

September Term, 2013
No. 105

IN THE
COURT OF APPEALS OF MARYLAND

BEN C. CLYBURN, *et al.*,
Appellants,

v.

QUINTON RICHMOND, *et al.*,
Appellees.

On Appeal from the Circuit Court for Baltimore City
(Alfred Nance, Judge)

On Writ of Certiorari to the Court of Special Appeals of Maryland

SUPPLEMENTAL BRIEF FOR APPELLEE PAUL B. DeWOLFE, JR.

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April 30, 2014

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QUESTION PRESENTED

In light of the General Assembly's failure to pass legislation to address this Court's decision establishing the constitutional right to counsel at initial bail hearings before District Court commissioners, and the pending amendments to the rules to effect this right, how should the Court revise the injunction issued by the circuit court, so that the right can be meaningfully implemented?

ARGUMENT

The Public Defender believes the Court should issue a revised injunction or remand the case to the circuit court with instructions on how the current injunction should be revised. An injunction is necessary to ensure that indigent individuals are provided state-furnished counsel at initial bail hearings in accordance with the Maryland Declaration of Rights. If an injunction is issued, any indigent defendants not provided such representation can seek enforcement of the injunction instead of filing for separate relief.

The Public Defender also believes that outlining certain requirements for implementation of the new right could help ensure that indigent defendants are provided *effective* representation at initial bail hearings by their appointed counsel. Based on the Public Defender's experience representing indigent defendants in pre-trial proceedings, and in light of the pending changes to the pre-trial procedures in Maryland, the Public Defender suggests the following requirements:

- That minimum standards for effective representation of indigent defendants be communicated to appointed attorneys to ensure that (1) a client is privately

interviewed *sufficiently in advance* of his or her initial bail hearing to afford counsel a meaningful opportunity to review charging documents, gather additional information related to release, and prepare for the hearing; (2) clients are not referred to a surety or offered (and potentially pressured into accepting) additional, fee-based services beyond the provisional representation by an appointed attorney; (3) client information, including mental health information, obtained during provisional representation by an appointed attorney is confidentially maintained and promptly transmitted to the Office of the Public Defender or successor counsel;

- That the application and interview to determine financial qualification for representation and any necessary fact-finding be completed sufficiently in advance of the initial bail hearing to avoid a client having to choose between (1) a longer period of confinement to obtain appointed counsel, or (2) waiving appointed counsel to have a prompt hearing on conditions of release;
- That law enforcement, correctional officers, and prosecutors not be permitted to (1) be involved in the gathering of sensitive and confidential financial information from an applicant for State-supplied legal services, (2) have access to the financial information, or (3) examine a defendant for any use or purpose, such as assessing a client's ability to pay a fine, restitution, or suffer forfeiture of assets;
- That an application to determine eligibility for counsel be submitted *ex parte* to a District Court commissioner, and be maintained as a confidential document that cannot be used for any purpose beyond determining an applicant's eligibility,

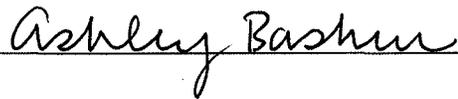
except as otherwise necessary for prosecution in connection with representations made in the application for appointment of counsel; and

- That an indigent defendant be released when the initial bail hearing cannot proceed due to the unavailability of appointed counsel, in circumstances when the defendant (1) is able to proceed with an initial bail hearing (*e.g.*, not ill, intoxicated, or suffering from another disability precluding an initial bail hearing), and (2) is eligible for release by a District Court commissioner.

CONCLUSION

The Public Defender accordingly requests that the Court issue a revised injunction to allow meaningful implementation of the constitutional right to counsel at initial bail hearings.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 30th day of April, 2014, a copy of the foregoing brief was served by electronic mail and first class mail, postage prepaid, on:

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