the American Civil Liberties Union, the American Civil Liberties Union of Maryland, the Brennan Center for Justice at NY University Law School, the Center for Constitutional Rights, and the National Legal Aid and Defender Association to file an amici curiae brief. The brief shall be deemed filed as of September 19, 2011.

September 23, 2011 - Joint Motion of Appellants to Increase Time for Oral Argument filed.

September 27, 2011 - Order of the Court of Appeals filed granting that oral argument time be increased to 30 minutes for appellants; 15 minutes for appellant DeWolfe to be divided between opening argument and rebuttal/x-opposition; and 45 minutes for appellees.

September 27, 2011 - Motion for Special Admission of Out-of-State Attorney Under Rule 14(a) of the Rules Governing Admission to the Bar of Maryland of William T. Robinson III.

September 27, 2011 - Motion for Special Admission of Out-of-State Attorney under Rule 14(a) of the Rules Governing Admission to the Bar of Maryland of Jeremy Hochberg.

September 27, 2011 - Motion for Special Admission of Out-of-State Attorney Under Rule 14(a) of the Rules Governing Admission to the Bar of Maryland of Baruch Weiss.

- September 27, 2011 - Motion for Special Admission of Out-of-State Attorney Under Rule 14(a) of the Rules Governing Admission to the Bar of Maryland of Daniel Friedman.
- September 27, 2011 - Motion for Special Admission of Out-of-State Attorney Under Rule 14(a) of the Rules Governing Admission to the Bar of Maryland of Rubina Madni.
- September 27, 2011 - Motion for Special Admission of Out-of-State Attorney Under Rule 14(a) of the Rules Governing Admission to the Bar of Maryland of Dirk Phillips.
- September 29, 2011 - Order of the Court of Appeals filed granting the special admission pro hac vice of William T. Robinson, III for the limited purpose of appearing and participating as co-counsel with movant, Ingrid Epperly on behalf of the American Bar Association.
- September 29, 2011 - Order of the Court of Appeals filed granting the special admission pro hac vice of Jeremy Hochberg for the limited purpose of appearing and participating as co-counsel with movant, Ingrid Epperly on behalf of the American Bar Association.
- September 29, 2011 - Order of the Court of Appeals filed granting the special admission pro hac vice of Baruch Weiss for the limited purpose of appearing and participating as co-counsel with movant, Ingrid Epperly on behalf of the American Bar Association.
- September 29, 2011 - Order of the Court of Appeals filed granting the special admission pro hac vice of Daniel Friedman for the limited purpose of appearing and participating as co-counsel with movant, Ingrid Epperly on behalf of the American Bar Association.
- September 29, 2011 - Order of the Court of Appeals filed granting the special admission pro hac vice of Rubina Madni for the limited purpose of appearing and participating as co-counsel with movant, Ingrid Epperly on behalf of the American Bar Association.
- September 29, 2011 - Order of the Court of Appeals filed granting the special admission pro hac vice of Dirk Phillips for the limited purpose of appearing and participating as co-counsel with movant, Ingrid Epperly on behalf of the American Bar Association.

October 3, 2011 - Motion to Strike "Corrected Brief" of Appellants filed.

October 5, 2011 - Response to Motion to Strike Corrected Brief filed.

October 7, 2011 - Order of the Court of Appeals filed granting the motion to strike "corrected brief" of appellants.

October 17, 2011 - Motion for Enlargement of Time filed.

October 18, 2011 - Order of the Court of Appeals filed granting that the appellant's reply brief shall be filed on or before October 19, 2011.

November 3, 2011 - Letter to the Clerk of the Court from Mitchell Y. Mirviss regarding Section IV (pages 63-66) of its decision in Boland v. Boland. (Sent to Court via memo.

January 4, 2012 - Judgment of the Circuit Court for Baltimore City affirmed. Costs to be paid by the District Court defendants.
Opinion by Barbera, J.
Concurring and Dissenting Opinion by Harrell, J., which Adkins, J., Joins.

January 30, 2012 - Letter to the Chief Judge from Joseph F. Vallario, Jr., Chairman, Judiciary Committee, re requesting that mandate in the above matter be delayed a minimum of 60 days to allow the legislature to properly deliberate and to determine the best resolution in light of the opinion.

February 1, 2012 - Motion for Reconsideration filed by counsel for appellants.

February 2, 2012 - Appellant Paul B. DeWolfe, Jr.'s Motion for Reconsideration and, in the Alternative, Stay of Issuance of Mandate;

Notice of Change of Address for A. Stephen Hut, Jr. filed.

February 3, 2012 - Letter from Michael Schatzow and Mitchell Y. Mirviss to the Clerk of the Court re Court's mandate.

February 16, 2012 - Letter to Michael Schatzow and Mitchell Mirviss re filing answers to motions for reconsideration that were filed by counsel for appellants. Answers due by March 5, 2012.

March 5, 2012 - Letter from William Brockman of the Attorney General's Office and counsel for appellants Ben Clyburn and other officials of the District Court requesting an opportunity to respond to the requested answers that were filed on March 5th.

March 12, 2012 - Appellant Paul B. DeWolfe, Jr.'s Motion for Leave to File Reply to Appellees' Response to Appellant's Motion for Reconsideration and, in the Alternative, Stay of Issuance of Mandate filed.

March 13, 2012 - Memorandum to the Court attaching letter and motion.

March 15, 2012 - Plaintiff's Response to Paul B. DeWolfe, Jr.'s Motion for Leave to File Reply or, in the Alternative, Plaintiffs' Conditional Motion for Leave to File Surreply filed.

March 15, 2012 - Plaintiffs' Surreply to Paul B. DeWolfe, Jr.'s Motion for Reconsideration or, in the Alternative, Stay of Issuance of the Mandate filed.

March 16, 2012 - Letter to William F. Brockman advising him Court in receipt of his letter of March 12, 2012. Court granted his request to respond to the answers to the motions for reconsideration filed in this case. His answer will be due on or before April 3, 2012.

March 16, 2012 - Order of the Court of Appeals filed that the Plaintiffs' conditional motion for leave to file surreply be, and it is hereby GRANTED.

March 16, 2012 - Order of the Court of Appeals filed that the Appellant Paul B. DeWolfe, Jr.'s motion for reconsideration and in the alternative stay of issuance of mandate be, and it is hereby, GRANTED, and the reply of the Public Defender is deemed filed.

April 3, 2012 - Response to Answer to Motion for Reconsideration filed by William F. Brockman.

April 13, 2012 - State of Maryland's Conditional Motion to Intervene filed.

April 16, 2012 - Plaintiffs' Response to State of Maryland's Conditional Motion to Intervene filed.

May 31, 2012 - Line filed by Julia Doyle Bernhardt, counsel for appellants, changing her address for the record.

July 9, 2012 - This matter came before the Court on the grant of a writ of certiorari. The Court heard oral argument on the matter on 11/8/2011 and issued an opinion affirming the Circuit Court's judgment in favor of Plaintiff-Appellees on 1/4/2012, on the ground that Sec. 16-204(b) of the Public Defender Act provides a right to representation at the initial bail hearing before a Commissioner. In light of that holding, it was unnecessary to decide, and the Court did not decide, whether Plaintiff-Appellees were entitled to relief on the basis of the right to counsel provided in either or both the Sixth Amendment to the U.S. Constitution and Article 21 of the MD Declaration of Rights.

Appellants Ben C. Clyburn, John Hargrove, David W. Weissert, Linda Lewis, and the Commissioners of the District Court of Maryland for Baltimore City (District Court Defendants) thereafter timely filed on 2/1/2012 a motion for reconsideration of the Court's opinion. Separately, Appellant Paul B. DeWolfe, Jr. (Public Defender) timely filed on 2/2/2012 a motion for reconsideration or, in the alternative, stay of issuance of the mandate. Plaintiff-Appellees Quinton Richmond, et al. (Plaintiffs) filed responses to the motions, and, subsequently, Appellants District Court Defendants and Public Defender filed replies to Plaintiffs' responses. In response to the District Court defendants' motion for reconsideration, the State of Maryland filed a motion to intervene in these proceedings, conditioned upon the Court's grant of Plaintiffs' request to decide immediately the pending constitutional issues, in light of the Legislature's response to the Court's 1/4/2012 opinion.

Among the matters presented in the foregoing filings is whether this Court, if it should decide to review the Federal and State constitutional claims raised by Plaintiffs but not decided in the 1/4/2012 opinion of the Court, first should remand the matter to the Circuit Court for further fact finding on the constitutional questions.

District Court Defendants assert "that an adjudication of [the constitutional] claims would benefit from a fuller factual record based on actual experience under the revised statute." Plaintiffs counter that "[the Court] could decide [the constitutional claims] now, without requiring further litigation in the Circuit Court."

It is the opinion of the Court, majority concurring, that further development of this issue will inform the disposition of the pending motions. Therefore, it is this 9th day of July, 2012,

ORDERED, that, within 20 days of the issuance of this order, Appellant District Court Defendants shall submit to the Court a memorandum of law limited to detailing, with specificity, the intended factual evidence they would proffer, not already found within the record currently before the Court, that Appellant District Court Defendants believe is necessary to consideration and resolution of the Federal and State constitutional claims raised by Plaintiffs; and, it is further

ORDERED, that the State of Maryland is hereby granted leave to intervene in these proceedings and may file a memorandum concurrently with the District Court Defendants; and, it is further

ORDERED, that, within 15 days thereafter, Appellee Plaintiffs and Appellant Public Defender may submit memoranda in response to those memoranda submitted by Appellant District Court Defendants and/or the State of Maryland.

July 30, 2012 - Response to Court's July 10, 2012 Inquiry filed by William F. Brockman, Deputy Solicitor General.

August 14, 2012 - Appellant Paul B. DeWolfe, Jr.'s Response to Appellant District Court Defendants' and Intervenor State of Maryland's "Response to Court's July 10, 2012 Inquiry" filed by Goetzl, Bashur of Wilmer Cutler Pickering and A. Stephen Hut, Jr., Assistant Public Defender.

August 14, 2012 - Plaintiffs' reply to State Defendants' "Response" to Court's July 10, 2012 Order filed by Mitchell Y. Mirviss.

August 22, 2012 - ORDERED, that the portion of the District Court Defendants' motion requesting a remand of the matter to the Circuit Court is denied; and, it is further

ORDERED, that this case shall be set for oral argument in the January 2013 session of the Court; and it is further

ORDERED, that Appellants, the District Court Defendants, the Public Defender, and the State of Maryland, shall file any supplemental briefs on or before September 26, 2012, and that Appellees, Quinton Richmond, et al., shall file any supplemental brief on or before October 26, 2012.

August 22, 2012 - Letter from Mitchell Y. Mirviss to the Court regarding the constitutional issues put forth in the Order of August 22, 2012.

August 22, 2012 - AMENDED ORDER filed.

September 20, 2012 - Motion for Special Admission of Out-of-State Attorneys Under Rule 14 of the Rules Governing Admission to the Bar of Maryland filed.

September 20, 2012 - Order of the Court of Appeals filed granting the special admission of out-of-state attorneys Brian Boynton and Nicole Ries Fox to appear and participate as co-counsel for the Public Defender.

October 10, 2012 - Motion to Enlarge Time Within Which to File Supplemental Briefs of Appellants filed.

October 10, 2012 - Order of the Court of Appeals filed granting that the State Appellants' motion to enlarge the time within which to file the supplemental briefs of appellants is granted; and that the time for filing the supplemental briefs of appellants is extended to October 15, 2012.

November 2, 2012 - Motion to Extend Time for Filing Appellees' Supplemental brief filed.

November 5, 2012 - ORDERED, by the Court of Appeals of Maryland, that the motion be, and it is hereby, granted and the supplemental brief(s) of the appellees shall be due on or before December 5, 2012; and it is further

ORDERED that supplemental reply briefs of the parties will be permitted with appellants supplemental reply brief(s)

being due on or before December 19, 2012 and appellees supplemental reply brief(s) being due on or before January 2, 2013.

January 16, 2013 - Notice of Withdrawal of Appearance filed by Aron B. Goetzl. Mr. Goetzl is leaving the law firm of Wilmer Cutler Pickering Hale and Dorr LLP effective 1/18/2013. Mr. DeWolfe will continue to be represented by other Wilmer Cutler Pickering Hale and Dorr LLP attorneys who have entered appearances in this matter.

September 25, 2013 - Judgment of the Circuit Court for Baltimore City except for the declaratory judgment, affirmed for the reasons set forth in our opinion and Order of January 4, 2012. Declaratory judgment of Circuit Court for Baltimore City vacated and case remanded to the circuit court for the entry of a declaratory judgment in accordance with this opinion. Costs to be paid by the State of Maryland. Opinion by Eldridge, J. Dissenting opinion by Barbera, C.J., which Harrell and Adkins, JJ., join.

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Top court won't stay lawyers-at-bail ruling

Posted: 7:37 pm Wed, November 6, 2013
 By Steve Lash
 Daily Record Legal Affairs Writer

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Maryland's top court said Wednesday it will not stay its landmark decision that criminal defendants have a constitutional right to counsel at initial bail hearings — but even so, it may have prolonged the seven-year legal fight between the accused and the state.

The Court of Appeals, in rejecting the state's request for a stay, directed the Baltimore City Circuit Court to issue a declaratory judgment ordering the state to provide counsel for indigent defendants at initial bail hearings.

However, nothing in the high court's decision stops the state from asking the circuit court for a delay based on the same argument Attorney General Douglas F. Gansler made in seeking the stay.

The state is reviewing the Court of Appeals' order rejecting the stay and has not made a final decision on what action it will take, the attorney general's office said.

In requesting the stay, Gansler said the General Assembly needs time to raise the additional \$28 million that the Maryland Office of the Public Defender said it will need annually to have attorneys on call at 177,000 initial bail hearings statewide.

Chief Maryland District Court Judge Ben. C. Clyburn, who joined the stay request in the Court of Appeals, said he will not seek a further delay; instead, he will focus his energy on ensuring that the right to counsel at initial bail hearings is implemented by the District Court commissioners who preside at them.

"I'm not fighting anything," Clyburn said Wednesday. "I am moving forward. We are ready to go."

An attorney for the indigent defendants who have waged the seven-year fight said he is "delighted" the District Court will not seek delay.

"I assume that means they're ready to implement immediately," added the lawyer, Michael Schatzow of Venable LLP in Baltimore.

Schatzow noted that the Court of Appeals passed procedural rules Monday

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to ensure defendants are represented by counsel at initial bail hearings. The court, however, placed the rules on hold pending resolution of the Baltimore City Circuit Court litigation.

The rules, when implemented, will permit District Court administrative Judges to appoint private attorneys if the public defender's office is short-staffed.

The appointed lawyers would be paid a fee based on the Office of the Public Defender's payment scale for panel attorneys -- those the office hires when it cannot handle a case itself due to a conflict of interest or some other reason. The bill for services would be sent to the state.

The rules will also require commissioners to tell unrepresented defendants of their right to counsel and that an attorney will be provided if they cannot afford one.

The Maryland Judiciary's Standing Committee on Rules of Practice and Procedure proposed the rules following the high court's DeWolfe v. Richmond decision in September.

Maryland Public Defender Paul B. DeWolfe, a titular defendant in the case, said his office did not press for a stay and is not seeking any further delay.

"It is our responsibility as attorneys for indigent defendants to protect their constitutional rights," DeWolfe added.

At the initial hearings, commissioners set bail or decide to release defendants on their own recognizance. If bail is set but cannot be paid, the defendant is sent to jail, where he or she remains until a bail review hearing is held, usually within 24 hours.

In its 4-3 decision, the Court of Appeals said the Maryland Constitution's due-process provision holds that the right to counsel "attaches in any proceeding that may result in the defendant's incarceration," including an initial bail hearing.

The Richmond litigation began in November 2006 in Baltimore City Circuit Court on behalf of 11 indigent defendants. The class action challenged procedures at the city's Central Booking and Intake Facility, where a commissioner sets the initial bail.

A circuit court judge originally granted summary judgment for the state, but the Court of Appeals sent the case back in March 2010 with instructions to add the public defender as a party.

That October, Judge Alfred Nance ruled there was a right to counsel, a decision the Court of Appeals affirmed in January 2012.

The 2012 decision found a statutory right to counsel at bail under the Maryland Public Defender Act. Motions for reconsideration were pending when the General Assembly amended the law last year.

The court then reheard argument on the constitutional question this January and issued its decision, finding the right existed, on Sept. 25.

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IN THE COURT OF APPEALS OF MARYLAND

ADMINISTRATIVE ORDER ESTABLISHING APPOINTMENT PROCESS FOR
ATTORNEYS REPRESENTING INDIGENT DEFENDANTS AT INITIAL
APPEARANCES BEFORE DISTRICT COURT COMMISSIONERS

WHEREAS, On September 25, 2013, the Court of Appeals filed its opinion in *DeWolfe v. Richmond* ("Richmond"), which held that indigent criminal defendants have the constitutional right to representation by counsel at initial appearances before District Court Commissioners, and the Court's mandate issued on October 17, 2013; and

WHEREAS, On October 15, 2013, the Standing Committee on Rules of Practice and Procedure submitted its 181st Report to the Court of Appeals, which contained proposed rules to implement the *Richmond* decision, and which the Committee recommended be adopted on an emergency basis; and

WHEREAS, On November 6, 2013, the Court, after making certain amendments, adopted the proposed rules changes in the 181st Report, but provided that they would not take effect until the issuance of a further Order of the Court because of uncertainties regarding the possible need for further action in the trial court; and

WHEREAS, Among the rules changes in the 181st Report is an amendment to Maryland Rule 4-216, namely subsection (e)(1)(A)(iii), which establishes the process by which the District Court appoints attorneys to represent indigent defendants at initial appearances before District Court Commissioners, should the Office of the Public Defender decline representation of any eligible defendant; and

WHEREAS, The process set forth in revised Rule 4-216(e)(1)(A)(iii), when it becomes effective, is integral to the effectuation of the constitutional right to counsel and,

ADMINISTRATIVE ORDER ESTABLISHING APPOINTMENT PROCESS FOR ATTORNEYS REPRESENTING INDIGENT DEFENDANTS AT INITIAL APPEARANCES BEFORE DISTRICT COURT COMMISSIONERS

Page 2 of 3

therefore, advance preparation for its full implementation should be established as soon as possible; and

WHEREAS, Because the Court is not ready to make all of the rules changes in the 181st Report immediately effective, it is appropriate to issue an Administrative Order, consistent with Rule 4-216(e)(1)(A)(iii), commencing the alternate private attorney appointment process for representation of eligible defendants in the District Court so that the rules changes may be implemented timely upon declaration of their effective date.

NOW, THEREFORE, I, Mary Ellen Barbera, Chief Judge of the Court of Appeals and administrative head of the Judicial Branch, pursuant to the authority conferred by Article IV, § 18 of the Maryland Constitution, do hereby order this 26th day of November, 2013, effective immediately;

1. Appointment Process. The Chief Judge of the District Court shall direct the District Administrative Judge in each district (i) with the assistance of local bar associations and other interested groups, to solicit qualified private attorneys in the district who would be willing to accept an appointment by the Court to represent eligible indigent defendants at initial appearances before commissioners in the district, the fees and expenses for such representation to be governed by the schedule used by the Public Defender for panel attorneys and to be charged against the State of Maryland, (ii) to compile a list of those attorneys who agree to serve on a standby basis, and (iii) to develop an efficient and effective procedure for notifying such attorneys of an actual appointment.

2. Rescission of Order. Subject to any further Administrative Order, this Order will

ADMINISTRATIVE ORDER ESTABLISHING APPOINTMENT PROCESS FOR ATTORNEYS
REPRESENTING INDIGENT DEFENDANTS AT INITIAL APPEARANCES BEFORE DISTRICT COURT
COMMISSIONERS

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be rescinded on the effective date of the rules changes in the 181st Report.

/s/ Mary Ellen Barbera

Mary Ellen Barbera
Chief Judge of the Court of Appeals

Filed: November 26, 2013

/s/ Bessie M. Decker

Bessie M. Decker

Clerk

Court of Appeals of Maryland

Ben Clyburn/DC/MDCOURTS

11/26/2013 02:15 PM

To DC - District Court - Administrative Judges, DC - District Court - Administrative Clerks, DC - District Court - Commissioners - Administrative, Ben Clyburn/DC/MDCOURTS@MDCOURTS
cc Mary Ellen Barbera/AC/MDCOURTS@MDCOURTS, Alan Wilner/AC/MDCOURTS@MDCOURTS, Thomas Ross/CC/MDCOURTS@MDCOURTS, jdebellus@meccourt.com,
bcc

Subject Implementation of Richmond Rules - Commencement of the Alternate Private Attorney Appointment Process

Dear Administrative Judges:

Attached is an Administrative Order regarding the implementation of *Richmond* (Attachment A). On November 16, 2013, the Court, after making certain amendments, adopted the proposed rules in the 181st Report, but provided that they would not take effect until the issuance of a further Order of the Court (Attachment B). The attached Administrative Order makes amended Rule 4-216(e)(1)(A)(iii), effective immediately. No other provisions of the Rules are effective until further notice.

Pursuant to the Administrative Order and amended Rule 4-216(e)(1)(A)(iii), I direct you to (1) with the assistance of local bar associations and other interested groups, to solicit qualified private attorneys in the district who would be willing to accept an appointment by the Court to represent eligible indigent defendants at initial appearances before commissioners in the district, the fees and expenses for such representation to be governed by the schedule used by the Public Defender for panel attorneys and to be charged against the State of Maryland, (ii) to compile a list of those attorneys who agree to serve on a standby basis, and (iii) to develop an efficient and effective procedure for notifying such attorneys of an actual appointment.

Susan Armiger, Assistant Chief Clerk of Finance, has contacted the Office of the Comptroller to determine how bills will be processed to the State. I will contact you once we hear from the Comptroller's office.

Thank you for your immediate attention to this Directive.

CJC



Richmond - (Attachment A).pdf



Rules Order - (Attachment B).pdf

ANNUAL REPORT

And

OFFICIAL OPINIONS

Of The

ATTORNEY GENERAL

Of

MARYLAND

1991

J. JOSEPH CURRAN, JR.

ATTORNEY GENERAL

earmarked for an identifiable position or if a position is being abolished without a corresponding budget cut linked to the position, the action in question is to be treated as a layoff, subject to Article 64A, §35.

J. Joseph Curran, Jr.
Attorney General

Jack Schwartz
Chief Counsel
Opinions & Advice

Editor's Note:

In *Workers' Compensation Comm'n v. Driver*, 336 Md. 105, 647 A.2d 96 (1994), the Court of Appeals held that employees whose positions were abolished through budgetary action are not entitled to rights under the layoff statute, which is now codified at Title 11, Subtitle 2 of the State Personnel and Pensions Article.

PUBLIC DEFENDER

**BUDGETARY ADMINISTRATION – CRIMINAL PROCEDURE – ATTORNEYS
– CONSTITUTIONAL LAW – APPOINTMENT OF COUNSEL IN
CONFLICT CASES**

October 4, 1991

Stephen E. Harris, Esquire
Public Defender for the
State of Maryland

You have requested our opinion on certain questions about the representation of indigent defendants, given the serious budgetary constraints affecting your office. You indicate that, as a result of budget cuts, your office no longer has funds to pay for the services of panel attorneys. As of September 30, 1991, your office stopped referring cases to panel attorneys even in situations where your office is precluded by a conflict from representing a defendant. Instead you are declining representation, with the expectation that counsel for the defendant will be appointed by the court.

You first ask whether you are correct in interpreting the statute to permit you to refuse to provide representation where to do so would give rise to a conflict. In our view, your office is indeed required to decline representation in such cases.

Second, you ask how private counsel are to be paid when courts begin to appoint counsel in cases that previously would have been assigned to a panel attorney. We advise that the appointing court could set the amount of compensation and ordinarily would require the county to pay the fee. If no funds are available for this purpose, the assigned lawyers could be called upon, as officers of the court, to carry out such assignments without fee.¹

¹ Your third question, having to do with alternatives if your proposed course of action were not lawful, is moot in light of our responses to the first two.

While our advice outlines a procedure that would meet the State's legal obligations to indigent defendants, we do not mean to suggest that this procedure is free of practical difficulties. Quite the contrary: this procedure undoubtedly will entail severe administrative burdens and is a far cry from the sensible approach to the representation of the indigent reflected in the wise decision to create your office, with its authority to engage panel attorneys in conflict cases, and on which the criminal justice system has come to rely. That a result is lawful does not make it feasible, let alone desirable. But, in the absence of new revenues, you and the courts have no choice.

I

Representation of Indigent Defendants in Conflict Cases

Under Article 27A, §6(a) of the Maryland Code, the Public Defender "shall maintain a confidential list of private attorneys-at-law who shall be available to serve as counsel to indigent persons eligible for legal representation under this article." These private attorneys are classified into panels. "Panel attorneys shall be compensated by the Public Defender for their professional services and expenses incident to representation of indigent persons" Article 27A, §6(d).

We agree with the premise that your office may not continue to assign cases to panel attorneys when no appropriation for that purpose remains available. The compensation of panel attorneys is derived "from funds authorized by the budget for the Office of the Public Defender." Article 27A, §6(d). See also §13(1) ("Funds for carrying out the provisions of this article shall be ... [a]s provided in the State budget from time to time."). If, as a result of budget reductions, the requisite appropriations are not available, your office has no choice but to cease the activity that would have been funded by the appropriation. See generally *76 Opinions of the Attorney General* 327 (1991); *75 Opinions of the Attorney General* 366 (1990).

At the same time, the lack of funds does not mitigate the State's responsibility to provide counsel for indigent defendants to the extent required by the Sixth Amendment to the United States Constitution, which grants to a criminal defendant the right "to have the Assistance of Counsel for his defence." See *Gideon v. Wainwright*, 372 U.S. 335 (1963).

Nor would a budget shortfall excuse compliance with ethical requirements governing conflicts in litigation. Rule of Professional Conduct 1.7(b) states the general principle that "[a] lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client" Dual

representation is permissible only if "the lawyer reasonably believes the representation will not be adversely affected" and "the client consents after consultation." The comment to the rule observes that "[t]he potential for conflict of interest in representing multiple defendants in a criminal case is so grave that ordinarily a lawyer should decline to represent more than one co-defendant." You have indicated that your office cannot, consistently with its ethical obligations, arrange for representation within your office of codefendants who do not consent to the arrangement.²

The solution to the conflict problem is found in Article 27A, §6(f), which provides that "[n]othing in this article shall be construed to deprive any court mentioned in §4(b)(2) of this article of its authority to appoint an attorney to represent an indigent person where there is a conflict in legal representation in a matter involving multiple defendants and one of the defendants is represented by or through the Office of Public Defender"³ Under §2-102(a) of the Courts Article ("CJ" Article), "a court may appoint ... counsel for a party if authorized by law or rule ...," and the Revisor's Note to CJ §2-102 cites Article 27A, §6(f) as "allow[ing] a court to appoint counsel for a criminal defendant where the public defender is in conflict of interest or where there is no public defender available." Chapter 2, Laws of Maryland 1973 at 37. See Rules 4-202(a) and 4-214(b).

II

Compensation of Appointed Counsel

"Being an officer of the Court," a member of the bar is "in the absence of a reasonable excuse, bound to perform the duty assigned him." *Worcester County v. Melvin*, 89 Md. 37, 40, 42 A. 910 (1899). At the same time, the Court of Appeals remarked that, "whilst the Court possessed the power and authority to require [the lawyer's] services, it would not have been justified in exacting them without making some provision for reasonable compensation." *Id.* And, indeed, under CJ §2-102(b)(2), appointed defense counsel would be a "special officer

² See Rule 1.10(a) and comment regarding the imputed disqualification of one lawyer to others in an office. You might wish to explore with the bar association or experts in legal ethics the nature of imputed disqualification in the situation you describe. "Most courts have recognized that it is inappropriate automatically to treat a prosecutor's office or a public defender's office as a 'firm' for purposes of imputed disqualification." Hazard & Hodes, *The Law of Lawyering* §1.10-202, at 326 (2d ed. 1990).

³ Section 4(b)(2) mentions "the District Court of Maryland, the various circuit courts ..., and the Court of Special Appeals."

ordinarily entitled to compensation in "[t]he amount set by the court ..."⁴

CJ §2-102(c) provides that "[a] special officer's fee may be taxed as costs or paid by the county."⁵ Obviously, an indigent defendant, by definition, could not pay these costs even if the court chose to tax them. See Rule 4-353. Thus, as a practical matter, the fee for counsel appointed to represent an indigent defendant would be payable by the county whose State's Attorney brings the prosecution. Cf. *State v. City of Baltimore*, 296 Md. 67, 72-73, 459 A.2d 585 (1983) and *Mayor and City Council v. Pattison*, 136 Md. 64, 68, 110 A. 106 (1920) (recognizing common law obligation of Baltimore City and the counties to pay criminal court costs and fees when a defendant is convicted but indigent).⁶

However, neither the statute nor the caselaw addresses the question of responsibility for payment of court-designated fees in the absence of local appropriations for that purpose. It may be, therefore, that until funds become available, appointed counsel will have to serve without fee.

Requiring a lawyer to provide uncompensated representation to an indigent defendant raises constitutional questions, and the cases are not uniform. See generally Annot., *Right of Attorney Appointed by Court for Indigent Accused to ... Compensation by Public ...*, 21 A.L.R. 3d 819 (1968). However, the majority — and, we believe, the better — view is that a lawyer has no constitutional right to refuse an uncompensated appointment.

⁴ The term "court" means "the Court in which the officer serves, but if the officer serves in a district of the District Court it means the District Court for county or district in which he serves." CJ §2-101(c).

⁵ The term "county" includes Baltimore City. Article 1, §14.

⁶ Prior to the establishment of the Public Defender's Office, counties spent substantial sums for appointed defense counsel — nearly \$1 million in fiscal year 1970, for example. Report of Joint Governor's Commission and Baltimore City Bar Association's Committee for the Study of Public Defender System for the State of Maryland 62 (1970). Of course, counties do not now appropriate funds for this purpose.

With respect to the District Court, we recognize that the entire costs of its "operation [and] administration" are borne by the State, not the counties. CJ §1-608(a). However, the express inclusion of the District Court in CJ §2-101(c) means that the compensation set by the District Court for appointed counsel under CJ §2-102(b)(2) is payable by the county in which the appointed counsel serves.

First of all, the Sixth Amendment does not itself impose a compensation requirement. In the words of Justice White, "nothing in the Sixth Amendment ... would prohibit a State from requiring its lawyers to represent indigent criminal defendants without any compensation for their services at all." *Martin County v. Makemson*, 479 U.S. 1043, 1045 (1987) (White, J. dissenting from denial of certiorari) (emphasis omitted).

Nor, in our view, does any other provision of the U.S. Constitution. "Attorneys may constitutionally be compelled to represent indigent defendants without compensation. The thirteenth amendment has never been applied to forbid traditional modes of public service even when only a limited segment of the population is so compelled.... [And] [t]he vast majority of federal and state courts ... have decided that requiring counsel to serve without compensation is not an unconstitutional taking of property without just compensation." *Williamson v. Vardeman*, 674 F.2d 1211, 1214 (8th Cir. 1982). See also, e.g., *Dolan v. United States*, 351 F.2d 671 (5th Cir. 1965); *United States v. Dillon*, 346 F.2d 633 (9th Cir. 1965). But see, e.g., *Family Div. Trial Lawyers v. Moultrie*, 725 F.2d 695, 705-06 (D.C. Cir. 1984) ("unreasonable amount of required uncompensated service" might qualify as a "taking").

Indeed, courts in other states have recognized the duty of the bar to accept uncompensated assignments in response to budget problems comparable to the present situation in Maryland. In *In re Spann*, 183 N.J. Super. 62, 443 A.2d 239 (1982), the court held in contempt a lawyer who refused assignment of the defense of a criminal defendant, at a time when the New Jersey Legislature had declined to fund that state's public defender's office: "[U]ntil the Legislature provides the necessary funds for the Public Defender to assume the responsibility mandated by [statute], members of the bar of the State of New Jersey will have to continue to bear the burden of representing indigent defendants ... as they have done in the past." 443 A.2d at 243. See also *State ex rel. Wolff v. Ruddy*, 617 S.W.2d 64, 65-66 (Mo. 1981).

III

Conclusion

In summary, it is our opinion that if your office is unable to represent a defendant because of a conflict and if funds for the provision of panel attorneys are unavailable, the defendant would be represented

by an attorney appointed by the court. To the extent of available funds, the county in which the prosecution is brought would be responsible for paying the fees set by the court for the appointed attorney's services.

J. Joseph Curran, Jr.
Attorney General

Jack Schwartz
Chief Counsel
Opinions and Advice

PUBLIC OFFICERS AND EMPLOYEES

PUBLIC DRAINAGE ASSOCIATION MANAGER HOLDS OFFICE OF PROFIT

June 27, 1991

Edward H. Hammond, Jr., Esquire
County Attorney for Worcester County

On behalf of the Worcester County Commissioners, you have requested our opinion whether a public drainage association manager holds an "office of profit" within the meaning of Article 35 of the Maryland Declaration of Rights.

For the reasons stated below, we conclude that a public drainage association manager does hold an office of profit.

I

Background

Article 35 of the Declaration of Rights provides in pertinent part that "no person shall hold, at the same time, more than one office of profit, created by the Constitution or laws of this State" Your question arises because certain public drainage association managers have held other positions that are considered to be offices of profit — for example, members of a soil conservation district. See *56 Opinions of the Attorney General* 329 (1971). Hence, if the position of manager of a public drainage association is also an office of profit, simultaneous service of this kind would not be permissible.¹

The analysis of "office of profit" questions has two steps: (1) Is the position a public "office," as distinct from employment? (2) If so, is the office one "of profit"? See *72 Opinions of the Attorney General* 286, 288-89 (1987).

¹ When a person who holds one office of profit accepts a second office of profit, the first office is deemed to have been vacated. See, e.g., *Truitt v. Collins*, 122 Md. 526, 530, 89 A. 850 (1914).

QUINTON RICHMOND, et al.,

Plaintiffs,

v.

THE HON. BEN C. CLYBURN, et al.,

Defendants.

*

IN THE

*

CIRCUIT COURT

*

FOR

*

BALTIMORE CITY

*

Case No. 24-C-06-009911 CN

* * * * *

ORDER TO SHOW CAUSE

Upon consideration of the Petition for Further Relief, it is this ___ day of _____, 2013, by the Circuit Court for Baltimore City,

ORDERED that the application by Plaintiffs for supplementary relief is sufficient. The District Court Defendants are hereby directed to show cause why the requested relief should not be granted within ___ days of the date of this Order.

JUDGE ALFRED NANCE
Circuit Court for Baltimore City

cc: Michael Schatzow, Esq.
Mitchell Y. Mirviss, Esq.
William F. Brockman, Esq.
Julia Doyle Bernhardt, Esq.
A Stephen Hut, Jr., Esq.
Ashley Bashur, Esq.

QUINTON RICHMOND, et al.,

Plaintiffs,

v.

THE HON. BEN C. CLYBURN, et al.,

Defendants.

* IN THE

* CIRCUIT COURT

* FOR

* BALTIMORE CITY

* Case No. 24-C-06-009911 CN

* * * * *

ORDER GRANTING PERMANENT INJUNCTION

Upon consideration of Plaintiffs' Petition for Further Relief, and any response thereto by the parties, it is this ___ day of _____, 2013, by the Circuit Court for Baltimore City,

ORDERED that Court finds that the grounds for a permanent injunction have been satisfied; and it is further, ORDERED that the Plaintiffs' Petition for Further Relief is hereby granted. The District Court Defendants are hereby ordered to appoint counsel for Plaintiffs at all initial bail hearings. This Order shall take effect immediately.

JUDGE ALFRED NANCE
Circuit Court for Baltimore City

cc: Michael Schatzow, Esq.
Mitchell Y. Mirviss, Esq.
William F. Brockman, Esq.
Julia Doyle Bernhardt, Esq.
A Stephen Hut, Jr., Esq.
Ashley Bashur, Esq.

QUINTON RICHMOND, et al.,	*	IN THE
Plaintiffs,	*	CIRCUIT COURT
v.	*	FOR
THE HON. BEN C. CLYBURN, et al.,	*	BALTIMORE CITY
Defendants.	*	Case No. 24-C-06-009911 CN

* * * * *

ORDER GRANTING PERMANENT INJUNCTION

Upon consideration of Plaintiffs’ Petition for Further Relief, and any response thereto by the parties, it is this ___ day of _____, 2013, by the Circuit Court for Baltimore City,

ORDERED that Court finds that the grounds for a permanent injunction have been satisfied; and it is further, ORDERED that the Plaintiffs’ Petition for Further Relief is hereby granted. The District Court Defendants are hereby prohibited from (a) conducting initial bail hearings for Plaintiffs without appointing counsel for them, and (b) directing the incarceration of Plaintiffs who have not been provided counsel at such hearings. This Order shall take effect immediately.

JUDGE ALFRED NANCE
Circuit Court for Baltimore City

cc: Michael Schatzow, Esq.
Mitchell Y. Mirviss, Esq.
William F. Brockman, Esq.
Julia Doyle Bernhardt, Esq.
A Stephen Hut, Jr., Esq.
Ashley Bashur, Esq.

QUINTON RICHMOND, et al.,	*	IN THE
Plaintiffs,	*	CIRCUIT COURT
v.	*	FOR
THE HON. BEN C. CLYBURN, et al.,	*	BALTIMORE CITY
Defendants.	*	Case No. 24-C-06-009911 CN

* * * * *

**MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF PETITION FOR FURTHER RELIEF**

Plaintiffs Quinton Richmond, et al., by their undersigned counsel, respectfully submit the following Memorandum of Points and Authorities in Support of their Petition for Further Relief seeking injunctive relief against Defendants the Hon. Ben C. Clyburn, the Hon. John R. Hargrove, Jr., David Weissert, Linda Lewis, and the Commissioners of the District Court for Baltimore City (collectively, the “District Court Defendants” or the “DCDs”).

PRELIMINARY STATEMENT

Throughout this case, the DCDs have done everything possible to delay or prevent the provision of counsel to Plaintiffs at initial bail hearings. They opposed the entry of an injunction to accompany the Court’s original declaratory judgment and then in the same breath argued that the Court’s issuance of a declaratory judgment without an injunction would create a res judicata bar against any injunctive relief in the future. Along with the Public Defender, they argued that the Court should not grant declaratory relief until funding and logistical issues were resolved in advance. After the initial decision by the Court of Appeals of January 4, 2012 (“DeWolfe I”), where the Court of Appeals expressly held that a stay was not appropriate to give the General Assembly time to consider funding and policy issues, the DCDs nonetheless moved for a stay and for reconsideration. After the second ruling by the Court of Appeals issued on September

25, 2012 (“DeWolfe II”), the State of Maryland (represented by the same counsel) sought a stay and moved for reconsideration and to recall the mandate of the Court of Appeals. In this Court, the DCDs opposed entry of the Court’s declaratory judgment and moved to vacate it. Now, in their Status Report (see Pet. Ex. 8), they ask for the Court to delay implementation of Plaintiffs’ right to counsel even further, suggesting that the Court defer to the Legislative and Executive Branches for another six months (at least) to consider the issue (again) of whether and how to reform the pretrial system in Maryland. Apparently, seven years of consideration while this case has been pending are not enough.

Even worse, the DCDs again argue that the Court should not take any steps to protect Plaintiffs’ right to counsel until the Executive or Legislative Branches earmark funds to pay for it. But the seven-year history of this case makes it perfectly clear that those branches will not authorize or appropriate funds until they have no choice but to do so. This creates their perfect daisy chain of perpetual constitutional violation: according to the DCDs, the Court should not act because funding is not available, and yet the record could not be clearer that funding will not be made available unless the Court acts and compels the DCDs to honor Plaintiffs’ constitutional rights. In asking the Court to wait until funding is provided, they seek to create a funding veto over Plaintiffs’ fundamental constitutional right to counsel.

The District Court Defendants’ contention that funding must precede honoring Plaintiffs’ constitutional rights upends the Constitutional structure of government that the Judicial Branch bears responsibility for declaring and enforcing constitutional rights. Legislatures do not have plenary power to negate the Declaration of Rights by failing to appropriate funds or by delaying such appropriations. Indeed, the Court of Appeals has definitively rejected the DCDs’ position, holding that “the executive and legislative budget authority is subject to the constitutional

limitations of the Declaration of Rights” and therefore affirming a preliminary injunction that required the expenditure of funds without advance budget authority. Ehrlich v. Perez, 394 Md. 691, 736 (2006). The Judiciary thus may not decline to enforce the Constitution merely because the Legislative and Executive Branches have not yet come to an agreement that those rights are worthy of enforcement. By asking this Court to wait until funds are available to pay for counsel as required by the Constitution, they want this Court to cede its constitutional role to the other branches of government. Under Maryland’s constitutional scheme, the DCDs’ request is improper and should be rejected out-of-hand. As it is clear that nothing will happen until the Court takes action, the Court must order the DCDs, on penalty of contempt, to commence their implementation of the Court of Appeals’ ruling and the Plaintiffs’ constitutional right to counsel.

ARGUMENT

I. Further Relief Is Warranted and Necessary.

In its order denying the State’s post-DeWolfe II motions for stay and to withdraw the mandate, the Court of Appeals anticipated further proceedings in this Court to enforce its declaratory judgment pursuant to Md. Code Ann., Cts. & Jud. Proc. (“CJP”) § 3-412. See Pet. Ex. 5, Order of Ct. of Appeals at 2 (citing Nova v. Penske, 405 Md. 435, 458-61, 952 A.2d 275, 289-91 (2008); Bankers & Ship. Ins. v. Electro Enters., 287 Md. 641, 652-53, 415 A.2d 278, 285 (1980)). The DCDs *agree* that the Court of Appeals has directed that the implementation of the new Rules will be triggered by further action by this Court pursuant to a petition for further relief pursuant to CJP § 3-412 and even chide Plaintiffs for having first demanded that the DCDs honor Plaintiffs’ constitutional rights voluntarily before Plaintiffs petitioned this Court to compel the DCDs to comply on penalty of contempt. See Ex. 8, Status Report at 6-7.¹

¹ Much of the Status Report takes umbrage at Plaintiffs for having gone to the District Court Defendants first to demand voluntary compliance before seeking coercive relief from this Court. It is not a material

The current posture of the case makes it clear that no implementation will occur unless the Court takes further action. For these reasons and those set forth in the Petition, the Court should grant further relief to enforce the Court's declaratory judgment.

II. Plaintiffs' Constitutional Rights Do Not Take a Back Seat to the District Court Defendants' Stated Claims that Implementation Must Await Funding and Resolution of All Logistical Challenges.

The District Court Defendants' principal stated reason for opposing immediate implementation – a purported lack of funding and lack of opportunity to address logistical concerns – is not a valid ground for denying Plaintiffs their constitutional right to counsel at initial bail hearings. As discussed in the Petition, the Attorney General has stated in a formal opinion issued to the Public Defender that “the lack of funds does not mitigate the State's responsibility to provide counsel for indigent defendants.” See Pls. Pet. at ¶ 18 (quoting Ex. 11, Op. No. 91-044, 76 Md. Op. Atty. Gen. 341, 342 (1991) (citing Gideon v. Wainwright, 372 U.S. 335 (1963))). That is especially the case here, where the record is clear that the funds will not be made available until the District Court Defendants are compelled to act.

The lack of pre-appropriated funds is no bar to injunctive relief to enforce constitutional rights. In Ehrlich v. Perez, 394 Md. 691 (2006), the Court of Appeals addressed the issue directly, considering whether a circuit court had authority to issue a preliminary injunction to reinstate Medical Assistance benefits retroactively to certain legal immigrants and their children who had been wrongfully denied benefits due to reductions in the State budget, in violation of the right to equal protection guaranteed by Article 24 of the Declaration of Rights. The State

issue for this Court, so Plaintiffs will not respond here beyond pointing out that it is common procedure to demand voluntary compliance from a defendant before petitioning a court for coercive relief. In light of Judge Clyburn's comments to the press proclaiming that the DCDs were ready to begin compliance and would not fight any further, Plaintiffs had every reason to hope that voluntary cooperation was possible. Unfortunately, the Status Report indicates a contrary intent: the District Court Defendants will continue to oppose immediate implementation and continue to seek to delay implementation well into the future.

defendants argued that the circuit court “lacked the authority to issue a preliminary injunction requiring expenditure of State funds” to pay for services that were not appropriated in the State budget. *Id.* at 713. While the Court of Appeals agreed that payment of past benefits could not be compelled through a preliminary injunction and instead had to be assessed as damages, it held that “because there is a likelihood that Appellants’ action was unconstitutional” the preliminary injunction was proper because “*the executive and legislative budget authority is subject to the constitutional limitations of the Declaration of Rights.*” *Id.* at 735 (emphasis added). Thus, the lack of pre-authorized appropriations cannot trump Plaintiffs’ constitutional rights. *Ehrlich* is dispositive of the issue at hand. Neither the Executive nor the Legislative Branches can veto Plaintiffs’ constitutional rights by failing to provide required funding.

In its January 4, 2012 decision, the Court of Appeals made clear that funding concerns do not stand in the way of the statutory right to counsel. See *DeWolfe v. Richmond*, --- Md. ---, No. 34, Sept. Term, 2011, slip op. at 29 (Jan. 4, 2012) (“*DeWolfe I*”) (“the budgetary concerns of the Public Defender never have played a role in Maryland appellate decisions involving defendants’ statutory right to counsel”); *id.* at 30 (adopting Judge Wilner’s statement in *Baldwin v. State*, 51 Md. App. 538, 555 (1982), that ““it goes without saying that reductions in the Public Defender’s budget and his desire to be frugal have no relevance whatever in the matter’ of whether a defendant qualified as ‘indigent’ under the Public Defender statute, that it was “the court’s obligation to uphold the law,” and that such ““obligation is not subject to or in any way dependent upon the level of appropriations received by the Public Defender”); *Office of the Pub. Defender v. State*, 413 Md. 411, 426 n.12 (2010) (quoting with apparent approval the statement in *Baldwin* that ““it goes without saying that reductions in the Public Defender’s budget and his desire to be frugal have no relevance whatever”” in the right to counsel), superseded on other

grounds by 2011 Md. Laws, ch. 244. These statements apply with even greater force to the constitutional right to counsel found by the Court of Appeals in DeWolfe II.

The Court of Appeals also quoted decisions from other jurisdictions making clear that courts “can hardly permit the legal rights of litigants to turn upon the alleged inability of the [governmental] defendant fully to meet his obligation to others” and that it “cannot in good conscience, however, deny relief to the plaintiffs pending such action” for legislative cures to the problem. DeWolfe I, --- Md. at ---, slip op. at 30-31 (quoting Caswell v. Califano, 583 F.2d 9 (1st Cir. 1978)); see also id. at 31 (discussing and quoting with approval Hurrell-Harring v. New York, 930 N.E.2d 217, 227 (N.Y. 2010), where New York’s top court allowed claims “to proceed notwithstanding that a remedy ... would necessitate the appropriation of funds and perhaps, particularly in a time of scarcity, some reordering of legislative priorities” as this did “not amount to an argument upon which a court might be relieved of its essential obligation to provide a remedy for violation of a fundamental constitutional right,” especially “a mandate as well-established and as essential to our institutional integrity as the one requiring the State to provide legal representation to indigent criminal defendants”).

Given these repeated pronouncements by the Court of Appeals, including a pronouncement in this very case, the DCDs’ concerns should be rejected out-of-hand. The Attorney General reached this very conclusion over two decades ago. The failure of the District Court Defendants to secure funding in advance of implementation does not mitigate Plaintiffs’ constitutional right to counsel. Implementation is both mandatory and imperative.

III. Plaintiffs Are Entitled to a Permanent Injunction Compelling the District Court Defendants to Comply with the Constitution on Pain and Penalty of Contempt.

Given the on-going failure of the District Court Defendants to comply with Plaintiffs’ constitutional rights, a permanent injunction is required. As the Court of Appeals has repeatedly

stated, if a defendant knowingly violates an established right of the plaintiff, a permanent injunction should issue. See Amabile v. Winkles, 276 Md. 234, 242 (1975) (holding that, where a violation is “committed with knowledge of the plaintiff’s right, the courts will refuse to balance the equities or conveniences and will grant the equitable relief sought”) (citing a long line of cases, including Lichtenberg v. Sachs, 213 Md. 147, 151-52 (1957)); see also Columbia Hills Corp. v. Mercantile-Safe Dep. & Trust Co., 231 Md. 379, 382 (1963) (rejecting defendant’s contention that even if the requested injunction would subject defendant “to great injury and afford[] [plaintiff] comparatively little benefit,” such that it would do more injury to the [defendant] than it would benefit the [plaintiff],” an unconstitutional result (in that case an unlawful taking of property) entitled the plaintiff to the injunction).

An injunction also is required under the four-part test for a permanent injunction under federal law. Under that test, a party must show:

- (1) that it has suffered an irreparable injury;
- (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury;
- (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted;
- and (4) that the public interest would not be disserved by a permanent injunction.

Christopher Phelps & Assocs., LLC v. Galloway, 492 F.3d 532, 543 (4th Cir. 2007); Marriott v. Cnty. of Montgomery, 426 F. Supp. 2d 1, 11 (N.D.N.Y 2006) (“The standard for a permanent injunction is essentially the same as the standard for a preliminary injunction, except that the moving party, instead of showing a likelihood of success on the merits must show actual success on the merits.”). But that test changes when a constitutional right is involved.

When requesting a permanent injunction to enjoin the violation of a plaintiff’s constitutional right, courts view the proven violation of a constitutional right as being so egregious that it constitutes irreparable harm by itself. See, e.g., 11A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure § 2948.1 (2d ed.1995)

“When an alleged constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary.”); Gour v. Morse, 652 F. Supp. 1166, 1173 (D. Vt. 1987) (“Constitutional rights are so basic to our society that their deprivation must be redressable by equitable remedies. Injury from their deprivation is almost by definition irreparable.”). Indeed, after a party has shown actual success on a constitutional challenge, “failure to grant [a] permanent injunction will result in irreparable injury because the constitutional right [] is threatened or impaired.” Causeway Med. Suite v. Foster, 43 F. Supp. 2d 604, 619 (E.D. La. 1999) (ordering permanent injunction after plaintiffs established a partial-birth abortion statute was facially unconstitutional and vague).

As for the public interest and balance of hardships,² these unquestionably favor Plaintiffs, as the denial of counsel all too often results in a loss of freedom, the most fundamental right in the Constitution. The Court of Appeals’ discussion of the “devastating effects” that can result from the denial of counsel definitively addresses this point. See DeWolfe II, slip op. at 4-5 (pointing out impact of initial bail determination on bail review hearings); id. at 5 (discussing “devastating” personal effects); id. at 5-6 (discussing conditions in the initial bail hearings). Conversely, the District Court Defendants cannot credibly plead hardship: they have had *seven years* to secure advance funding and to make whatever logistical arrangements are needed to

² In some cases, when a positive right established by statute or the Constitution is being violated such that the right itself (and the policy supporting that right) would be abrogated, federal courts do not engage in a balance of the equities even under federal law. See, e.g., Tennessee Valley Auth. v. Hill, 437 U.S. 153, 193-94 (1978) (declining to balance the equities and hardships of an injunction issued against completion of multi-million dollar dam whose operation would bring about the extinction of the Snail Darter fish, in violation of the Endangered Species Act, regardless of the costs involved); United States v. City & Cnty. of San Francisco, 310 U.S. 16, 30-31 (1940) (reversing Ninth Circuit decision that, based “upon a balancing of the equities,” had overturned an injunction, as “this case does not call for a balancing of equities or for the invocation of the generalities of judicial maxims in order to determine whether an injunction should have issued” because the “equitable doctrines relied on do not militate against the capacity of a court of equity as a proper forum in which to make a declared policy of Congress effective” and the clear interference with congressional intent “makes [a]n injunction to prohibit continued violation of that policy ... both appropriate and necessary”).

implement Plaintiffs' right to counsel. Indeed, the DCDs have been on clear notice since this Court's declaratory judgment three years ago, the DeWolfe I decision two years ago, and the DeWolfe II decision over two months ago that they likely would have to honor and implement the right to counsel. Their Status Report does not provide any good excuse for their desire not to go forward other than their suggestion that this Court should defer to the Executive and Legislative Branches to devise solutions. Indeed, contrary to the DCDs' position, Judge Clyburn has publicly declared that he and the DCDs are ready to proceed. The Court should therefore grant the Petition and issue an injunction compelling the DCDs to comply with the Maryland Constitution by providing counsel to Plaintiffs at initial bail hearings or, in the alternative, prohibiting the DCDs from directing the incarceration of Plaintiffs absent the provision of counsel at initial bail hearings.

CONCLUSION

For the foregoing reasons, this Court should grant the Petition for Further Relief and issue an injunction compelling the DCDs to comply with the Maryland Constitution by providing counsel to Plaintiffs at initial bail hearings or, in the alternative, prohibiting the DCDs from directing the incarceration of Plaintiffs absent the provision of counsel at initial bail hearings.

Respectfully submitted,



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QUINTON RICHMOND, et al., * IN THE
 Plaintiffs, * CIRCUIT COURT
 v. * FOR
 THE HON. BEN C. CLYBURN, et al., * BALTIMORE CITY
 Defendants. * Case No. 24-C-06-009911 CN

* * * * *

THE PUBLIC DEFENDER’S RESPONSE TO PLAINTIFFS’ PETITION FOR FURTHER RELIEF AGAINST THE DISTRICT COURT DEFENDANTS

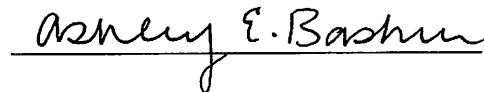
On September 25, 2013, the Court of Appeals of Maryland held that “under Article 24 of the Maryland Declaration of Rights, an indigent defendant is entitled to state-furnished counsel at an initial hearing before a District Court Commissioner.” *DeWolfe v. Richmond*, 434 Md. 444, 464 (2013). Plaintiffs Quinton Richmond, *et al.*, have now petitioned for further relief against the District Court Defendants following on to the declaratory judgment entered by this Court. The Petition seeks entry of an injunction “directing the District Court Defendants to appoint counsel for Plaintiffs at their initial bail hearings” or, in the alternative, “a negative injunction prohibiting the District Court Defendants from (a) conducting initial bail hearings for Plaintiffs without appointing counsel for them, and (b) directing the incarceration of Plaintiffs who have not been provided counsel at such hearings.”¹ Pet. for Further Relief 10.

The Office of the Public Defender will continue to support and defend all statutory and constitutional rights afforded its clients. Accordingly, if the Plaintiffs’ Petition is granted, the Public Defender is ready, willing, and able to provide representation at initial bail hearings

¹ The Public Defender interprets the Plaintiffs’ requested two-part negative injunction to mean that if counsel is not appointed to an indigent defendant at his or her initial bail hearing, a District Court Commissioner cannot conduct the hearing and a defendant who is otherwise eligible for release by a Commissioner, *cf.* Md. Code Ann., Crim. Proc. § 5-202 (West 2012), will be released from custody. If the Court were to conclude that there is any ambiguity with respect this issue, it should enter an injunction that makes clear that indigent defendants eligible for release must be released from custody if they are not provided counsel at their initial bail hearings.

before District Court Commissioners, assuming the State elects to discharge its obligations through the Office of the Public Defender, *cf. DeWolfe*, 434 Md. at 464 n.15, and appropriates sufficient funds for this purpose.

Respectfully submitted,



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*Counsel for Defendant
Paul B. DeWolfe, Jr.*

Dated: December 20, 2013

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 20th day of December, 2013, a copy of the foregoing Response to Plaintiffs' Petition for Further Relief Against the District Court Defendants was served by electronic mail and first class mail, postage prepaid, on:

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Counsel for District Court Defendants

By: Ashley E. Bashin

*Counsel for Defendant
Paul B. DeWolfe, Jr.*

January 8, 2014

VIA HAND-DELIVERY

The Honorable Alfred Nance
Judge, Circuit Court for Baltimore City
Room 561E, Courthouse East
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Re: Quinton Richmond, et al. v. The Hon. Ben Clyburn, et al.
Civil No. 24-C-06-009911 CN

Dear Judge Nance:

We are writing to inquire about the status of Plaintiffs' Petition for Further Relief, which we filed one month ago, on December 5, 2013. In that Petition, we explained that the Court of Appeals had conditioned its issuance of Rule amendments to implement its decision finding a constitutional right to counsel at initial bail hearings upon this Court issuing an Order compelling the District Court Defendants to comply. The Court of Appeals indicated that Plaintiffs should file such a Petition and cited case law that supported providing such relief. Pursuant to Md. Code Ann., Cts. & Jud. Proc. ("CJP") § 3-812(c), we asked the Court to issue an Order to Show Cause requiring the Defendants to answer the Petition for Further Relief. To date, the Public Defender has responded, but the District Court Defendants have not.

The procedure for moving forward is clearly laid out in the Declaratory Judgment Act. Under CJP § 3-812(c), "If the application is sufficient, the court, on reasonable notice, shall require any adverse party whose rights have been adjudicated by the declaratory judgment or decree, to show cause why further relief should not be granted." No Defendant is arguing that our application is insufficient. We therefore respectfully request that the Court enter the Order to Show Cause.

The Court first granted Plaintiffs declaratory relief over three years ago, on October 1, 2010. Since then, the Court of Appeals has twice affirmed this Court's ruling. The rights in question have been established and are indisputable. We see no clear reason why implementation cannot commence immediately. Even if the District Court Defendants still disagree on that point, we see no impediment that would stand in the way of adjudicating the issues in our Petition so that the new Rules will issue and compliance will commence.

Moreover, some of the barriers to implementation raised by the District Court Defendants in their "Status Report" seem to have been resolved. The Task Force to Study the Laws and Policies Relating to Representation of Indigent Criminal Defendants by the Office of the Public Defender has issued its final report to the General Assembly. On Monday, that task force heard

The Honorable Alfred Nance

January 8, 2014

Page 2

a presentation by Judge Clyburn of the final report of The Judiciary Task Force on Pretrial Confinement and Release. Judge Clyburn publicly stated at that hearing that the logistical concerns that had previously been raised regarding providing representation at the commissioner hearings had been addressed and resolved, such that, from a logistical perspective, they could occur immediately if the Rules were to issue and funding were to be available. As those latter events will occur after an Order is issued by the Court compelling the District Court Defendants to comply, the path appears clear for implementation to commence. The first step, therefore, is for the Court to issue the Order to Show Cause.

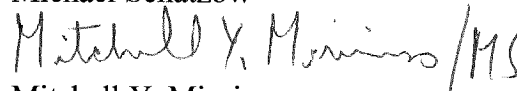
The Judiciary Task Force recommended an implementation date for its reform of January 1, 2015. To put it simply, it is not fair to the Plaintiffs to wait *another year* or longer while a long-term reform plan is fashioned and developed. This is particularly so given that the Court of Appeals has refused to stay, withdraw, or reconsider its mandate. Implementation can and should occur now, on an interim basis, while the politicians and policymakers debate the details of the long-term reforms. We know we do not need to remind the Court that the constitutional rights of scores of indigent criminal defendants are being violated every day in the City and across the State. This Court has been stalwart in stepping forward to protect the rights of indigent criminal defendants. We respectfully ask the Court to resume the process once more so that Plaintiffs may enjoy their constitutional rights promptly, rather than wait a year or longer until the long-term policy reforms are decided and developed.

Thank you for your consideration of this request.

Very truly yours,



Michael Schatzow



Mitchell Y. Mirviss

cc: William F. Brockman, Esq.
Julia Doyle Bernhardt, Esq.
A. Stephen Hut, Esq.
Ashley Bashur, Esq.
Clerk, Circuit Court for Baltimore City

QUINTON RICHMOND, *et al.*

Plaintiffs

v.

THE HONORABLE BEN C. CLYBURN, *et al.*

Defendants

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IN THE
CIRCUIT COURT
FOR
BALTIMORE CITY
Case No. 24-C-06-009911

ORDER

Upon consideration of the Petition for Further Relief filed by Plaintiffs against certain Defendants, namely the Honorable Ben C. Clyburn, David Weissert, Linda Lewis, and the Commissioners of the District Court for Baltimore City (collectively, the “District Court Defendants”), any responses thereto by the parties, review of the court file, and this Court finding:

1. The Court of Appeals of Maryland definitively ruled that Plaintiffs are entitled to representation by counsel at the initial bail hearings under the due process clause of Article 24 of the Maryland Declaration of Rights, affirming this Court’s ruling of October 1, 2010, that Plaintiffs have a constitutional right to counsel under Article 24;
2. The Court of Appeals issued its mandate on October 13, 2013;
3. Pursuant to directive of the Court of Appeals, on October 23, 2013, this Court issued a Declaratory Judgment specifically finding that Plaintiffs have a right to counsel at initial bail hearings under Article 24 of the Maryland Declaration of Rights, and that the District Court Defendants have been violating that said right by failing to provide counsel;
4. The District Court Defendants moved to vacate this Court’s Declaratory Judgment, and this Court denied that motion on November 1, 2013;

It is this 10th day of January, 2014, by the Circuit Court for Baltimore City, hereby

ORDERED, that the Plaintiffs' Petition for Further Relief is hereby **GRANTED**. And,

ORDERED, that the District Court Defendants are to appoint counsel for Plaintiffs at all initial bail hearings. And, further,

ORDERED, that this Court finds that the grounds for a **PERMANENT INJUNCTION** have been **SATISFIED**. Further, it is

ORDERED, that the District Court Defendants are hereby **PROHIBITED AND ENJOINED** from a) conducting initial bail hearings without appointing counsel for Plaintiffs, and/or b) directing the incarceration of any Plaintiffs who have not been provided counsel at such hearings. And,

ORDERED, that this Order shall take effect **IMMEDIATELY**.

Judge's signature appears on the original of this document.

Judge Alfred Nance
Circuit Court for Baltimore City

AN/ln

CC: Court File
All Parties

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6 Saint Paul St., Ste. 1400
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QUINTON RICHMOND, *et al.*

Plaintiffs

v.

THE HONORABLE BEN C. CLYBURN, *et al.*

Defendants

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IN THE
CIRCUIT COURT
FOR
BALTIMORE CITY
Case No. 24-C-06-009911

ORDER

Upon consideration of the Motion to Vacate Declaratory Judgment submitted by the District Court Defendants, the responses of the Plaintiffs and other Defendants, review of the court file, the Declaratory Judgment entered by this Court on October 24, 2013, and the decisions of the Maryland Court of Appeals, it is, on this 10th day of January, 2014, by the Circuit Court for Baltimore City, hereby

ORDERED, that Plaintiff's Motion to Vacate Declaratory Judgment is hereby **DENIED**.

Judge's signature appears on the original of this document.

Judge Alfred Nance
Circuit Court for Baltimore City

AN/lm

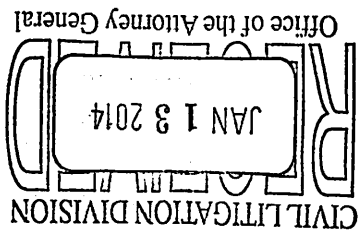
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QUINTON RICHMOND, *et al.*

Plaintiffs

v.

THE HONORABLE BEN C. CLYBURN, *et al.*

Defendants

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IN THE

CIRCUIT COURT

FOR

BALTIMORE CITY

Case No. 24-C-06-009911

ORDER

Upon consideration of the Motion to Vacate Declaratory Judgment submitted by the District Court Defendants, the responses of the Plaintiffs and other Defendants, review of the court file, the Declaratory Judgment entered by this Court on October 24, 2013, and the decisions of the Maryland Court of Appeals, it is, on this 10th day of January, 2014, by the Circuit Court for Baltimore City, hereby

ORDERED, that Plaintiff's Motion to Vacate Declaratory Judgment is hereby **DENIED**.

Judge's signature appears on the original of this document.

Judge Alfred Nance
Circuit Court for Baltimore City

AN/ln

CC: Court File
All Parties

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Office of the Attorney General
RECEIVED
JAN 13 2014
CIVIL LITIGATION DIVISION

QUINTON RICHMOND, *et al.*

Plaintiffs

v.

THE HONORABLE BEN C. CLYBURN, *et al.*

Defendants

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IN THE

CIRCUIT COURT

FOR

BALTIMORE CITY

Case No. 24-C-06-009911

AMENDED ORDER

Upon consideration of the Petition for Further Relief filed by Plaintiffs against certain Defendants, namely the Honorable Ben C. Clyburn, the Honorable John R. Hargrove, Jr., David Weissert, Linda Lewis, and the Commissioners of the District Court for Baltimore City (collectively, the “District Court Defendants”), any responses thereto by the parties, review of the court file, and this Court finding:

1. The Court of Appeals of Maryland ruled that Plaintiffs are entitled to representation by counsel at the initial bail hearings under the due process clause of Article 24 of the Maryland Declaration of Rights, affirming this Court’s ruling of October 1, 2010, that Plaintiffs have a constitutional right to counsel under Article 24;
2. The Court of Appeals issued its mandate on October 13, 2013;
3. Pursuant to directive of the Court of Appeals, on October 23, 2013, this Court issued a Declaratory Judgment specifically finding that Plaintiffs have a right to counsel at initial bail hearings under Article 24 of the Maryland Declaration of Rights, and that the District Court Defendants have been violating that said right by failing to provide counsel;

4. The District Court Defendants moved to vacate this Court's Declaratory Judgment, and this Court denied that motion on November 1, 2013;

It is this 10th day of January, 2014, by the Circuit Court for Baltimore City, hereby

ORDERED, that the Plaintiffs' Petition for Further Relief is hereby **GRANTED**. And,

ORDERED, that the District Court Defendants are to appoint counsel for Plaintiffs at all initial bail hearings. And, further,

ORDERED, that the District Court Defendants are hereby **PROHIBITED AND ENJOINED** from a) conducting initial bail hearings without appointing counsel for Plaintiffs, and/or b) directing the incarceration of any Plaintiffs who have not been provided counsel at such hearings. And,

ORDERED, that this Order shall take effect **IMMEDIATELY**.

Judge's signature appears on the original of this document.

Judge Alfred Nance
Circuit Court for Baltimore City

AN/lh

CC: Court File
All Parties

William F. Brockman, Esq.
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CIVIL LITIGATION DIVISION

RECEIVED
JAN 14 2014

Office of the Attorney General

BEN C. CLYBURN, et al.

*** IN THE**

*** COURT OF APPEALS**

*** OF MARYLAND**

v.

*** Petition Docket No. 622
September Term, 2013**

QUINTON RICHMOND, et al.

*** (No. , September Term, 2013
Court of Special Appeals)**

TEMPORARY STAY ORDER

Pursuant to Maryland Rule 8-303(e), it is this 14th day of January 2014, by the Court of Appeals (majority concurring; Judge Adkins not participating),

ORDERED, that enforcement of the January 10, 2014 Amended Order of the Circuit Court for Baltimore City in Case No. 24-C-06-009911 be, and the same is, hereby stayed through 4:30 p.m. on January 23, 2014, in order to enable the Court of Appeals to consider, at its monthly conference to be held on January 23, 2014, the “District Court Defendants” Petition for Writ of Certiorari and Motion For Stay Pending Further Review (both filed on January 14, 2014), as well as any answers or responses thereto as may be filed by other parties. Such answers or responses shall be filed with this Court by 4:30 p.m. on January 17, 2014.

This temporary stay order is subject to further order of the Court.

/s/ Mary Ellen Barbera
CHIEF JUDGE

cc: Counsel for all parties
Clerk, Court of Special Appeals
Judge Nance

BEN C. CLYBURN, et al.

* **IN THE**
* **COURT OF APPEALS**
* **OF MARYLAND**

v.

* **Petition Docket No. 622**
* **September Term, 2013**

QUINTON RICHMOND, et al.

* **(No. , Sept. Term, 2013**
* **Court of Special Appeals)**

ORDER

Upon consideration of the petition for a writ of certiorari to the Court of Special Appeals and the answer filed thereto, in the above entitled case, it is this 23rd day of January, 2014

ORDERED, by the Court of Appeals of Maryland, that the petition be, and it is hereby, granted, limited, to the following issues:

1. “Did the circuit court err in entering an injunction directing officials of the District Court to conduct initial appearances in a manner inconsistent with the existing rules promulgated by this Court?”
2. “Did the circuit court err in granting an application for supplemental relief based on a prior declaratory judgment without first issuing a show cause order, as required by the statute governing such applications?”
3. “Did the circuit court err in ordering officials of the District Court to appoint counsel for all arrestees at initial appearances and prohibiting those court officials from conducting initial appearances for arrestees who were not provided with counsel?”

and it is further

ORDERED, that said case shall be transferred to the regular docket as No. 105, September Term, 2013; and it is further

ORDERED, that counsel shall file briefs or memoranda and printed record extract in accordance with Md. Rules 8-501 and 8-502, appellants' brief(s) or memoranda and record extract to be filed on or before February 13, 2014; appellees' brief(s) or memoranda to be filed on or before February 27, 2014; and reply brief(s) or memoranda to be filed on or before March 5, 2014; and it is further

ORDERED, that this case shall be set in for oral argument on Friday, March 7, 2014; and it is further

ORDERED, that the temporary stay order issued by this Court on January 14, 2014 shall be extended through to 4:30 p.m. on Friday, March 7, 2014.

/s/ Mary Ellen Barbera
Chief Judge

BEN C. CLYBURN, et al.

* **IN THE**
* **COURT OF APPEALS**
* **OF MARYLAND**

v.

* **Petition Docket No. 622**
* **September Term, 2013**

QUINTON RICHMOND, et al.

* **(No. , Sept. Term, 2013**
* **Court of Special Appeals)**

WRIT OF CERTIORARI

STATE OF MARYLAND, to wit:

TO THE HONORABLE THE JUDGES OF THE
COURT OF SPECIAL APPEALS OF MARYLAND:

WHEREAS, BEN C. CLYBURN, et al. v. QUINTON RICHMOND, et al., No. , September Term, 2013 is pending before your Court and the Court of Appeals is willing that the record and proceedings therein be certified to it.

YOU ARE HEREBY COMMANDED TO HAVE THE RECORD TRANSMITTED TO THE COURT OF APPEALS OF MARYLAND ON OR BEFORE February 6, 2014, together with this writ, for the said Court to proceed thereon as justice may require.

WITNESS the Chief Judge of the Court of Appeals of Maryland this 23rd day of January, 2014.

/s/ Bessie M. Decker
Clerk
Court of Appeals of Maryland

QUINTON RICHMOND, ET AL,

Plaintiff

vs.

DISTRICT COURT OF
MARYLAND, ET AL,

Defendant

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IN THE

CIRCUIT COURT FOR

BALTIMORE CITY

Case No.: 24-C-06-009911

* * * * *

ORDER

Upon consideration of District Court Defendants' Motion to Dismiss (64), which the Court takes as a Motion for Summary Judgment, Plaintiffs' Motion for Summary Judgment (71), responses thereto, review of the Court file, memoranda and arguments of the parties, it is this 30th day of September, 2010 by the Circuit Court for Baltimore City,

ORDERED, that Defendant's Motion for Summary Judgment is hereby **DENIED**. And, **ORDERED**, that Plaintiffs' Motion for Summary Judgment is hereby **GRANTED**. And, further

ORDERED, that the decision of this court is hereby **STAYED**, giving an opportunity for the filing of any appeals and decisions thereon.

**Judge's signature appears on
the
original of this document.**

JUDGE ALFRED NANCE
Circuit Court for Baltimore City

cc: Michael Schatzow, Esq.
Mitchell Y. Mirviss, Esq.
Alex Hortis, Esq.
William F. Brockman, Esq.
Julia Doyle Bernhardt, Esq.
H. Scott Curtis, Esq.
A Stephen Hut, Jr., Esq.
Aron Goetzl, Esq.
Ashley Bashur, Esq.

On March 5, 2010, the Court of Appeals issued a *per curiam* order that vacated the judgment entered by this Court in favor of the District Court Defendants; directed this Court to dismiss the action, if Plaintiffs did not amend the Complaint to add the Maryland Public Defender as a party to the case by April 6, 2010 and to conditionally deny Plaintiffs' unopposed motion for class certification.¹ On April 5, 2010, Plaintiffs filed a Second Amended Complaint in which they added the Public Defender as a defendant to the action as directed by the Court of Appeals.

On June 28, 2010, the Public Defender filed a Response to the Plaintiffs' and District court Defendants' previously filed Motions for Summary Judgment. On June 29, 2010, the District Court Defendants moved to dismiss the Second Amended Complaint, arguing that the Public Defender is a necessary party under Md. Rule 2-211 and the Complaint failed to assert a justiciable claim against it, and that the Second Amended Complaint failed to satisfy the mandate of the Court of appeals.

On July 19, 2010, the parties were before this Court to argue District Court Defendant's Motion to Dismiss Plaintiffs' Second Amended Complaint.² On July 26, 2010, Plaintiff's filed a Third Amended Complaint and on August 3, 2010 filed a Motion for Summary Judgment. Plaintiffs seek summary judgment against all Defendants as to all counts in Plaintiffs' Third Amended Complaint: Count I (violation of the Maryland Public Defender Act); Count II (violation of the right to counsel under the Sixth Amendment of the U.S. Constitution); Count III (violation of the right to counsel under Article 21 of the Maryland Declaration of Rights); Count IV (violation of the Fourteenth Amendment to the U.S. Constitution); and Count V (violation of Article 24 to the Maryland Declaration of Rights).

PARTIES

Plaintiffs

Plaintiffs, Quinton Richmond, Jerome Jett, Glenn Callaway, Myron Singleton, Timothy Wright, Keith Wilds, Michael LaGrasse, Ralph Steele, Laura Baker, Erich Lewis and Nathaniel

¹ Richmond v. Dist. Ct. of Md., 412 Md. 672, 673 (2010).

² District Court Defendants' Motion to Dismiss is denied as moot as Plaintiffs filed a Third Amended Complaint on July 26, 2010.

Shivers, allege that they are indigent individuals who were arrested and detained at the Baltimore City Central Booking facility. They were each brought before a Commissioner for an initial bail hearing while being held at the Central Booking facility and each specifically requested to be represented by appointed counsel at that hearing. Plaintiffs allege that they were denied such representation by the Commissioner in violation of their statutory constitutional rights. In each case, the Commissioner proceeded to conduct the initial bail hearing for the purpose of determining the named Plaintiff's eligibility for pretrial release without appointed counsel present.

Plaintiffs seek relief on behalf of themselves and all indigent persons³ who have been denied their statutory and/or constitutional right to counsel at their initial appearance before the Commissioner for their initial bail hearing. (Complaint 1).

The Office of the Public Defender and the Public Defender Act

The Office of the Public Defender is part of the Executive Branch of State government, with the Public Defender as its head. Md. Crim. Proc. Code Ann. §§ 16-202-203.⁴ The primary duty of the Public Defender is to provide legal representation for indigent individuals in accordance with the Public Defender Act, and such representation may be provided by the Public Defender, or subject to the supervision of the Public Defender, by the deputy public defender, district public defenders, assistant public defenders, or panel attorneys. *Id.* at §§ 16-207(a) and 204(a). The Office of the Public Defender currently provides representation for indigent⁵ individuals under this title in: (i) a criminal or

³ The certified class having been reinstated.

⁴ Formally Md. Ann. Code art. 27A, § 4.

⁵ Md. Court. Ann. Crim. Proc. § 16-210. Eligibility for services

(a) Application as indigent individual. -- An individual may apply for services of the Office as an indigent individual, if the individual states in writing under oath or affirmation that the individual, without undue financial hardship, cannot provide the full payment of an attorney and all other necessary expenses of representation in proceedings listed under § 16-204(b) of this subtitle.

(b) Determination of eligibility. --

(1) Eligibility for the services of the Office shall be determined by the need of the applicant.

(2) Need shall be measured according to the financial ability of the applicant to engage and compensate a competent private attorney and to provide all other necessary expenses of representation.

(3) Financial ability shall be determined by:

(i) the nature, extent, and liquidity of assets;

(ii) the disposable net income of the applicant;

juvenile proceeding in which a defendant or party is alleged to have committed a serious offense; (ii) a criminal or juvenile proceeding in which an attorney is constitutionally required to be present prior to presentment being made before a commissioner or judge; (iii) a post conviction proceeding for which the defendant has a right to an attorney under Title 7 of this article; (iv) any other proceeding in which confinement under a judicial commitment of an individual in a public or private institution may result; (v) a proceeding involving children in need of assistance under § 3-813 of the Courts Article; or (vi) a family law proceeding under Title 5, Subtitle 3, Part II or Part III of the Family Law Article, including: for a parent, a hearing in connection with guardianship or adoption; a hearing under § 5-326 of the Family Law Article for which the parent has not waived the right to notice; and an appeal. Public defenders also provide representation for indigent individuals at all bail review hearings before District Court judges in Baltimore City, Montgomery County and Harford County. Id at § 16-204(b). Further, the Public Defender Act provides that representation shall be provided to an indigent individual in all stages, including, in criminal proceedings, custody, interrogation, preliminary hearing, arraignment, trial, and appeal. Id.

Currently, Public defenders do not represent indigent individuals in initial bail hearings before Commissioners.

-
- (iii) the nature of the offense;
 - (iv) the length and complexity of the proceedings;
 - (v) the effort and skill required to gather pertinent information; and
 - (vi) any other foreseeable expense.

(4) If eligibility cannot be determined before the Office or a panel attorney begins representation, the Office may represent an applicant provisionally.

(5) If the Office subsequently determines that an applicant is ineligible:

(i) the Office shall inform the applicant; and

(ii) the applicant shall be required to engage the applicant's own attorney and reimburse the Office for the cost of the representation provided.

(c) Investigation of financial status. --

(1) The Office shall investigate the financial status of an applicant when the circumstances warrant.

(2) The Office may:

(i) require an applicant to execute and deliver written requests or authorizations that are necessary under law to provide the Office with access to confidential records of public or private sources that are needed to evaluate eligibility; and

(ii) on request, obtain information without charge from a public record office or other unit of the State, county, or municipal corporation.

District Court Defendants

Under Maryland's bail and pre-trial release system, following an arrest, criminal suspects are brought before a Commissioner for an initial appearance and an initial bail hearing pursuant to Md. Rule 4-213. The governing statute, CJP § 2-607, provides that Commissioners need not be lawyers and indeed need not have any minimum qualifications for service, such as a college degree, high school diploma, or criminal justice background; however, Commissioners shall be adult residents of the counties in which they serve. CJP § 2-607.

At the bail hearing, the Commissioner informs the defendant of each offense with which the defendant is charged and of the allowable penalties, including mandatory penalties, if any, and shall provide the defendant with a copy of the charging document if the defendant does not already have one and one is then available. Md. Rule 4-213. Additionally, the Commissioner advises arrested persons of their constitutional rights, set bond or commit persons to jail in default of bond or releases them on personal recognizance if circumstances warrant, and conduct investigations and inquiries into the circumstances of any matter presented to the Commissioner in order to determine if probable cause exists for the issuance of a charging document, warrant, or criminal summons and, in general, perform all the functions of committing magistrates. CJP § 2-607. Additionally, the Commissioner advises the defendant that if the defendant appears for trial without counsel, the court could determine that the defendant waived counsel and proceed to trial with the defendant unrepresented by counsel Md. Rule 4-213.

ISSUE

The issue presented to this Court is whether an initial bail hearing before a Commissioner is a critical stage in a criminal proceeding entitling representation by an attorney?

DISCUSSION

Plaintiffs contend that the Court should grant summary judgment in their favor and declare that Plaintiffs enjoy a constitutional right to representation by counsel at initial bail hearings because the initial bail proceedings are a critical stage of a criminal proceeding.

Any party may make a motion for summary judgment on all or part of an action on the ground that there is no genuine dispute as to any material fact and that the party is entitled to judgment as a matter of law. Md. Rule 2-501. See Syme v. Marks Rentals, Inc., 70 Md. App. 235, 520 A.2d 1110 (1987)(when ruling on motion for summary judgment, trial court must address two separate issues: whether the pleadings, depositions, answers to interrogatories, admissions, and affidavits show that there is no genuine dispute as to any material fact and whether the movant is entitled to judgment as a matter of law). Factual disputes that are irrelevant or unnecessary will not be counted, and when a movant has carried its burden, the party opposing summary judgment must do more than simply show there is some metaphysical doubt as to the material facts. Seaboard Sur. Co. v. Richard F. Kline, Inc., 91 Md. App. 236, 603 A.2d 1357 (1992).

To defeat a motion for summary judgment, the respondent must show that there is a genuine dispute as to a material fact; an affidavit or other sworn statement of fact to the effect that the allegation is true to the best of one's knowledge and belief is not sufficient. Lowman v. Consolidated Rail Corp., 68 Md. App. 64, 509 A.2d 1239 (1986). The mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact. Seaboard Sur. Co. v. Richard F. Kline, Inc., 91 Md. App. 236, 603 A.2d 1357 (1992). A material fact must be one the resolution of which will somehow affect the outcome of the case. King v. Bankerd, 303 Md. 98, 492 A.2d 608 (1985).

In resolving the issue of whether a material fact remains in dispute, the court must accord great deference to the opposing party against whom the motion for summary judgment has been filed.

Syme v. Marks Rentals, Inc., 70 Md. App. 235, 520 A.2d 1110 (1987). In Maryland, when there is a genuine issue of material fact, the evidence, or the inferences deducible therefrom, is sufficient to permit the trier of fact to arrive at more than one conclusion; consequently, the moving party is not entitled to judgment as a matter of law. Sadler v. Dimensions Healthcare Corp., 378 Md. 509, 836 A.2d 655 (2003).

Initial Bail Hearing

Plaintiffs argue that the initial bail hearing is an adversarial proceeding, and as such, is a critical stage of a criminal case. Specifically, Plaintiffs argue that if the proceeding pits the defendant in an adversarial confrontation with agents of the State or otherwise presents significant legal problems or risks the loss of important rights, a critical stage exists.

Defendants contend that the initial bail hearing is an informal procedure for the determination of probable cause and advises the defendant of his rights and sets temporary conditions of release. Defendants argue that these duties do not transform the initial bail hearing into a critical stage.

This case was originally before this Court on October 24, 2007. At that time, this Court, citing Fenner v. State, 381 Md. 1 (2004) as the prevailing law, granted summary judgment in favor of Defendants.

In Fenner, the defendant challenged the decision of the Court of Special Appeals which affirmed a trial court's ruling denying Petitioner's motion to suppress inculpatory statements made during a bail hearing where he was not represented by counsel. Id. The bail review hearing took place one day after the petitioner's arrest and followed his appearance before a Commissioner for an initial hearing. Ultimately, the defendant was convicted of distribution of cocaine and conspiracy to distribute cocaine. The Court of Appeals held that a bail review hearing conducted by a district court judge pursuant to Md. Rule 4-216 for the purpose of setting the appropriate amount of bail is not a critical stage of a criminal proceeding requiring the appointment of counsel under the Sixth Amendment. Id.

Since the initiation of this case, the Supreme Court has ruled in Rothgery v. Gillespie County, Tex., 554 U.S. 191, 128 S. Ct. 2578 (2008). In Rothgery, officers brought Petitioner before a magistrate, as required by state law, for a so-called "article 15.17 hearing," at which the Fourth Amendment probable-cause determination was made, bail was set, and Petitioner was formally apprised of the accusation against him. Id. at 370. After the hearing, the magistrate committed Petitioner to jail, and he was released after posting a surety bond. Petitioner had no money for a lawyer and made several unheeded oral and written requests for appointed counsel. He was subsequently indicted and rearrested, his bail was increased, and he was jailed when he could not post the bail. Id. Petitioner sued Respondent pursuant to 42 U.S.C.S. § 1983, alleging that his Sixth Amendment right to counsel was violated by the county's unwritten policy of denying appointed counsel to indigent defendants out on bond until at least the entry of an information or indictment. Id. The Supreme Court held that a criminal defendant's initial appearance before a magistrate, where he learns the charge against him and his liberty is subject to restriction, marks the initiation of adversary judicial proceedings that trigger attachment of the Sixth Amendment right to counsel. Id.

This Court finds the hearing before the magistrate in Rothgery to be similar to the initial bail hearing before the Commissioner in the present case. In the instant matter, Plaintiffs allege that they are indigent individuals who were arrested and detained at the Baltimore City Central Booking facility; brought before a Commissioner for an initial bail hearing while being held at the Central Booking facility; specifically requested to be represented by appointed counsel at that hearing; and were denied such representation. In the case of each Plaintiff, the Commissioner proceeded to conduct the initial bail hearing for the purpose of determining Plaintiffs' eligibility for pretrial release without an appointed counsel represented. Plaintiffs, as in Rothgery, bring this action against Defendants claiming that denying appointed counsel to Plaintiffs is a violation of their constitutional right to counsel.

During the initial bail hearing defendants appear before a Commissioner, are informed of each offense with which he or she is charged, informed of the allowable penalties, has a bond set or is

committed to jail. This commitment to prosecute and the accusation prompt restrictions on the defendant's liberty which is sufficient to establish a critical stage.⁶

Many courts have held that an event carrying a risk of incrimination is recognized as a critical stage.⁷ The initial bail hearing in the present case requires the Commissioner's careful consideration of a host of facts about the defendant and the crimes charged. Ultimately, the initial bail hearing determines whether a defendant will be allowed to retain, or forced to surrender, his liberty during the pendency of his criminal case. This proceeding is not held in a courtroom and is never transcribed or recorded, making it impossible to review what the Commissioner or arrestee said to determine the basis for the Commissioner's ruling. During the initial bail review, Commissioners ask a series of questions concerning residence, employment and other ties that defendants have to the community. Defendants are expected to answer these questions and most often they do. By responding to these questions, defendants run the risk of incrimination by possibly making an inculpatory statement that he or she mistakenly believes would assist in the chance of obtaining bail.

This Court, having reviewed Rothgery in light of facts and arguments of the case *sub judice*, must conclude that the initial bail hearings are a critical stage in a criminal proceeding.

⁶ Case law has defined a critical stage for purposes of the right to counsel as proceedings between an individual and agents of the state (whether formal or informal, in court or out) that amount to trial-like confrontations, at which counsel would help the accused in coping with legal problems or meeting his adversary. U.S. v. Wade, 388 U.S. 218, 226 (1967).⁶ A critical stage is a phrase used to denote a step of a criminal proceeding, such as arraignment, that holds significant consequences for the accused. Bell v. Cone, 535 U.S. 584 (2002). If the presence of counsel is essential to protect the fairness of the trial, a pretrial proceeding is a critical stage. United States v. Ashe, 413 U.S. 300, 322 (1973). "Critical stages" are identified as those pretrial procedures that would impair defense on the merits if the accused were required to proceed without counsel. Utt v. State, 293 Md. 271, 443 A.2d 582 (1982). A pretrial proceeding is not a critical stage where basic rights cannot be said to be irretrievably lost and the absence of counsel will not impair defense on the merits. Id.

⁷ See Estelle v. Smith, 451 U.S. 454 (1975) (the Supreme Court held that an uncounseled psychiatric interview used to support a death sentence violated the Sixth Amendment because a laymen may not be aware of the precise scope, nuances, and the boundaries of his Fifth Amendment privilege, the assertion of that right often depends upon legal advice from someone who is trained and skilled in the subject matter).

Right to Counsel

Secondly, Plaintiffs argue that because the initial bail hearing is a critical stage of the criminal process, Plaintiffs and those similarly situated enjoy the right to counsel as established by the Sixth Amendment and Article 21 of the Maryland Declaration of Rights.

The Sixth Amendment to the United States Constitution serves to assure aid at trial, and therefore attaches at the commencement of adversary judicial criminal proceedings. Fenner v. State, 381 Md. 1, 846 A.2d 1020 (2004). Article 21 of the Maryland Declaration of Rights also guarantees criminal defendants the right to assistance of counsel. Id. See also State v. Tichnell, 306 Md. 428, 509 A.2d 1179 (1986)(there is no distinction between the right to counsel guaranteed by the Sixth Amendment and Article 21 of the Maryland Declaration of Rights).⁸ The right to counsel extends to those critical proceedings in which the accused is confronted, just as at trial, by the procedural system or by expert or adversary, or by both...in a situation where the results of the confrontation might well settle the accused's fate and reduce the trial to a mere formality. Fenner, 381 Md. at 20.

Plaintiffs argue that by denying them any representation by counsel at their initial bail hearings before the Commissioner, Defendants violated Plaintiffs' right to counsel as declared by the Sixth Amendment, Article 21 and the Public Defender Act.⁹ The District Court Defendants contend that Plaintiffs' arguments concerning the right to counsel at initial bail hearings are inconsistent with the Public Defender Acts' legislative history, legislative intent, and the Public Defender's long-standing practice under the Act.

In Rothgery, the Supreme Court determined that the Sixth Amendment right of the accused to assistance of counsel in all criminal prosecutions is limited by its terms: it does not attach until a prosecution is commenced. Id. For purposes of the right to counsel, commencement is pegged to the

⁸ See Rutherford v. Rutherford, 296 Md. 347, 464 A.2d 228 (1983) (the Sixth Amendment and Article 21 of the Maryland Declaration of Rights and this article guarantee a right to counsel, including appointed counsel for an indigent, in a criminal case involving incarceration).

⁹ The Court notes that the Public Defender agrees that indigent defendants have a right to representation at the initial bail hearing.

initiation of adversary judicial criminal proceedings, whether by way of formal charge, preliminary hearing, indictment, information, or arraignment. Id.¹⁰ The rule is not mere formalism, but a recognition of the point at which the government has committed itself to prosecute, the adverse positions of government and defendant have solidified, and the accused finds himself faced with the prosecutorial forces of organized society, and immersed in the intricacies of substantive and procedural criminal law. Id.

In the present case, Plaintiffs were brought before a Commissioner for an initial bail hearing and requested to be represented by counsel and they were denied that representation.

In finding that the initial bail hearing is a critical stage of a criminal proceeding, this Court also finds that Defendants violated Plaintiffs' Sixth Amendment and Article 21 right to counsel by continuing with the bail hearing once Plaintiffs requested representation. There can be no doubt that the appearance before a Commissioner, where each Plaintiff was informed of the accusations that were lodged and where each had restrictions placed on his or her liberty, constitutes a critical stage for purposes of the right to counsel. Representation by counsel at the initial bail hearings would provide substantial benefits to the detainees; including to provide verifiable information about the arrestee that would assist the Commissioner to make a more informed decision about the arrestee.¹¹

As the Court of Appeals has pointed out on several occasions, "the right to counsel under the Public Defender Act is significantly broader than the constitutional right to counsel. McCarter v. State of Maryland, 363 Md. 705, 714, 770 A.2d 195 (2001). See State v. Flansburg, 345 Md. 649, 700 n.4, 694 A.2d 462, 465 n.4; Wilson v. State, 284 Md. 664, 670-671, 399 A.2d 256, 259-260 (1979). The Public Defender Act provides that representation extends to all stages in the proceedings, including but not limited to custody, interrogations, preliminary hearing, pretrial motions and hearings, trial, motions for modification or review of sentence or new trial, and appeal. Md. Crim. Proc. Code Ann. §§ 16-

¹⁰ See Marshall Adams v. State of Maryland, 192 Md. App. 469, 482; 995 A.2d 763 (2010).

¹¹ Right to counsel includes making the hearing and detainee available to counsel for adequate representation.

202. It is clear that the Public Defendant Act provides for representation at a proceeding where possible incarceration may result. This obviously includes an initial bail hearing.¹²

Due Process

Lastly, Plaintiffs argue that Defendants' actions, policies and practices violated their constitutional due process rights.¹³ Plaintiffs contend that a due process interest exists because initial bail hearings involve a determination of a defendant's physical freedom.

Article 24 of the Maryland Declaration of Rights provides that no person may be imprisoned or otherwise deprived of his liberty without due process and application of the law of the land. The essential elements of "due process of law" and "the law of the land," as they relate to a judicial proceeding, are notice and an opportunity to defend. Accrocco v. Splawn, 264 Md. 527, 287 A.2d 275 (1972); See also J. Whitson Rogers, Inc. v. Hanly, 21 Md. App. 383, 319 A.2d 833 (1974).

Identification of the specific dictates of due process generally requires consideration of three distinct factors:

First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Id.

The initial bail hearing before the Commissioner holds significant consequences to the accused which involves potential prejudice to the defendant's rights; it decides the defendant's liberty. If bail is denied or set at a level that the defendant cannot afford, the defendant is deprived of his or her freedom, a fundamental right. At this initial hearing, the State has statutorily committed to prosecute

¹² Even privately retained attorneys have difficulty in gaining access to the place where the hearing and the detainee are held for the purpose of providing adequate representation.

¹³ See also Vavasori v. Commission on Human Relations, 65 Md. App. 237; 500 A.2d 307 (1985) (the due process clauses of Md. Const. Decl. Rts. art. 24 and the Fourteenth Amendment have the same meaning. U.S. Supreme Court interpretations of the federal provision are authority for interpretation of Article 24).

and without a change of position, a defendant is subject to accusation after initial appearance and is headed to trial. See Rothgery, 554 U.S. at 193. This Court finds any stage that could result in a finding that would place the defendant in jeopardy of loss of liberty or being confined, the defendant is entitled counsel, and proceeding with the matter after representation is requested to be a violation of due process.

CONCLUSION

In light of the facts and arguments of the parties, this Court finds that Plaintiffs and similarly situated indigent individuals have a right to counsel at initial bail hearings and that by denying Plaintiffs and those similarly situated any representation at the initial bail hearing, Defendants violated Plaintiffs due process rights.

This Court in reviewing the pleadings and arguments made, finds there is no dispute as to material facts and hereby **GRANTS** Plaintiffs' Motion for Summary Judgment and **DENIES** Defendants' Motion for Summary Judgment.

This Court is aware of arguments and contentions by Defendants raising issues of separation of powers and budgetary matters that may result from this Court's decision. In light thereof, this Court hereby **STAYS** its decision, giving an opportunity for the filing of any appeals and decisions thereon.

**Judge's signature appears on
the
original of this document.**

Judge Alfred Nance

September 30, 2010

cc: Michael Schatzow, Esq.
Mitchell Y. Mirviss, Esq.
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Ashley Bashur, Esq.

AN/cj

QUINTON RICHMOND, ET AL,

Plaintiffs,

vs.

DISTRICT COURT OF
MARYLAND, ET AL,

Defendants.

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IN THE

CIRCUIT COURT FOR

BALTIMORE CITY

Case No.: 24-C-06-009911

* * * * *

DECLARATORY JUDGMENT

Upon consideration of Defendant District Court's Motion (80), Plaintiffs' and Defendant Public Defender's responses (80/1) thereto, arguments and memoranda of the parties, and for reasons more fully stated in this Court's Memorandum Opinion dated September 30, 2010, it is this 28th day of December, 2010, hereby,

ORDERED, DECREED AND ADJUDGED, that Plaintiffs are indigent individuals who were arrested and detained at the Baltimore City Central Booking Facility. And,

ORDERED, DECREED AND ADJUDGED, that Plaintiffs, individually, were brought before a Commissioner for an initial bail hearing while being held at the Central Booking facility. And,

ORDERED, DECREED AND ADJUDGED, that Plaintiffs, individually, requested to be represented by appointed counsel at that the initial bail hearing. And,

ORDERED, DECREED AND ADJUDGED, that in the case of each Plaintiff, the Commissioner conducted the initial bail hearing for the purpose of determining Plaintiffs' eligibility for pretrial release without an appointed counsel present. And,

ORDERED, DECREED AND ADJUDGED, that the duty of the Office of the Public Defender, as mandated by the Public Defender Act, is to provide legal representation to indigent individuals. And,

ORDERED, DECREED AND ADJUDGED, that criminal suspects are brought before a Commissioner for an initial appearance and an initial hearing pursuant to Md. Rule 4-213. And,

ORDERED, DECREED AND ADJUDGED, that during the initial bail hearing, defendants appear before a Commissioner; are informed of each offense charged; informed of the allowable penalties; has a bond set or is committed to jail. And,

ORDERED, DECREED AND ADJUDGED, that the initial bail hearing determines whether a defendant will be allowed to retain, or forced to surrender, his liberty during the pendency of his criminal case. And,

ORDERED, DECREED AND ADJUDGED, that this initial bail hearing is a commitment to prosecute and the accusations prompt restrictions on the defendant's liberty which is sufficient to establish a critical stage. And,

ORDERED, DECREED AND ADJUDGED, that the initial bail hearing is an adversarial hearing, and as such, is a critical stage of the criminal process. And,

ORDERED, DECREED AND ADJUDGED, that the appearance before a Commissioner, where each Plaintiff was informed of the accusations that were lodged and where each had restrictions placed on his or her liberty, constitutes a critical stage for purposes of the right to counsel. And,

ORDERED, DECREED AND ADJUDGED, that the Sixth Amendment and Article 21 right of the accused to assistance of counsel in all criminal prosecutions does attach at the initial hearing, i.e. where prosecution is commenced. And,

ORDERED, DECREED AND ADJUDGED, that by proceeding without Plaintiffs having representation by counsel at their initial bail hearings, before the Commissioner, Defendants violated Plaintiffs' right to counsel as declared by the Sixth Amendment, Article 21 of the Maryland Declaration of Rights, and the Public Defender Act. And,

ORDERED, DECREED AND ADJUDGED, that an individual's right to counsel commence at the initiation of adversarial criminal proceedings, i.e., the point at which the government has committed itself to prosecute. And,

ORDERED, DECREED AND ADJUDGED, that Defendants violated Plaintiffs' Sixth Amendment and Article 21 right to counsel by continuing with the bail hearing once Plaintiffs requested representation. And,

ORDERED, DECREED AND ADJUDGED, that any stage that could result in a finding that would place the defendant in jeopardy of loss of liberty or being confined, the defendant is entitled counsel, and to proceed with the matter after

representation was requested is a violation of the constitutional right to due process. And,

ORDERED, DECREED AND ADJUDGED, that Article 24 of the Maryland Declaration of Rights provides that no person may be imprisoned or otherwise deprived of his liberty without due process and application of the law of the land. And,

ORDERED, DECREED AND ADJUDGED, that Defendants violated Plaintiffs' right to due process by continuing with the bail hearing once Plaintiffs requested representation.

**Judge's signature appears on the
original of this document.**

JUDGE ALFRED NANCE
Circuit Court for Baltimore City

cc: Michael Schatzow, Esq.
Mitchell Y. Mirviss, Esq.
Alex Hortis, Esq.
William F. Brockman, Esq.
Julia Doyle Bernhardt, Esq.
H. Scott Curtis, Esq.
A Stephen Hut, Jr., Esq.
Aron Goetzl, Esq.
Ashley Bashur, Esq.

AN/no

QUINTON RICHMOND, ET AL,

Plaintiffs,

vs.

DISTRICT COURT OF
MARYLAND, ET AL,

Defendants.

IN THE

CIRCUIT COURT

FOR

BALTIMORE CITY

Case No.: 24-C-06-009911

* * * * *

AMENDED ORDER

Upon consideration of Plaintiffs' Request for an Injunction set forth in Counts I through V of Plaintiffs' Third Amended Complaint, review of the Court file and responses of the parties, it is this 14th day of February, 2011 by the Circuit Court for Baltimore City,

ORDERED, that Plaintiff's Request for an Injunction is hereby **DENIED**.

Judge's signature appears on the original of this document.

JUDGE ALFRED NANCE
Circuit Court for Baltimore City

- cc: Michael Schatzow, Esq.
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- Alex Hortis, Esq.
- William F. Brockman, Esq.
- Julia Doyle Bernhardt, Esq.
- H. Scott Curtis, Esq.
- A Stephen Hut, Jr., Esq.
- Aron Goetzl, Esq.
- Ashley Bashur, Esq.

AN/no