

IN THE COURT OF APPEALS OF MARYLAND

BEN C. CLYBURN, <i>et al.</i> ,	*	
<i>Petitioners,</i>	*	
v.	*	September Term, 2013
		Petition Docket No. ____
QUINTON RICHMOND, <i>et al.</i> ,	*	
<i>Respondents.</i>	*	
* * * * *		

MOTION FOR STAY PENDING FURTHER REVIEW

Pursuant to Maryland Rule 8-303(e), the petitioners, Ben C. Clyburn, Chief Judge of the District Court of Maryland; Barbara Baer Waxman, Administrative Judge for the District Court of Maryland for Baltimore City; David W. Weissert, Coordinator of Commissioner Activity for the District Court of Maryland; Linda Lewis, Administrative Commissioner for the District Court of Maryland for Baltimore City; and the Commissioners of the District Court of Maryland for Baltimore City State of Maryland (the “District Court Defendants”), through counsel, move for an immediate stay of enforcement of the order and injunction entered by the Circuit Court for Baltimore City on January 10, 2014. The petitioners have filed notices of appeal of the judgment to the Court of Special Appeals and are filing simultaneously with this motion a petition in this Court for a writ of certiorari before decision in the Court of Special Appeals.¹

¹ A copy of the circuit court’s January 10, 2014 order and of the amended order entered on January 13, 2014 in *Quinton Richmond, et al. v. Ben Clyburn, et al.*, No. 24-C-06-00911 are attached at to the petition for a writ of certiorari at App. 30. (All references

1. On September 25, 2013, this Court issued its decision declaring that the current procedures for the initial appearance of an arrestee are constitutionally inadequate, because the rules now in effect do not provide for representation by counsel at an arrestee's initial appearance before a commissioner of the District Court. *DeWolfe v. Richmond*, 434 Md. 444 (2013).

2. On November 6, 2013, the Court issued an order denying the State of Maryland's motion to stay the Court's judgment. The Court explained that the fiscal and logistical concerns raised by the State in its motion instead should be presented to the circuit court, if and when a party filed an application for further relief based on the circuit court's declaratory judgment. The same day, the Court adopted provisional rules that, among other things, would authorize commissioners to conduct waiver inquiries before continuing with the initial appearance, an authority that the commissioners presently lack. The provisional rules do not become effective, however, until a date to be specified in a further order by the Court.

3. On November 14, 2013, the District Court Defendants submitted a status report advising the circuit court of the actions taken by this Court and their consequences for the course of further proceedings in the circuit court. (App. 26.) The District Court Defendants explained that the current statutes and rules do not contemplate having counsel present at an arrestee's initial appearance before a commissioner of the District

are to the appendix to the petition for a writ of certiorari.) A copy of the docket evidencing the judgment of the circuit court is attached at App. 1. (*See* Entry No. 00105004 (entered January 13, 2014) (App. 27). The District Court Defendants noted their appeals on January 13, 2014 (notice attached at App. 38).

Court. Moreover, the District Court Defendants explained, the declaratory judgment entered by the circuit court on November 7, 2013 does not prescribe the procedure that should be followed if and when an arrestee invokes his or her right to counsel during an initial appearance before a commissioner.

4. The District Court Defendants also explained that this Court has not yet implemented the rules amendments necessary to accommodate an arrestee's request for counsel and counsel's participation at an initial appearance before a commissioner. They explained that both the Judiciary and the leadership of the General Assembly have been exploring comprehensive reforms to the State's pretrial system.²

5. The District Court Defendants also informed the circuit court that in the November 6 orders, this Court clearly anticipated that further proceedings in the circuit court under § 3-412 of the Courts and Judicial Proceedings Article should precede implementation of the amended rules that will govern how the defendant District Court officials conduct initial appearances. That procedure, the District Court Defendants explained, is discussed in the cases cited in the Court's November 6 order in this case:

Section 3-412 allows the request for further relief to be made "either in a separate action or by application to a court [that] retains jurisdiction" after awarding declaratory relief. *Nova Research, Inc. v. Penske Truck Leasing Co.*, 405 Md. 435, 458 (2008). Once the action has been initiated, the court, "on reasonable notice," may require "any adverse party whose rights have been adjudicated by the declaratory judgment or decree to show cause

² The Judiciary's task force has since issued a report recommending substantial changes to the State's pretrial system but these cannot be implemented until the end of 2014, at the earliest.

why further relief should not be granted.” Md. Code Ann., Cts. & Jud. Proc. § 3-412(c).

Status Report (Nov. 14, 2013) at 6 n.*. The plaintiffs agreed that “the Court of Appeals anticipated further proceedings in [the circuit court]” and that “the Court of Appeals has directed that the implementation of the new Rules will be triggered by further action by [the circuit court] pursuant to a petition for further relief pursuant to CJP § 3-412.” The plaintiffs accordingly initiated those proceedings by filing a petition on December 5. On January 8, plaintiffs’ counsel advised the circuit court that “[t]he procedure for moving forward is clearly laid out in the Declaratory Judgment Act; citing § 3-412(c), plaintiffs’ counsel stated, “The first step . . . is for the Court to issue the Order to Show Cause.”


6. Instead of following the procedure set forth in § 3-412 of the Courts and Judicial Proceedings Article, the circuit court entered an injunction two days later without first issuing a show cause order to the defendants or conducting any proceedings under § 3-412. (App. 26-27, 36.) This procedural error led the circuit court to enter an overly-broad injunction that subjects the District Court Defendants to conflicting legal commands. The terms of the injunction, which the circuit court ordered to take effect immediately, are incompatible with the existing rules promulgated by this Court to govern the conduct of initial appearances, and the terms of the injunction are not even consistent with the provisional rules that this Court tentatively adopted on November 6, 2013, but that the Court declined to make effective without further action by this Court.

7. Substantial fiscal and logistical obstacles still prevent immediate implementation of the Court’s decision. The circuit court’s precipitous action in entering

an injunction without complying with the procedures set forth in § 3-412 prevented it from tailoring a remedy that takes into account the complex logistical and fiscal challenges associated with the ongoing efforts to adapt the State's pretrial system to the newly-declared right to counsel at initial appearances. All three branches of government are actively engaged in considering policy reform proposals that would substantially alter existing aspects of the State's pretrial procedures, while at the same time grappling with the more immediate logistical and fiscal challenges created by the Court's ruling. Rather than crafting a remedy that acknowledges these challenges, the circuit court ignored them and entered an unworkable injunction that exacerbates those challenges. The Court should enter an immediate stay of enforcement of the circuit court's injunction pending disposition of the petition for a writ of certiorari.

Respectfully submitted,

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January 14, 2014

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CERTIFICATE OF SERVICE

I certify that, on this 14th day of January 2014, a copy of the foregoing motion for stay of enforcement of the judgment was served by mail on, and sent by e-mail to:

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Respondents.

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* * * * *

ORDER

Upon consideration of the motion for stay pending further review filed by the petitioners, the Ben C. Clyburn, Chief Judge of the District Court of Maryland; Barbara Baer Waxman, Administrative Judge for the District Court of Maryland for Baltimore City; David W. Weissert, Coordinator of Commissioner Activity for the District Court of Maryland; Linda Lewis, Administrative Commissioner for the District Court of Maryland for Baltimore City; and the Commissioners of the District Court of Maryland for Baltimore City State of Maryland (the "District Court Defendants"), it is this __ day of _____, 2014,

ORDERED, by the Court of Appeals of Maryland that the motion for stay pending further review is GRANTED; and the judgment of the Circuit Court for Baltimore City entered on January 10 and 13, 2014 in *Quinton Richmond, et al. v. Ben Clyburn, et al.*, No. 24-C-06-00911 is STAYED pending further order of this Court.

CHIEF JUDGE