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Casenotes: Criminal Procedure — Maryland Rule 746 — Scheduling Criminal Cases for Trial — Maryland Rule 746 Requires That Criminal Charges Be Dismissed When State Fails to Bring Case to Trial within Prescribed Period and Fails to Establish Extraordinary Cause Justifying Postponement. State v. Hicks, 285 Md. 310, 403 A.2d 356 (1979)

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CRIMINAL PROCEDURE — MARYLAND RULE 746 — SCHEDULING CRIMINAL CASES FOR TRIAL — MARYLAND RULE 746 REQUIRES THAT CRIMINAL CHARGES BE DISMISSED WHEN STATE FAILS TO BRING CASE TO TRIAL WITHIN PRESCRIBED PERIOD AND FAILS TO ESTABLISH EXTRAORDINARY CAUSE JUSTIFYING POSTPONEMENT. *STATE v. HICKS*, 285 Md. 310, 403 A.2d 356 (1979).

I. INTRODUCTION

In *State v. Hicks*,[1] the Court of Appeals of Maryland held that application of Maryland Rule 746[2] is mandatory.[3] Rule 746 now requires that a criminal trial date be set within 180 days[4] after the earlier of the appearance or waiver of counsel or the appearance of the defendant before the court.[5] The rule further provides that, upon a showing of "extraordinary cause," an administrative judge or a judge designated by him may grant a change of trial date.[6] The appropriate sanction for the state's failure to comply with this "180-day rule"[7] is dismissal of the criminal charges.[8] Prior to *Hicks*, Maryland courts had interpreted the precursors of Rule 746[9] as directory, rather than mandatory, because the General Assembly had not explicitly provided the sanction of dismissal of an indictment for administrative noncompliance.[10]

The *Hicks* court further held that Rule 746, unlike the sixth amendment speedy trial right, does not require the state to invoke the Interstate Agreement on Detainers[11] in order to bring a

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1. 285 Md. 310, 403 A.2d 356 (1979). Chief Judge Murphy delivered the opinion of the court. Judge Davidson filed a dissenting opinion with which Judges Cole and Digges concurred. *Id.* at 321–33, 403 A.2d at 362–68.
2. See text accompanying notes 39–41 *infra*.
3. 285 Md. 310, 318, 403 A.2d 356, 360 (1979).
4. Formerly, Md. Rule 746 provided that a trial date be set not later than 120 days after the appearance or waiver of counsel or after the appearance of the defendant before the court pursuant to Md. Rule 723. Md. Rule 746 was amended on an emergency basis on November 16, 1979, to change the time period specified by the rule from 120 to 180 days. 6 Md. Reg. 1915 (1979).
5. Md. Rule 746(a). See text accompanying notes 39–41 *infra*.
6. Md. Rule 746(b). See text accompanying note 41 *infra*.
7. See note 4 *supra*.
8. State v. Hicks, 285 Md. 310, 318, 403 A.2d 356, 360 (1979).
9. Prior to the adoption of Md. Rule 746, the scheduling of criminal cases for trial was governed by former Md. Rule 740 and MD. ANN. CODE art. 27, § 591(a) (1979).
10. State v. Hicks, 285 Md. 310, 316, 403 A.2d 356, 359 (1979). *See* Young v. State, 15 Md. App. 707, 292 A.2d 137, *aff'd per curiam*, 266 Md. 438, 294 A.2d 467 (1972).
11. MD. ANN. CODE art. 27, §§ 616A to 616R (1979). Under the Interstate Agreement on Detainers, either a prisoner incarcerated in a penal facility of another state or the state in which untried criminal charges are pending against the prisoner may request his temporary transfer for trial.

defendant incarcerated in another state to trial.[12] The court found, upon the particular facts of the case, that "extraordinary cause" had been shown in compliance with the rule's requirement for a change of trial date[13] and remanded the case for prosecution.[14] On rehearing,[15] the court gave its holding prospective effect only, limiting its application to cases that commence after July 25, 1979.[16] This casenote discusses the *Hicks* decision with emphasis upon the scheduling of criminal cases for trial and the public policies that underlie Rule 746.

II. THE FACTUAL BACKGROUND OF *HICKS*

While serving a sentence in a Delaware prison, Harley Robert Hicks invoked the provisions of the Interstate Agreement on Detainers[17] to obtain trial upon criminal charges then pending against him in Wicomico County, Maryland.[18] As a result, Hicks was transferred to Wicomico County, tried, and subsequently sentenced to a term of imprisonment to run consecutively with his Delaware sentence.[19]

Prior to Hicks' return to the Delaware prison, an eight-count criminal information was filed, charging him with additional Maryland offenses.[20] On April 24, 1978, the public defender entered

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12. 285 Md. 310, 319, 403 A.2d 356, 361 (1979).
13. *Id.* at 318–19, 403 A.2d at 360–61. *See* Md. Rule 746(b).
14. 285 Md. 310, 321, 403 A.2d 356, 362 (1979).
15. The state filed a motion requesting reconsideration of the holdings that Md. Rule 746 is mandatory and that the appropriate sanction for noncompliance is dismissal. *Id.* at 334, 403 A.2d at 368 (per curiam decision on motion for reconsideration). The state further requested that, if the court declined to reconsider the holdings, they be given purely prospective effect. *Id.* Reconsideration is governed by Md. Rule 850.
16. State v. Hicks, 285 Md. 310, 338, 403 A.2d 356, 371 (1979) (per curiam decision on motion for reconsideration).
17. MD. ANN. CODE art. 27, § 616D(a) (1976) provides in pertinent part:
    > Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within one hundred eighty days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information or complaint: provided that for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.
18. State v. Hicks, 285 Md. 310, 313, 403 A.2d 356, 358 (1979).
19. *Id.* Hicks was tried on April 4, 1978, and sentenced to three years imprisonment.
20. *Id.* The criminal information was filed on April 21, 1978, charging Hicks with storehouse breaking and related offenses. *Id.* at 313 n.2, 403 A.2d at 358 n.2.

his appearance for Hicks, and a trial date was set for April 27 by agreement of counsel.[21] Unknown to either the prosecutor or the public defender, Hicks was returned to Delaware on April 26.[22] Consequently, trial on the eight-count information was rescheduled for August 8, 1978,[23] a date within the 120-day period then prescribed by Maryland Rule 746.[24] Neither the state nor Hicks invoked the Interstate Agreement on Detainers to secure his attendance at trial.[25] When the case was called, the prosecutor told the court that "arrangements" had been made for Hicks' presence, but that Hicks had "not consented to come."[26] The court ordered the case continued, remarking: "Obviously we can't do anything with the man [Hicks] not being here."[27]

On August 25, Hicks filed a motion to dismiss[28] on the ground that he had not been tried within the 120-day period then prescribed by Rule 746.[29] This motion was heard on October 2, 1978.[30] The trial court determined that the primary issue raised by the motion was whether Rule 746 was mandatory, without regard to whether the state or the defendant was responsible for the change of trial date.[31] The state contended that the rule was directory only and, alternatively, that the requisite "extraordinary cause" under Rule 746[32] was shown at the August 8 hearing to justify the postponement.[33] Relying

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21. *Id.* at 313, 403 A.2d at 358.
22. *Id.* The state contended that Hicks had been returned at his own request to the Delaware prison. Brief for Appellant at 4, State v. Hicks, 285 Md. 310, 403 A.2d 356 (1979) [hereinafter cited as Brief for Appellant]. The defense contested the state's assertion and assumed *arguendo* that Hicks' return was due to the apparent negligence of the state. Brief for Appellee at 5, State v. Hicks, 285 Md. 310, 403 A.2d 356 (1979) [hereinafter cited as Brief for Appellee]. The trial court did not consider the point material and no testimony was taken. *Id.* at 25–26.
23. 285 Md. 310, 314, 403 A.2d 356, 358 (1979).
24. See note 4 *supra*.
25. 285 Md. 310, 314–15, 403 A.2d 356, 358–59 (1979). Delaware authorities refused to release Hicks for trial on August 8 unless the state invoked the provisions of the Interstate Agreement on Detainers.
26. *Id.* at 314, 403 A.2d at 358; Brief for Appellee, *supra* note 22, at 17. The prosecutor continued:

    > From my knowledge of Mr. Hicks' whereabouts and his situation, I think he will finish serving his Delaware sentence this September, and then he does have a Maryland sentence to serve, and I think there's a detainer on him in Delaware, he will be sent to the Maryland House of Correction, so we will have an opportunity to get custody of him some time beginning in September.

    Id. at 18.
27. 285 Md. 310, 314, 403 A.2d 356, 358 (1979); Brief for Appellee, *supra* note 22, at 18.
28. 285 Md. 310, 314, 403 A.2d 356, 358 (1979).
29. See note 4 *supra*.
30. 285 Md. 310, 314, 403 A.2d 356, 358 (1979).
31. Brief for Appellee, *supra* note 22, at 26–27.
32. See text accompanying note 41 *infra*.
33. 285 Md. 310, 315, 403 A.2d 356, 358–59 (1979).

on the use of the word "shall" within the text of the rule, the trial court held that Rule 746 was mandatory.[34]

Implicitly accepting Hicks' argument that the state bears the duty of bringing the defendant to trial and that this duty is not excused merely because the accused is incarcerated in some other jurisdiction, the trial court found that the state should have either produced Hicks at trial within the period prescribed by Rule 746 or filed a motion showing "extraordinary cause" to justify a postponement.[35] Finding neither, the court granted the motion to dismiss.[36]

The state appealed, and the Court of Appeals of Maryland granted certiorari prior to consideration of the case by the court of special appeals.[37]

III. THE DEVELOPMENT OF MARYLAND RULE 746

Maryland Rule 746 became effective on July 1, 1977, as part of an extensive revision of the Chapter 700 Rules regulating criminal cases in the circuit courts of the counties and in the Criminal Court of Baltimore.[38] The rule, which governs the scheduling of criminal cases for trial, now provides:

> a. *General Provision.*
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> Within 30 days after the earlier of the appearance of counsel or the first appearance of the defendant before the court pursuant to Rule 723 (Appearance — Provision for or Waiver of Counsel),[39] a trial date *shall* be set which shall be not later than 180 days[40] after the appearance or waiver of counsel or after the appearance of defendant before the court pursuant to Rule 723 (Appearance — Provision for or Waiver of Counsel).
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> b. *Change of Trial Date.*
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> Upon motion of a party made in writing or in open court *and for extraordinary cause shown*, the county administra-

34. Brief for Appellee, *supra* note 22, at 29.
35. 285 Md. 310, 315, 403 A.2d 356, 359 (1979).
36. *Id.*
37. *Id.* The court of appeals granted certiorari prior to oral argument in the court of special appeals pursuant to MD. CTS. & JUD. PROC. CODE ANN. § 12–203 (1980).
38. *See generally* Comment, *The New Maryland Rules of Criminal Procedure: Time Table for Lawyers*, 6 U. BALT. L. REV. 241 (1977).
39. Rule 723(a) provides that either the defendant or his attorney shall appear at the time and place specified in the summons, unless the attorney enters an appearance for the defendant in writing on or before that time. Under Rule 723(b), if a defendant appears without counsel, he must be advised of certain rights, including the right to counsel. Rule 723(c) governs the inquiry into whether a defendant has knowingly and intelligently waived his right to counsel.
40. See note 4 *supra*.

tive judge or a judge designated by him may grant a change of trial date.[41]

Prior to the adoption of Rule 746, setting of trial dates in Maryland was regulated by former Rule 740,[42] which incorporated by reference the provisions of article 27, section 591:

> (a) Within two weeks after the arraignment of a person accused of a criminal offense, or within two weeks after the filing of an appearance of counsel or the appointment of counsel for an accused in any criminal matter, whichever shall occur first, a judge or other designated official of the Circuit Court or the Criminal Court of Baltimore City in which the matter is pending, shall set a date for the trial of the case, which date shall be not later than six months from the date of the arraignment of the person accused or the appearance or the appointment of counsel for the accused whichever occurs first. The date established for the trial of the matter shall not be postponed except for extraordinary cause shown by the moving party and only with the permission of the administrative judge of the court where the matter is pending.
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> (b) The judges of the Court of Appeals of Maryland are authorized to establish additional rules of practice and procedure for the implementation of this section in the Criminal Court of Baltimore City and in the various circuit courts throughout the State of Maryland.[43]

The enactment of article 27, section 591 illustrates the Maryland General Assembly's awareness of the detrimental effects upon the criminal justice system caused by excessive delay in scheduling criminal cases for trial and postponement of scheduled trials for inadequate reasons.[44] The court of appeals has indicated that the statute seeks to promote "orderly procedure" by setting an outside limit on the time allowed the state to prepare for trial.[45] To assure that criminal cases be heard promptly, the court of appeals found

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41. Md. Rule 746 (emphasis added).
42. Md. Rule 740 (superseded) was adopted on June 1, 1972. It provided: "The date of trial and postponements shall be governed by Code, Article 27, section 591."
43. Md. Ann. Code art. 27, § 591 (1976) was enacted by Act of April 29, 1971, ch. 212, 1971 Md. Laws 500.
44. State v. Hicks, 285 Md. 310, 316, 403 A.2d 356, 359 (1979). The court cited Guarnera v. State, 20 Md. App. 562, 573, 318 A.2d 243, 248 (1974), in which the court of special appeals characterized delay as causative of (1) lost court time, attorney's time, and witnesses' time due to rescheduling, (2) a detrimental image of the judicial system and the attendant lowering of public confidence in the courts, and (3) a weakening of the deference due to the General Assembly mandate embodied in § 591. Moreover, delay may cause prejudice to both sides.
45. *See* Epps v. State, 276 Md. 96, 112, 345 A.2d 62, 73 (1975).

authority in section 591(b) to restrict further the time within which a case should be brought to trial.[46] This led to the court's promulgation of Maryland Rule 746, which reflected the policy and emulated the language of section 591.[47]

According to Rule 746(a), the criminal assignment commissioner has thirty days from the earlier of the appearance of the defendant before the court[48] or the appearance of defense counsel pursuant to Rule 723 to set an initial trial date,[49] an increase from the two-week period provided in section 591(a). Rule 746(a) further provides a time period of 180 days[50] within which a case must be scheduled for trial. Section 591(a) similarly allows six months. The 180-day period begins to run from the earlier of the appearance of the defendant before the court or the appearance or waiver of defense counsel pursuant to Rule 723.

By the terms of Rule 746(b), a postponement of the trial date may be made only upon written motion or motion in open court and only for "extraordinary cause." The "extraordinary cause" standard of section 591 is retained in Rule 746(b) as the sole justification for postponement of criminal trial dates, and, in both, the determination of whether "extraordinary causes" exists rests exclusively in the limited discretion of the administrative judge.[51] Unlike the statute, however, the rule permits the administrative judge to authorize other judges to grant postponements. Neither Rule 746 nor section 591 prescribe any sanction for noncompliance.

The precursors of Rule 746 had consistently been held to be of only directory force.[52] No sanction had ever been imposed for

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46. State v. Hicks, 285 Md. 310, 318, 403 A.2d 356, 360 (1979). *See also* Wilson v. State, 44 Md. App. 1, 6, 408 A.2d 102, 106 (1979) (MD. CONST. art. 4, § 18(A) vests authority in the Court of Appeals of Maryland to make rules having the force of law governing "practice and procedure in the administration of the . . . courts.").
47. Wilson v. State, 44 Md. App. 1, 6, 408 A.2d 102, 106 (1979).
48. Md. Rule 746 does not apply until a criminal case reaches the circuit court. Dates of arrest or preliminary hearings which occur in the district court are irrelevant. Furthermore, Md. Rule 746 does not pertain to removals from the district court due to appeals or prayers for jury trial. Time does not begin to run until a defendant receives a Rule 723 hearing in the circuit court or until defense counsel enters his appearance with the clerk of the circuit court. Brown v. State, 27 Md. App. 233, 237, 340 A.2d 409, 412 (1975) (construing Md. Rule 740, the precursor of Md. Rule 746). Where Md. Rule 746 is not applicable, trial judges retain their traditional discretion over continuances. *Id.* at 238, 340 A.2d at 413.
49. A trial date is more than a mere docket entry — it is the date on which trial is to commence. Epps v. State, 276 Md. 96, 114, 345 A.2d 62, 74 (1975).
50. See note 4 *supra*.
51. Discretionary rulings of judges carry a presumption of validity. Mathias v. State, 284 Md. 22, 28, 394 A.2d 292, 295 (1978). The aggrieved party bears the burden of providing the court with a satisfactorily endowed record indicative of an abuse of the trial court's discretion in granting the motion. Hughes v. State, 43 Md. App. 698, 706, 407 A.2d 330, 336 (1979).
52. *See* text accompanying notes 61–63 *infra*.

noncompliance with either section 591 or former Rule 740. Consequently, there had been no need to interpret the meaning of the "extraordinary cause" necessary to justify the postponement of criminal trials. Due to the obvious similarities of language between the rule and the statute and the lack of judicial comment on adoption of the rule, prosecutors and court administrators throughout Maryland apparently assumed that Rule 746 would be identical in effect to section 591. The result was "almost wholesale violations" of the rule's requirements.[53] Moreover, it was not clear whether the rule was intended to implement the accused's sixth amendment right to a speedy trial or merely to provide a guide to orderly judicial procedure.

It was almost two years after the adoption of Maryland Rule 746 before the court of appeals had its first opportunity to discuss the proper application of this rule. *Hicks* offered an appropriate forum to address the important issues left unresolved by a plain reading of the rule.

IV. DISCUSSION AND ANALYSIS OF THE COURT'S HOLDING

The court of appeals held that Rule 746 was intended to place mandatory controls on the scheduling and postponement of criminal cases in Maryland.[54] The *Hicks* court stated that when the provisions of the rule regulating trial dates and their postponement are not observed by the state, the appropriate sanction is dismissal of the criminal indictment.[55] In addition, the court found that the requirements of Rule 746 were not intended to implement the accused's sixth amendment right to a speedy trial.[56] Thus, the state is not required to invoke the Interstate Agreement on Detainers[57] in order to bring a defendant incarcerated in another state to trial within the period prescribed by the rule.[58] On reconsideration, the court of appeals gave its holding in *Hicks* purely prospective effect, applying it only to criminal prosecutions in which the appearance or waiver of counsel or appearance of defendant before the court occurs after July 25, 1979.[59]

A. Rule 746 is Mandatory

Inasmuch as *Hicks* was the first case involving the interpretation of Rule 746 to reach the appellate courts, the state analogized

53. State v. Hicks, 285 Md. 310, 334, 403 A.2d 356, 369 (1979) (per curiam decision on motion for reconsideration).
54. See text accompanying notes 60–78 *infra*.
55. See text accompanying notes 79–88 *infra*.
56. See text accompanying notes 104–16 *infra*.
57. See note 11 *supra*.
58. See text accompanying notes 89–103 *infra*.
59. See text accompanying notes 126–29 *infra*.

that "in the absence of a contrary contextual indication the use of the word 'shall' is presumed to have a mandatory meaning."[71]

The court of appeals found that the "admonitions in *Guarnera* were largely unheeded, a predictable result so long as under *Young* § 591 was to be accorded directory rather than mandatory force."[72] Moreover, the court declared,

> By our adoption of Rule 746 in 1977, we intended to supersede the provisions of § 591(a) and put teeth into a new regulation governing the assignment of criminal cases for trial. . . . We deemed it essential, as is evident from the language of Rule 746, to place mandatory controls over the scheduling of criminal cases for trial, and over their postponement, to assure that criminal charges would be promptly heard and resolved.[73]

The *Hicks* court concluded that the language used in adopting Rule 746, in light of the legislative intention underlying section 591, must be construed as mandatory.[74] In its reconsideration, the court noted that the word "shall" is presumed to have a mandatory meaning under settled principles of statutory construction.[75] The court also noted that if the deadline for trial of the case were directory, not mandatory, and could be ignored whenever convenient, there would be no necessity for the provision in the statute and rule requiring "extraordinary cause" and permission of an administrative judge for an extension of the deadline.

The court of appeals observed that "giving § 591 and Rule 746 only 'directory' effect results in almost wholesale violations of the statute and rule."[76] "The provisions of Rule 746 are of mandatory

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71. Brief for Appellee, *supra* note 22, at 10–11 (citing Johnson v. State, 282 Md. 314, 321, 384 A.2d 709, 713 (1978)). In *Johnson*, the court of appeals held that Md. Rule 723(a) was mandatory. That rule formerly provided that an arraignment hearing "shall" be had within a specified time period after arrest and provided no sanction for the state's failure to comply. The defense in *Hicks* drew an analogy between Md. Rule 723(a) and Md. Rule 746(a) in that both rules provide for judicial proceedings within a specified time period and both rules use the word "shall" in their text. Neither rule provides a sanction for noncompliance. The language and logic of the *Johnson* decision were persuasive, in Hicks' view, that Md. Rule 746 should be accorded mandatory force. *See generally* 8 U. BALT. L. REV. 562 (1979).
72. State v. Hicks, 285 Md. 310, 317–18, 403 A.2d 356, 360 (1979) (citing Guarnera v. State, 20 Md. App. 562, 573–74, 318 A.2d 243, 249 (1974)).
73. State v. Hicks, 285 Md. 310, 318, 403 A.2d 356, 360 (1979).
74. *Id.* The court of appeals affirmed the lower court's ruling on this issue.
75. *Id.* at 334, 403 A.2d at 369 (per curiam decision on motion for reconsideration) (citing Johnson v. State, 282 Md. 314, 321, 384 A.2d 709, 713 (1978); Moss v. Director, 279 Md. 561, 564–65, 369 A.2d 1011, 1013 (1977)).
76. 285 Md. 310, 334, 403 A.2d 356, 369 (1979) (per curiam decision on motion for reconsideration).

the rule's provisions to those of section 591.[60] Arguing that the rule reflected the legislative policy of section 591 and emulated its language, the state relied on the court's interpretation of the statute in *Young v. State*.[61] There the court of special appeals held that the provisions of section 591 "were intended by the Legislature to be directory and not mandatory because it had not explicitly provided the extreme sanction of dismissal of an indictment for administrative noncompliance."[62]

The issue was raised a second time in *Guarnera v. State*[63] when the court of special appeals again accorded section 591 only directory force. In the *Guarnera* opinion, however, the court admonished that "the message should be loud and clear to the bench, the bar, parties, witnesses, and to the public, that trials must not and will not be postponed for ordinary reasons."[64] In *Hicks*, the state specifically noted that the rule, like section 591, provided no sanctions for noncompliance and urged that Rule 746 similarly should be held to be directory.[65]

The defendant in *Hicks* argued that the rule should be interpreted as mandatory. Recognizing that section 591 had already been interpreted as directory,[66] counsel asked the court of appeals to treat *Hicks* as a case of first impression.[67] The defendant further argued that logic dictates that a statute (or rule) be interpreted so as to remedy the practice it was designed to control.[68] In support of his position, Hicks argued that, because Rule 746 is expressly more restrictive than section 591, the court of appeals must have intended that the rule be binding and that to allow the rule, where it imposes stricter standards than the statute, to "be ignored at will will lead to absurd results."[69] Hicks also relied on *Johnson v. State*,[70] which held

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60. Brief for Appellant, *supra* note 22, at 6–8.
61. 15 Md. App. 707, 292 A.2d 137, *aff'd per curiam*, 266 Md. 438, 294 A.2d 467 (1972).
62. State v. Hicks, 285 Md. 310, 316, 403 A.2d 356, 359 (1979) (citing Young v. State, 15 Md. App. 707, 292 A.2d 137 (1972)). On appeal, this view was summarily affirmed by the court of appeals. Young v. State, 266 Md. 438, 294 A.2d 467 (1972).
63. 20 Md. App. 562, 318 A.2d 243 (1974).
64. *Id.* at 573–74, 318 A.2d at 249.
65. The state also claimed that Hicks suffered no prejudice as a result of the extension of the trial date beyond the then prescribed 120-day limit. State v. Hicks, 285 Md. 310, 313, 403 A.2d 356, 358 (1979). See note 4 *supra*.
66. *See, e.g.*, Young v. State, 15 Md. App. 707, 292 A.2d 137, *aff'd per curiam*, 266 Md. 438, 294 A.2d 467 (1972); Guarnera v. State, 20 Md. App. 562, 318 A.2d 243 (1974).
67. Brief for Appellee, *supra* note 22, at 9.
68. *Id.* (citing State v. Fabritz, 276 Md. 416, 348 A.2d 275 (1975)).
69. Brief for Appellee, *supra* note 22, at 9.
70. 282 Md. 314, 384 A.2d 709 (1978).

application, binding upon the prosecution and defense alike; they are not mere guides or bench marks to be observed, if convenient."[77] The dissent wholly concurred with the majority's holding that Rule 746 should be construed as mandatory.[78]

B. Appropriate Sanction for Noncompliance is Dismissal

Rule 746 provides no express sanction for the state's failure to comply with its terms. In the *Hicks* court's view, if Rule 746 were to prove effective, an appropriate sanction would have to be provided to "compel compliance."[79] The sanction of dismissal provides both the inducement to assure compliance and a remedy for the state's failure to comply. The court of appeals in *Hicks*, therefore, affirmed the lower court's holding that dismissal of the criminal charges is ordinarily the appropriate sanction for noncompliance with Rule 746 when "extraordinary cause" justifying a trial postponement has not been established.[80] The dissent agreed with the majority on this issue.[81]

Neither the majority nor the dissent gave any consideration to possible alternatives to the sanction of dismissal.[82] On reconsideration, however, the court of appeals identified two instances in which it would be inappropriate to dismiss a criminal indictment.[83] The first circumstance would be "where the defendant, either individually or through his attorney, seeks or expressly consents to a trial date in violation of Rule 746."[84] Consent acts as a waiver of the rule, and it would be improper for the defendant to gain advantage from his own delay.[85] The second circumstance in which dismissal would be inappropriate is when the act of setting the trial date is not done within thirty days of the appearance of counsel or the first

77. *Id.* at 318, 403 A.2d at 360.
78. *Id.* at 321, 403 A.2d at 362 (Davidson, J., dissenting).
79. *Id.* at 336, 403 A.2d at 370 (per curiam decision on motion for reconsideration).
80. *Id.* at 318, 403 A.2d at 360.
81. *Id.* at 321, 403 A.2d at 362 (Davidson, J., dissenting).
82. For a discussion of the alternatives to dismissal, see Note, *The Right To A Speedy Criminal Trial,* 57 COLUM. L. REV. 846, 859 (1957).
83. State v. Hicks, 285 Md. 310, 335, 403 A.2d 356, 369 (1979) (per curiam decision on motion for reconsideration).
84. *Id.*
85. *Id.* This situation is analogous to a criminal defendant who consents to a mistrial where the "manifest necessity" standard has not been met. The defendant cannot take advantage of his own act and prevent a retrial on double jeopardy grounds. *Id.* (citing United States v. Dinitz, 424 U.S. 600 (1976); United States v. Jorn, 400 U.S. 470, 484–85 (1971)). When the state requests a trial date which violates the rule, either because the trial is scheduled after the period prescribed by the rule or because the postponement is granted for less than "extraordinary cause," the accused or his counsel must expressly, on the record, consent to the delay. Loker, *The Effect of State v. Hicks on the Scheduling and Postponing of Trial, Pursuant to Maryland Rule 746* at 5, August 1, 1979 (unofficial memorandum).

appearance of the defendant before the court.[86] While the court of appeals found that this provision of Rule 746 is also mandatory, it reasoned that no prejudice can result to the defendant unless the trial date is scheduled beyond the maximum period[87] within which trial must be held and, thus, no sanction is necessary.[88]

C. "Extraordinary Cause"

The "extraordinary cause" standard of section 591 was retained in Rule 746 as the sole justification for postponement of criminal trial dates.[89] Whether "extraordinary cause" has been shown is "dependent upon the facts and circumstances of each case."[90] For this reason, the courts have not attempted to compile a comprehensive list of causes they would view as "extraordinary."[91]

In *Hicks*, the defense argued that the prosecutor made no motion at the August 8 hearing, either in writing or in open court, to establish the "extraordinary cause" sufficient to justify a postponement beyond the period prescribed by Rule 746.[92] Alternatively, the defense maintained that the state was required to invoke the

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86. State v. Hicks, 285 Md. 310, 337, 403 A.2d 356, 369 (1979). The court distinguished between the 180-day requirement and this 30-day requirement: "[T]he legislative purpose underlying § 591 and Rule 746 will in no way be advanced by holding that dismissal is the appropriate sanction for violation of the 30-day requirement." *Id.* at 335, 403 A.2d at 369.

87. See note 4 *supra*.

88. 285 Md. 310, 337, 403 A.2d 356, 369 (1979) (per curiam decision on motion for reconsideration).

89. *Id.* at 318, 403 A.2d at 360. A hearing held to determine whether "extraordinary cause" exists may be considered of such importance that the defendant's presence may be required. Hughes v. State, 43 Md. App. 698, 708, 407 A.2d 330, 338 (1979). Md. Rule 746(b) states that "extraordinary cause" must be shown either by written motion or by motion in open court by the moving party. Md. Rule 746(b) also states that only an administrative judge or his designee may determine whether "extraordinary cause" exists.

90. State v. Hicks, 285 Md. 310, 319, 403 A.2d 356, 361 (1979). Clearly, however, it is cause beyond what is "ordinary, usual or commonplace." *Id. Compare* Copeland v. State, 27 Md. App. 397, 340 A.2d 355 (1975) (defendant's request to change attorney held to be "extraordinary cause") *with* Guarnera v. State, 20 Md. App. 562, 318 A.2d 243 (1974) (defendant's last minute request to change attorney held not to be "extraordinary cause").

91. *See generally* A.B.A. PROJECT ON MINIMUM STANDARDS FOR CRIMINAL JUSTICE: STANDARDS RELATING TO SPEEDY TRIAL (Approved Draft 1968).

92. 285 Md. 310, 314, 403 A.2d 356, 358 (1979); Brief for Appellee, *supra* note 22, at 6. The transcript of the proceeding on August 8, 1978, records the following exchange in pertinent part:

> MR. HICKSON (Assistant State's Attorney): Mr. Hicks is not present, Your Honor.
>
> THE COURT: Have arrangements been made to get him here?
>
> MR. HICKSON: We have, Your Honor, but he has not consented to come.
>
> . . . . [The prosecutor indicated that Hicks would be returned to Maryland in September to serve another sentence and the state would then get custody.]
>
> THE COURT: Well, I don't know what — I don't understand what we're

Interstate Agreement on Detainers[93] to bring Hicks to trial and, thus, the state's failure to invoke the Agreement precluded a finding of "extraordinary cause."[94]

The state claimed that a trial date had been set within the prescribed period of Rule 746 and a postponement had been granted in open court for the "extraordinary" reason that Hicks, incarcerated in a Delaware prison, did not appear for trial on the scheduled date.[95] According to the state, it had no obligation to invoke the Agreement to obtain temporary custody of an out-of-state prisoner in order to comply with Rule 746.[96]

The trial court found, however, that the state was required to invoke the Interstate Agreement on Detainers to obtain Hicks' presence in court on August 8 or present a motion showing "extraordinary cause" for a postponement.[97] Finding that the state had done neither, the trial court dismissed the indictment.[98]

The court of appeals held that the lower court had erred, reasoning that the prosecutor's statement, together with the court's

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doing! But obviously we can't do anything with him not being here. I will have to check into it and see why it is on the list for today. Obviously we can't do anything with the man not being here.

Id. at 17–18.

93. See note 11 *supra*.

94. Brief for Appellee, *supra* note 22, at 8. The defense urged that even if a motion had been made, no "extraordinary cause" justifying a trial postponement had been shown. Because Hicks was incarcerated out of state, the state's failure to invoke the Interstate Agreement to procure his presence at trial made his absence totally "foreseeable." *Id.* at 7. Hicks also argued that a defendant has no duty to bring himself to trial. It is the state's duty to bring the defendant to trial, a duty which includes invoking the Interstate Agreement when applicable. By its failure to invoke the Interstate Agreement, the state was directly responsible for Hicks' absence and ignored its duty to comply with Md. Rule 746. Hicks reasoned that the state's independent decision not to gain jurisdiction over an accused cannot be "extraordinary cause." *Id.* at 7–8. At no time did Hicks raise the issue of the sixth amendment right to a speedy trial. Brief for Appellant, *supra* note 22, at 6.

95. 285 Md. 310, 313, 403 A.2d 356, 358 (1979). Delaware authorities refused to release Hicks for trial on August 8 unless the state invoked the Interstate Agreement on Detainers. *Id.* at 314, 403 A.2d at 359.

96. *Id.* at 314–15, 403 A.2d at 359. The state does have a continuing constitutional obligation to invoke the Interstate Agreement on Detainers in order to provide an accused with a speedy trial under the sixth amendment. State v. Wilson, 35 Md. App. 111, 371 A.2d 140 (1977), *aff'd*, 281 Md. 640, 655, 382 A.2d 1053, 1064 (1978). The prosecutor explained to the trial court why the Interstate Agreement was not invoked: "Our normal office procedure is not to do that unless there are very extraordinary circumstances, because usually there are costs involved and our budget does not provide for these extraordinary circumstances." State v. Hicks, 285 Md. 310, 315, 403 A.2d 356, 359 (1979); Brief for Appellee, *supra* note 22, at 25. The state noted that it had informed the trial court that Hicks would be available for trial the following month when he would be released by Delaware authorities to serve an earlier imposed Maryland sentence. 285 Md. at 314, 403 A.2d at 358.

97. *Id.* at 315, 403 A.2d at 359.

98. *Id.*

decision to postpone the case due to Hicks' absence, was equivalent to the state's having made a timely motion in open court based upon a showing of "extraordinary cause," thus complying with Rule 746.[99] The court explained that the state could have invoked the Interstate Agreement on Detainers in an effort to obtain Hicks' presence in Maryland on the scheduled trial date, but it was under no obligation to do so simply to satisfy the requirements of Rule 746.[100] When Hicks did not appear for trial through no fault of his own or of the state, "extraordinary cause" for a postponement was found to exist.[101]

The dissent agreed with the majority that the proceedings on August 8 implicitly involved a motion for a postponement.[102] The dissent believed, however, that the state had a duty to invoke the Interstate Agreement to procure Hicks' presence at trial and that its failure to do so did not constitute "extraordinary cause" for a postponement.[103]

D. Compliance with Rule 746 Does Not Require Invocation of the Interstate Agreement on Detainers — A Comparison with the Sixth Amendment

In order to resolve the issue of whether Rule 746 obligated the state to invoke the Interstate Agreement on Detainers[104] to secure Hicks' presence, the court first had to consider the pivotal question of whether Rule 746 was intended to implement the accused's constitutional right to a speedy trial in Maryland.[105]

According to the majority, Rule 746 was adopted to set a standard for orderly procedure, a standard which imposes a shorter time limit for bringing a case to trial than that mandated by the sixth amendment. While intending no departure from established law that a defendant's incarceration in another jurisdiction does not release the state from its obligation to grant the accused his

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99. *Id.* at 319, 403 A.2d at 361.
100. *Id.*
101. *Id.* at 319–20, 403 A.2d at 361. The court stated that when "Hicks did not invoke the Agreement and was not present in court, but was to be returned by Delaware authorities to Maryland the month following the scheduled August 8 trial date, extraordinary cause justifying a postponement was plainly shown to exist." *Id.*
102. *Id.* at 321, 403 A.2d at 362 (Davidson, J., dissenting).
103. *Id.*
104. See note 11 *supra*.
105. The right to a speedy trial in Maryland is protected by MD. CONST., DECL. OF RIGHTS art. 21 and U.S. CONST. amend. IV. *See* Klopfer v. North Carolina, 386 U.S. 213, 223 (1967) (the sixth amendment right to a speedy trial is incorporated in the due process clause of the fourteenth amendment and is applicable to the states). *See generally* Comment, *The Right to a Speedy Trial in Maryland*, 6 U. BALT. L. REV. 47 (1976).

constitutional right to a speedy trial,[106] the majority stated that "the time limits prescribed by Rule 746 are not, however, the measure of the Sixth Amendment right."[107] Based upon this conclusion, the court held that the state was not required to invoke the Interstate Agreement on Detainers simply to comply with Rule 746.[108]

The court was unpersuaded by the defendant's argument that Rule 746 is a statutory prompt trial requirement having a constitutional basis.[109] The Court of Appeals of Maryland expressed the view that Rule 746 "stands on a different legal footing than the Sixth Amendment's constitutional right."[110] Unfortunately, the majority made no attempt to support this finding or to distinguish the "prompt disposition of criminal cases" afforded by Rule 746 and the "speedy trial" guaranteed by the sixth amendment.[111] The majority's sole explanation was that Rule 746 "reflects the legislative policy

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106. State v. Hicks, 285 Md. 310, 320, 403 A.2d 356, 361 (1979). "The right to a speedy trial is a guarantee afforded to every accused . . . ." State v. Hunter, 16 Md. App. 306, 310, 295 A.2d 779, 781 (1972).
107. 285 Md. 310, 320, 403 A.2d 356, 361 (1979).
108. *Id.* at 320–21, 403 A.2d at 362.
109. Brief for Appellee, *supra* note 22, at 12 n.5.
110. 285 Md. 310, 320, 403 A.2d 356, 361–62 (1979).
111. In fact, it appears that the majority carefully refrained from drawing any comparisons between the sixth amendment and Md. Rule 746. For example, in its discussion of circumstances in which dismissal would not be appropriate, such as where a defendant has requested or consented to a delay beyond the time allotted by Md. Rule 746, the majority cited cases dealing with double jeopardy for authority, rather than the more strictly analogous sixth amendment cases. *Id.* at 335, 403 A.2d at 369. Clearly, however, "prompt disposition" and "speedy trial" are strongly analogous terms. *See* Wilson v. State, 44 Md. App. 1, 7, 408 A.2d 102, 106 (1979). Both set outside limits on the time allowed the state to bring criminal cases to trial. See text accompanying notes 117–21 *infra*. Both impose the sanction of dismissal of the criminal indictment when the state fails to provide the accused a trial within the time allowed. See text accompanying notes 79–80 *supra*. And both rely on the accused to seek dismissal of the criminal charges. Md. Rule 736 requires the accused to move for dismissal. Additionally, the state and the accused have substantial interests in the prompt resolution of criminal charges which both Md. Rule 746 and the sixth amendment seem intended to protect.

The accused has an interest in minimizing the anxiety produced by extended periods of uncertainty, limiting the possibility of loss of witnesses whose testimony supports his innocence, and preventing the detrimental effects of prolonged incarceration when he is unable to make bail. Barker v. Wingo, 407 U.S. 514, 532–33 (1972). Although the majority in *Hicks* never addressed the issue, Md. Rule 746 parallels the sixth amendment in shielding a defendant from these effects.

Societal interests protected by the sixth amendment include the orderly and efficient use of judicial resources, preservation of testimony favorable to the prosecution, maintenance of public confidence in the criminal justice system, deterrence of crime, and minimizing the detrimental effects of delays on rehabilitation. Barker v. Wingo, 407 U.S. at 519–20. Although not specifically stated by the majority in *Hicks*, Md. Rule 746 again parallels the sixth amendment in protecting these public interests.

embodied in . . . § 591, that there should be a prompt trial of criminal charges."[112]

It was this conclusion by the majority, that Rule 746 is not of constitutional dimension, from which Judge Davidson dissented.[113] The dissent noted, "[S]tatutory prompt trial requirements . . . implement, effectuate, and 'put teeth' into the Sixth Amendment. Given this interrelationship, it would be . . . incongruous to interpret a statutory requirement as being narrower in scope and applicability and, therefore, less effective than the Sixth Amendment requirement."[114] Believing that Rule 746 was intended to implement the sixth amendment, Judge Davidson reasoned that the state should have been required to take the same actions to comply with Rule 746 as were necessary to comply with the sixth amendment.[115] Thus, Judge Davidson would have held that the state must invoke the Interstate Agreement on Detainers to comply with Rule 746.[116]

As a result of *Hicks*, there are now two criteria to be applied to the scheduling and postponement of criminal prosecutions in Maryland, the sixth amendment and Rule 746. Rule 746 provides that trial must begin within 180 days[117] plus any additional time allowed for postponements that are justified by "extraordinary cause."[118] In comparison, the sixth amendment guarantees that a defendant be tried within a less definite period determined by applying the four-factor balancing test of *Barker v. Wingo*.[119] Under *Barker,* the four factors to be considered are the length of the delay, the reasons for the delay, the prejudice to the defendant caused by the delay, and any waiver by the defendant of the sixth amendment right. This balancing test is not applied until cumulative delays in bringing a case to trial become presumptively prejudicial to the

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112. State v. Hicks, 285 Md. 310, 334, 403 A.2d 356, 369 (1979) (per curiam decision on motion for reconsideration).
113. *Id.* at 321, 403 A.2d at 362 (Davidson, J., dissenting).
114. *Id.* at 327, 403 A.2d at 365 (Davidson, J., dissenting).
115. *Id.* at 321–22, 403 A.2d at 362 (Davidson, J., dissenting). Judge Davidson's dissent draws further support from an earlier court of special appeals' opinion in Guarnera v. State, 20 Md. App. 562, 318 A.2d 243 (1974). "The legislative policy of Maryland implementing the constitutional requirement that persons accused of a criminal offense shall be tried promptly was declared by the enactment [of § 591]." *Id.* at 564, 318 A.2d at 244. Thus, by extension, Md. Rule 746 would appear to implement the sixth amendment.
116. 285 Md. 310, 321–22, 403 A.2d 356, 362 (1979) (Davidson, J., dissenting).
117. See note 4 *supra.*
118. Md. Rule 746(b).
119. 407 U.S. 514 (1972). The outside time limit allowed by the sixth amendment is "relative" and is dependent upon a balancing test weighing the four factors. *Id.* at 530–33; State v. Hunter, 16 Md. App. 306, 310, 295 A.2d 779, 781 (1972). *See generally* Comment, *The Right to a Speedy Trial in Maryland*, 6 U. BALT. L. REV. 47 (1976).

rights of the accused.[120] Maryland has found such a presumption in a delay of as little as nine months twenty-three days.[121]

As the post-*Hicks* case, *State v. Hiken*,[122] observed, "[E]ven where there has been full compliance with Rule 746, the [sixth amendment] analysis may well result in a finding that the accused's speedy trial rights were denied."[123] But, in practical terms, Rule 746 provides that *most* cases must be brought to trial within a time period shorter than that mandated by the sixth amendment, at least when the accused is incarcerated within the State of Maryland.

The virtue of Rule 746 is that it provides a definite criterion which, in the majority of cases, clarifies the outer perimeters of "how long is too long for the State to bring an accused to trial."[124] This serves to simplify a court's determination of whether an accused's rights have been abridged and tends to eliminate the subjectivity inherent in the *Barker* four-factor balancing test.

Although Rule 746 results in greater protection for the accused than the sixth amendment standing alone, it must be reiterated that the rule was adopted by the Court of Appeals of Maryland as a standard for orderly procedure. Such protection, then, cannot fairly be said to be more than an incidental benefit to criminal defendants. Because the rule does not have constitutional underpinnings, the time period specified by Rule 746 may be changed at the discretion of the Court of Appeals of Maryland. Moreover, as in *Hicks*, "extraordinary cause" to justify a trial postponement under the rule need not always satisfy constitutional standards.

This "how long is too long" determination can be viewed as operating along a time continuum. Although it is conceivable that the sixth amendment could be triggered first, the 180-day time

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120. Barker v. Wingo, 407 U.S. 514, 531 (1972).
121. *See* State v. Hiken, 43 Md. App. 259, 405 A.2d 284 (1979).
122. *Id.*
123. *Id.* at 271 n.18, 405 A.2d at 291 n.18. A fact pattern illustrative of a situation in which there has been full compliance with Md. Rule 746, but the accused's speedy trial rights have been denied may be drawn from the facts of *Hiken*. Hiken was charged under Maryland law with arson. Trial was scheduled in accordance with Md. Rule 746, but postponed for the "extraordinary" reason that the state's evidence was subpoenaed before the trial date by the United States Attorney's Office in connection with a related grand jury investigation. The evidence was not returned. Nine months and twenty-three days from the date of Hiken's arrest, a motion to dismiss was granted for lack of speedy trial. Although the issue was not addressed by the court of special appeals, presumably "extraordinary cause" to justify further postponements continued to exist.

    On the other hand, any time that a trial has been postponed for less than "extraordinary cause," where the resultant delay is less than nine months twenty-three days, presumably the sixth amendment requirement for speedy trial will have been complied with, but the violation of Md. Rule 746 will cause dismissal.
124. Wilson v. State, 44 Md. App. 1, 5, 408 A.2d 102, 105 (1979).

period of Rule 746 is inside the nine-month-twenty-three-day presumptively prejudicial delay period of *Hiken*, a case construing the sixth amendment. Thus, criminal defense attorneys, at least those representing clients incarcerated within Maryland, may request a dismissal of charges for failure to comply with Rule 746 after 180 days and after each successive delay or postponement,[125] asserting the absence of "extraordinary cause." Once the delay moves along the time continuum to beyond the point of presumptively prejudicial delay (nine months twenty-three days), the defendant may assert his sixth amendment claim independently of any rights under Rule 746.

E. Holding in Hicks *Given Purely Prospective Effect*

On reconsideration, the court of appeals gave its holding purely prospective effect.[126] *Hicks* applies only to those criminal prosecutions in which the appearance or waiver of counsel or appearance of the defendant before the court occurs after July 25, 1979.[127] The interpretation of the rule in *Hicks* was a clear break with prior interpretations of section 591,[128] and the court considered it an "almost classic example" of a ruling that should be given only prospective effect.[129]

V. THE EFFECTS OF *HICKS*

The *Hicks* court's interpretation of Rule 746 was viewed by judges, prosecutors, and court administrators as "chaotic to criminal

125. "[I]t makes not the slightest difference whether a [postponement] requested is the fifth, the third, or the very first — the reasons for it must satisfy the administrative judge that they meet the test of extraordinary cause." State v. Hicks, 285 Md. 310, 317, 403 A.2d 356, 360 (1979) (citing Guarnera v. State, 20 Md. App. 562, 574, 318 A.2d 243, 249 (1974)).

126. State v. Hicks, 285 Md. 310, 334, 403 A.2d 356, 368 (1979) (per curiam decision on motion for reconsideration).

127. *Id.* July 25, 1979, was the date on which the mandate was filed. *Id.* at 334, 403 A.2d at 369.

128. See text accompanying notes 61–63 *supra*.

129. 285 Md. 310, 338, 403 A.2d 356, 371 (1979) (per curiam decision on motion for reconsideration). The court applied a three-prong balancing test. *Id.* at 337, 403 A.2d at 370. *See* Wiggins v. State, 275 Md. 689, 698–716, 344 A.2d 80, 85–95 (1975). The factors considered were the purpose of the new ruling, the reliance placed upon the old ruling, and the effect of retrospective application on the administration of justice. State v. Hicks, 285 Md. at 337–38, 403 A.2d at 370–71. In the court's view, the purpose to be served by the new ruling was to act as a "protective measure designed to insure compliance with the requirements" imposed on the state regarding prompt trials. *Id.* at 337, 403 A.2d at 370. "[T]he critical language of Rule 746, upon which our decision in this case was based, was essentially unchanged from the language in [§ 591]." *Id.* at 336, 403 A.2d at 370. Further, the court found that retroactive application would increase the burden on the administration of justice by overturning convictions based on fair reliance upon pre-*Hicks* decisions and would not serve to deter future violations. *Id.* at 337–38, 403 A.2d at 370–71.

justice."[130] Because of crowded court dockets and an insufficient number of judges, prosecutors, and public defenders, court officials feared that they could not comply with the decision and that many cases would therefore have to be dismissed.[131] The large number of criminal prosecutions that faced possible dismissal for lack of timely trial did little to instill confidence in the judicial system[132] and seemed counterproductive to the *Hicks* court's stated goal of promoting an orderly and efficient administration of justice.[133]

As the first post-*Hicks* 120-day deadline approached,[134] public pressure intensified to modify the rule in order to preclude dismissal of the large number of pending cases, many involving serious charges.[135] In an attempt to comply with the court of appeals' interpretation of Rule 746, Baltimore City judges resolved as many cases as possible before trial through pre-trial conferences and plea bargains.[136] The court of appeals recognized the dilemma that the rule was causing for some jurisdictions[137] and urged the formation of a task force, consisting of representatives from the state's judicial, executive, and legislative branches, to recommend solutions.[138]

The Court of Appeals of Maryland's Standing Committee on Rules of Practice and Procedure urged the court to relax the 120-day

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130. The Sun (Baltimore), Nov. 24, 1979, § A, at 14, col. 1 (morning ed.).
131. The Sun (Baltimore), Dec. 2, 1979, § B, at 1, col. 5, at 6, col. 3.
132. *See, e.g.*, The Sun (Baltimore), Oct. 12, 1979, § D, at 16, col. 1 (morning ed.).
133. State v. Hicks, 285 Md. 310, 334, 403 A.2d 356, 369 (1979) (per curiam decision on motion for reconsideration).
134. November 22, 1979 (120 days from the filing of the mandate on July 25, 1979).
135. Public officials complained they could not comply with the 120-day deadline. Mary Ann Willin, Deputy City State's Attorney, estimated that *75% or more* of the criminal cases, both misdemeanors and felonies, to be tried in city courts would have to be forfeited under *Hicks*. The administrative judge of the Supreme Bench, the Honorable Robert L. Karwacki, said Ms. Willin's estimate was too high. Other court officials concurred that the court docket crowding problems in light of *Hicks* continued to be serious. The Sun (Baltimore), Oct. 12, 1979, § D, at 16, col. 1 (morning ed.).

"Baltimore prosecutors predicted that 25 to 30 *percent* of the criminal cases before the Supreme Bench would not be tried within 120 days and thus would be dismissed." The Sun (Baltimore), Nov. 17, 1979, § A, at 1, col. 1 (morning ed.) (emphasis added).

The state public defenders, who represent most criminal defendants, were particularly hard-pressed to handle the cases with such dispatch, due to an ever increasing caseload and a lack of manpower resources. The Sun (Baltimore), Nov. 17, 1979, § A, at 1, col. 1, at 15, col. 4 (morning ed.).
136. The Sun (Baltimore), Oct. 12, 1979, § D, at 16, col. 1 (morning ed.). "'We've been knocking out 40% of the defendants brought over from the jail on this crash program in plea bargains,' Judge Karwacki said." *Id.*
137. The Sun (Baltimore), Nov. 24, 1979, § A, at 14, col. 2 (morning ed.).
138. *Id.* The court sought suggestions from the state's circuit court judges on how to reduce the crisis caused by *Hicks*. For example, Judge Karwacki urged that "the time limit be increased to 180 days." The Sun (Baltimore), Oct. 12, 1979, § D, at 16, col. 1 (morning ed.).

limit of Rule 746.[139] The court of appeals relented and unanimously accepted the Committee's recommendations that Rule 746(a)

> be amended on an emergency basis to change the time limit specified in the Rule from "120" days to "180" days, and . . . that this Rules Change shall take effect November 16, 1979, and shall apply to all proceedings thereafter commenced and, so far as practicable, to all proceedings then pending . . . .[140]

The change came as welcome relief to harried court officials who had been straining to comply with the 120-day time deadline.[141] The court's emergency rule change, however, has not completely stilled the public clamor over *Hicks*. Rule 746 is, for the time being, very much in limbo. Eight bills aimed at amending section 591 to direct the court of appeals to modify the rule's present formulation were introduced in the most recent session of the legislature.[142]

VI. CONCLUSION

By holding that Maryland Rule 746 is mandatory and that the appropriate sanction for noncompliance is dismissal of the criminal

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139. The Sun (Baltimore), Nov. 17, 1979, § A, at 15, col. 4 (morning ed.). "The committee [composed of judges, lawyers and legislators] is not really comfortable with its recommendation . . . [to the court of appeals]. 'We [the committee] are not sure this is going to resolve all the problems. But 120 days is unrealistic at this time.' " *Id.* The court of appeals had authority to alter the 120-day rule pursuant to MD. ANN. CODE art. 27, § 591(b) (1976).

140. 6 Md. Reg. 1915 (1979). "There are weaknesses in the system that will cause [some of the courts] not to be able to meet the 120-day rule, Robert C. Murphy, the chief judge, said before the court voted unanimously to make the change." The Sun (Baltimore), Nov. 17, 1979, § A, at 1, col. 1 (morning ed.). In a discussion before the vote, however, Chief Judge Murphy indicated that he still prefers the shorter time limit: "There's a very strong feeling on the part of everyone in the system that we'd like to keep the 120 days to form strict guidelines we can target on for the benefit of the public." *Id.* at 15, col. 4.

141. The Sun (Baltimore), Nov. 17, 1979, § A, at 1, col. 1 (morning ed.). " 'This is the relief we were looking for,' said Judge Robert L. Karwacki, administrative judge of the Supreme Bench. 'We feel we can fully comply with a 180-day rule.' " *Id.*

"Stephen H. Sachs, the state attorney general, said, 'the change by the court . . . will obviously relieve some pressure. This will be helpful to prosecutors.' " *Id.* at 15, col. 4.

142. The eight bills introduced in the 1980 session of the General Assembly were S.B. 42, H.B. 205, H.B. 219, H.B. 324, H.B. 351, H.B. 614, H.B. 615, and H.B. 636. Senate Bill 42 and House Bill 324 sought to limit the application of Md. Rule 746(a) to non-felony cases. Two bills attempted to lessen the "extraordinary cause" standard of Md. Rule 746(b): H.B. 205 to "cause" and H.B. 615 to "good cause." House Bill 219 was introduced to change the effect of Md. Rule 746 from mandatory to directory by substituting "may" for "shall." House Bill 614 went further by adding that postponement was but one factor to be considered in determining whether the accused had been denied a speedy trial. House Bill 351 went even further, incorporating the *Barker* four-factor balancing test. See text accompanying notes 119–20 *supra*.

indictment, the court has "put teeth" into the legislative policy embodied in section 591 that there be a "prompt disposition of criminal charges." *Hicks* is fair warning to all who are responsible for the administration of the criminal justice system in Maryland that rules established by the legislature and the judiciary for the regulation of criminal cases must be followed.

Stephen Fielder
Jeffrey Miller

ADDENDUM

Since the initial printing of this article, section 591(a) has been amended.[143] The section now provides that a trial may be postponed for "good cause" shown by the moving party, a retreat from the standard of "extraordinary cause." Although it remains to be seen whether the court of appeals will incorporate this change into its own rules, the General Assembly has clearly indicated its desire to "pull the teeth" of Rule 746. Even if the court of appeals chooses to amend Rule 746 to allow postponements for "good cause," it may have little practical impact because "good cause," like "extraordinary cause," must be applied on a case-by-case basis and means no more or no less than what the court says it means.

143. *See* Act of May 6, 1980, ch. 378, 1980 Md. Laws 1283.