

3



ROBERT M. BELL
CHIEF JUDGE
COURT OF APPEALS OF MARYLAND
ROBERT C. MURPHY COURTS OF APPEAL BUILDING
361 ROWE BOULEVARD
ANNAPOLIS, MARYLAND 21401-1699

October 3, 2008

VIA FACSIMILE AND FIRST CLASS MAIL

The Honorable Martin O'Malley
Governor of Maryland
State House
100 State Circle
Annapolis, MD 21401

The Honorable Thomas V. Mike Miller, Jr.
President of Senate
State House, H-107
Annapolis, Maryland 21401-1991

The Honorable Michael E. Busch
Speaker of the House
State House, H-101
Annapolis, Maryland 21401-1991

RE: Public Defender Panel Attorneys

Dear Governor O'Malley, Senator Miller and Delegate Busch:

As you are no doubt aware, Nancy Forster advised me, in a letter dated September 22, 2008, that effective October 1, 2008, the Public Defender's Office will discontinue the assignment of new cases to panel attorneys. Ms. Forster acknowledged the severe impact that this will cause the Judiciary, but stated that her Office has been forced into taking this drastic measure because of severe budgetary constraints.

I responded to Ms. Forster, by a letter dated September 30, 2008, in which I noted that this cost containment measure had been initiated in the past, but that notwithstanding these prior occurrences, there are underlying issues that have never been addressed, namely, given the Public Defender's responsibility to provide counsel to indigent defendants, the constitutionality *vel non* of treating indigent co-defendants in conflict of interest cases differently from other indigent defendants. I observed that it is arguable that the entitlement to the assistance of counsel is

The Honorable Martin O'Malley
The Honorable Thomas V. Mike Miller, Jr.
The Honorable Michael E. Busch
October 3, 2008
Page 2

rendered nugatory in such circumstances. Moreover, although this matter was not addressed in Ms. Forster's letter, another purpose of panel attorneys is to provide counsel in termination of parental rights and children in need of assistance cases where there is a conflict of interest for the Public Defender's Office. Without addressing whether indigent parties, in such cases, have a constitutional right to counsel, there still is an equal protection issue, where, for example, counsel is provided to one spouse but not another.

Until a more satisfactory solution to the current budgetary difficulties of the Public Defender's Office is found, I have asked that Ms. Forster direct her Office to maintain its list of panel attorneys, report to the local court whenever there is a conflict of interest situation, and provide the name of the panel attorney whom her office believes would be able to represent the affected defendant. The court, after considering the Public Defender's report, could then appoint the attorney as a special counsel to represent the defendant, pursuant to Courts and Judicial Proceedings Article § 2-102. Under § 2-102(c), "[a] special officer's fee may be taxed as costs or paid by the county." See *76 Opinions of the Attorney General* 341 (1991).

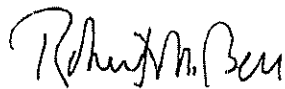
I am acutely aware of the State's perilous financial condition and the need to make significant budget cuts. The precise impact of these cuts on the Public Defender's Office is a matter that must be left primarily to the Executive Branch. That said, the State, nevertheless, has a constitutional and statutory obligation to provide counsel to indigent defendants. This obligation cannot be compromised or otherwise delimited. I am deeply concerned that if an appropriate resolution of the Public Defender's budgetary difficulties is not reached, the impact on the State's justice system, and society as a whole, will be profound.

Indeed, it is difficult enough to operate the State's justice system, given the intractable problems it must confront, even when it sufficiently funded. An underfunded Public Defender system is in no one's long-term interest and, in fact, can be expected to have a negative impact on the entire justice system. In addition to the equal protection issues discussed above, there may well be significant ramifications with respect to the *Hicks* Rule, pursuant to Criminal Procedure Article § 6-103 and Md. Rule 4-271. Under such circumstances, it is likely that defendants charged with serious felonies will be released. For these reasons, the Public Defender's Office must be provided funding sufficient to perform its assigned function of "provid[ing] for the realization of the constitutional guarantees of counsel in the representation of indigent individuals" Criminal Procedure Article §16-201(1).

The Honorable Martin O'Malley
The Honorable Thomas V. Mike Miller, Jr.
The Honorable Michael E. Busch
October 3, 2008
Page 3

I appreciate your consideration of this matter.

Very truly yours,



Robert M. Bell

cc: Hon. Peter B. Krauser
Hon. William D. Missouri
Hon. Ben C. Clyburn
Hon. Irma S. Raker
Hon. T. Eloise Foster
Hon. Douglas F. Gansler
Hon. Peter V. R. Franchot
Hon. Nancy K. Kopp
Hon. Nancy S. Forster
Hon. Sheila C. McDonald
Hon. James J. Stakem
Hon. John R. Leopold
Hon. James T. Smith, Jr.
Hon. Sheila Dixon
Hon. Wilson H. Parran
Hon. John W. Cole
Hon. Julia Walsh Gouge
Hon. William C. Manlove
Hon. F. Wayne Cooper
Hon. William V. Nichols
Hon. Jan H. Gardner
Hon. Dennis G. Glotfelty
Hon. David R. Craig
Hon. Kenneth S. Ulman
Hon. Roy W. Crow
Hon. Isiah Leggett
Hon. Jack B. Johnson
Hon. Eric S. Wargotz
Hon. Francis J. Russell
Hon. James N. Ring
Hon. Philip C. Foster
Hon. John F. Barr
Hon. Richard M. Pollitt, Jr.
Hon. Virgil Shockley
Elizabeth F. Harris
Frank V. Broccolina
Katherine Kelly Howard
David R. Durfee
Veronica P. Jones
Kelley O'Connor
Suzanne Delaney