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Recent Developments: Dewolfe v. Richmond: Indigent Arrestees Have a Statutory Right to Counsel at Initial Appearances before District Court Commissioners and Bail Reviews before District Court Judges; Trial Court Did Not Err in Issuing Declaratory Judgment without Considering Office of the Public Defender's Budgetary Concerns or Drafting a Remedy; Res Judicata Would Not Preclude Arrestees from Subsequently Seeking Injunctive Relief to Enforce Their Right to Counsel

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## RECENT DEVELOPMENT

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### *DEWOLFE V. RICHMOND*

By: A. Lauren Cramer

**INDIGENT ARRESTEES HAVE A STATUTORY RIGHT TO COUNSEL AT INITIAL APPEARANCES BEFORE DISTRICT COURT COMMISSIONERS AND BAIL REVIEWS BEFORE DISTRICT COURT JUDGES; TRIAL COURT DID NOT ERR IN ISSUING DECLARATORY JUDGMENT WITHOUT CONSIDERING OFFICE OF THE PUBLIC DEFENDER'S BUDGETARY CONCERNS OR DRAFTING A REMEDY; *RES JUDICATA* WOULD NOT PRECLUDE ARRESTEES FROM SUBSEQUENTLY SEEKING INJUNCTIVE RELIEF TO ENFORCE THEIR RIGHT TO COUNSEL**

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## RECENT DEVELOPMENT

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***DEWOLFE V. RICHMOND*: INDIGENT ARRESTEES HAVE A STATUTORY RIGHT TO COUNSEL AT INITIAL APPEARANCES BEFORE DISTRICT COURT COMMISSIONERS AND BAIL REVIEWS BEFORE DISTRICT COURT JUDGES; TRIAL COURT DID NOT ERR IN ISSUING DECLARATORY JUDGMENT WITHOUT CONSIDERING OFFICE OF THE PUBLIC DEFENDER'S BUDGETARY CONCERNS OR DRAFTING A REMEDY; *RES JUDICATA* WOULD NOT PRECLUDE ARRESTEES FROM SUBSEQUENTLY SEEKING INJUNCTIVE RELIEF TO ENFORCE THEIR RIGHT TO COUNSEL.**

**By: A. Lauren Cramer**

The Court of Appeals of Maryland held that indigent criminal defendants are entitled to appointed counsel, under Maryland's Public Defender Act ("PD Act"), during initial bail hearings before district court commissioners and during bail reviews before district court judges. *DeWolfe v. Richmond*, No. 34, 2012 WL 10853 (Md. Jan. 4, 2012). The court further held that the trial court did not err in entering declaratory judgment on behalf of the plaintiffs without also generating a remedy for the Office of the Public Defender ("OPD"). *Id.* at \*14-15. Finally, the court held that the plaintiffs could seek injunctive relief to enforce their right to counsel. *Id.* at \*16-18.

This class action proceeding involved eleven named plaintiffs, including Quinton Richmond ("Richmond"), each of whom was arrested for a "serious offense," per section 16-101(h)(1)-(4) of the Public Defender Statute. Each arrestee was detained at the Central Booking Jail and subsequently brought before a Baltimore City district court commissioner to determine their eligibility for pretrial release. During those hearings, each individual informed the commissioner of their inability to afford an attorney, and requested an appointed attorney. In each instance, the commissioner denied appointed counsel and set bail. Richmond and the other arrestees subsequently filed their class action suit against numerous defendants, including the District Court of Maryland and its Chief Judge, the Administrative Judge of the District Court for Baltimore City, and the Commissioners of the District Court in Baltimore City. The basis of the lawsuit was to obtain a declaratory judgment ruling that bail hearings are part of the

criminal proceeding, entitling arrestees to legal representation during those hearings under the PD Act, the Sixth Amendment to the United States Constitution, and Article 21 of the Maryland Declaration of Rights. They also sought a declaratory judgment ruling that the initial bail hearings implicated their fundamental rights under the Due Process Clause of the Fourteenth Amendment to the United States Constitution, and Article 24 of the Maryland Declaration of Rights. Further, Richmond also sought an injunction enjoining the defendants from future violations of this right to representation by the OPD.

Richmond initially filed the lawsuit in the Circuit Court for Baltimore City, where the court granted summary judgment for the defendants. Richmond subsequently filed a timely notice of appeal to the Court of Special Appeals of Maryland. The Court of Appeals of Maryland then issued a writ of certiorari on its own initiative and vacated the order of the circuit court, remanding the case with instructions to dismiss unless Richmond amended the complaint to reflect the proper defendants, including the Public Defender (“DeWolfe”). Richmond amended the complaint, and the circuit court granted judgment to Richmond, but did not decide the issues of declaratory and injunctive relief. The court also issued an order staying the decision during the pendency of an appeal; both parties then filed timely appeals. Richmond later filed a petition for a writ of certiorari seeking review of the case by the Court of Appeals of Maryland, which the court granted prior to any review by the Court of Special Appeals of Maryland.

The Court of Appeals of Maryland discussed how the right to counsel under the PD Act is broader in scope than the right to counsel under the Sixth Amendment of the United States Constitution. *DeWolfe*, 2012 WL 10853, at \*7 (citing *McCarter v. State*, 363 Md. 705, 707, 770 A.2d 195, 199-200 (2001)). In section 16-204(b)(2) of the PD Act, it states that legal representation is to be provided at all stages of a proceeding, which in the criminal context includes custody, interrogation, preliminary hearing, arraignment, trial, and appeal. *DeWolfe*, 2012 WL 10853, at \*9. Richmond highlighted this subsection, and the court agreed that the plain language in the statute includes bail hearings, and thus, criminal defendants have the right to counsel during such proceedings. *Id.* The court also held that an initial appearance before a commissioner is undoubtedly contained within the criminal proceeding, and is accordingly a stage in that proceeding due to its nature and overall importance. *Id.* at \*11 (citing *McCarter v. State*, 363 Md. 705, 707, 770 A.2d 195, 196 (2001)). Even in situations where indigent defendants are charged with a less

serious offense or other proceedings not included under the PD Act, the court further emphasized that such arrestees are nevertheless entitled to legal representation since incarceration could result from those hearings as well. *DeWolfe*, 2012 WL 10853, at \*11-12 (citing *State v. Flansburg*, 345 Md. 694, 697, 694 A.2d 462, 463-464 (1997)). The court further extended this statutory right to counsel to bail reviews held in district courts before judges. *DeWolfe*, 2012 WL 10853 at \*12.

The court then considered whether the trial court erred in granting declaratory judgment without also crafting a remedy to execute the ruling. *DeWolfe*, 2012 WL 10853 at \*14-15. The court stated that the central question regarding declaratory judgments is whether such a judgment would terminate the controversy, and whether actual, concrete, and adverse claims or interests exist. *Id.* at \*14 (citing *Lovell Land, Inc. v. State Highway Admin.*, 408 Md. 242, 256, 969 A.2d 284, 292 (2009)). A declaratory judgment might be appropriate even if a party may incur a consequential burden, particularly under such circumstances as here, where the statutory right to counsel was at issue in a class action suit. *DeWolfe*, 2012 WL 10853, at \*14. In reviewing past precedent, the court did not find any occasion where it delayed implementation of a substantive right due to concerns for the financial costs attendant to carrying out that right. *Id.* at \*15. The court further stated that the budgetary concerns of the OPD have never played a role in decisions involving the statutory right to counsel. *Id.* at \*14 (citing *Webster v. State*, 299 Md. 581, 623, 474 A.2d 1305, 1327 (1984)).

Finally, the court addressed whether the circuit court's denial of Richmond's request for injunctive relief raised a *res judicata* bar, preventing arrestees from seeking injunctive relief for future violations. *DeWolfe*, 2012 WL 10853, at \*16. *Res judicata* bars a claim only when three requirements are present. *Id.* at \*17. The parties in the subsequent litigation must be the same as, or in privity with, the parties to the earlier dispute, the subsequent action must present matters that were, or could have been, litigated in the earlier action, and there must be a valid final judgment on the merits in the earlier dispute. *Id.* Applying those criteria to the present case, the court held that the second and third elements were not satisfied to invoke a *res judicata* bar. *Id.* Future violations of the declaratory judgment could not have been litigated in the earlier action and the denial of injunctive relief was a procedural decision, rather than one on the merits, because the circuit court stayed its decision, pending appellate review. *Id.* Overall, the Court of Appeals of Maryland

agreed with Richmond that arrestees enjoy the right to counsel at bail determinations under the PD Act. *Id.* at \*7.

Alternatively, the dissent emphasized the impractical aspects of this ruling such as the severely limited resources of the OPD and the physical composition of the detention facilities in Maryland where initial appearances take place. *DeWolfe*, 2012 WL 10853, at \*18-19 (Harrell, J. dissenting). The dissent argued that a stay should have been part of the holding in order to accommodate the monetary and staffing issues related to its implementation. *Id.*

*DeWolfe v. Richmond* extends the rights of indigent criminal defendants, which increases their likelihood of being well-prepared for bail review determinations and may ultimately help arrestees reach more favorable and legally competent outcomes in their cases. With the assistance of counsel arrestees will be able to more fully articulate why, based on the statutory criteria, they are entitled to a bail or a lower bail.

However, as the dissent emphasizes, this holding will place an enormous burden on the already overburdened OPD. The budgetary concerns are significant, with the cost of a much larger caseload estimated to be impractically high, calling for more staffing and longer hours spent on these types of cases. Public defenders may need to work night shifts at pretrial detention centers or courthouses in order to accommodate this ruling and the Office of the State's Attorney may be interested in sending prosecutors to represent the State at these hearings as well.

The ruling in this case presents a dichotomy between increasing the rights of the accused and the ability to support those rights monetarily. The balance between these two issues will need to be resolved before this ruling may be fully implemented. Recently, the Court of Appeals of Maryland issued a two-week stay shortly after announcing this decision, and the Maryland General Assembly subsequently passed bills to amend the PD Act to counteract this ruling. The bills, which are awaiting the Governor's signature, state that the right to counsel under the PD Act would exist only when a defendant seeks a bail review before a Maryland district court judge and not during initial appearances before commissioners.