

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,

Circuit Court Case No. 15-2380-AS

Hon. James M. Maceroni

Arising from 38th District Court

Case Nos. 14EA04628

15EA04176

District Judge Carl F. Gerds III

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CARMELLA SABAUGH  
Macomb County Clerk

**MOTION FOR CLASS CERTIFICATION**

Pursuant to MCR 3.501, plaintiff Donna Elaine Anderson requests that this Court enter an order certifying this case as a class action.

In support of this motion, plaintiff states as follows:

1. Ms. Anderson commenced this action on July 9, 2015 by filing her complaint for superintending control, which included class action allegations.

2. This motion for class certification is being filed within 91 days after the filing of plaintiff's complaint as required by MCR 3.501(B)(1)(a).

3. By this motion, plaintiff seeks to proceed on behalf of a class of persons similarly situated, namely all persons who are or will be defendants before Judge Gerds in the 38th District Court and are subject to a "pay or stay" sentence without a determination that they are financially able to pay, or the functional equivalent such as a jail sentence because of their inability to pay.

4. Class certification is desirable because, although it is hoped and expected that an order of superintending control issued by this Court will not be violated by the District Court, class certification will ensure that if such a violation does take place, the person aggrieved by that violation will be a member of the plaintiff class in this action with standing to enforce the order.

5. For the reasons set forth in the complaint and in the brief that accompanies this motion, the five requirements for class certification enumerated in MCR 3.501(A)(1)—numerosity, commonality, typicality, adequacy and superiority—are satisfied in this case.

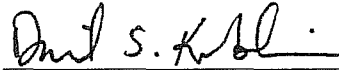
6. Additionally, MCR 3.501(C)(2) requires that a motion for class certification include a proposal regarding class notice. The brief and proposed order accompanying this motion satisfy that requirement.

\* \* \*

Accordingly, Ms. Anderson hereby requests that this Court certify this case as a class action. A brief and proposed order follow this motion, and plaintiff refers the Court to the

exhibits, affidavits and record evidence in this action as further support for the relief sought.

Respectfully submitted,



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Attorneys for Plaintiff

Dated: September 4, 2015

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**BRIEF IN SUPPORT OF MOTION FOR CLASS CERTIFICATION**

## TABLE OF CONTENTS

INDEX OF AUTHORITIES.....	ii
INTRODUCTION .....	1
LEGAL STANDARD.....	2
ARGUMENT.....	3
I.    The class is so numerous that joinder of all members is impracticable.....	3
II.   There are questions of law or fact common to the members of the class that predominate over questions affecting only individual members. ....	4
III.  The claim of the class representative is typical of the claims of the class.....	5
IV.  The class representative will fairly and adequately assert and protect the interests of the class. ....	6
V.   The maintenance of this case as a class action will be superior to other available methods of adjudication in promoting the convenient administration of justice.....	6
PROPOSAL REGARDING CLASS NOTICE .....	7
CONCLUSION.....	9

## INDEX OF AUTHORITIES

### Cases

<i>A &amp; M Supply Co v Microsoft Corp</i> , 252 Mich App 580; 654 NW2d 572 (2002).....	4
<i>Cahill v Thomassen</i> , 393 Mich 137; 224 NW2d 24 (1974).....	2
<i>Dean v Coughlin</i> , 107 FRD 331 (SDNY, 1985).....	4
<i>Duskin v Dep't of Hum Servs</i> , 304 Mich App 645; 848 NW2d 455 (2014).....	3
<i>Glover v Johnson</i> , 85 FRD 1 (ED Mich, 1977).....	4
<i>Hiatt v Adams County</i> , 155 FRD 605 (SD Ohio, 1994).....	4
<i>Miller v Univ of Cincinnati</i> , 241 FRD 285 (SD Ohio, 2006).....	4
<i>Nowacki v Dep't of Corrs</i> , 2014 WL 4088041, unpublished opinion of the Court of Appeals issued August 19, 2014 (Docket No. 315969).....	5, 6
<i>People v Burton</i> , 429 Mich 133; 413 NW2d 413 (1987).....	7
<i>Pressley v. Lucas</i> , 30 Mich App 300; 186 NW2d 412 (1971).....	1, 4
<i>Zine v Chrysler Corp</i> , 236 Mich App 261; 600 NW2d 384 (1999).....	3

### Court Rule

MCR 3.501.....	passim
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## INTRODUCTION

In this action for superintending control, plaintiff Donna Elaine Anderson is seeking an order from this Court prohibiting 38th District Court Judge Carl F. Gerds III from imposing “pay or stay” sentences without first determining that the defendant has the financial ability to pay, or the functional equivalent such as a jail sentence because of an inability to pay. As established in plaintiff’s complaint and motion for final order of superintending control, Judge Gerds has an unconstitutional general practice of imposing such sentences.

The plaintiff in this case, Donna Elaine Anderson, is facing sentencing in the District Court. Under Judge Gerds’s general practice of sentencing defendants to “pay or stay” sentences without an ability-to-pay assessment, Ms. Anderson faces incarceration due to poverty. She has therefore brought this action, on behalf of herself and all others similarly situated, seeking relief from Judge Gerds’s practice.

Class certification is appropriate in this case because the general “pay or stay” practice being challenged in this action affects a class, not just Ms. Anderson. As the Court of Appeals has stated, “The adaptation of the class action to the protection of the rights of indigent accused persons is a sensible extension of this procedural device which was fashioned in equity to assure that important rights would not go unvindicated.” *Pressley v. Lucas*, 30 Mich App 300, 320; 186 NW2d 412 (1971). Although this Court has the inherent authority, pursuant to its superintending control power, to order an end to the District Court’s unlawful practice, class certification helps resolve any possible doubt as to who individually would be able to take action to enforce the order if it is violated by the District Court when sentencing defendants other than Ms. Anderson. Although it is hoped and expected that the District Court will not violate an order of superintending control issued by this Court, class certification is desirable because it will ensure

that if this Court's order is not followed, persons aggrieved by that violation will be members of the plaintiff class in this action with standing to enforce the order.

The Michigan Supreme Court has recognized that class action status is appropriate in superintending control cases such as this one. In *Cahill v Thomassen*, 393 Mich 137; 224 NW2d 24 (1974), the plaintiff filed a class action complaint for superintending control, alleging that the district court had a *general policy* of refusing 10% deposit bonds and jury trials in traffic cases, which he claimed violated Michigan law. The Michigan Supreme Court held that superintending control was appropriate because of "Cahill's claim that there was a class of persons similarly situated with himself . . . . While appeal did provide a suitable procedure to resolve Cahill's individual case, it could not have supported relief for the class as a whole." *Id.* at 142-43. Thus, the very fact that made the case suitable for superintending control—a generalized practice by the District Court—also made the case a class action because the generalized practice affected a class of persons.

This case is essentially the same. Therefore, the Court should grant class certification in addition to issuing a final order of superintending control.

### **LEGAL STANDARD**

There five prerequisites to class certification are:

- (a) the class is so numerous that joinder of all members is impracticable;
- (b) there are questions of law or fact common to the members of the class that predominate over questions affecting only individual members;
- (c) the claims or defenses of the representative parties are typical of the claims or defenses of the class;
- (d) the representative parties will fairly and adequately assert and protect the interests of the class; and



(e) the maintenance of the action as a class action will be superior to other available methods of adjudication in promoting the convenient administration of justice. [MCR 3.501(A)(1).]

These requirements are commonly referred as numerosity, commonality, typicality, adequacy, and superiority. *Duskin v Dep't of Hum Servs*, 304 Mich App 645, 652; 848 NW2d 455 (2014).

## ARGUMENT

### **I. The class is so numerous that joinder of all members is impracticable.**

The first requirement for class certification is that “the class is so numerous that joinder of all members is impracticable[.]” MCR 3.501(A)(1)(a). “There is no particular minimum number of members necessary to meet the numerosity requirement, and the exact number of members need not be known as long as general knowledge and common sense indicate that the class is large.” *Zine v Chrysler Corp*, 236 Mich App 261, 288; 600 NW2d 384 (1999).

In this case, the class of people who appear before Judge Gerds for sentencing and receive “pay or stay” sentences, or the equivalent, without an assessment of their ability to pay, is large. Plaintiff’s complaint, along with its supporting affidavits and court records, specifically identifies over a dozen individuals who were sentenced to pay or stay without an assessment of their ability to pay. These individuals are just a sampling of those who have been subjected to the challenged practice by Judge Gerds, as they just happen to be the individuals whose cases were heard on the days that the ACLU sent volunteers to the court to observe the hearings. Indeed, at an earlier hearing in this case, counsel for the City of Eastpointe acknowledged that “This is going on in our courts, I can tell you that as a criminal defense attorney, that does happen.” See Exhibit A, July 20, 2015 Hearing Transcript, p. 8. This Court confirmed “we know that’s a practice” and “it’s been the practice for years.” *Id.* In sum, “general knowledge and common sense indicate that the class is large.” *Zine*, 236 Mich App at 288.

Additionally, “joinder of all members of the class is impracticable,” MCR 3.501(A)(1)(a), because the class in this case includes both current and future defendants sentenced in the 38th District Court. When a class is fluid, which it often is in non-damages cases brought for equitable relief to change systemic practices, it is proper to define the class to include future members who come into the system as current members depart. *Pressley v Lucas*, 30 Mich App 300, 319-20; 186 NW2d 412 (1971).<sup>1</sup> The numerosity requirement is met because “both the size of the class sought to be represented and its lack of stability made joinder of all members impracticable.” *Id.* at 320.

**II. There are questions of law or fact common to the members of the class that predominate over questions affecting only individual members.**

The second requirement for class certification is that “there are questions of law or fact common to the members of the class that predominate over questions affecting only individual members.” MCR 3.501(A)(1)(b).

The common question factor is concerned with whether there is a common issue the resolution of which will advance the litigation. It requires that the issues in the class action that are subject to generalized proof, and thus applicable to the class as a whole, must predominate over those issues that are subject only to individualized proof.” [*Zine, supra*, 236 Mich App at 289-90 (citations and quotation marks omitted).]

“Still, there is no requirement in the rule that all questions necessary for ultimate resolution be common to the members of the class.” *A & M Supply Co v Microsoft Corp*, 252 Mich App 580, 599; 654 NW2d 572 (2002) (internal quotation marks omitted).

In this case, the common questions are the existence and constitutionality of a generalized practice in the 38th District Court of sentencing individuals to “pay or stay” without an assessment of their ability to pay. The record evidence shows that such a practice exists, and the

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<sup>1</sup> See also *Miller v Univ of Cincinnati*, 241 FRD 285, 290 (SD Ohio, 2006); *Hiatt v Adams County*, 155 FRD 605, 608 (SD Ohio, 1994); *Dean v Coughlin*, 107 FRD 331, 332-33 (SDNY, 1985); *Glover v Johnson*, 85 FRD 1, 3-5 (ED Mich, 1977).

law is clear that it is unconstitutional. Thus, the resolution of these common issues will certainly advance the litigation.

Further, these common issues are subject to generalized proof and thus applicable to the class as a whole. Judge Gerds is the only district judge in the 38th District Court, and it is Judge Gerds's generalized practice (not any one individual sentence or outcome) that is being challenged. Moreover, the common issues clearly predominate over any issues in this case that might be subject only to individualized proof, since the relief sought is an order to end the practice, not individualized relief.

**III. The claim of the class representative is typical of the claims of the class.**

“The typicality requirement directs the court to focus on whether the named representatives’ claims have the same essential characteristics as the claims of the class at large.” *Nowacki v Dep’t of Corrs*, 2014 WL 4088041, at \*4, unpublished opinion of the Court of Appeals issued August 19, 2014 (Docket No. 315969) (internal quotation marks omitted). This means that “the representative’s claim must arise from the same event or practice or course of conduct that gives rise to the claims of the other class members and be based on the same legal theory.” *Id.* (internal quotation marks and alterations omitted).

Here, the typicality requirement is satisfied because Ms. Anderson’s legal claim is identical to the claims of the class, and it arises from the same course of conduct that gives rise to the class claim—namely the District Court’s generalized “pay or stay” sentencing practice. Ms. Anderson is a defendant in 38th District Court who, pursuant to the challenged practice and like other members of the class, faces “pay or stay” sentencing without an assessment of her ability to pay. Because Ms. Anderson’s central claim is a challenge to a generalized policy that affects the class as a whole, she satisfies the typicality requirement.

**IV. The class representative will fairly and adequately assert and protect the interests of the class.**

There are two components to the “adequacy” requirement. “First, the court must be satisfied that the named plaintiffs’ counsel is qualified to sufficiently pursue the putative class action. Second, the members of the advanced class may not have antagonistic or conflicting interests.” *Nowacki, supra*, at \*4 (internal quotation marks omitted).

Here, plaintiff is represented by multiple attorneys from the ACLU of Michigan, a public interest organization well known for its work on criminal justice reform with years of experience in class action cases. ACLU attorneys have previously served as class counsel in *Duncan v Michigan*, which led to meaningful indigent defense reform throughout the state, and the ACLU has led the effort to stop unconstitutional pay-or-stay sentencing throughout the state. Additionally, there are no antagonistic or conflicting interests within the class; the purpose of class certification is to ensure that each member of the class will be legally entitled to enforce a final order of superintending control in the unlikely event it is violated.

**V. The maintenance of this case as a class action will be superior to other available methods of adjudication in promoting the convenient administration of justice.**

In assessing superiority, the court is required to consider, among other things, whether final equitable or declaratory relief might be appropriate with respect to the class and whether the action will be manageable as a class action. MCR 3.501(A)(2). Here, this is a case for equitable relief (an order prohibiting “pay or stay” sentencing), and the case is manageable as a class action because there are no individualized issues and the purpose of class certification is merely to ensure that future members of the class have the legal right to enforce the final order of superintending control.

Further, class certification in this case is superior “in promoting the convenient administration of justice,” MCR 3.501(A)(1)(e), because 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.” *People v Burton*, 429 Mich 133, 146; 413 NW2d 413 (1987) (Boyle, J., concurring). Here, an order of superintending control providing relief to a class will allow this Court to address and resolve objections concerning a generalized practice of the District Court. Doing so will protect the system’s integrity and further its efficiency. Certifying this case as a class action will undoubtedly promote that goal. Insofar as a failure to certify a class might make the order of superintending control less effective or less secure, “maintenance of this action as a class action will be superior to other available methods of adjudication,” MCR 3.501(A)(1)(e).

#### **PROPOSAL REGARDING CLASS NOTICE**

MCR 3.501(C)(1) requires that notice be given to members of the class, and MCR 3.501(C)(2) requires the plaintiff to include in the motion for class certification a proposal regarding notice. The proposal must cover the matters enumerated in MCR 3.501(C)(3).

**Manner of Giving Notice.** MCR 3.501(C)(4)(a) requires reasonable notice to the class in such manner as the court directs, which need not be individual notice, MCR 3.501(C)(4)(b), but must be based on a consideration of the nature of the case, the class, the relief requested, and other factors, MCR 3.501(C)(4)(c). In this case, damages are not being sought, so individual written notice is not required by due process. Additionally, the class is fluid, opt-outs are unlikely, and the possible prejudice if notice is not received by each individual member of the class is slight. Plaintiff therefore believes the best manner of giving notice is (1) by posting in the

courthouse where class members appear for sentencing and (2) by mailing to court-appointed attorneys who represent class members at sentencing.<sup>2</sup>

With regard to (1), there are currently signs posted on the door to the courtroom that faces the lobby, and near the window of the clerk's office where payments are received, with warnings that payment plans are not allowed. Because those signs are already prominently posted in locations that class members are likely look, plaintiff requests that this Court order the District Court clerk to prominently post class notice in those two locations.

With regard to (2), class members are likely to receive notice through their court-appointed attorneys. The most efficient way to provide this notice to court-appointed attorneys is for the 38th District Court to provide plaintiff's counsel with a list of their names and addresses. Plaintiff therefore requests that this Court order the District Court to furnish plaintiff's counsel with such a list so that plaintiff's counsel can mail notice to court-appointed counsel.

**Content of the Notice.** MCR 3.501(C)(5) lists the requirements for what the content of the class notice must include. Attached as Exhibit B is plaintiff's proposed class notice, for review and approval by the Court. Plaintiff believes this notice complies with all the requirements of MCR 3.501(C)(5).

**Timing and Procedure.** Plaintiff proposes the following timeline and procedure for handling class notice. Within 14 days of this Court's order, the 38th District Court shall (1) post notice in the courthouse as directed, and (2) furnish the names and addresses of counsel who currently receive court appointments to handle criminal cases in that court to plaintiff's counsel, who in turn shall mail notice to those attorneys within 7 days of receiving the information. The deadline to opt out or file a motion to intervene, see MCR 3.501(C)(5)(b) & (f), shall be 60 days

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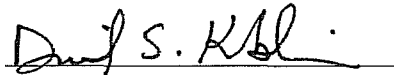
<sup>2</sup> MCR 3.501(C)(4)(b) explicitly endorses notice by posting and distribution through a professional association.

from the date of this Court's order. Opt-outs and intervention motions must be filed with this Court and served on plaintiff's counsel and counsel for the City of Eastpointe. Unless a motion is filed before the 60-day deadline, the final order of superintending control shall be deemed binding upon the class at the conclusion of the 60-day period.

### CONCLUSION

For the reasons set forth above, plaintiff requests that this Court grant her motion for class certification.

Respectfully submitted,



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Attorneys for Plaintiff

Dated: September 4, 2015

## INDEX OF EXHIBITS

A: July 20, 2015 Hearing Transcript

B: Proposed Class Notice



# EXHIBIT A

1  
2 STATE OF MICHIGAN  
3 IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB

4 DONNA E. ANDERSON,

5 Appellant,

6 vs.

Case No. 15-2380-AS

7 IN RE: SUPERINTENDING CONTROL,

8 Appellee.  
9 \_\_\_\_\_ /

10 PROCEEDINGS

11 BEFORE THE HONORABLE JAMES M. MACERONI (P-61759), JUDGE

12 Mount Clemens, Michigan - Monday, July 20, 2015

13 APPEARANCES:

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22 Official Court Reporter  
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TABLE OF CONTENTS

Page

WITNESSES:

(No witnesses offered)

Received

EXHIBITS:

(No exhibits offered)

1 Mount Clemens, Michigan

2 July 20, 2015

3 At about 9:15 a.m.

4 - - -

5 THE CLERK: In Re: Donna Anderson.

6 THE COURT: Good morning, Counsel.

7 MR. STEINBERG: Good morning, your Honor.

8 MR. BROWN: Good morning.

9 MR. STEINBERG: Michael J. Steinberg here on  
10 behalf of the plaintiff, Donna Anderson who is here  
11 in the courtroom, second row.

12 THE COURT: Okay.

13 MR. BROWN: Calvin Brown for the City of  
14 Eastpointe, your Honor.

15 THE COURT: All right. This is your  
16 emergency motion, Counsel, for superintending  
17 control.

18 MR. STEINBERG: Yes, your Honor. It is an  
19 action for superintending control challenging the  
20 practice of the 38th District Court.

21 THE COURT: For a pay or stay?

22 MR. STEINBERG: Correct, pay or stay  
23 practice; sentencing poor people to jail without  
24 conducting a determination of whether or not the  
25 person has the ability to pay. This is a practice we

1 have been challenging for the past 5 years, it is  
2 called pay or stay, fine or time, days or dollars,  
3 money or jail, and it's been condemned across the  
4 country from Ferguson to Escanaba as creating the new  
5 debtor's prison. It's also been found to be  
6 unconstitutional by the U.S. Supreme Court in Bearden  
7 versus Georgia, 1983, and the Michigan Supreme Court  
8 has also found it to be unconstitutional. However,  
9 today we are not seeking a ruling on the merits, we  
10 are just seeking to preserve the status quo because  
11 Miss Anderson faces sentencing --

12 THE COURT: Wednesday?

13 MR. STEINBERG: -- on Wednesday, on her  
14 misdemeanor charges for failure to have licenses for  
15 her dogs.

16 THE COURT: Right.

17 MR. STEINBERG: And so we seek a temporary  
18 order for superintending control which is essentially  
19 a stay of proceedings.

20 THE COURT: It's a stay of her sentencing,  
21 essentially --

22 MR. STEINBERG: Yes. Yes.

23 THE COURT: -- right? Pending the outcome  
24 of the litigation.

25 Let me ask you this, Counsel, the -- and I

1 know one of the other defendants that you had listed  
2 in your brief had, that was appealed to  
3 Judge Chrzanowski and there was an order given  
4 indicating that the practice is unconstitutional.

5 MR. STEINBERG: Correct.

6 THE COURT: After it was sent back down, and  
7 I believe he was just sentenced to straight, at that  
8 point, sentenced to straight to jail.

9 MR. STEINBERG: Correct, which we have  
10 appealed it. Since that, since we filed this case,  
11 that sentence has been reversed as well.

12 THE COURT: That sentence has been reversed  
13 as well?

14 MR. STEINBERG: Yes.

15 THE COURT: Okay. Is it the practice of the  
16 Eastpointe court to continue to do, even after  
17 that work, that --

18 MR. STEINBERG: Yes. I mean, we are also  
19 representing a defendant called -- named Mr. Milton  
20 who was sentenced to a pay or stay sentence and  
21 sentenced to jail. We did a motion, an emergency  
22 motion for bail pending appeal which was denied by  
23 the trial court and granted by the circuit court,  
24 so --

25 THE COURT: By Judge Chrzanowski as well?

1 Or did she draw that or did that, or did that --

2 MR. STEINBERG: Umm --

3 MR. BROWN: That was Judge Druzinski, I  
4 believe.

5 MR. STEINBERG: Yes.

6 THE COURT: Okay.

7 MR. STEINBERG: Okay. So it is a practice  
8 that continues. We have had court watchers in the  
9 courts since the Rockett appeal, and it is his  
10 practice, and --

11 THE COURT: Okay.

12 MR. STEINBERG: And that's why we have  
13 gone -- we filed an action for superintending  
14 control.

15 THE COURT: Okay. Mr. Brown.

16 MR. BROWN: Well, your Honor, since the  
17 Rockett appeal which is in front of Chrzanowski,  
18 there's only been one other appeal filed and that was  
19 regarding a defendant named, I believe it was Milton,  
20 and in that case, we are -- I actually filed a brief.

21 THE COURT: Did you file a response on --

22 MR. BROWN: No, I just got this action,  
23 your Honor.

24 THE COURT: Okay.

25 MR. BROWN: So I will file an Answer on

1           behalf of the City. I can't find --

2           THE COURT: You didn't have an opportunity  
3 to file an Answer to the emergency motion?

4           MR. BROWN: No, I did not answer the  
5 emergency motion.

6           THE COURT: Okay.

7           MR. BROWN: I will say I don't think I can  
8 bind the 38th District Court in this matter, so I can  
9 only speak on behalf of the City.

10          THE COURT: Okay.

11          MR. BROWN: But I will say that with the  
12 right of appeal, which there is, you know,  
13 superintending control is inappropriate. I  
14 understand there have been 2 cases where appeals have  
15 been filed. There's Rockett and Milton. Rockett was  
16 remanded.

17          THE COURT: There's several -- there's  
18 several instances cited in the brief.

19          MR. BROWN: We have not been able to verify  
20 that pay or stay is what would happen there.

21          THE COURT: You don't need to verify.

22          MR. BROWN: We need to verify that.

23          THE COURT: We know that that's -- I mean,  
24 you know, we know that that's a practice, that's the  
25 practice not only in Eastpointe, that is the practice



1 in other district courts across the county.

2 MR. BROWN: That is going on in our courts,  
3 I can tell you as criminal defense attorney, that  
4 does happen.

5 THE COURT: That is the practice, I mean,  
6 that is the issue, that's why we are here. It's been  
7 the practice, it's been the practice for years. And  
8 essentially you are saying to Defendant A, well, you  
9 get 90 days in jail, but if you can pay a thousand  
10 dollars you don't have to do the jail time.

11 Defendant B that maybe works at Chrysler gets to pay  
12 the \$1500 fine and walk, I mean, how is that not --

13 MR. BROWN: I'm not saying -- I agree that's  
14 the way, what you just describe is unconstitutional,  
15 I agree with you. I just think that instead of a  
16 Writ of Superintending Control, this case proceeding,  
17 you could issue a, actually I will say you could  
18 issue a writ instead of staying the cases completely  
19 and just instruct the judge he's got to sentence  
20 properly in this case, for example.

21 THE COURT: But it sounds like without  
22 getting into the facts that's already happened, and  
23 he's continuing to do it.

24 MR. BROWN: I don't believe so, no. There's  
25 been two appeals. Since Rockett and Milton, I don't

1 think there's been one other case where he's done  
2 this.

3 THE COURT: Or if it's just been one. I  
4 mean, if the judge is told it is an unconstitutional  
5 practice and he continues do that, even in the  
6 instance of one case, then he's still, he's still  
7 engaging in the same practice.

8 MR. BROWN: Yes, I just -- my personal  
9 opinion --

10 THE COURT: You just admitted it is  
11 unconstitutional.

12 MR. BROWN: My personal opinion, though, is  
13 if you were to send it back to Judge Gerds to -- with  
14 instructions to do an ability to pay analysis, that  
15 he's not going to disregard that order, so --

16 THE COURT: Right. Well, I mean, what's set  
17 here is essentially a motion for -- emergency motion  
18 for superintending control to stay the sentencing  
19 that's scheduled for Wednesday, which I am going to  
20 grant that order.

21 MR. STEINBERG: If I could, your Honor, we  
22 have a slightly different order that we would like  
23 you to enter. It is very much like the order that  
24 was attached; however, since we filed this action  
25 apparently the Eastpointe police have issued another

1 dog-related misdemeanor ticket.

2 THE COURT: Citation.

3 MR. STEINBERG: So what we would ask is  
4 that, and it is a one-judge district, so what we  
5 would ask --

6 THE COURT: Right.

7 MR. STEINBERG: -- is that, and I've shared  
8 a copy of the new order with Mr. Brown, that you sign  
9 this order which is almost identical, but it stays  
10 all proceedings with respect to this -- Miss  
11 Anderson.

12 THE COURT: The ticket before was for  
13 failure to have a dog license, correct?

14 MR. STEINBERG: Correct. She has since --  
15 she has since --

16 THE COURT: She has since got the necessary,  
17 so the payment wasn't for the dog license, it was  
18 essentially for the fines and costs for failing to  
19 obtain the dog license --

20 MR. STEINBERG: Precisely.

21 THE COURT: -- in the first place. Okay.  
22 What is the new citation for?

23 MR. STEINBERG: It's something having to do  
24 with the licensing of her brother's dog that she was  
25 dog sitting for.

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THE COURT: Okay. All right. I will sign  
that order as well.

MR. STEINBERG: Thank you, your Honor.

THE COURT: Thank you, Mr. Steinberg.

MR. BROWN: Thank you, your Honor.

THE COURT: Thank you, Mr. Brown.

(Proceedings concluded at 9:24 a.m.)

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# EXHIBIT B

**NOTICE TO ALL CRIMINAL DEFENDANTS  
FACING PAY OR STAY SENTENCES**

**IF YOU CANNOT PAY FINES, FEES AND COSTS,  
THE COURT CANNOT SEND YOU TO JAIL WITHOUT FIRST  
FINDING THAT YOU HAVE THE ABILITY TO PAY.**

**What was decided in the lawsuit and how does it affect me?** In this case, which is called *In re Anderson*, a higher court decided that criminal defendants in the 38th District Court cannot be sent to jail on “pay or stay” sentences when they cannot afford to pay. That means that if you are ordered to pay fines, fees and costs in a criminal case, the judge cannot send you to jail for not paying unless the judge finds that you are in fact able to pay. Your sentence cannot be “money or jail,” “days or dollars,” or jail with release authorized upon payment, unless the judge finds you can financially afford to pay. Nor can the judge sentence you to jail if a person who could afford to pay fines, fees and costs would not be sent to jail for the same crime.

**Do I need to do anything in order for the ruling to apply to me?** You do not need to do anything. This case is a “class action,” which means it was brought for a group of people. If you are or will be a criminal defendant in the 38th District Court facing a “pay or stay” sentence, you are a member of the class. The court’s judgment automatically applies to you, unless you exclude yourself from the class.

**What else do I need to know?** This case does not have direct financial consequences for class members, nor will you receive any money for being in the class. No counterclaims have been made against the class.

**What if I disagree with the ruling?** If you do not want this ruling to apply to you, you need to file a written statement that you want to be excluded. You must file your statement in the Circuit Court, 40 N. Main St., Mt. Clemens, MI 48043 no later than [60 days after date of court order]. You must also serve a copy of the statement by first-class mail or personal delivery on Daniel S. Korobkin, ACLU Fund of Michigan, 2966 Woodward Ave., Detroit, MI 48201, and on Calvin C. Brown, Ihrie O’Brien, 24055 Jefferson Ave., Ste. 2000, St. Clair Shores, MI 48080. If you are a member of the class, you also have the right to intervene in the action by filing a motion to intervene in *In re Anderson*, Macomb County Circuit Court Case No. 15-2380-AS, no later than [60 days after date of court order]. You must also serve a copy of the motion and notice of hearing by first-class mail or personal delivery on Mr. Korobkin and Mr. Brown.

**Where can I get more information?** Contact class counsel at the ACLU Fund of Michigan, Attention: Daniel S. Korobkin, Esq., 2966 Woodward Ave., Detroit, MI 48201, (313) 578-6800, or [dkorobkin@aclumich.org](mailto:dkorobkin@aclumich.org), or go to [www.aclumich.org/Eastpointe](http://www.aclumich.org/Eastpointe).

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,

Circuit Court Case No. 15-2380-AS

Hon. James M. Maceroni

Arising from 38th District Court  
Case Nos. 14EA04628

15EA04176

District Judge Carl F. Gerds III

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Attorneys for Plaintiff

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CARMELLA SABAUGH  
Macomb County Clerk

*Proposed* **ORDER GRANTING MOTION FOR CLASS CERTIFICATION  
AND DIRECTING CLASS NOTICE**

Plaintiff Donna Elaine Anderson's Motion for Class Certification having now come before the Court; the Court having heard argument on the motion and having reviewed pleadings, briefs and record evidence; and the Court otherwise being fully apprised; it is hereby ORDERED as follows:

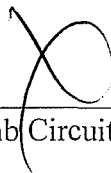
1. Plaintiff's Motion for Class Certification is GRANTED.



2. This action shall be maintained on behalf of a class of all persons who are or will be defendants before Judge Gerds in the 38th District Court and are subject to a “pay or stay” sentence without a determination that they are financially able to pay, or the functional equivalent such as a jail sentence because of their inability to pay.
3. The final order of superintending control shall operate as the judgment in this case and shall be binding upon the class.
4. Class notice shall proceed as follows:
  - a. The class notice submitted by plaintiff as Exhibit B to her motion for class certification is approved.
  - b. Within 14 days of this Order, the 38th District Court shall prominently post class notice in the courthouse, in at least the following locations: (i) the outside of the door that leads from the lobby into Judge Gerds’s courtroom; and (ii) near the window of the clerk’s office where payments in criminal cases are received. Notice shall remain posted for one year following the date of this Order. Plaintiff’s counsel shall furnish the 38th District Court with copies of the class notice for posting.
  - c. Within 14 days of this Order, the 38th District Court shall furnish plaintiff’s counsel with the names and addresses of all attorneys who currently receive court appointments to handle criminal cases in that court. Plaintiff’s counsel shall mail notice to those attorneys within 7 days of receiving the information from the court.
  - d. Any member of the class who elects to be excluded from the class must file a written statement to that effect with this Court, and serve the statement on all other parties, within 60 days of this Order. The election to be excluded must comply with the instructions in the class notice.
  - e. Any member of the class who wishes to intervene in this action must file a motion to intervene, and serve the motion and notice of hearing on all other parties, within 60 days of this Order. The motion to intervene must comply with the instructions in the class notice and with the court rule on intervention, MCR 2.209.

**IT IS SO ORDERED.**

Dated:

  
\_\_\_\_\_  
Macomb Circuit Court Judge