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November 19, 2020

Honorable Mary Ellen Barbera
Chief Judge
Court of Appeals of Maryland
361 Rowe Blvd.
Annapolis, MD 21401

Dear Chief Judge Barbera,

I am writing with grave concerns about the current health risks in district court and the need for greater guidance to the district judges on limiting in-person proceedings during this heightened time in the pandemic. Consistent with the Governor's recent orders bringing Maryland back to "Phase III restrictions," you issued appropriate orders to also scale back on judicial proceedings. While jury trials have been postponed and Circuit Court proceedings limited, your orders are being interpreted inexplicably to allow for District Courts to continue all criminal proceedings in person, despite these dockets posing among the greatest COVID risks and the least urgency. I urge you to require that in-person proceedings for misdemeanor proceedings that do not involve an incarcerated client or domestic violence be postponed until the end of this public health crisis.

District court dockets are super-spreader events. Attorneys, defendants, judicial staff and others appearing at these proceedings are indoors for extended periods of time in contravention to the now-universal guidances to avoid such interactions unless essential. Even with social distancing practices, district courts throughout the state are crowded, especially at the security entrances and in the hallways.

My staff has been on the frontlines providing representation in criminal cases, and exposing themselves to increased risk of contracting the virus. As COVID cases have risen statewide, our attorneys and clients are increasingly contracting the coronavirus based on unnecessary and avoidable court proceedings for minor offenses that would never result in incarceration. Recent transmissions among our staff include a Montgomery County defender exposed to COVID while representing a client on a trespass charge and a Prince George's County attorney exposed after representing people on a traffic docket. Dozens of attorneys across the state are providing representation in hundreds of similarly minor cases every week. In Charles County, a recent docket included four individuals charged with failing to pay restitution; another attorney represented someone on a 2019 theft charge for \$2. Howard County attorneys have seen numerous cases for driving on a suspended license where the license is no longer suspended. And those are just a sample of incidents in the greater DC region. Virtually every county has had similar cases, some with judges and court staff who tested positive for COVID.

In addition to the individual health repercussions, court-based COVID transmissions have resulted in widespread quarantining as well as heightened anxiety and fears. The dangers and

costs posed by the courtroom contact is far greater than the offenses alleged. Cases that do not result in pretrial incarceration lack the danger or urgency to warrant the current health risks. The court has already found that these individuals do not pose a flight or safety risk, based on their pretrial release. Moreover, these cases are disproportionately resolved without any finding of wrongdoing.

There are countless District Court dockets across the state that consist primarily of “nuisance” crimes (e.g. disorderly conduct, trespass, shoplifting, urinating in public...etc.) and status-based traffic offenses (e.g. driving while suspended, driving without a license) where the clients are not incarcerated. Even on these cases, defendants who do not show up for court are cited for failing to appear and often have a bench warrant issued for their arrest. While COVID has created life-threatening dangers for those with a medical condition or other vulnerability, increased risks of getting to court for those who rely on public transportation, and confusion over whether attending court is appropriate or even permitted during the shutdown orders, district court judges continue to issue bench warrants for failing to appear. Recognizing these dire consequences, defendants with COVID symptoms are obliged to attend court. Some clients bring their children with them because child care is unavailable.

Consistent with your orders, the administrative judge in Baltimore City, Judge Waxman, has taken the step of postponing all cases in which the clients are not incarcerated, with the exception of domestic violence cases. While we believe that some of these low level misdemeanors should simply be dismissed, postponement until in-court proceedings are safe is a reasonable middle position that should be required statewide. Baltimore City District Court is the largest and most complex of the state’s district courts. If it can effectively postpone all cases not involving incarcerated defendants it seems that the rest of the district courts throughout the state can and should follow suit. We humbly ask you to so order.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Paul DeWolfe', is placed over a light blue rectangular background.

PAUL DEWOLFE
Public Defender