STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB

15-2380-AS

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

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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BRIEF IN SUPPORT OF
COMPLAINT FOR SUPERINTENDING CONTROL

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JURISDICTION

This Court has jurisdiction to exercise superintending control over the 38th District Court pursuant to Const 1963, art 6, § 13, MCL 600.615, and MCR 3.302.

QUESTION PRESENTED

Should this Court assume superintending control over the 38th District Court and order 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?

Plaintiff says: Yes.

INTRODUCTION

In this action for superintending control pursuant to MCL 600.615 and MCR 3.302, plaintiff Donna Elaine Anderson requests that this Court order 38th District Court 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. Although imposing "pay or stay" sentences on defendants who cannot afford to pay is clearly unconstitutional under binding United States Supreme Court and Michigan case law, Judge Gerds maintains a general practice of imposing such sentences without an ability-to-pay determination. As a direct result of this unconstitutional practice, indigent defendants in the 38th District Court are incarcerated because they are poor, while defendants with means do not serve jail time for comparable offenses.

The plaintiff in this case, Donna Elaine Anderson, pleaded guilty in the 38th District Court for failing to license her dogs and failing to appear in court on the dog license tickets. Ms. Anderson is indigent and is unable to pay the $455 in fines, fees and costs she has been assessed. 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. She 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.

FACTS

The case concerns the routine sentencing practice of the 38th District Court in Eastpointe. A single judge, the Hon. Carl F. Gerds III, serves in the 38th District Court.

As set forth in detail in the Complaint for Superintending Control and its exhibits, Judge Gerds has a practice of imposing "pay or stay" sentences on defendants regardless of their ability to pay.[1] Such sentences require the defendant to pay a specified amount of money or, if the amount is not paid, to serve a specified amount of time in jail. A "pay or stay" sentencing practice, when carried out without regard to defendants' ability to pay, 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.

Plaintiff's complaint and its attached exhibits document the general practice of "pay or stay" sentencing in the 38th District Court and the impact of this practice on indigent defendants who cannot afford to pay.[2] The record also demonstrates that previous attempts to end this practice through direct appeals of individual sentences have been unsuccessful.[3] In fact, even after this Court issued a written opinion and order explaining that Judge Gerds's "pay or stay" sentencing practice was unconstitutional,[4] Judge Gerds persisted in the practice and continues to impose such sentences without regard to defendants' financial ability to pay.[5] Further, it is Judge

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[1] See Complaint ¶¶ 14-77 and exhibits.

[2] See Complaint ¶¶ 14-77 and exhibits.

[3] See Complaint ¶¶ 52-53, 71-77 and exhibits.

[4] *People of the City of Eastpointe v Rockett*, unpublished opinion of the Macomb Circuit Court, issued March 18, 2015 (Docket No. 15-444-AR), Complaint Exhibit A.

[5] See Complaint ¶¶ 52-53, 71-77 and exhibits.

Gerds's practice not to allow payment plans or partial payments; a defendant who does not pay *in full* when the sentence is imposed is sent *directly* to jail.[6]

People of the City of Eastpointe v Ryan Edward Rockett

The recent case of *People of the City of Eastpointe v Ryan Edward Rockett* exemplifies the District Court's sentencing practice.[7] In that case, Mr. Rockett was found guilty of operating a vehicle without insurance and driving while his license was suspended. On January 30, 2015, Judge Gerds sentenced Mr. Rockett to pay fees and costs in the amount of $1500 or, if he did not pay, serve 93 days in jail.[8] Judge Gerds made no inquiry into Mr. Rockett's financial ability to pay. At the sentencing hearing, Judge Gerds merely stated, "Hopefully you can pay that and be on your way." Mr. Rockett asked, "Is it pay or stay?" and Judge Gerds confirmed, "Yes, sir." The register of actions for Mr. Rockett's case confirms that Mr. Rockett's sentence was "MONEY OR JAIL,"[9] and the judgments of sentence in Mr. Rockett's case state that he was committed to jail with release authorized "upon payment of fine/costs."[10] Because Mr. Rockett is indigent and could not afford to immediately pay $1500, he was immediately sent to jail.

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

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[6] See Complaint ¶¶ 19, 55, 66, 68, 94 and exhibits. Complaint 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."

[7] 38th District Court case numbers 14EA05894B-OI and 14EA05894C-OT.

[8] Rockett Sentencing Transcript, January 30, 2015, Complaint Exhibit C.

[9] Rockett Registers of Actions, Complaint Exhibit D.

[10] Rockett Judgments of Sentence, Complaint Exhibit E.

request for bond pending appeal, and Mr. Rockett was forced to renew his bond motion in this Court. 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. By the time Mr. Rockett was released, he had served 14 days in the Macomb County Jail.

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.[11] In the 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.
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> 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.[12]

This Court therefore vacated Mr. Rockett's sentence and remanded for resentencing. But

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[11] *People of the City of Eastpointe v Rockett*, unpublished opinion of the Macomb Circuit Court, issued March 18, 2015 (Docket No. 15-444-AR), Complaint Exhibit A.

[12] Complaint Exhibit A, p.4.

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.[13] Instead, Judge Gerds resentenced Mr. Rockett to 93 days in jail, this time *without* authorization for release upon payment of fines and costs, stating: "You can appeal this sentence too, if you'd like. . . . That's how I rule in my court. If you don't like that you can appeal it to Judge Chrzanowski again."[14] Mr. Rockett again sought bond pending appeal, and Judge Gerds again denied the request. This Court subsequently granted an emergency motion for bond pending appeal, and the merits of Mr. Rockett's second appeal are pending before Judge Chrzanowski under docket number 15-1474-AR. By the time Mr. Rockett was released, he had served an additional four days in jail.

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

Another example of Judge Gerds's unconstitutional "pay or stay" sentencing practice is the case *People of the City of Eastpointe v Stephane Earl-Rico Milton.*[15] In that case, Mr. Milton was found guilty of contempt for failing to appear on a ticket for "pedestrian fail to use cross walk," otherwise known as jaywalking. On June 19, 2015, Judge Gerds sentenced Mr. Milton to pay fees and costs in the amount of $334 or, if he did not pay, serve 30 days in jail.[16] At the time of the sentencing in Mr. Milton's case, this Court had already issued its opinion and order in Mr. Rockett's case explaining the unconstitutionality of Judge Gerds's "pay or stay" sentencing practice and holding that "a court must conduct an ability-to-pay analysis" before sentencing a defendant to jail time on a pay-or-stay sentence. At Mr. Milton's sentencing hearing, however,

[13] Rockett Resentencing Transcript, May 1, 2015, Complaint Exhibit F.

[14] Rockett Resentencing Transcript, May 1, 2015, Complaint Exhibit F.

[15] 38th District Court case number 14EA06438-ON.

[16] Milton Sentencing Transcript, June 19, 2015, Complaint Exhibit G.

Judge Gerds made absolutely no inquiry into Mr. Milton's financial ability to pay. Judge Gerds simply explained: "Pay the $334[,] off you go. If you'd rather do the 30 days, sir, then you don't owe anything at all." When Mr. Milton asked if he could make a partial payment, Judge Gerds denied the request. 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,"[17] and the judgment of sentence in Mr. Milton's case likewise states that he was committed to jail with release authorized "upon payment of fine/costs."[18] Because Mr. Milton is indigent and could not afford to immediately pay $334, he was immediately sent to jail.

After he was sent to jail, Mr. Milton retained undersigned counsel from the ACLU. He was subsequently granted bond pending appeal, and his application for leave to appeal is pending before this Court under docket number 15-2185-AR. By the time Mr. Milton was granted bond pending appeal, he had served five days in jail on this "pay or stay" sentence arising from his jaywalking citation.

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

In addition to the cases described above, courtwatchers from the ACLU have observed Judge Gerds routinely sentence defendants to "pay or stay" without determining whether they have the ability to pay.[19] 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. Examples include:

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[17] Milton Register of Actions, Complaint Exhibit H.

[18] Milton Judgment of Sentence, Complaint Exhibit I.

[19] Berschback Affidavit, Complaint Exhibit J.

- Dar-Shawn Roman Brown, sentenced to "MONEY OR JAIL" on January 9, 2015.
- Harvey Williams, sentenced to "MONEY OR JAIL" on January 9, 2015.
- Noel Thomas Callaway, sentenced to "MONEY OR JAIL" on February 20, 2015.
- Tory Chico Jones, sentenced to "MONEY OR JAIL" on February 20, 2015.
- Terrance Dion Fuqua, sentenced to "MONEY OR JAIL" on May 29, 2015.
- Lieatrice Nicole Grayson, sentenced to "MONEY OR JAIL" on May 29, 2015.
- Justice Shannon Wade, sentenced to "MONEY OR JAIL" on May 29, 2015.
- Alicia Shawnta Brown, sentenced to "MONEY OR JAIL" on May 29, 2015.
- Vanesia Lanette-Danielle Evans, sentenced to "MONEY OR JAIL" on May 29, 2015.
- Delon Martez Adams, sentenced to "MONEY OR JAIL" on May 29, 2015.
- Chontae Michelle Knight, sentenced to "MONEY OR JAIL" on June 29, 2015.[20]

In each of the above cases, Judge Gerds did not make any inquiry into these defendants' financial ability to pay prior to imposing the sentences.[21]

People of the City of Eastpointe v Donna Elaine Anderson

Donna Elaine Anderson, the plaintiff in this action, is the defendant in *People of the City of Eastpointe v Donna Elaine Anderson*.[22] Ms. Anderson's case in the District Court is currently pending, and she is due to be sentenced by Judge Gerds after pleading guilty to not having a dog license and contempt for failure to appear on that citation. As a result of the dog license violation

[20] Registers of Actions, Complaint Exhibits M-W.

[21] Berschback Affidavit, Complaint Exhibit J; Sullivan Affidavit, Complaint Exhibit L; Doukoure Affidavit, Complaint Exhibit K.

[22] 38th District Court case numbers 14EA04628A-OM and 14EA04628B-OM.

and associated penalties and late fees, Ms. Anderson now owes $455 in fines, fees and costs.[23]

Ms. Anderson is indigent.[24] A single mother with two young children dependent solely on her for their care and wellbeing, Ms. Anderson is the recipient of means-tested government assistance including Section 8 housing assistance, utility assistance, food assistance, and Medicaid. She has been unable to obtain steady full-time employment because she must take care of her children and cannot afford child care.

Ms. Anderson was advised by her court-appointed attorney that Judge Gerds, per his usual practice, will sentence her 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.[25] Ms. Anderson's attorney has explained to her that Judge Gerds has a strict policy of not allowing payments plans,[26] 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. Due to her indigency, Ms. Anderson has not been able to save or obtain $455. Her court-appointed attorney has adjourned her sentencing twice so that she would not go to jail. At the last hearing, Judge Gerds warned Ms. Anderson that this would be her last chance and there would be no further adjournments of her sentencing hearing.[27] Based on Judge Gerds's established practice, Ms. Anderson knows that if she appears at her sentencing hearing without $455, she will be sentenced to jail and immediately taken into custody without consideration of her financial

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[23] Anderson Registers of Actions, Complaint Exhibit X.

[24] Anderson Affidavit, Complaint Exhibit Y.

[25] Anderson Affidavit, Complaint Exhibit Y.

[26] See Photograph, Complaint Exhibit B.

[27] Anderson Transcript, Complaint Exhibit Z.

inability to pay.[28] In sum, like Mr. Rockett and Mr. Milton before her, Ms. Anderson faces incarceration because she is poor.

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.[29]

[28] Anderson Affidavit, Complaint Exhibit Y.

[29] *Id.*

LEGAL STANDARD

A complaint for superintending control "is the proper vehicle to challenge the general practices of an inferior court." *Lockhart v Thirty-Sixth Dist Court Judge*, 204 Mich App 684, 688; 516 NW2d 76 (1994). This Court "has a general superintending control over all inferior courts and tribunals" within its jurisdiction, including the 38th District Court in Eastpointe. MCL 600.615; Const 1963, art 6, § 13. "A superintending control order enforces the superintending control power of a court over lower courts or tribunals." MCL 3.302(A). The procedure for obtaining an order of superintending control in circuit court is governed by MCR 3.302(E).

There are two requirements for superintending control. "The standard for issuing a writ of superintending control is to determine whether the lower court failed to perform a clear legal duty." *Frederick v Presque Isle Co Circuit Judge*, 439 Mich 1, 15; 476 NW2d 142 (1991). Additionally, the plaintiff must establish "the absence of an adequate legal remedy." *Recorder's Court Bar Ass'n v Wayne Circuit Court*, 443 Mich 110, 134; 503 NW2d 885 (1993). As explained below, both requirements are satisfied in this case.

ARGUMENT

I. By sentencing defendants to "pay or stay" without assessing their ability to pay, Judge Gerds is violating a clear legal duty.

The first question in deciding an action for superintending control is whether the lower court failed to perform a clear legal duty. *Frederick, supra*, 439 Mich at 15. There is no question that sentencing poor people to jail because they cannot afford to pay fines, fees or costs constitutes a failure to perform a clear legal duty.

"It is well established that a sentence that exposes an offender to incarceration unless he pays restitution or some other fine violates the Equal Protection Clauses of the federal and state constitutions because it results in unequal punishments for offenders who have and do not have sufficient money." *People v Collins*, 239 Mich App 125, 135-36; 607 NW2d 760 (1999). This was confirmed recently by the State Court Administrative Office's Ability to Pay Workgroup: "Michigan law is . . . clear that a judge may not incarcerate someone who lacks the ability to pay court-ordered financial obligations." SCAO Ability to Pay Workgroup, *Tools and Guidance for Determining and Addressing an Obligor's Ability to Pay* (April 20, 2015), p. 1.[30]

The constitutional prohibition against "pay or stay" sentencing stems from the United States Supreme Court's decisions in *Williams v Illinois*, 399 US 235; 90 S Ct 2018; 26 L Ed 2d 586 (1970), *Tate v Short*, 401 US 395; 91 S Ct 668; 28 L Ed 2d 130 (1971), and *Bearden v Georgia*, 461 US 660; 103 S Ct 2064; 76 L Ed 2d 221 (1983). The rule emanating from those decisions is that the state "cannot impose a fine as a sentence and then automatically convert it into a jail term solely because the defendant is indigent and cannot forthwith pay the fine in full." *Bearden*, 461 US at 667 (internal quotation marks omitted).

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[30] Available at http://courts.mi.gov/Administration/SCAO/Resources/Documents/Publications/Reports/AbilityToPay.pdf.

Based on these decisions, the Michigan Court of Appeals has clearly held that it is likewise unconstitutional to sentence an indigent defendant to jail with release or suspension of the sentence permitted only upon payment of a fine. *Collins*, *supra*, 239 Mich App at 136. And the Michigan Supreme Court recognized in *People v Jackson*, 483 Mich 271, 287; 769 NW2d 630 (2009), that "a truly indigent defendant [should] never be required to pay" a court-ordered financial obligation upon penalty of incarceration. To ensure this, if a payment obligation is imposed as part of a sentence, the trial court may not "enforce" the obligation, i.e., send the defendant to jail, without conducting a comprehensive ability-to-pay assessment. *Id.* at 287-90.

Relying on the above-cited clearly established case law, this Court has already reviewed Judge Gerds's "pay or stay" sentencing practice and has declared it unconstitutional.[31] In *People of the City of Eastpointe v Ryan Edward Rockett* (Docket No. 15-444-AR) (Chrzanowski, J.), this Court issued a written opinion and order reviewing the binding case law on this topic from the U.S. Supreme Court, the Michigan Supreme Court, and the Michigan Court of Appeals.[32] 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 *Jackson*, 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.

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[31] See Complaint ¶¶ 39-40.

[32] *People of the City of Eastpointe v Rockett*, unpublished opinion of the Macomb Circuit Court, issued March 18, 2015 (Docket No. 15-444-AR), Complaint Exhibit A.

> 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* and *Collins* under the Equal Protection Clauses of both the federal and state constitutions.**[33]

Accordingly, a district judge has a clear legal duty under the equal protection guarantees of both the federal and state constitutions to conduct an ability-to-pay analysis before imposing a "pay or stay" sentence, and to refrain from imposing such a sentence on someone who cannot afford to pay. In this case, as detailed in plaintiff's complaint and its attached exhibits, Judge Gerds has a "pay or stay" sentencing practice that violates this requirement and subjects indigent defendants to incarceration because of their inability to pay. This practice has continued despite clear case law holding it unconstitutional, and even after the opinion and order of this Court in *People v Rockett*, *supra*, which should have served to educate Judge Gerds, if he was previously unaware of the law in this area. Therefore, Judge Gerds has failed to perform a clear legal duty, making this case appropriate for superintending control.

II. Direct appeals are not an adequate legal remedy for challenging a generalized "pay or stay" sentencing practice.

The second requirement for superintending control is the absence of "another adequate remedy." MCR 3.302(B). Although at first glance the court rules might appear to suggest that superintending control is improper when an appeal is available, the case law is very clear that superintending control is foreclosed only when an appeal would be an *adequate* remedy. It has long been recognized that "superintending control is the proper vehicle to challenge the *general practices* of an inferior court." *Lockhart v Thirty-Sixth Dist Court Judge*, 204 Mich App 684,

[33] *Id.*, p. 4 (emphasis added).

688; 516 NW2d 76 (1994) (emphasis added). For this reason, courts have explained that even when an appeal might be available in an individual case, such an appeal is not adequate when the remedy sought is a change in the general policy or practice of the lower tribunal. See *In re Hague*, 412 Mich 532, 546; 315 NW2d 524 (1982) ("It is clear . . . that availability of an appeal in the individual case does not preclude superintending relief when that procedure does not provide an adequate remedy."); *Smith v Common Pleas Court of Detroit*, 106 Mich App 621, 623; 308 NW2d 586 (1981) ("[A]n action for superintending control is appropriate where a litigant seeks to review the general policies and practices of an inferior court even though the individual litigant may have a right of appeal.").

The Michigan Supreme Court's decision in *Cahill v Thomassen*, 393 Mich 137; 224 NW2d 24 (1974), is dispositive. The plaintiff in that case was attempting to challenge a traffic ticket in the district court and was told that he would not be allowed to post a 10% cash deposit bond and would not be permitted a jury trial. He then filed a 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 an appeal in his individual traffic case would not have been an adequate remedy:

> Cahill was challenging the *general practices* of the 15th District Court regarding the posting of bond and the availability of jury trials. . . . While appeal did provide a suitable procedure to resolve Cahill's individual case, . . . [u]nder the present facts only superintending control allowed the circuit court to address and resolve the objections concerning the *generalized practices* of the district court and, if [Cahill] had prevailed, to issue an appropriate remedial order. [*Id.* at 142-43 (emphasis added).]

This case is essentially the same. The record reflects that Judge Gerds has a *general practice* of imposing "pay or stay" sentences without regard to defendants' ability to pay. The

remedy sought in this action is an order that would prohibit the District Court from jailing *any* defendant pursuant to a "pay or stay" sentence or similar order without first determining that the defendant has the financial ability to pay.[34] Only superintending control would allow such an order; an individual appeal would be inadequate.

Additionally, the record demonstrates that previous attempts to end Judge Gerds's "pay or stay" sentencing practice through appeals of individual sentences have been unsuccessful.[35] Even after this Court ordered relief in an individual appeal, Judge Gerds continued to violate his clear legal duty not to impose "pay or stay" sentences without regard to defendants' inability to pay. The Supreme Court has held that superintending control is appropriate when individualized appeals had "proven ineffective," *Recorder's Court Bar Ass'n v Wayne Circuit Court*, 443 Mich 110, 133; 503 NW2d 885 (1993), thereby demonstrating that a case-by-case appeal approach would not be adequate because "the underlying problem [will] remain unchanged," *id.* at 135. Here, as demonstrated by the cases of Ryan Rocket and Stephane Milton, even if Ms. Anderson were to file an appeal, "the underlying problem" in the 38th District Court "would remain unchanged." Superintending control is necessary because it is the only adequate remedy.

Further, bringing case-by-case appeals to challenge Judge Gerds's general sentencing practice is "too time-consuming and burdensome to be called adequate." *Lockhart v Thirty-Sixth Dist Court Judge*, 204 Mich App 684, 691; 516 NW2d 76 (1994). And when Judge Gerds imposes an unconstitutional pay-or-stay sentence, even bringing an immediate appeal does not keep the defendant out of jail;[36] additional appeals will thus be inadequate at preventing unlawful

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[34] Complaint, Prayer for Relief, pp. 18-19.

[35] See Complaint ¶¶ 52-53, 71-77.

[36] See Complaint ¶¶ 34-38, 45-48, 62-65.

deprivations of liberty as compared to a direct order of superintending control prohibiting the District Court from continuing its current unlawful practice.

In sum, not only does "pay or stay" sentencing violate a clear legal duty, individual appeals from Judge Gerds's general "pay or stay" sentencing practice would be an inadequate remedy. Therefore, an order of superintending control should issue to put an end to the unconstitutional "pay or stay" sentencing practice in the 38th District Court.

CONCLUSION AND RELIEF REQUESTED

Based on the facts and law set forth above and documented in plaintiff's complaint, this Court should exercise superintending control over the 38th District Court and order 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. This Court should also order the District Court to impose a non-custodial sentence on Ms. Anderson that accommodates her limited ability to pay. Further, if this Court requires additional record evidence before rendering a final judgment in this matter, the Court should open discovery, order the District Court to produce records as requested by plaintiff or by this Court, and issue any other appropriate order in furtherance of this Court's jurisdiction and superintending control power over the 38th District Court.

Respectfully submitted,

Dated: July 9, 2015

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