

## Judge can order Office of the Public Defender representation

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A trial judge can order the Office of Public Defender to represent a defendant when the court and the office disagree on whether he or she is indigent, a divided Court of Appeals held Friday.

There have been several cases out of Cecil County where the public defender has argued that a defendant is not indigent but a judge has disagreed, so this decision provides “needed instruction and guidance on this issue,” said Andrew H. Baida, who represented the state. A 4-3 majority of the court held that because the public defender’s office was using the wrong standard to determine indigence, the trial court could step in, conduct its own hearing on the defendant’s financial situation, and appoint counsel from the Office of the Public Defender.

“Of utmost importance to the present case, Art. 27A, §6(f), contains no language indicating a legislative intent to prohibit the appointment of an attorney from the local OPD by a trial court to represent an individual that the court determines qualifies as indigent, except where an actual and unwaived or unwaivable conflict of interest would arise,” Judge Glenn T. Harrell Jr. wrote.

Language in previous Court of Appeals holdings that would seem to suggest otherwise was mere dicta and therefore not binding, Harrell wrote.

The minority, led by Chief Judge Robert M. Bell, dissented strongly.

“The majority’s disregard of precedent and statutory pronouncements not only is troubling, but it tramples on the doctrine of separation of powers,” Bell wrote.

Bell was joined in dissent by Judges Lynne A. Battaglia and Clayton Greene Jr.

According to the opinion, Jason Flynn Stinnett was facing burglary and related charges in Cecil County and requested a public defender. The Office of the Public Defender determined that he was not entitled to its services because his income was more than 110 percent of the federal poverty guidelines. That is the limit set out in COMAR 14.06.03.05A and D(2).

“By evaluating Stinnett’s application solely under the maximum net annual income and asset ceiling standard of COMAR 14.06.03.05A and D(2), while ignoring wholly the statutorily-

mandated indigency factors contained in Art. 27A, § 7(a), and COMAR 14.06.03.05A, the local OPD applied the incorrect standard for determining indigency of applicants and erred, both legally and factually, in concluding that Stinnett did not qualify for representation by its attorneys,” Harrell wrote.

The trial court conducted a hearing on whether Stinnett truly was indigent, examining the additional factors mandated for consideration in COMAR 14.06.03.05A and Art. 27A, such as assets and disposable net income. The court found that Stinnett had no net income, even though his gross income exceeded the federal poverty guidelines. As such, the judge concluded that Stinnett was indigent.

The judge ordered Cecil County Deputy District Public Defender John K. Northrop, someone else from the office, or a panel attorney to represent Stinnett. Northrop filed a notice of appeal and failed to appear at a later hearing in Stinnett’s case, and the judge found him in contempt and fined him \$10. The Court of Appeals took the case before the Court of Special Appeals could hear it.

Both the majority and the dissent agreed to reverse the judge’s contempt finding.

The majority held that the judge’s order failed to specify whether the contempt was civil or criminal, mandating reversal. The minority wrote that the contempt finding should be reversed because the judge had no authority to order Northrop to represent Stinnett.

Northrop declined to comment on the holding, referring questions to chief Public Defender Paul B. DeWolfe.

Baida, of Rosenberg Martin Greenberg LLP, was asked to represent the state because in the 1990s, the Office of the Attorney General issued an opinion that trial judges lack the authority to order a public defender to represent a defendant.

In a second opinion issued Friday, the Court of Appeals held that a Cecil County Circuit Court judge should not have dismissed drug possession and driving under the influence charges against Evelyn Susan Workman. The judge dismissed the charges because the public defender’s office, using the same method of calculating indigence as it had with Stinnett, refused to represent Workman, even though the judge later found that she was indigent.

The holding in *Office of the Public Defender v. State* dictates that the judge has the power to order the office to represent an indigent defendant, so the charges were improperly dismissed, Harrell wrote.

Bell, Battaglia and Greene concurred, agreeing that Workman’s charges should have stood but disagreeing that the judge could have ordered the public defender’s office to represent her.