

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB

In re DONNA ELAINE ANDERSON,
individually and on behalf of all others
similarly situated,

15 - 2380 - AS
Circuit Court Case No. 15-_____ -AS

Hon. JAMES M. MACERONI

Arising from 38th District Court
Case Nos. 14EA04628A-OM
14EA04628B-OM
District Judge Carl F. Gerds III

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There is no pending or resolved civil action arising out of the transaction or occurrence alleged in this complaint. However, criminal appeals arising out of the transaction or occurrence alleged in this complaint have been previously filed in this Court, where they were given docket numbers 15-444-AR, 15-1474-AR, and 15-2185-AR. Case numbers 15-444 and 15-1474 were assigned to Judge Mary A. Chrzanowski. Case number 15-2185 was assigned to Judge Kathryn A. Viviano, and a motion has been filed to reassign the case to Judge Chrzanowski.

COMPLAINT FOR SUPERINTENDING CONTROL

Introduction

1. Plaintiff Donna Elaine Anderson requests that this Court take superintending control over the 38th District Court pursuant to MCL 600.615 and MCR 3.302 and order District Judge Carl F. Gerds III to perform his clear legal duty to refrain from imposing “pay or stay” sentences on indigent defendants who cannot afford to pay.

2. Although imposing “pay or stay” sentences on defendants who cannot afford to pay is clearly unconstitutional under binding United States Supreme Court and Michigan caselaw, Judge Gerds maintains a general practice of imposing such sentences without an ability-to-pay determination.

3. As a direct result of this unconstitutional practice, indigent defendants in the 38th District Court are routinely incarcerated because they are poor, while defendants with means do not serve jail time for comparable offenses.

4. Ms. Anderson pleaded guilty to contempt in the 38th District Court for failing to license her dogs and failing to appear in court on the dog license tickets.

5. Ms. Anderson is indigent and is unable to pay the \$455 in fines, fees and costs she has been assessed.

6. Under Judge Gerds’s general practice of sentencing indigent defendants to “pay or stay” sentences, Ms. Anderson faces imminent incarceration due to poverty when she is sentenced on July 22, 2015.

7. Ms. Anderson therefore brings this action, on behalf of herself and all others similarly situated, seeking relief from Judge Gerds’s practice of sentencing indigents to incarceration under clearly unconstitutional “pay or stay” sentences.

The Clear Legal Duty Not to Impose “Pay or Stay” Sentences

8. Courts sentencing criminal defendants have a clear legal duty not to sentence a defendant to jail for failure to pay fines, fees, costs, and similar legal financial obligations unless the defendant has the financial ability to pay.

9. The United States Supreme Court and the appellate courts of this State have repeatedly held that it is unconstitutional to sentence someone to jail for failure to pay fines, fees, costs, and similar legal financial obligations unless that person has the financial ability to pay.¹

10. A recent report of the State Court Administrative Office (SCAO) reaffirmed that Michigan judges have this clear legal duty, stating:

In the three decades since the United States Supreme Court issued its decision in *Bearden v Georgia*, 461 US 660 (1983), judges have been required to address the issue of ability to pay before incarcerating a person for failure to pay court-ordered financial obligations. Michigan law is also clear that a judge may not incarcerate someone who lacks the ability to pay court-ordered financial obligations.²

11. Such sentences are unconstitutional because they condition a person’s liberty on his or her financial means, thereby violating the right to equal protection under the law and the right not to be deprived of liberty without due process of law.

12. The unconstitutional sentencing practice known colloquially as “pay or stay” consists of imposing a sentence that orders the defendant to pay a specified amount of money or,

¹ See, e.g., *Bearden v Georgia*, 461 US 660; 103 S Ct 2064; 76 L Ed 2d 221 (1983); *Tate v Short*, 401 US 395; 91 S Ct 668; 28 L Ed 2d 130 (1971); *People v Jackson*, 463 Mich 271; 769 NW2d 630 (2009); *People v Collins*, 239 Mich App 125; 607 NW2d 760 (1999); *People of the City of Eastpointe v Rockett*, unpublished opinion of the Macomb Circuit Court, issued March 18, 2015 (Docket No. 15-444-AR) (attached as Exhibit A).

² SCAO Ability to Pay Workgroup, *Tools and Guidance for Determining and Addressing an Obligor’s Ability to Pay* (April 20, 2015), <http://courts.mi.gov/Administration/SCAO/Resources/Documents/Publications/Reports/AbilityToPay.pdf>, p. 1.

if the amount is not paid, to serve a specified amount of time in jail.

13. A “pay or stay” sentencing practice, when carried out without regard to defendants’ ability to pay, is unconstitutional because it creates a two-tier system of justice: persons of means pay money and remain free, whereas poor people who are unable to pay go to jail.

The “Pay or Stay” Sentencing Practice in the 38th District Court

14. This case concerns the sentencing practice of the 38th District Court in Eastpointe.

15. A single district judge, the Hon. Carl F. Gerds III, serves in the 38th District Court.

16. Judge Gerds has a general practice of imposing “pay or stay” sentences.

17. Judge Gerds has a general practice of imposing sentences that require defendants to go to jail immediately unless they pay fines, fees and costs in full on the day of sentencing.

18. Judge Gerds has a general practice of not conducting an indigency hearing or otherwise assessing defendants’ ability to pay before imposing such sentences.

19. Judge Gerds has a general practice of not allowing defendants to pay their financial obligations over time or to enter into payment plans with the court,³ nor does he allow indigent defendants to perform community service in lieu of making payments.

People of the City of Eastpointe v Ryan Edward Rockett

20. Judge Gerds’s sentencing practice is exemplified by the case of *People v Rockett*, 38th District Court case numbers 14EA05894B-OI and 14EA05894C-OT.

³ Attached as Exhibit B is a photograph of a sign posted in the lobby of the 38th District Court, stating “FINES & COSTS DUE UPON SENTENCING” and “NO PAYMENT PLANS.”

21. The defendant in that case, Ryan Edward Rockett, was found guilty of operating a vehicle without insurance and driving while his license was suspended.

22. On January 30, 2015, Judge Gerds sentenced Mr. Rockett to pay fees and costs in the amount of \$1500 or serve 93 days in jail.⁴

23. Judge Gerds made no inquiry into Mr. Rockett's financial ability to pay.

24. At the sentencing hearing, Judge Gerds merely stated, "Hopefully you can pay that and be on your way."

25. Mr. Rockett asked, "Is it pay or stay?"

26. Judge Gerds confirmed, "Yes, sir."

27. The register of actions for Mr. Rockett's case confirms that Mr. Rockett's sentence was "MONEY OR JAIL."⁵

28. The judgments of sentence generated in Mr. Rockett's case state that he was committed to jail with release authorized "upon payment of fine/costs."⁶

29. Mr. Rockett was indigent and could not afford to immediately pay \$1500.

30. Therefore, Mr. Rockett was immediately sent to jail.

31. At the time of his sentencing, Mr. Rockett was a recipient of need-based government assistance in the form of food assistance and Medicaid.

32. At the time of his sentencing, Mr. Rockett had recently obtained a job and was saving up money to pay the costs and fees associated with his case.

33. However, when he was sent to jail, he lost his job.

⁴ Rockett Sentencing Transcript, January 30, 2015, Exhibit C.

⁵ Rockett Registers of Actions, Exhibit D.

⁶ Rockett Judgments of Sentence, Exhibit E.

34. After he was sent to jail, Mr. Rockett retained undersigned pro bono counsel from the ACLU of Michigan and, through counsel, filed an emergency motion for bond pending appeal on the grounds that his pay-or-stay sentence was unconstitutional because he was indigent.

35. Judge Gerds denied the request for bond pending appeal.

36. Mr. Rockett then sought bond pending appeal from this Court on the same grounds.

37. The case was assigned to the Hon. Mary A. Chrzanowski (docket no. 15-444-AR), who granted bond and granted Mr. Rockett's application for leave to appeal.

38. By the time Mr. Rockett was released, he had served 14 days in the Macomb County Jail.

39. On March 18, 2015, Judge Chrzanowski issued an opinion and order in Mr. Rockett's appeal holding that Judge Gerds's "pay or stay" sentencing practice was unconstitutional. A copy of the opinion and order is attached as Exhibit A.

40. In the March 18, 2015 opinion and order, this Court reviewed the binding case law from the U.S. Supreme Court, the Michigan Supreme Court, and the Michigan Court of Appeals. The court then explained:

In the context of "pay or stay" or "fine or time" sentencing practices, a sentencing court demands that a defendant serve a certain jail sentence, unless he or she is able to immediately pay various fines, fees, and costs. In actuality, a "pay or stay" sentence imposes imprisonment for the failure to pay certain fines, costs, and fees. Pursuant to [*People v Jackson*, 483 Mich 271; 769 NW2d 630 (2009)], this constitutes the imposition of a fee with the simultaneous enforcement that fee, i.e. if the indigent defendant is unable to immediately pay the fines, costs, and fees, they are mandated to serve jail time. Thus, a court must conduct an ability-to-pay analysis, *before* enforcing the fee – sentencing defendant to jail time.

Through the imposition of a "pay or stay" or "fine or time" sentence, a court embraces a sentencing practice that provides that a person of means

can simply pay the amount demanded and avoid jail time, while the poor, who cannot pay that amount immediately, are subjected to incarceration. This practice is unconstitutional pursuant to [*Bearden v Georgia*, 461 US 660; 103 S Ct 2064; 76 L Ed 2d 221 (1983)] and [*People v Collins*, 239 Mich App 125; 607 NW2d 760 (1999)] under the Equal Protection Clauses of both the federal and state constitutions.⁷

41. This Court therefore vacated the judgments of sentence in Mr. Rockett's case and remanded for resentencing.

42. Judge Gerds resentenced Mr. Rockett on May 1, 2015.

43. At the resentencing hearing, despite the clear guidance from this Court, Judge Gerds again failed to conduct any inquiry into Mr. Rockett's ability to pay.⁸

44. Instead, Judge Gerds resentenced Mr. Rockett to 93 days in jail, this time *without* authorization for release upon payment of fines and costs.

45. Mr. Rockett again sought bond pending appeal, and Judge Gerds again denied the request.

46. Mr. Rockett again filed an emergency application for leave to appeal and an emergency motion for bond pending appeal with this Court.

47. This Court granted the emergency application and granted bond, and the merits of Mr. Rockett's second appeal are pending before Judge Chrzanowski under docket number 15-1474-AR.

48. By the time Mr. Rockett was released, he had served an additional four days in jail.

⁷ Exhibit A, p.4.

⁸ Rockett Resentencing Transcript, May 1, 2015, Exhibit F.

People of the City of Eastpointe v Stephane Earl-Rico Milton

49. Another example of Judge Gerds's unconstitutional "pay or stay" sentencing practice is the case *People v Milton*, 38th District Court case number 14EA06438-ON.

50. The defendant in that case, Stephane Earl-Rico Milton, was found guilty of contempt for failing to appear on a ticket for "pedestrian fail to use cross walk," otherwise known as jaywalking.

51. On June 19, 2015, Judge Gerds sentenced Mr. Milton to pay fees and costs in the amount of \$334 or serve 30 days in jail.⁹

52. At the time of the June 19, 2015 sentencing in Mr. Milton's case, this Court had already issued its March 18, 2015 opinion and order in Mr. Rockett's case explaining the unconstitutionality of Judge Gerds's "pay or stay" sentencing practice. In that opinion, this Court had explained that "a court must conduct an ability-to-pay analysis" before sentencing a defendant to jail time on a pay-or-stay sentence.

53. At Mr. Milton's June 19, 2015 sentencing hearing, however, Judge Gerds made no inquiry into Mr. Milton's financial ability to pay.

54. At the sentencing hearing, Judge Gerds explained: "Pay the \$334[,] off you go. If you'd rather do the 30 days, sir, then you don't owe anything at all."

55. Mr. Milton asked if he could make partial payments, and Judge Gerds denied the request.

56. As in Mr. Rockett's case, the register of actions in Mr. Milton's case confirms that Mr. Milton's sentence is "MONEY OR JAIL."¹⁰

⁹ Milton Sentencing Transcript, June 19, 2015, Exhibit G.

¹⁰ Milton Register of Actions, Exhibit H.

57. The judgment of sentence generated in Mr. Milton's case likewise states that he was committed to jail with release authorized "upon payment of fine/costs."¹¹

58. Mr. Milton was indigent and could not afford to immediately pay \$334.

59. Therefore, Mr. Milton was immediately sent to jail.

60. At the time of his sentencing, Mr. Milton was a recipient of need-based government assistance in the form of food assistance and Medicaid.

61. Mr. Milton had been temporarily disabled as a result of a car accident, and had recently obtained employment as a door-to-door salesman.

62. When Mr. Milton was sent to jail, he lost his job.

63. After he was sent to jail, Mr. Milton retained undersigned pro bono counsel from the ACLU of Michigan.

64. Mr. Milton was subsequently granted bond pending appeal, and his application for leave to appeal is pending before this Court under docket number 15-2185-AR.

65. By the time Mr. Milton was granted bond pending appeal, he had served five days in jail on his "pay or stay" sentence arising from his jaywalking citation.

Additional Examples of "Pay or Stay" Sentencing in the 38th District Court

66. In addition to the cases described above, courtwatchers from the ACLU of Michigan have observed Judge Gerds routinely sentence defendants to "pay or stay" without determining whether they have the ability to pay.¹² These sentences order the defendants' immediate commitment to the Macomb County Jail unless they pay the full amount of fines, costs and fees owed to the court on the day they are sentenced.

¹¹ Milton Judgment of Sentence, Exhibit I.

¹² Berschback Affidavit, Exhibit J; Doukoure Affidavit, Exhibit K; Sullivan Affidavit, Exhibit L.

67. On January 9, 2015, Judge Gerds sentenced Dar-Shawn Roman Brown to serve 30 days in jail unless he immediately paid \$438 for fines, fees and costs associated with urinating in public. The register of actions in Mr. Brown's case states "MONEY OR JAIL."¹³ Judge Gerds did not make any inquiry into Mr. Brown's ability to pay prior to imposing the sentence.¹⁴

68. On January 9, 2015, Judge Gerds sentenced Harvey Williams to serve 90 days unless he immediately paid \$1625 in fines, fees and costs for driving while license suspended and disorderly conduct. The register of actions in Mr. Williams's case states "MONEY OR JAIL."¹⁵ Mr. Williams had brought some money with him to court to pay, but was told by the court clerk that he had not brought enough to cover the total amount that he owed, and was taken by the court officer to lock-up.¹⁶

69. On February 20, 2015, Judge Gerds sentenced Noel Thomas Callaway to serve 30 days in jail unless he immediately paid \$590 in fines, fees and costs for failure to display a valid license. The register of actions in Mr. Callaway's case states "MONEY OR JAIL."¹⁷ Judge Gerds did not make any inquiry into Mr. Callaway's ability to pay prior to imposing the sentence.¹⁸

70. On February 20, 2015, Judge Gerds sentenced Tory Chico Jones to serve 30 days in jail unless he immediately paid \$386 in fines, fees and costs for disobeying a traffic signal/red

¹³ Dar-Shawn Roman Brown Register of Actions, Exhibit M.

¹⁴ Doukoure Affidavit, Exhibit K.

¹⁵ Williams Register of Actions, Exhibit N.

¹⁶ Doukoure Affidavit, Exhibit K.

¹⁷ Callaway Register of Actions, Exhibit O.

¹⁸ Berschback Affidavit, Exhibit J.

light and contempt for failure to appear. The register of actions in Mr. Jones's case states "MONEY OR JAIL."¹⁹ Judge Gerds did not make any inquiry into Mr. Jones's ability to pay prior to imposing the sentence.²⁰

71. On May 29, 2015, Judge Gerds sentenced Terrance Dion Fuqua to serve 45 days in jail unless he immediately paid \$620 in fines, fees and costs for failure to display a valid license. The register of actions in Mr. Fuqua's case states "MONEY OR JAIL."²¹ Judge Gerds did not make any inquiry into Mr. Fuqua's ability to pay prior to imposing the sentence.²²

72. On May 29, 2015, Judge Gerds sentenced Lieatrice Nicole Grayson to serve 45 days in jail unless she immediately paid \$420 in fines, fees and costs for failure to display a valid license. The register of actions in Ms. Grayson's case states "MONEY OR JAIL."²³ Judge Gerds did not make any inquiry into Ms. Grayson's ability to pay prior to imposing the sentence.²⁴

73. On May 29, 2015, Judge Gerds sentenced Justice Shannon Wade to serve 60 days in jail unless she immediately paid \$1058 in fines, fees and costs for driving with a suspended license and expired plate and contempt for failure to appear. The registers of actions in Ms. Wade's case state "MONEY OR JAIL."²⁵ Judge Gerds did not make any inquiry into Ms.

¹⁹ Jones Register of Actions, Exhibit P.

²⁰ Berschback Affidavit, Exhibit J.

²¹ Fuqua Register of Actions, Exhibit Q.

²² Berschback Affidavit, Exhibit J.

²³ Grayson Register of Actions, Exhibit R.

²⁴ Berschback Affidavit, Exhibit J.

²⁵ Wade Registers of Actions, Exhibit S.

Wade's ability to pay prior to imposing the sentence.²⁶

74. On May 29, 2015, Judge Gerds sentenced Alicia Shawnta Brown to serve 30 days in jail unless she immediately paid \$535 in fines, fees and costs for allowing a person to drive in violation of the motor vehicle code. The register of actions in Ms. Brown's case states "MONEY OR JAIL."²⁷ Judge Gerds did not make any inquiry into Ms. Brown's ability to pay prior to imposing the sentence.²⁸

75. On May 29, 2015, Judge Gerds sentenced Vanesia Lanette-Danielle Evans to serve 60 days in jail unless she immediately paid \$848 in fines, fees and costs for defective equipment, failure to display a valid license and proof of insurance and contempt for failure to appear. The registers of actions in Ms. Evans's case state "MONEY OR JAIL."²⁹ Judge Gerds did not make any inquiry into Ms. Evans's ability to pay prior to imposing the sentence.³⁰

76. On May 29, 2015, Judge Gerds sentenced Delon Martez Adams to serve 60 days in jail unless he immediately paid \$593 in fines, fees and costs for no proof of insurance, driving on an expired license, and contempt for failure to appear. The registers of actions in Mr. Adams's case state "MONEY OR JAIL."³¹ Judge Gerds made no inquiry into Mr. Adams's ability to pay.³²

²⁶ Berschback Affidavit, Exhibit J.

²⁷ Alicia Shawnta Brown Register of Actions, Exhibit T.

²⁸ Berschback Affidavit, Exhibit J.

²⁹ Evans Registers of Actions, Exhibit U.

³⁰ Berschback Affidavit, Exhibit J.

³¹ Adams Registers of Actions, Exhibit V.

³² Berschback Affidavit, Exhibit J.

77. On June 29, 2015, Judge Gerds sentenced Chontae Michelle Knight to serve 60 days in jail unless she immediately paid \$785 in fines, fees and costs for driving on a suspended license. The register of actions in Ms. Knight's case states "MONEY OR JAIL."³³ Judge Gerds did not make any inquiry into Ms. Knight's ability to pay prior to imposing the sentence.³⁴

People of the City of Eastpointe v Donna Elaine Anderson

78. Donna Elaine Anderson is the plaintiff in this action.

79. Ms. Anderson is the defendant in *People v Anderson*, 38th District Court case numbers 14EA04628A-OM and 14EA04628B-OM.³⁵

80. Ms. Anderson's case is currently pending, and she is scheduled for sentencing on July 22, 2015.

81. On April 15, 2015, Ms. Anderson pleaded guilty to not having a dog license and contempt for failure to appear on that citation.

82. As a result of the dog license violation and associated penalties and late fees, Ms. Anderson now owes \$455 in fines, fees and costs to the court.

83. Ms. Anderson is indigent.³⁶

84. Ms. Anderson is a single mother with two young children dependent solely on her for their care and wellbeing.

85. Ms. Anderson is the recipient of means-tested government assistance including Section 8 housing assistance, utility assistance, food assistance, and Medicaid.

³³ Knight Registers of Actions, Exhibit W.

³⁴ Sullivan Affidavit, Exhibit L.

³⁵ Anderson Registers of Actions, Exhibit X.

³⁶ Anderson Affidavit, Exhibit Y.

86. Ms. Anderson has been unable to obtain steady full-time employment because she must take care of her children and cannot afford child care.

87. As a result of her indigency, Ms. Anderson often falls behind in paying her regular household bills.

88. For example, Ms. Anderson is currently two months behind in paying her water bill.

89. Ms. Anderson's top priority is to keep her children fed and housed in a home with electricity and running water.

90. Ms. Anderson was told by her court-appointed attorney that her sentence will be to either pay the \$455 she owes to the court or, if she cannot pay that amount in full on the date of sentencing, to go to jail.

91. Ms. Anderson's sentencing was originally scheduled for May 20, 2015.

92. Because of her indigency, Ms. Anderson was not able to save or obtain \$455 by May 20, 2015.

93. When Ms. Anderson came to court on May 20, 2015 without \$455, her attorney adjourned her sentencing for approximately 30 days so that she would not go to jail.

94. Ms. Anderson's attorney has explained to her that the court has a strict policy of not allowing payments plans (see Exhibit Y), that she would not be allowed to do community service in lieu of paying, and that she would go directly to jail if she was unable to immediately pay \$455 in full at the time of her sentencing.

95. Ms. Anderson's sentencing was rescheduled for June 24, 2015.

96. Because of her indigency, Ms. Anderson was not able to save or obtain \$455 by June 24, 2015.

97. When Ms. Anderson came to court on June 24, 2015, she brought \$150 with her as a demonstration of her good-faith intent to pay off her debt over time.

98. When Ms. Anderson's case was called, her attorney asked for an additional 30-day adjournment of her sentencing because Ms. Anderson did not have the full \$455 that day.

99. Judge Gerds granted the adjournment but warned Ms. Anderson that this would be her last chance and there would be no further adjournments of her sentencing hearing.³⁷

100. Ms. Anderson's sentencing was rescheduled for July 22, 2015.

101. Due to Ms. Anderson's indigency, she has been unable to save or obtain \$455 and will be unable to do so by July 22, 2015.

102. Based on Judge Gerds's established practice, Ms. Anderson knows that if she appears on July 22, 2015 without \$455, she will be sentenced to jail and immediately taken into custody without regard to her financial inability to pay.

103. Ms. Anderson is a single mother who lives alone with her two young children. Ms. Anderson was told by her attorney that if the judge sends her to jail and she has not arranged for someone to care for her children, her children would be taken by Child Protective Services.

104. Ms. Anderson has admitted responsibility for her offense, has now obtained the dog licenses required by city ordinance, and is fully prepared to be punished. However, she does not believe that she should be sent to jail based on her inability to pay when a similarly situated defendant with the ability to pay would not be jailed.

Grounds for Superintending Control

105. Judge Gerds's "pay or stay" sentencing practice violates his clear legal duty under the due process and equal protection guarantees of the federal and state constitutions not to

³⁷ Anderson Transcript, Exhibit Z.

impose sentences that result in defendants' incarceration due to their inability to pay.

106. No available legal remedy other than superintending control is adequate to obtain the relief sought because:

- a. this complaint challenges a general practice of the District Court;
- b. individualized appeals from Judge Gerds's individual decisions have proved unsuccessful in ending the challenged practice;
- c. even when appeals have been successful in challenging an individual sentence, defendants have been forced to serve some period of jail time before obtaining release on bond pending appeal, thereby causing them irreparable harm;
- d. if Ms. Anderson is sentenced to jail because she cannot afford to pay \$455 in fines, fees and costs, she will be deprived of her liberty in violation of the United States and Michigan Constitutions, causing her irreparable harm;
- e. even if Ms. Anderson appeals her individual sentence and is successful both in obtaining bond pending appeal and in the appeal itself, she will be forced to serve some period of jail time before being released, causing her irreparable harm;
- f. an appeal of Ms. Anderson's individual sentence cannot provide relief to similarly situated persons affected by the District Court's general sentencing practice; and
- g. similarly situated persons, who by definition are indigent, are unlikely to have the resources to appeal their "pay or stay" sentences, and, even if

they do, are likely to have served the entirety of their unconstitutional sentences before their cases can be heard.

Class Allegations

107. Ms. Anderson seeks an order of superintending control as a representative party on behalf of all persons similarly situated to her.

108. The class of such persons is defined as all persons who are or will be defendants before Judge Gerds in the 38th District Court and who are or will be subject to a “pay or stay” or similar sentence in that Court and who are or will be unable to afford to pay.

109. The class is sufficiently numerous to make joinder of all its members impracticable. The allegations of this complaint give rise to a fair inference that dozens (and most likely hundreds) of defendants in the 38th District Court have been given “pay or stay” sentences without consideration of their ability to pay. Absent the relief sought by this complaint, a large number of defendants will continue to be harmed by the challenged practice, and the joinder of such persons in this action is inherently impracticable.

110. The questions of law or fact common to the members of the class predominate over questions affecting only individual members. The common question of law is whether a “pay or stay” sentencing practice, when carried out without regard to defendants’ financial ability to pay, violates the due process and equal protection guarantees of the federal and state constitutions. The common questions of fact are whether Judge Gerds engages in such a practice and whether members of the class are subject to it. These questions predominate over questions affecting only individual members because the challenged practice itself violates defendants’ entitlement to an individualized consideration of their financial circumstances that the law clearly requires.

111. Ms. Anderson's claim is typical of the claim of the class. Ms. Anderson is a defendant in 38th District Court who, pursuant to the challenged practice and like other members of the class, is likely to be sentenced to jail by Judge Gerds because she is too poor to pay the fines, fees and costs assessed against her. For the reasons set forth above, superintending control is the only adequate remedy available to her and the class.

112. Ms. Anderson will fairly and adequately assert and protect the interests of the class. There are no known conflicts between her and absent class members with respect to the matters at issue in this action; she will vigorously prosecute this action on behalf of the class; and undersigned counsel from the ACLU has the experience, expertise, and resources to represent the class.

113. The maintenance of this action as a class action will be superior to other available methods of adjudication in promoting the convenient administration of justice. The function of a writ of superintending control is to serve the interests of the judicial system as a whole as a device for protecting the system's integrity and furthering its efficiency. Under the present facts superintending control providing relief to a class will allow this Court to address and resolve objections concerning a generalized practice of the District Court and to issue an appropriate remedial order providing final equitable or declaratory relief with respect to the class.

PRAYER FOR RELIEF

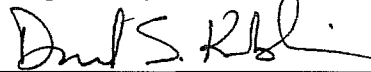
Based on the foregoing, plaintiff Donna Elaine Anderson asks that this Court assume superintending control over the 38th District Court and:

- a. enter an interim order requiring the District Court to temporarily stay Ms. Anderson's case and adjourn her sentencing pending the issuance of a final judgment in this proceeding or until further order of this Court;

- b. enter a judgment ordering the District Court not to jail any defendant pursuant to a “pay or stay” sentence or any similar order, such as commitment to jail with release authorized upon payment, without first determining that the defendant has the financial ability to pay;
- c. enter a judgment ordering the District Court to impose a non-custodial sentence on Ms. Anderson that accommodates her limited ability to pay; and
- d. issue any other interim or final order deemed reasonable, necessary or just in furtherance of this Court’s jurisdiction over this matter.

Dated: July 9, 2015

Respectfully submitted,



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